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OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

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PLJ

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Commonwealth of Pennsylvania v. Lerin Dukes*

Criminal Appeal—Evidence—Waiver—Sex Offenses—Prior Bad Acts—Cross Examination—Spousal Abuse

Evidentiary issues related to a case of sexual abuse of a spouse.

No. CC 2016-03643. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Bicket, J.—February 6, 2017.

OPINION

Appellant, Lerin Dukes, appeals the Judgement of Sentence imposed by this Court on November 8, 2016. For the reasons set forth below, this Court's Order should be affirmed.

BACKGROUND

The salient procedural and factual history is as follows. Lerin Dukes (hereinafter "Defendant") was charged with the following crimes in connection with an incident which occurred on or about February 23, 2016:

a. Count 1: One count of 18 Pa.C.S. § 1321 §(a)(1) Rape by Forcible Compulsion;

b. Count 2: One count of 18 Pa.C.S. §3124. 1 Sexual Assault;

c. Count 3: One count of 18 Pa.C.S. §2902(a)(1) Unlawful Restraint with Risk of Serious Bodily Injury;

d. Count 4: One count of 18 Pa.C.S. § (a)(1) Simple Assault; and

e. Count 4: One count of 18 Pa.C.S. §2706(a)(1) Terroristic Threats with

Intent to Terrorize Another.

Following a non-jury trial held on August 16 & 17, 2016, before the undersigned, this Court found Defendant guilty of Count 2, Sexual Assault and Count 4, Simple Assault. Defendant was sentenced on November 8, 2016. On November 18, 2016 Defendant filed a Post-Sentence Motion which this Court denied on November 23, 2016.

On December 22, 2016, Defendant filed a "Notice of Appeal to the Judgement of Sentence imposed on November 8, 2016.

On January 24, 2017, Defendant filed his Concise Statement of Matters Complained of on Appeal. Defendant's Concise Statement of Matters Complained of on Appeal are as follows:

I. The court erred when it permitted the Commonwealth to introduce evidence of prior assaultive acts committed by Appellant against the complaint in this case on January 4, 2012, May 16 and September 5, 2013, and April 23, 2014.

II. The court erred when it convicted Appellant of the crime of Sexual Assault (18 Pa.C.S. § 3124.1) based on its erroneous belief that the crime was committed if Appellant engaged in orthodox or deviate sexual intercourse with the complainant and there was no evidence that the complainant consented to that act of intercourse.

III. The court erred when it permitted the Commonwealth to question Appellant on cross-examination regarding (a) alleged criminal acts committed by him against the complainant on January 4, 2012, May 16, 2013, September 5, 2013 and April 23, 2014 and (b) his violation of a nocontact order occasioned by his visiting the complainant's residence on February 18, 2016 (sic).

FINDINGS OF FACT

Based upon the testimony and evidence presented at the August 16, 2016, non-jury trial, the Court makes the following findings of fact.

Defendant and (the "Victim") are married individuals. (Trial transcript "T.T."; dated August 15-17, 2016; p. 26) On or about February 23, 2016, the Victim and her children were residing at 7500 Bennet Street, Pittsburgh Pennsylvania. (*Id.* at 31) At this time Defendant was residing in the Renewal Center. (*Id.*) On or about February 23, 2016, at approximately 10:30 a.m., the Victim was in her living room of said 7500 Bennet Street address when Defendant entered the residence in violation of a no-contact order with the Victim. (*Id.* at 32) Upon Defendant's entry, the couple began to argue and physically fight. (*Id.* at 35) The fight between the couple began on the first floor of the residence and moved to the second floor when Defendant pushed the Victim up the stairs "unwillingly." (*Id.* at 36) Once on the second floor of the residence, Defendant led the Victim to the "second" bedroom and removed her clothes and engaged in sexual intercourse with the Victim. (*Id.* at 37-39) The Victim testified that she did not want to engage in sexual intercourse with Defendant. (*Id.* at 39)[1] The Victim testified that she scratched and bit Defendant during the course of sexual intercourse. (*Id.* at 44) The Victim testified that she then advised Defendant that she was "not angry" and "everything was fine" and "he could go on his way" because she did not want him to know she was going to call the police. (*Id.* at 47) Defendant subsequently left the residence and the Victim called 911 to report Defendant. (*Id.*)

Discussion

I. The court erred when it permitted the Commonwealth to introduce evidence of prior assaultive acts committed by Appellant against the complaint in this case on January 4, 2012, May 16 and September 5, 2013, and April 23, 2014.

Defendant's first matter complained of on appeal is without merit. The Pennsylvania Superior Courts have consistently held "evidence of prior abuse between a defendant and an abused victim is generally admissible to establish motive, intent, malice, or ill-will." *Com. v. Ivy*, 146 A.3d 241, 252 (Pa. Super. 2016)(internal citations omitted). Additionally, Pennsylvania Courts have held such evidence of prior abuse is admissible to rebut a Defendant's defense alleging the victim consented to such sexual acts. *Id.* and see *Com. v. Jackson*, 900 A.2d. 936 (Pa. Super. 2006). Furthermore, such evidence has been admissible to show the history of the case between a defendant and a victim. See generally, *Ivy, supra.*

Nevertheless, as Defendant elected to have this case tired in a non-jury bench trial, any potential prejudice the evidence of his prior abuse of the victim was "diminished" if not eliminated. See *Com. v. O'Brien*, 836 A.2d 966, 968 (Pa. Super. 2003 (Moreover, because [Defendant] has chosen to be tried by a judge without a jury, the potential for undue prejudicial effect is diminished.)

This Court did not consider the prior assaultive acts evidence in arriving at its verdict. This Court believes there was sufficient evidence independent of the prior abuse evidence to sustain Defendant's convictions of Sexual Assault and Simple Assault. The Court notes that Defendant does not raise the sufficiency or weight of the evidence on appeal and as such the Court will not address same.

II. The court erred when it convicted Appellant of the crime of Sexual Assault (18 Pa.C.S. § 3124.1) based on its erroneous belief that the crime was committed if Appellant engaged in orthodox or deviate sexual intercourse with the complainant and there was no evidence that the complainant consented to that act of intercourse.

Defendant's second matter complained of on appeal is without merit. Defendant alleges that this Court shifted the burden of production and persuasion to the Defendant to prove consent based upon a brief discussion at side-bar. Defendant's allegation based upon the portion of the cited transcript is a mischaracterization of the Court's statements and is taken out of context. The Court's statement to counsel at side-bar merely stated that the Court did not believe a victim of a sexual assault or rape needs to verbalize non-consent in order for the Commonwealth to establish and prove non-consent on the part of a victim.

III. The court erred when it permitted the Commonwealth to question Appellant on cross-examination regarding (a) alleged criminal acts committed by him against the complainant on January 4, 2012, May 16, 2013, September 5, 2013 and April 23, 2014 and (b) his violation of a no-contact order occasioned by his visiting the complainant's residence on February 18, 2016 (sic).

