

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JALIK PEAY

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2372 EDA 2013

Appeal from the Judgment of Sentence July 29, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0014638-2011

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RASHAWN EDWARDS

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2395 EDA 2013

Appeal from the Judgment of Sentence July 29, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0014637-2011

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

HALEEM POOLE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2477 EDA 2013

Appeal from the Judgment of Sentence August 2, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0014640-2011

BEFORE: PANELLA, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.:

FILED JANUARY 21, 2015

Co-defendants, Jalik Peay, Rashawn Edwards, and Haleem Poole, appeal from the judgments of sentence¹ stemming from their involvement in a 2011 jailhouse² riot, resulting in the death of a fellow inmate, Earl Bostic, and seriously injuring two other inmates, Richard Gyton and Aaron Young. After careful review, we affirm on the opinion authored by the Honorable Barbara A. McDermott.

Young allegedly had a dispute with inmate Sean Sullivan³ over a block worker job.⁴ Sullivan passed "bangers"⁵ to the co-defendants and devised a

¹ We have *sua sponte* consolidated these cases on appeal. **See** Pa.R.A.P. 513 (when same question involved in two or more appeals in different cases, appellate court may in its discretion order them to be argued together as if but single appeal).

² The riot occurred at Curran-Fromhold Correctional Facility, located on State Road in Philadelphia.

³ Co-defendants, Donte Jones and Sean Sullivan, were tried and convicted of third-degree murder and attempted murder in a separate trial. Their appeals are also before this Court. **See Commonwealth v. Jones**, 1879 EDA 2013; **Commonwealth v. Sullivan**, 1905 EDA 2013. Although the trial court opinion in the instant case lists Desean as Sullivan's first name, in his current appeal to this Court as well as the trial court's opinion in that case, his forename is Sean.

plan to attack; the plan included distracting the prison guards so that the perpetrators could invade cell 15 which housed victims Young and Gyton. Bostic was nearby watching television in a dayroom when he was attacked by the co-defendants.

Bostic died of multiple stab wounds to the neck, chest, back and right arm, one of which partially severed his aorta. Gyton and Young were seriously injured when they were stabbed in the hand, head, arm and stomach⁶ by the co-defendants. The perpetrators used shanks⁷ and bangers to carry out the bloody attacks.

Police officers interviewed Gyton at Hahnemann Hospital at the time he was being treated for his stab wounds. The officers memorialized Gyton's statements in a document, which was later read into the record at both the preliminary hearing and at trial. In the document, Gyton identifies the co-defendants as the individuals who stabbed the inmate-victims. N.T. Trial,

(Footnote Continued) _____

⁴ Pod 2 of Block C of the co-defendant's correctional facility contained 32 cells, divided into two tiers, organized around a common living and dining area. Each pod had a designated block worker who was permitted to work outside the common areas while the other inmates were locked in their respective cells.

⁵ A banger is a form of a knife made by prison inmates.

⁶ Gyton suffered a liver laceration, six puncture wounds to his small intestine and injuries to his inferior vena cava and a retroperitoneal hematoma.

⁷ A shank or shiv is a slang term for a sharp or pointed implement used as an improvised knife-like weapon.

5/1/13, at 278-280. At trial, however, Gyton testified he did not know who stabbed him, he recanted statements he allegedly made during a prison assessment that indicated he needed to be separated in jail from the co-defendants because he feared they would harm him again, and he testified about a letter he sent to the co-defendants explaining that his “story” about them committing the crimes had been fabricated. *Id.* at 233; N.T. Trial, 5/2/13, at 13-15, 30; N.T. Trial, 5/3/13, at 83.

Peay, Edwards and Poole were tried together before Judge McDermott. After a seven-day trial, the jury convicted Peay of one count each of third-degree murder,⁸ possession of an instrument of crime (PIC),⁹ prohibited offense weapons,¹⁰ criminal conspiracy to commit murder,¹¹ and two counts each of attempted murder¹² and aggravated assault.¹³ The jury convicted Edwards of two counts each of attempted murder, aggravated assault, and one count each of PIC, prohibited offensive weapons, and criminal

⁸ 18 Pa.C.S. § 2502(c).

⁹ 18 Pa.C.S. § 907(a).

¹⁰ 18 Pa.C.S. § 908.

¹¹ 18 Pa.C.S. § 903.

¹² 18 Pa.C.S. § 901(a); 18 Pa.C.S. § 2501(a).