Defendant's third matter complained of on appeal is without merit. Defendant did not raise, preserve or object to the cross-examination of Defendant with regard to criminal acts committed by him against the Victim and his violation of a no-contact order occasioned by his visiting the Victim's residence on February 23, 2016.

> Issues not raised to the trial court are waived and cannot be raised for the first time on appeal. In order to preserve an issue for review, a party must make a timely and specific objection. Also, an appellant may not raise a new theory for an objection made at trial on his appeal.

Com. v. Duffy, 832 A.2d 1132, 1136 (Pa. Super. 2003). Accordingly, this issue has been waived on appeal.

Assuming *arguendo* that the Superior Court does not agree that this issue has been waived on appeal, the Defendant opened the door to such questioning on direct examination when Defense counsel questioned the Defendant with regard to these prior incidents. (T.T.; p. 144) (See *Com. v. Stakley*, 365 A.2d 1298, 1300 (Pa. Super. 1976)(The phrase 'opening the door' or 'opening the gate' by cross-examination involves a waiver. If defendant delves into what would be objectionable testimony on the part of the Commonwealth, then the Commonwealth can probe further into the objectionable area.))

For the reasons set forth above, this Court should be affirmed.

BY THE COURT:
/s/Bicket, J.

[1] The Court notes that the Victim recanted some of her testimony at the bench trial, particularly with regard to the force used by Defendant and her vocalizing her non-consent, including screaming for help, from the testimony she provided at the preliminary hearing. However, the Court found her recanting to be unpersuasive and not credible. The Victim's demeanor while testifying showed clear signs of fear and intimidation of Defendant.

Commonwealth of Pennsylvania v. James Banks

Criminal Appeal—Weight of the Evidence—Sentencing (Discretionary Aspects)—Homicide (Attempted)—Credibility—Dying Declaration—Standard Range Sentence

Claim that verdict was against the weight of the evidence is based upon credibility decisions made by the jury.

No. CC 2014-15867. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Lazzara, J.—February 15, 2017.

OPINION

This is a direct appeal from the judgment of sentence entered on July 14, 2016, following a jury trial that took place between April 6, 2016 and April 8, 2016. The Defendant was charged in a five (5) count information as follows: Count One (1): Criminal Attempt - Homicide (18 Pa. C.S.A. §901(a)); Count Two (2): Criminal Conspiracy to commit Homicide, Robbery, Burglary, and Aggravated Assault (18 Pa. C.S.A. §903); Count Three (3): Robbery – Serious Bodily Injury (18 Pa. C.S.A. §3701(a)(1); Count Four (4): Burglary (18 Pa. C.S.A. §3502(a)(1)); and Count Five (5) Aggravated Assault (Pa. C.S.A. §2702(a)(1)). At the conclusion of trial, the jury found the Defendant not guilty of Conspiracy to Commit Criminal Homicide, but guilty of all of the remaining charges. Sentencing was deferred to allow for the preparation of a Pre-Sentence Report ("PSR").

On July 14, 2016, the Defendant was sentenced to an aggregate sentence of 26 to 52 years of imprisonment with a five (5) year period of probation to follow upon his release from imprisonment. Specifically, the Defendant was sentenced to a period of fifteen (15) to thirty (30) years of incarceration at Count One (1), and a period of seven (7) to fourteen (14) years of incarceration at Count Two (2), which was ordered to run consecutively to the sentence imposed at Count One (1). At Count Three (3), the court sentenced the Defendant to a period of eight (8) to sixteen (16) years of incarceration, which was ordered to run concurrently with the sentences imposed at the previous counts. A five (5) year term of probation was also imposed at Count Three (3), and the probation term was ordered to commence upon the Defendant's release from imprisonment. At Count Four (4), the Defendant

was sentenced to a period of four (4) to eight (8) years of imprisonment, which was ordered to run consecutively to Counts One (1) and Two (2). No further penalty was imposed for the Aggravated Assault conviction at Count Five (5) because the conviction merged with the Attempted Homicide conviction at Count One (1). Court costs were imposed, and the Defendant received 412 days of credit for time served. The Defendant also was ordered to have no contact with the victim, Anthony Matthews, or his family. The Defendant filed a timely post-sentence motion, which was heard and denied on August 5, 2016. This timely appeal followed.

On December 5, 2016, the Defendant filed a timely Concise Statement of Errors Complained of on Appeal ("Concise Statement"), raising two (2) issues for review. (Concise Statement, pp. 2-4). The Defendant argues that this court abused its discretion in denying the post-sentence motion because the verdict was against the weight of the evidence, and he contends that this court abused its discretion in imposing sentence. The Defendant's allegations of error on appeal are without merit. The court respectfully requests that the Defendant's convictions and sentence be upheld for the reasons that follow.

I. FACTUAL BACKGROUND

On the morning of October 10, 2014, at approximately 8:30 a.m., the victim, Anthony Matthews, was asleep in his bedroom when he was suddenly awakened by three (3) African-American men standing at his bedside. (Jury Trial Transcript ("TT") (Volume I), 4/5/16-4/8/16, pp. 72, 87, 89, 94, 96, 102-03, 127, 136, 142-44). The intruders had broken into his apartment at 100 Moore Avenue, located in the Knoxville/Mt. Oliver area of the City of Pittsburgh. (TT, pp. 72, 89-90, 127, 136, 165). All three (3) men were armed with weapons, and they made no attempt to mask their identities. (TT, pp. 136-37, 140). Mr. Matthews was immediately able to recognize two (2) of the intruders as James and Jerome Banks, the younger brothers of his ex-girlfriend, London Banks. (TT, pp. 129-31, 134, 137, 140). Mr. Matthews was well familiar with the Banks brothers. (TT, pp. 129-31). He knew exactly what the Banks brothers looked and sounded like because he had spent time with them on multiple occasions during the time that he was dating their sister. (TT, pp. 129-31). The Defendant, James Banks, knew exactly where Mr. Matthews lived because London Banks had briefly resided with Mr. Matthews during the time that they were dating, and the Defendant had been inside of Mr. Matthews' apartment on at least one (1) prior occasion. (TT, pp. 131-32, 135-36).

Mr. Matthews woke up to an unidentified man yelling "Where's the money? Where's the money?" (TT, pp. 73, 81, 136-37, 144-45). Armed with a knife, the unidentified man was standing on the side of Mr. Matthews' bed, and he stabbed Mr. Matthews in the abdomen as Mr. Matthews was attempting to stand up in order to get out of bed. (TT, pp. 136-37, 145). Mr. Matthews began fighting with the unidentified man, and, with his right hand, Mr. Matthews grabbed the knife that the man was holding. (TT, pp. 137, 145). During the struggle, Mr. Matthews felt himself get stabbed in the back. (TT, pp. 137-38, 145). When he turned around, he realized that the Defendant was also armed with a knife and that the Defendant had been the one who had stabbed him in the back. (TT, pp. 137, 145).