¹³ 18 Pa.C.S. § 2702(a)(1).

conspiracy to commit murder.¹⁴ Poole was convicted of two counts each of attempted murder, aggravated assault, and one count each of third-degree murder, PIC, prohibited offensive weapons, and criminal conspiracy to commit murder.

On July 29, 2013, the trial court sentenced Peay to 20-40 years' imprisonment on the murder conviction, with a consecutive sentence of two concurrent terms of 20-40 years in prison for two counts of attempted murder, and concurrent sentences of 20-40 years' imprisonment for conspiracy, 1-2 years' imprisonment for weapons possession, and 1-2 years in prison for PIC.¹⁵ On that same date, the court sentenced Edwards to concurrent terms of 18-40 years' incarceration for the conspiracy and each attempted murder conviction and 1-2 years in prison for the weapons charge, with a consecutive term of incarceration of 1-2 years for PIC. On August 2, 2103, the court sentenced Poole to concurrent terms of 20-40 years in prison for his third-degree murder, conspiracy and attempted murder convictions, as well as concurrent terms of 1-2 years in prison for his PIC and weapons charges.¹⁶

¹⁴ Edwards was acquitted of murder.

¹⁵ Peay's sentence for attempted murder was ordered to run consecutive to the third-degree murder sentence, while his PIC sentence was ordered to run concurrently with the third-degree murder sentence.

¹⁶ The co-defendants' aggravated assault convictions merged for sentencing purposes.
(Footnote Continued Next Page)

Peay and Poole filed timely post-sentence motions, which were denied by the trial court. These appeals follow.

On appeal, Peay presents the following issues for our review: (1) whether the trial court erred in failing to grant [Peay's] request for a directed verdict; and (2) whether the conviction[s were] against the weight of the evidence.¹⁷ On appeal, Edwards and Poole present the following issues for our consideration:

- (1) [Are] the appellant[s] entitled to an arrest of judgment with respect to [their] convictions . . . since the evidence is insufficient to sustain the verdicts of guilt as the Commonwealth failed to sustain its burden of proving the appellant's guilt beyond a reasonable doubt?
- (2) [Are] the appellant[s] entitled to a new trial as a result of the trial court's ruling that allowed the Commonwealth to present testimony that Omar Fulton had been threatened?
- (3) [Are] the appellant[s] entitled to a new trial as a result of the trial court's ruling that allowed the Commonwealth to present testimony from Police Officer Brian Stark concerning the confiscation of two knives from a prison desk?
- (4) [Are] the appellant[s] entitled to a new trial as a result of the misconduct of the prosecutor committed during his summation?

(Footnote Continued) _____

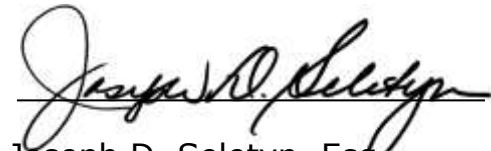
¹⁷ Although Peay's Pa.R.A.P. 1925(b) Statement of Errors Complained of on Appeal does not include a sufficiency of the evidence claim, because sufficiency was raised in Peay's motion for a directed verdict and because the trial court chose to address his direct verdict challenge as one of sufficiency of the evidence, we do not find it waived on appeal. **See** Pa.R.A.P. 1925(b)(4)(vii).

Poole also presents the following additional issues for our consideration: (1) Is the appellant entitled to a remand for resentencing since the sentence imposed by the trial court is unreasonable, excessive and not reflective of his character, history and condition; and (2) is the appellant entitled to a new trial since the verdicts of guilt are against the weight of the evidence.

After reviewing the parties' briefs, relevant case law and record on appeal, we affirm the co-defendants' judgments of sentence based upon the thorough and well-reasoned opinion¹⁸ authored by Judge McDermott. We instruct the parties to attach a copy of Judge McDermott's decision in the event of further proceedings in the matters.

Judgments of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/21/2015

¹⁸ We note that the word "is" should be "its" on the eighth line of page 26 of the trial court's opinion.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

FILED

OCT 11 2013

Criminal Appeals Unit
First Judicial District of PA

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0014637-2011
: CP-51-CR-0014638-2011
: CP-51-CR-0014640-2011

v.

RASHAWN EDWARDS : 2395 EDA 2013
JALIK PEAY : 2372 EDA 2013
HALEEM POOLE : 2477 EDA 2013

OPINION

McDermott, J.

October 11, 2013

Procedural History

Rashawn Edwards

On July 10, 2011, Rashawn Edwards was arrested and charged with Murder, Attempt Murder (four counts), Aggravated Assault (three counts), Criminal Conspiracy (six counts), Possession of an Instrument of Crime (PIC) (five counts), Prohibited Offensive Weapons (five counts), and Riot.

On April 29, 2013, Edwards, along with co-defendants Poole and Peay, appeared before this Court and elected to be tried by a jury.¹ On May 7, 2013, the jury found Edwards guilty of two counts of Attempt Murder, two counts of Aggravated Assault, and one count each of PIC, Prohibited Offensive Weapons, and Criminal Conspiracy to Commit Murder. The jury found Edwards not guilty of Murder.

¹ On July 7, 2011, co-conspirators Jones and Sullivan were arrested and charged. On July 12, 2011, Thompson was arrested and charged. On March 1, 2013, in a separate trial, Jones and Sullivan were convicted of Earl Bostic's murder and attempted murder of Gyton and Young. Previous to this trial, on March 28, 2012, the Honorable Benjamin Lerner had granted Thompson's Motion to Quash all charges.

On July 29, 2013, this Court sentenced Edwards to eighteen to forty years of imprisonment for Criminal Conspiracy and for each Attempt Murder conviction, and one to two years of imprisonment for Prohibited Offensive Weapons, all to run concurrently. This Court sentenced Edwards to a consecutive term of imprisonment of one to two years for PIC, for a total sentence of nineteen to forty two years of imprisonment.

On August 9, 2013, Edwards filed a timely Notice of Appeal. On August 16, 2013, this Court ordered Edwards to submit a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On September 16, 2013, Edwards filed a timely Statement.

Jalik Peay

On July 12, 2011, Jalik Peay was arrested and charged with Murder, Attempt Murder (four counts), Aggravated Assault (four counts), Criminal Conspiracy (five counts), PIC (five counts), Prohibited Offensive Weapons (five counts), and Riot.

On April 29, 2013, Peay, along with co-defendants Edwards and Poole, appeared before this Court and elected to be tried by a jury. On May 7, 2013, the jury found Peay guilty of Murder of the Third Degree, two counts of Attempt Murder, two counts of Aggravated Assault, and one count each of PIC, Prohibited Offensive Weapons, and Criminal Conspiracy to Commit Murder.

On July 29, 2013, this Court sentenced Peay to concurrent terms of imprisonment of twenty to forty years for Murder in the Third Degree and Criminal Conspiracy, and one to two years for PIC and Prohibited Offensive Weapons. Peay was sentenced to twenty to forty years of concurrent time on each count of Attempt Murder. These sentences were imposed consecutive to the imprisonment for Murder, for a total sentence of forty to eighty years of imprisonment.

On August 6, 2013, Peay filed Post Sentence Motions. On August 8, 2013, this Court denied Peay's Post Sentence Motions. On August 16, 2013, Peay filed a Notice of Appeal. On August 19, 2013, this Court ordered defendant Peay to submit a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On September 11, 2013, Peay submitted a timely statement.²

Haleem Poole

On July 13, 2011, Haleem Poole was arrested and charged with Murder, Attempt Murder (four counts), Aggravated Assault (four counts), Criminal Conspiracy (five counts), PIC (five counts), Prohibited Offensive Weapons (five counts), and Riot.

On April 29, 2013, Poole, along with co-defendants Edwards and Peay, appeared before this Court and elected to be tried by a jury. On May 7, 2013, the jury found Poole guilty of Murder of the Third Degree, two counts of Attempt Murder, two counts of Aggravated Assault, and one count each of PIC, Prohibited Offensive Weapons, and Criminal Conspiracy to Commit Murder.

On August 2, 2013, this Court sentenced Poole to concurrent terms of imprisonment of twenty to forty years for Murder of the Third Degree, Criminal Conspiracy, and both counts of Attempt Murder, as well as one to two years for PIC and Prohibited Offensive Weapons, for a total sentence of twenty to forty years of imprisonment.