As Mr. Matthews tried to push the Defendant away from him, the unidentified man stabbed him again, this time in the side. (TT, pp. 137, 145-46, 161). Mr. Matthews turned back around to grab the knife from the unidentified man, and, as he continued to struggle for the knife, the co-Defendant, Jerome Banks began hitting Mr. Matthews repeatedly in the head with a brick, delivering between six (6) and seven (7) blows. (TT, pp. 137-38, 145-46, 162). Mr. Matthews heard the Defendant yell to his brother Jerome, "[h]it him, hit him, hit him." (TT, pp. 137, 146). Shortly thereafter, the Defendant and his brother ran out of the bedroom, leaving Mr. Matthews alone with the unidentified male. (TT, pp. 137-38, 146). At that point, Mr. Matthews, who still had a grip on the unidentified male's knife, released his grip from the knife, which allowed the man to flee from the apartment. (TT, pp. 138, 146). Before leaving the apartment, however, the three (3) men stole Mr. Matthews' Playstation 3 gaming system and laptop from his living room, and they smashed his television with the same brick that Jerome Banks had used to repeatedly hit him in the head. (TT, pp. 138-39, 153, 161-63, 274).

After the third male ran out of his bedroom, Mr. Matthews stumbled out into his living room screaming, "I don't have anything, I swear to God I don't have any money, I don't have anything for you all to take." (TT, pp. 73, 84, 138). Mr. Matthews collapsed on the floor of his living room. However, he managed to call 911 on his cell phone. (TT, pp. 147-48). Mr. Matthews then crawled across his living room floor and out into the hallway of his apartment building. (TT, pp. 90, 147, 161, 204). His next-door neighbor, Donald Fuller, heard the struggle take place. Mr. Fuller came outside of his apartment and tried to assist Mr. Matthews. Mr. Fuller had seen three (3) black men fleeing from Mr. Matthews apartment when he peered through his peephole after he heard the commotion outside. (TT, pp. 72-75, 77-80, 82, 147-49).

Law enforcement officials were dispatched to the scene at approximately 8:56 a.m. (TT, pp. 88-89). Officers and medical personnel arrived within minutes and found Mr. Matthews in the hallway outside of his apartment, laying in a large pool of his own blood. (TT, pp. 89-92, 104-05,147-48, 204). Mr. Matthews was bleeding profusely, and he was fading in and out of consciousness due to the amount of blood loss he had sustained. (TT, pp. 90-92, 104). Mr. Matthews was in substantial pain due to the "multiple severe stab wounds" that he suffered. (TT, pp. 103-04, 148). His intestines were hanging out of his body, and he was struggling to breathe because of a stab wound to his lung. (TT, pp. 75, 105-06, 151). Mr. Matthews was transported in an ambulance to Mercy Hospital. (TT, pp. 93, 107-08, 150). While he was in route to the hospital, Mr. Matthews began panicking, believing that he was going to die, and he attempted to provide paramedic Shawn Eigenbrode with information about the attack. (TT, pp. 107-09, 150-51). Although he was struggling to breathe through an oxygen mask, Mr. Matthews asked Mr. Eigenbrode to tell his mother, father, and daughter, if he did not survive, that he loved them. (TT, pp. 105, 107,120-121, 150-51). Mr. Matthews also relayed to Mr. Eigenbrode that he was stabbed by his ex-girlfriend's brothers and that there were three (3) men who attacked him. (TT, pp. 109-10, 113-15, 150). When Mr. Eigenbrode asked the name of his ex-girlfriend, Mr. Matthews replied, "London Banks." (TT, pp. 110, 150).

Upon his arrival at Mercy Hospital, Mr. Matthews was put into a medically induced coma for approximately two (2) days. (TT, p. 151). For approximately the next week, Mr. Matthews remained at the hospital, undergoing various surgeries and treatment. (TT, pp. 151-53). On October 17, 2014, Mr. Matthews' condition stabilized sufficiently that he was able to speak with the police about the attack and stabbing. Mr. Matthews spoke with Detective Judd Emery, identifying his attackers as Jerome and James Banks, the younger brothers of his ex-girlfriend, London Banks. Mr. Matthews was presented with separate photo arrays for each brother, and he positively identified both brothers without any hesitation. He circled their pictures, wrote their nicknames next to their faces, and signed his name. (TT, pp. 167-171; 257-262)

After spending approximately a week in the hospital, Mr. Matthews was discharged. Unfortunately, he was readmitted less than 48 hours later due to various complications from his injuries. (TT, pp. 151-52). Mr. Matthews required yet more surgical

procedures and he developed deep vein thrombosis. (TT, p. 152). He spent nearly a month in the hospital due to the complications that he developed from his stab wounds. (TT, p. 152). He was ultimately discharged from the hospital on November 6, 2014. (TT, pp. 152-53). By the time of trial, Mr. Matthews still was experiencing the symptoms from nerve damage in both of his hands and in his lower back. (TT, p. 153). He continued to struggle with pain in his abdominal area from the scar tissue that had developed after his surgeries. (TT, p. 153). He reported some slight short-term memory loss from the head injury that had been caused by the blows from the brick wielded by Jerome Banks. (TT, pp. 153-54). In addition to his physical injuries, Mr. Matthews struggled with anxiety and post-traumatic stress, and he reported difficulty sleeping since the attack in his bedroom. (TT, p. 153).

Prior to the attack, Mr. Matthews had been working full-time at the Chipotle Mexican Grill. (TT, pp. 128, 154). He primarily worked on the grill and was also training for a management position at the restaurant. (TT, p. 128). Since the stabbing, however, Mr. Matthews has not been able to work in any capacity because he is significantly limited in his ability to use his hands for an extended period of time. (TT, pp. 154-55). It is also difficult for him to work in any position that requires lifting or squatting because of the scar tissue in his stomach and the nerve damage in his back. (TT, p. 154). Mr. Matthews also has difficulty sitting and standing for prolonged periods of time because he experiences severe, sharp pains in his back that shoot down his leg. Mr. Matthews is unsure whether he will be able to work a full workday again. (TT, pp. 154-55).

II. DISCUSSION

A. The Defendant's convictions for Attempted Murder, Criminal Conspiracy, Robbery, Burglary, and Aggravated Assault were not against the weight of the evidence.

In his first allegation of error, the Defendant contends that this court "abused its discretion in denying the post-sentence motion [because] the evidence presented was so contrary to the verdict rendered that it shocks one's sense of justice." (Concise Statement, pp. 2-3). In support of his assertion, the Defendant cites to: (i) the lack of physical and scientific evidence implicating the Defendant in the commission of the crimes, (ii) the credibility of the victim and the conditions surrounding his identification of the Defendant, (iii) the fact that the Defendant and the unidentified coconspirator perpetrated the attack using knives from Mr. Matthews' kitchen, (iv) the fact that the Defendant presented an alibi defense at trial, and (v) the apparent lack of motive for the attack. (*Id.*).

It is well-established that a challenge to the weight of the evidence "concedes that there is sufficient evidence to sustain the verdict." *Commonwealth v. Widmer*, 744 A.2d 745, 751 (Pa. 2000); *Commonwealth v. Hunzer*, 868 A.2d 498, 507 (Pa. Super. 2005), *appeal denied*, 880 A.2d 1237 (Pa. 2005) ("A true weight of the evidence challenge concedes that sufficient evidence exists to sustain the verdict **but questions which evidence is to be believed**.") (emphasis added). In reviewing claims that the verdict was against the weight of the evidence, our appellate courts have explained that

> [t]he weight of the evidence is **exclusively for the finder of fact** who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, *appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim*.

Commonwealth v. Lewis, 911 A.2d 558, 565 (Pa. Super. 2006) (emphasis added); *Commonwealth v. Torres*, 578 A3d 1323, 1326 (Pa. Super. 1990) ("The determination whether to grant a new trial on the ground that the verdict is against the weight of the evidence rests within the discretion of the trial court, and we will not disturb that decision absent an abuse of discretion.").

Indeed, "appellate review of a trial court's decision on a weight of the evidence claim is extremely limited." *Torres, supra*, at 1326. Courts have reasoned that

> [b]ecause the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence.

Widmer, supra, at 753. Stated differently, "[o]ne of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice." *Commonwealth v. Clay*, 64 A.3d 1049, 1055 (Pa. 2013) (quoting *Widmer, supra*, at 753).

In determining whether a trial court abused its discretion in denying a motion for a new trial based on a claim that the verdict was against the weight of the evidence, our Supreme Court has cautioned that

> [a] new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. [*Widmer, supra*, at 751-52]. Rather, "the role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.'" [*Widmer, supra*] at 752 (citation omitted). It has often been stated that "a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." [*Commonwealth v. Brown*, 648 A.2d 1177, 1189 (Pa. 1994)].

Clay, supra, at 1055.

This court did not abuse its discretion in denying the Defendant's post-sentence motion because the verdict was not against the weight of the evidence. To the contrary, the weight of the evidence presented at trial was substantially against the Defendant and his brother, Jerome Banks. Although the Defendant correctly notes that the Commonwealth was unable to present physical or scientific evidence linking him to the crime, his "CSI" argument loses substantial force when considered against the evidence as a whole, and it seeks to distract one's attention away from the fact that the determination of guilt in this case was centered on credibility determinations and the resolution of conflicting testimony, matters that are solely within the province of the jury.

Although this court did not sit as the fact-finder, it presided over the trial and closely studied the victim as he recounted the

horrific events that unfolded on October 10, 2014. At all times throughout the proceedings, Mr. Matthews came across as sincere, genuine, and highly credible. He testified calmly, confidently and consistently, and his credibility was bolstered by other compelling pieces of evidence that corroborated his account of what transpired on October 10, 2014.

One of the most salient pieces of evidence in this case was the fact that Mr. Matthews identified the Banks brothers as his attackers on the way to the hospital, while believing he was going to die. (TT, pp. 107-09, 150). Mr. Matthews told paramedic Shawn Eigenbrode, as he was bleeding out and struggling to breathe, that he was stabbed by his ex-girlfriend's younger brothers. (TT, pp. 107-09, 121, 150-51). When the paramedic asked the name of his ex-girlfriend, Mr. Matthews replied, "London Banks." (TT, pp. 110, 150). Mr. Eigenbrode testified at trial and corroborated Mr. Matthews' testimony. Specifically, Mr. Eigenbrode confirmed that, while they were in the ambulance, Mr. Matthews asked him, "Am I going to die?" and he also testified that Mr. Matthews told him he was attacked by "his ex's brothers." (TT, 107-109). Although Mr. Matthews' injuries were not ultimately fatal, Mr. Matthews essentially made a dying declaration to Mr. Eigenbrode when he identified his attackers in the ambulance, because he genuinely believed he was going to die. Our Supreme Court has recognized the reliability of dying declarations, noting that such reliability "is based on the premise that no one who is immediately going into the presence of his Maker will do so with a lie upon his lips." *Commonwealth v. Smith*, 314 A.2d 224, 225 (Pa. 1973) (internal quotations omitted). For that reason, our Supreme Court has even stated that dying declarations "should be considered as the equivalent of testimony given under oath in open Court" because an individual who believes that death is imminent is "more likely to tell the truth than is a witness in Court who knows that if he lies he will have a locus penitentiae, an opportunity to repent, confess and be absolved of his sin[.]" *Commonwealth v. Brown*, 131 A.2d 367, 369-370 (Pa. 1971).

Thus, the fact that Mr. Matthews identified the Banks brothers as his attackers while he thought he was dying on the way to the hospital makes his identification highly credible and worthy of belief. It should be noted that at trial, the defense attempted to undermine the identification made in the ambulance by claiming that Mr. Matthews identified his ex-girlfriend as "Linda Bey." (TT, pp. 114-16, 121, 222). This argument is nothing more than an attempt to mislead the jury. When considered against the evidence in its entirety, it is clear that the "name issue" is a desperate attempt by the defense to attack the credibility of the victim. Considering Mr. Matthews' physical condition, the noise from the ambulance's sirens, the fact that Mr. Matthews was "panicking" and that he was trying to speak through an oxygen mask, with a punctured lung, at the time he made his identification, Mr. Eigenbrode understandably could have been confused as to the name that he thought that he heard. (TT, pp. 120-21). This is even more likely given that "London" is a much less common name than "Linda". Given how similar the names sound even without all of the background noise, Mr. Eigebrode's confusion as to the name is easily understood. In any event, any discrepancy as to the identification of the perpetrators was for the jury to consider and resolve. The jurors obviously resolved this "discrepancy" in Mr. Matthews' favor after weighing the evidence as a whole. It should also be noted that Mr. Matthews identified his attackers as the brothers of his ex-girlfriend, no matter what name was heard or mis-heard, and he testified credibly that he did not even know, let alone date, a Linda Bey.

Any doubt as to whether Mr. Matthews said the name "Linda Bey" or "London Banks" is further cast away by the fact that Mr. Matthews identified the Banks brothers as his attackers two (2) more times in the week following his attack. Detectives Emery and Bolin initially went to the hospital on the day of the stabbing to talk to Mr. Matthews, but they were unable to speak with him because of his condition. (TT, p. 257). On October 14, 2014, Detectives Emery and Bolin returned to the hospital, and they were able to have a brief conversation with Mr. Matthews about the attack. (TT, p. 257). Mr. Matthews told them that he knew two (2) of his attackers because they were his ex-girlfriend's brothers, and he identified his ex-girlfriend as London Banks. (TT, p. 257). On October 17, 2014, Detective Emery returned to the hospital and presented Mr. Matthews with two (2) separate photo arrays for purposes of making an official identification. (TT, pp. 167-71, 257-262). Mr. Matthews had no trouble positively identifying the brothers in each array. He circled their pictures, wrote their nicknames "Jimmy" (James Banks) and "Rome" (Jerome Banks) next to their respective pictures, and signed his name. (TT, pp. 167-261-62). Thus, from the time of the attack throughout all the proceedings, Mr. Matthews consistently maintained that the Banks brothers were responsible for his stabbing, which further demonstrates the reliable and credible nature of his testimony.