On August 12, 2013, Poole filed Post Sentence Motions. On August 15, 2013, this Court denied Poole's Post Sentence Motions. On August 27, 2013, Poole filed a Notice of Appeal. On August 28, 2013, this Court permitted Poole's trial counsel to withdraw and appointed appellate counsel. On August 29, 2013, this Court ordered Poole to submit a Statement of Matters

² On September 6, 2013, counsel submitted the Statement through the electronic filing system; however, the filing was rejected. Counsel filed the Statement in person and submitted documentation of the attempted filing. This Court accepts the Statement as timely filed.

Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On September 9, 2013, Poole submitted a timely Statement.

Facts

On June 21, 2011, George Moore was housed at Curran-Fromhold Correctional Facility (CFCF), in cell twenty of pod two of the second floor of C building (C-2, P-2). That evening, while the inmates were locked in their cells, co-conspirator Desean Sullivan was working as a block worker cleaning up in the day room. Moore was in his cell keeping watch while his cellmate, Jokir Slade, used a prohibited cell phone, when he heard Sullivan arguing with Richard Gyton. Gyton was inside cell fifteen along with his cellmate, Aaron Young. After the argument, Sullivan walked to cell twenty-seven and grabbed a sweater from underneath the door. Sullivan walked to cell seventeen, where Peay was housed, and dropped a banger from the sweater to the ground and pushed it under the door. Sullivan then slid something that sounded like metal under the door of cell eleven, where Edwards and his co-conspirators Donte Jones and Quentin Thompson were housed. N.T. 5.1.2013 at 66, 83-84, 86, 88-94.

After the block was opened up at 7:30 p.m., Moore and Slade went to cell fifteen to inquire about the argument. At that time, co-defendants Poole, Peay, and Edwards along with co-conspirators Sullivan and Jones walked up to cell fifteen. Sullivan and Poole both had their hands in their pants and Sullivan had a piece of cloth hanging out of his pants that would be used as a handle for a banger. Sullivan went up to Young and said "what's up?" Young replied, "[i]'ll rumble you in the cell. I'll fight you in the cell but put the banger away." Sullivan said no. The guards approached and the group dissipated. N.T. 5.1.2013 at 96-104.

After observing Poole, Peay, and Sullivan walking around with their hands down their pants, Moore accompanied Gyton to the yard. Moore sensed that a fight might occur because

Poole, Peay, and Sullivan's behavior was consistent with secreting weapons in their pants. A little while later Moore was on the phone when Gyton and Young finished playing basketball and headed to their cell. N.T. 5.1.2013 at 107, 117, 119.

At the phones, Thompson began fighting with Walter English. Sullivan, Peay, and Poole ran into cell fifteen where Gyton and Young were. When Moore started towards cell fifteen to help Gyton and Young, Edwards came from the right of cell fifteen with a banger in his hand and attacked Moore. Moore fought off Edwards and yelled that the guards were coming. N.T. 5.1.2013 at 124-131.

After Moore yelled that the guards were coming, Sullivan, Peay, and Poole ran out of cell fifteen towards the dayroom TV where Earl Gene Bostic, Jr was sitting. Bostic was sitting with his back to the three men, all of whom began to stab Bostic. Sullivan, Peay, Poole, and Jones continued to stab Bostic after he had fallen to the ground. Moore believed each person stabbed Bostic about four or five times. N.T. 5.1.2013 at 132-133, 136.

While they were stabbing Bostic, Gyton came out of his cell with blood on his shirt. Jones ran over to Gyton and stabbed him in the arm. Gyton fought off Jones. Jones then ran over and joined Sullivan, Peay, and Poole in stabbing Bostic. N.T. 5.1.2013 at 133-138, 142.

Young never left cell fifteen. At that time, the correctional officers came on the block and locked everyone in their cells. A lieutenant came to cell twenty where Moore and Slade were locked in and asked if they were injured. Slade showed that he had been stabbed and Moore indicated he had injured his knee. N.T. 5.1.2013 at 133-138, 142.

On June 21, 2011, at about 9:30 p.m., Correctional Officers Gloria Dunmore and Eric Patterson were at the desk in C-2, P-2 when a fight broke out at the phones where one inmate suddenly hit Walter English. Correctional Officer Patterson went to break up the fight at the

phones and Correctional Officer Dunmore called for assistance and went to check on the yard. At that point there was a commotion and a mass of people running in the dayroom. Both correctional officers saw Bostic bleeding on the floor of the dayroom and Jones run away from Bostic. After assistance arrived, Correctional Officer Dunmore escorted Gyton to the medical facilities. Gyton informed Correctional Officer Dunmore that someone in cell twenty was injured. Correctional Officer Dunmore returned to cell twenty and found Slade had been stabbed. Moore, Slade's cellmate requested to be taken to medical even though he was not injured, because as Slade's cellmate "they [were] going to get him too." N.T. 4.30.2013 at 113-119, 124-129, 132, 165-171.