Although the Defendant attempts to undermine the circumstances surrounding his ability to see his attackers, this argument is unavailing in light of the fact that the attack happened around 8:30 a.m. in the morning, and the sheer curtains in Mr. Matthews' bedroom were open when the attack occurred. (TT, pp. 142, 277). Additionally, the attackers made no efforts to cover or mask themselves. Mr. Matthews was easily able to identify the familiar faces that he saw in his room. Additionally, he was able to recognize their voices, as well as their appearances.

The court further notes that, although there were no other eyewitnesses that could speak to the identity of the attackers, the testimony of Mr. Matthews' next-door neighbor, Donald Fuller, also lent substantial credibility to Mr. Matthews' account of what transpired. As noted, Mr. Fuller and Mr. Matthews' apartments shared a common wall. Because the walls were thin, Mr. Fuller was able to hear the attack take place. (TT, pp. 72-74). He testified that he and his girlfriend were actually awakened by the sound of a struggle taking place in Mr. Matthews' apartment. Mr. Fuller testified that it sounded like people were "wrestling" or "playing football" in the apartment. (TT, pp. 72-73). Significantly, Mr. Fuller heard a man say, "Give me the money, give me the money," and he heard Mr. Matthews respond by saying "I don't got no money, I don't got no money." (TT, p. 73). Mr. Fuller then looked out the peephole in his front door and saw three (3) black men running out of Mr. Matthews' apartment and down the stairs of the apartment building. (TT, pp. 74, 78, 80). Mr. Fuller credibly corroborated key details of the victim's account of the incident.

Mr. Fuller's testimony also corroborated another relevant point regarding the entry into the apartment building. Mr. Matthews testified that, although he lived in a "secure" building, the security door was anything but secure because it easily could be opened with the use of a credit card. (TT, pp. 165, 179). Mr. Matthews testified that he showed London Banks how to open the door with a credit card during the time that she resided with him. Mr. Fuller testified that "everybody was accessing [the security door] through a credit card." (TT, pp. 84, 165, 179). Detective Emery further corroborated the ease with which the building could be accessed, testifying that he used a business card to gain entry into the building. (TT, p. 281). Given that the Defendant's sister knew how to access the building, and given that the Defendant had been in Mr. Matthews' apartment on at least one (1) prior occasion, this was another link in the chain of evidence that was relevant to the determination of guilt in this matter. (TT, pp. 165-66).

With respect to the lack of physical and scientific evidence in this case, the court notes that Mr. Matthews' *own fingerprints* could not be lifted from his *own* apartment door. (TT, p. 276). Additionally, no testing was conducted on the security door of the

building because of the amount of traffic that flows through that door and because the officers touched the door when they were conducting their investigation. (TT, p. 280). No scientific testing could be conducted on the knives that were used in the attack because they were never located. The brick used by Jerome Banks was tested, but, because of the nature of its surface, there was no evidence that could be successfully lifted from it. (TT, pp. 241-42).

The Defendant also suggests that it was illogical that he and his unidentified co-conspirator armed themselves with knives from Mr. Matthews' own apartment instead of bringing their own weapons with them. (TT, pp. 140-41, 230). Again, this was an argument that was for the jury to consider. The jurors evidently rejected this argument, perhaps because it is well-understood that criminals often do not behave logically and are opportunistic. Moreover, Mr. Matthews testified that he recognized the knives as his own, and he never saw them again after the incident. Regardless of when and how the intruders armed themselves, the fact remains that they were armed with deadly weapons and used those weapons to inflict serious bodily injury upon the victim.

The Defendant also attempts to undermine the victim's credibility by arguing that it was illogical for him to keep his door unlocked given the neighborhood in which he lives. To that end, Mr. Matthews testified he had a "bad habit" of leaving his apartment door unlocked. He further testified credibly that the door was left unlocked the morning of the incident because his new girlfriend had left his apartment at 2:00 a.m. to go to work, and he forgot to lock the door behind her. (TT, pp. 182-83, 272). Even if Mr. Matthews could have exercised more care in securing entry into his own apartment, the reason why his door was unlocked was easily explained by him and is ultimately irrelevant to the question of who attacked him.

Finally, the Defendant contends that the verdict was against the weight of the evidence because he presented an "alibi" defense at trial. His alibi defense, however, was not based on any piece of objective evidence, but rather the testimony of his child's mother, Angela Teasley, and her mother, Tiffany Teasley. (Jury Trial Transcript, Volume II ("TT2"), 4/5/16-4/8/16, pp. 5-47). The Defendant's alibi defense relied solely on whether the jury found the Teasley women to be credible, and it is not at all surprising that the jurors ultimately rejected the alibi defense as not worthy of belief.

First, Angela and Tiffany Teasley were interviewed by a defense investigator on June 29, 2015 at the same time, in the same room, thereby allowing them to align their stories. (TT2, pp. 7, 16, 22, 24). Second, Angela Teasley materially changed the details of her alibi defense between the time of her statement and trial. Specifically, she first claimed that she was able to remember exactly where the Defendant was on the day of the incident because on October 9, 2014, the day before the incident, the Defendant accompanied her to Magee Women's Hospital to find out the gender of their baby. (TT2, pp. 8, 22-27). She admitted that she had used that hospital date as the lynchpin for determining where the Defendant was on October 10, 2014. (TT2, p. 28). However, after finding out that the Commonwealth would be able to prove through medical records that she was never at the hospital on October 9, 2014, Angela Teasley changed her story and said that the Defendant was at her mother's house with her from October 9, 2014 until October 11, 2014, and that the couple did not leave the house at all for those three (3) days. (TT2, pp. 13-14, 28-29).

The court notes that it had the opportunity to observe Angela Teasley as she testified, and her testimony was not credible in the least. Between her demeanor and tone, her obvious bias and her desire to keep her child's father from going to prison, it is not surprising that the jury rejected her testimony and found it unworthy of belief. This court notes that it found, after hearing the same testimony as the jurors, that Ms. Teasley's alibi testimony was entirely unworthy of any belief.

It is also no mystery why the jury also rejected the testimony of "alibi" witness Tiffany Teasley. The court notes that Tiffany Teasley cannot even be considered a proper alibi witness because she could not account for the Defendant's whereabouts during the specific timeframe of the attack. (TT2, pp. 43-45). Although she testified that the Defendant was at her house between October 9, 2014 and October 11, 2014, she specifically testified that she was asleep until almost noon on the day of the incident. (TT2, pp. 39, 42-45). Tiffany Teasley, therefore, was unable to place the Defendant at her home at the time of the attack, and she had no way of knowing where the Defendant was at approximately 8:30 a.m., when the attack on Mr. Matthews occurred.

Accordingly, for all of the reasons cited above, there is no merit to the Defendant's claim that he deserved a new trial because the verdict was against the weight of the evidence. The Defendant's challenge to the weight of the evidence is, at its core, an invitation for the appellate court to reweigh the evidence and second-guess the credibility determinations made by the jury in this case. The reviewing court respectfully should decline to accept such an invitation because "[i]t was the function of the jury as the finder of fact to evaluate the evidence and determine the weight it should be given." *Lewis, supra*, at 566. All of the purported weaknesses in the Commonwealth's case as were outlined in the Defendant's Concise Statement were matters for the jury to resolve. Based on the foregoing discussion of evidence, the jurors' assessment of the evidence and their credibility determinations did not shock this court's sense of justice in any way. There were no facts in this case that were "so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." *Clay, supra*, at 1055. To the contrary, the weight of the evidence was squarely against the Defendant, and this court did not abuse its discretion when it denied his motion for a new trial.

B. This court did not abuse its discretion when it imposed an aggregate sentence of imprisonment of 26 to 52 years of imprisonment.

The Defendant contends that his standard range sentences were "manifestly unjust, unreasonable, and excessive," and he argues that the court abused its discretion when it imposed consecutive sentences. (Concise Statement, pp. 3-4). In support of his argument, he claims that the court "failed to appropriately consider" his history, character, substance abuse problems, and rehabilitative needs. He also cites to the fact that his criminal background involved only non-violent misdemeanor crimes and that he expressed remorse at sentencing. (*Id.* at 3-4).

It is well-settled that "[s]entencing is a matter vested in the sound discretion of the sentencing judge and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003). "To constitute an abuse of discretion, the sentence imposed must either exceed the statutory limits or be manifestly excessive." *Commonwealth v. Gaddis*, 639 A.2d 462, 469 (Pa. Super. 1994) (citations omitted). To that end, "an abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous." *Commonwealth v. Greer,* 951 A.2d 346, 355 (Pa. 2008). "In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing court's discretion." *Mouzon, supra,* at 1128. This deferential standard of review acknowledges that the sentencing court is "in the best position to view the defendant's character, displays of remorse, defiance, indifference, and the overall effect and nature of the crime." *Commonwealth v. Allen*, 24 A.3d 1058, 1065 (Pa. Super. 2011) (internal citations omitted).

The Defendant's sentencing argument seeks to challenge the discretionary aspects of sentencing. The court notes that "[t]he right to appeal a discretionary aspect of sentence is not absolute." *Commonwealth v. Martin*, 727 A.2d 1136, 1143 (Pa. Super. 1999). A defendant "challenging the discretionary aspects of his sentence must invoke [appellate] jurisdiction by satisfying a four-part test." *Commonwealth v. Moury*, 992 A.2d 162, 170 (Pa. Super. 2010). In conducting the four-part test, the appellate court analyzes

> (1) whether appellant has filed a timely notice of appeal, see Pa. R. A. P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, see Pa. R. Crim. P. [708]; (3) whether appellant's brief has a fatal defect, Pa. R. A. P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa. C. S. A. § 9781(b).

Id. at 170. "The determination of whether there is a substantial question is made on a case-by-case basis, and [the appellate court] will grant the appeal only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." *Commonwealth v. Haynes*, 125 A.3d 800, 807 (Pa. Super. 2015).

Our courts have "held on numerous occasions that a claim of inadequate consideration of [mitigating] factors does not raise a substantial question for [] review." *Haynes, supra*, at 807; *Commonwealth v. Buterbaugh,* 91 A.3d 1247, 1266 (Pa. Super. 2014). Furthermore, "a sentencing court generally has discretion to impose multiple sentences concurrently or consecutively, and a challenge to the exercise of that discretion does not ordinarily raise a substantial question." *Commonwealth v. Raven*, 97 A.3d 1244, 1253 (Pa. Super. 2014). Moreover, "bald claims of excessiveness due to the consecutive nature of sentences imposed will not raise a substantial question." *Commonwealth v. Dodge*, 77 A.3d 1263, 1270 (Pa. Super. 2013). Rather, "[t]he imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment." *Moury, supra*, at 171-72.

Respectfully, the reviewing court should find that the Defendant has failed to raise a substantial question for review of his sentence. The Defendant's standard range sentences were consistent with the sentencing provisions of the Sentencing Code, and they did not conflict with the fundamental norms that underlie the sentencing process. However, should the Superior Court conclude that there exists a substantial question as to the appropriateness of the sentence, the aggregate sentence imposed was justified by the totality of the circumstances in this case.

First, the court notes that it had the benefit of a presentence report to aid in its sentencing determination, and, pursuant to its consistent practice, the court carefully reviewed this report prior to sentencing. (Sentencing Hearing Transcript ("ST"), 7/14/16, pp. 2-3); *See Commonwealth v. Tirado*, 870 A.2d 362, 368 (Pa. Super. 2005) (noting that "the sentencing court had the benefit of reviewing the presentence investigation report prior to sentencing . . . and, as such, it is presumed that the sentencing court 'was aware of the relevant information regarding defendant's character and weighed those considerations along with mitigating statutory factors.'") (internal citations omitted). The court specifically noted at sentencing that it had reviewed the presentence report *three (3) separate times* in preparation for sentencing. (ST, p. 3). This court, therefore, was well-familiar with the Defendant's personal background, criminal history, and substance abuse issues, and it took each one of those factors into account in determining what sentence would be appropriate in this case. (ST, p. 35).

Second, the court considered a number of different factors beyond the heinous and serious nature of the Defendant's crimes. In addition to giving meaningful consideration to the Defendant's background, history, and need for rehabilitation, the court considered the arguments of counsel at sentencing, the victim impact testimony from Mr. Matthews and his mother, and the Defendant's allocution to the court. (ST, pp. 10-29).

This court would note that the victim's testimony at sentencing was particularly impactful. Having closely studied the victim as he testified at trial, and again during sentencing, the court found Mr. Matthews to be extremely credible and sincere in his description, not only of the events that transpired on the day of the incident, but also in his description of the physical and emotional pain that he continues to struggle with as a result of his brutal attack that almost took his life. The effects of the stabbing have completely derailed Mr. Matthews from the management track that he was on before the incident, and, at the time of trial, he still had not been able to return to work. Mr. Matthews does not know whether he will ever be able to work a full work day in the future. He continues to have difficulties and challenges with even the most basic of bodily functions, such as grip strength. His mother's testimony also noted that his relationship with his child has changed fundamentally, as he cannot interact and play with his child in the manner that he was able to prior to the attack. His basic ability to be a father has been compromised.

The Defendant and his co-conspirators robbed the victim of much more than his electronic possessions. They robbed him of his sense of security inside of his own apartment and broke his trust in society as a whole. The stabbing has caused Mr. Matthews to suffer from anxiety and post-traumatic stress. Mr. Matthews has been robbed of one of the most precious commodities – sleep. He is unable to sleep because the attack occurred while he was in his bed, the place where one should always feel most safe.

While counsel attempted to re-litigate the facts of the case at sentencing, and while the Defendant maintained his innocence in the matter, the jury rejected his alibi defense at trial, likely because it was entirely unworthy of belief and unable to be corroborated by any objective and unbiased evidence. As noted above, the alibi witnesses had close ties to the Defendant and, thus, had every incentive to testify favorably for the Defendant.

As the Defendant acknowledges in his Concise Statement, the sentences imposed were standard range sentences, and courts have recognized that "where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code." *Commonwealth v. Lamonda*, 52 A.3d 365, 372 (Pa. Super. 2012); *See also Commonwealth v. Cruz-Centeno*, 668 A.2d 536 (Pa. Super. 1995), *appeal denied*, 676 A.2d 1195 (Pa. 1996) (stating combination of PSI and standard range sentence, absent more, cannot be considered excessive or unreasonable).

In any event, a defendant is not entitled to a concurrent sentencing scheme, and the Defendant in this case certainly was not deserving of a "volume discount" for committing serious crimes that involved breaking into the victim's apartment, brutally stabbing him and almost taking his life, then robbing him of his belongings. *See Commonwealth v. Hoag*, 665 A.2d 1212, 1214 (Pa. Super. 1995) ("The general rule in Pennsylvania is that in imposing a sentence the court has discretion to determine whether to make it concurrent with or consecutive to other sentences then being imposed or other sentences previously imposed."); *Commonwealth v. Anderson*, 650 A.2d 20, 22 (Pa. 1994) (raising a concern that defendants not be given "volume discounts" for multiple criminal acts that arose out of one larger criminal transaction).

Accordingly, after considering all of the evidence presented at trial and sentencing, as well as all of the statutory factors set forth in 42 Pa. C.S.A. §9721(b), this court's decision to employ a consecutive sentencing scheme so as to impose an aggregate

sentence 26 to 52 years of imprisonment was justified by the totality of the circumstances in this case. While the court considered the mitigating aspects of the Defendant's circumstances, it found that the mitigating factors did not outweigh other relevant considerations outlined above. The Defendant's conduct demonstrates a disregard for the law and an indifference to the value of human life, and this, in turn, creates a substantial need to protect the public from his behavior. Accordingly, this court did not abuse its discretion in imposing sentence, and this allegation of error should be rejected on appeal.

III. CONCLUSION

The Defendant's contentions on appeal are without merit. Based on the foregoing, the verdict was not against the weight of the evidence, and the sentence imposed was not an abuse of discretion. Accordingly, this court respectfully requests that the verdict and sentence in this case be upheld.

BY THE COURT:
/s/Lazzara, J.

Date: February 15, 2017

Commonwealth of Pennsylvania v. Malaysha Pennix

Criminal Appeal—Sufficiency—Disorderly Conduct—Swearing at Police—VUFA in a Court Facility

Woman challenges her convictions after her detention at the metal detectors of Family Court.

No. CC 201603128. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
McDaniel, J.—March 3, 2017.

OPINION

The Defendant has appealed from the judgment of sentence entered on October 6, 2016. However, a review of the record reveals that the Defendant has failed to present any meritorious issues on appeal and, therefore, the judgment of sentence should be affirmed.

The Defendant was charged with Possession of a Firearm or Other Weapon in a Court Facility[1] and Disorderly Conduct.[2] A non-jury trial was held before this Court on October 6, 2016 at which time this Court adjudicated the Defendant guilty of all charges. She was immediately sentenced to a term of probation of six (6) months. Timely Post-Sentence Motions were filed and were denied on October 12, 2016. This appeal followed.

Briefly, the evidence presented by the Commonwealth (through stipulation to the Sheriff's Report and Affidavit of Probable Cause) indicated that on October 28, 2015, the Defendant attempted to enter the Family Court building on Ross Street, but was detained at the metal detector when a scan of her book bag revealed the presence of a knife and razor blades. The Defendant was asked to remove the items from her bag, but she had difficulty locating them and became argumentative with the deputy. The Defendant continued to get more and more agitated, and was heard screaming "Fuck you I ain't got time for this", "Fuck you police" and "I don't got time for you fucking police." (Allegheny County Sheriff's Office Incident Report, 10/28/15, p. 1). She was subsequently instructed to leave the building, but she refused and continued to scream and be disruptive until she was escorted from the building by Sheriff's deputies.

On appeal, the Defendant raises five (5) claims of error, which are combined for ease of review and addressed as follows:

1. Sufficiency of the Evidence - Disorderly Conduct

Initially, the Defendant argues that the evidence was insufficient to support the conviction for Disorderly Conduct because her use of profanity did not constitute obscene language. This claim is meritless.

> Our Crimes Code defines Disorderly Conduct as follows:
>
> ***§5503. Disorderly conduct***
>
> *(a) Offense defined. - A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:*
>
> …
>
> *(3) uses obscene language, or makes an obscene gesture;*

18 Pa.C.S.A. §5503.

The record reflects that when she was stopped at the metal detector and asked to remove the knife and razor blades from her bag, the Defendant began screaming and yelling "Fuck you I ain't got time for this", "Fuck you police", "Fuck all you police", "I don't got time for you fucking police", "I don't have time for this fucking shit" and "Fuck all you cops". She now argues that although her language was profane, it did not rise to the level of obscenity and thus was insufficient to support the conviction.

In *Commonwealth v. Pringle*, 450 A.2d 103 (Pa.Super. 1982) our Superior Court addressed a virtually identical issue. In that case, the defendant observed the arrest of her friend who was behaving in an unruly manner outside of a tavern in the town square. As the friend resisted the arrest, the Defendant began repeatedly shouting "goddamn fucking pigs" and "fucking pig, let him go" at the police officers. Our Superior Court cited a line of cases in which the word "fuck" was not found to be "obscene", but noted that in those cases, the word "fuck" was not directed at police officers. The Pringle Court held that "it is well-settled in our Commonwealth that one may be convicted of disorderly conduct for engaging in the activity of shouting profane names and insults at police officers on a public street while the officers attempt to carry out their lawful duties." *Commonwealth v. Pringle*, 450 A.2d 103, 105-106 (Pa.Super. 1982). It continued on to note that "although in other circumstances the rule is well-established that to be obscene, the words must carry a sexual connotation, in the context of the instant case, it is clear that in calling the officers 'goddamn fucking pigs', the Appellant used 'obscene' language within the contemplated context of the disorderly conduct statute."

Id. at 106-107.

It is clear that the Defendant's repeated screaming of "Fuck you I ain't got time for this", "Fuck you police", "Fuck all you police", "I don't got time for you fucking police", "I don't have time for this fucking shit" and "Fuck all you cops" when asked to remove a knife and razor blades from her bag at the Family Division Courthouse amounted to obscene language for purposes of the disorderly conduct statute. See *Pringle, supra.* Insofar as the Defendant repeatedly used obscene language towards the Sheriff's Deputies who were performing their lawful duties, the evidence was sufficient to support the conviction for disorderly conduct. This claim must fail.

2. Sufficiency of the Evidence

Next, the Defendant has raised multiple claims directed to the sufficiency of the evidence to support the conviction for Possession of a Firearm or Other Dangerous Weapon in a Court Facility. Specifically, she argues that the knife and razor blades were not dangerous weapons, that there was no evidence that she knowingly possessed them and that the Family Division Courthouse is not a "Court Facility" for purposes of the statute.

Section 913 of the Crimes Code states, in relevant part:

> ***§913. Possession of firearm or other dangerous weapon in court facility***
>
> *(a) Offense defined. - A person commits an offense if he:*
>
> *(1) knowingly possesses a firearm or other dangerous weapon in a court facility or knowingly causes a firearm other dangerous weapon to be present in a court facility;*
>
> …
>
> *(f) Definitions. - As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*
>
> *"Court facility." The courtroom of a court of record; a courtroom of a community court; the courtroom of a magisterial district judge; a courtroom of the Philadelphia Municipal Court, a courtroom of the Pittsburgh Magistrates Court; a courtroom of the Traffic Court of Philadelphia; judge's chambers; witness rooms; jury deliberation rooms; attorney conference rooms; prisoner holding cells; offices of court clerks, the district attorney, the sheriff and probation and parole officers; and any adjoining corridors.*
>
> *"Dangerous weapon." A bomb, any explosive or incendiary divide or material when possessed with intent to use or to provide such material to commit any offense, graded as a misdemeanor of the third degree or higher, grenade, blackjack, sandbag, metal knuckles, dagger, knife (the blade of which is exposed in an automatic way by switch, push-button, spring mechanism or otherwise) or other implement for the infliction of serious bodily injury which serves no common lawful purpose.*

18 Pa.C.S.A. §913.

The Defendant first challenges the dangerous weapon requirement of the statute, and asserts that a folding knife and razor blades are not "dangerous weapons" for purposes of the statute. Although there was no testimony elicited regarding the knife itself, and specifically no mention of whether it was a type of automatic or spring release, the Sheriff's Incident Report and Affidavit of Probable Cause indicate that the knife was a folding knife with a two (2) inch blade. No further details were provided regarding the razor blades.

However, our courts have held that knives with no spring release may be classified as "dangerous weapons" pursuant to Section 913 even though they are not specifically listed in the statute because they are "capable of producing death or serious bodily injury, regardless of any legitimate purpose the instrument may have." *Commonwealth v. Hyatt*, 2013 WL 11267522, p. 5 (Pa.Super. 2013). The folding knife and the razor blades were certainly capable of producing death or serious bodily injury, regardless of the purpose for which the Defendant now claims to have had them in her bag. As such, this Court was well within its discretion in finding that the knife and razor blades were "dangerous weapons" pursuant to Section 913. This claim is meritless.

The Defendant next challenges the knowing possession requirement of the statute, as she argues that there was no evidence establishing that she knew the knife and razor blades were inside her bag. At trial, the Defendant testified that when leaving for her family court hearing, she grabbed a bag she had not used in months and put her court papers in it right before she left. (Trial Transcript, p. 5). However, on cross-examination, she testified that she took the bag without looking in it because her family court paperwork was already in the bag and had been so for months. (T.T., p. 6). Moreover, her testimony that she only put her court papers in a bag that she hadn't used in months (T.T., p. 5) was patently incredible in that she had her wallet with her (as she was asked for identification upon being taken to the Sheriff's office), which would not have been sitting in a bag, unused, for months. Sitting as the trier of fact, this Court determined that the Defendant's testimony regarding her knowing possession of the knife was not credible, as was well within its discretion. This claim is meritless.

The Defendant also argues that the Family Division Courthouse is not a "court facility" because the statute does not include the word "courthouse" in the definition and there was no evidence that the Ross Street entrance to the Courthouse where the metal detector was located constituted a "court facility."

Following an extensive renovation of the old Allegheny County Jail, the combined Family and Juvenile Division Courthouse opened in 2000. The main entrance to the Courthouse - the location where the Defendant entered - is located on Ross Street, directly across from the Allegheny County Courthouse where the Criminal Division is located. The entrance doors lead directly to a metal detector which opens into a rotunda lobby which leads to an information desk, elevators and other rooms including a child care facility. The second through fifth floors house court staff and clerks offices, judges chambers, courtrooms, a library and conference rooms. The various courtrooms and clerks offices open onto hallways and corridors and lead to the elevators, which connect to the rotunda lobby and the building entrance where the metal detectors in question are located. The Family and Juvenile Division Courthouse is exclusively used for court proceedings; it contains no non-court related county offices or private businesses.

For an attorney to argue that the Family Division Courthouse is not a "court facility" is, frankly, stunning to this Court. If counsel's argument is to be believed and only the hallway directly outside of a courtroom is a "court facility", this court posits, what then? Must there be allowed open entry to the building with multiple, separate metal detectors outside each hallway where a

courtroom or clerk's office is located? Counsel's argument is, quite simply, ludicrous. The Family and Juvenile Division Courthouse is used exclusively for court-business, and the location of a metal detector at its entrance - which leads to a lobby, which leads to elevators, which lead to hallways which lead to courtrooms - is the best and most efficient way to keep all of the Court employees, attorneys and litigants safe. There is no reasonable argument that the Family Division Courthouse is not a "court facility" or that it is somehow in violation of Section 913 because the metal detector is located at the building's entrance rather than directly outside a courtroom, and defense counsel's persistence in making the argument is the ultimate example of a spurious claim. This claim is meritless without question and must fail.

3. Absence of Notice

Finally, the Defendant argues that there was no notice regarding the prohibition of weapons pursuant to Section 913(d) and so the Defendant's conviction is void. Again, this claim is meritless.

Section 913(d) of the Crimes Code states:

> ***§913. Possession of firearm or other dangerous weapon in court facility***
>
> *(d) Posting of notice. - Notice of the provisions of subsections (a) and (e) shall be posted conspicuously at each public entrance to each courthouse or other building containing a court facility and each court facility, and no person shall be convicted of an offense under subsection (a)(1) with respect to a court facility if the notice was not so posted at each public entrance to the courthouse or other building containing a court facility and at the court facility unless the person has actual notice of the provisions of subsection (a).*

18 Pa.C.S.A. §913.

This Court took judicial notice of the fact that there is a large sign indicating that no weapons are permitted in the Family Division Courthouse at the Ross Street entrance where the Defendant entered the building. The sign is large and can be easily read from the street through the building's glass doors. The Defendant's argument that no such sign exists is meritless on its face and requires no additional analysis. This claim must fail.

Accordingly, for the above reasons of fact and law, the judgment of sentence entered by this Court on October 6, 2016 must be affirmed.

BY THE COURT:
/s/McDaniel, J.

Dated: March 3, 2017