At about 9:30 p.m., Kathleen Marcelis and Charles Goldstein, nurses at CFCF, were called to C-2, P-2. When Nurse Marcelis arrived she found Bostic lying in a pool of blood on the dayroom floor in front of cells seven through ten. Nurse Goldstein applied pressure to wounds on Bostic's neck and back, while Nurse Marcelis attended to two injured inmates in cell fifteen. In cell fifteen, Nurse Marcelis found Gyton lying on the ground bleeding from the chest and Young bleeding from the head. Young and Gyton were sent to the medical unit. N.T. 4.30.2013 at 73-75, 79-80, 82-83, 85-86.

At 10:26 p.m., Bostic died from multiple stab wounds at Aria Health Torresdale Campus Hospital. Dr. Aaron Rosen, an expert witness forensic pathology, testified that Bostic suffered nine stab wounds to the neck, chest, back and right arm. One stab wound resulted in a cut in Bostic's aorta, causing blood to fill the pericardial sac. He also suffered a small incised wound on his left finger and an abrasion on his middle of his back. N.T. 5.1.2013 at 15-16, 21, 39.

Gyton was admitted to the emergency department of Hahnemann University Hospital. Gyton suffered a stab wound to his abdomen and his right upper arm. Gyton suffered a liver

laceration, six puncture wounds to his small intestine, an injury to the inferior vena cava, and a retroperitoneal hematoma. N.T. 5.1.2013 at 48-50.

Young and Slade were taken to local hospitals and discharged the next day. Young was treated for stab wounds to his head and left hand. Slade was treated for a stab wound to his upper back. N.T. 5.1.2013 at 52-54.

Police Officer Brian Stark of the Philadelphia Police Crime Scene Unit arrived at CFCF at 1:30 a.m. the night of the murder. Officer Stark recovered two handmade weapons, which were wet and sitting on a paper towel, from the correctional officers' desk. The first weapon was a piece of metal with a sharpened tip connected to a green toothbrush that was bent to act as a handle and secured with a shoelace. The second weapon was a piece of metal with a pointed edge secured to an orange toothbrush. Officer Stark recovered a bloodstained blue uniform shirt, size 3XL, from the chair outside of cells fourteen and fifteen. From inside cell fifteen, Officer Stark recovered a bloodstained towel and a bloodstained t-shirt, size large, and from cell twenty, he recovered a bloodstained uniform shirt, size 4XL. N.T. 4.30.3013 at 201-204, 219, 222-226, 245-246.

On June 22, 2011, at 8:00 a.m., Correctional Officers conducted a shakedown of C-2, P-2. Nine homemade weapons were recovered. This included a ten-inch long metal rod with a sharpened point from cell eleven; a seven-inch flat sharpened piece of metal in two potato chip bags inside a trash can in the dayroom; a six-inch long flat piece of metal with a sharpened point from behind the floor molding between cells five and six; a plastic spoon with sharpened point from cell three, inside the bed of Rafael Spearman; a six-inch metal rod with a sharpened point from a vent in the utility closet leading into cell seven; a seven-inch metal rod with a sharpened point from a utility closet next to cell number seven; a nine-inch sharpened metal rod from a

utility closet next to cell number seven; and, a nine-inch sharpened metal rod from a vent in cell four. Officers also recovered a blue shirt with a red stain from Quentin Thompson. N.T.

4.30.2013 at 261-262, 265-266, 269-273.

According to Bryne Strother, a Forensic Scientist for the Philadelphia Police Department and qualified expert in forensic science, the DNA taken from the metal point of one of the homemade weapons recovered from the guard's desk in C-2, P-2 was inconclusive as to Jones and Edwards.³ The DNA sample from the blue shirt collected from Thompson was consistent with DNA a mixture originating from Thompson and another individual, the DNA of whom was inconclusive relative to Jones, Peay, and Gyton. The DNA taken from the handle and white cloth string on the handle of that same weapon contained DNA from three individuals, and it was likely⁴ that it was from Jones, Edwards, and a third unidentified male. The DNA taken from the blue short sleeved shirt, size 3XL, recovered from a chair in the dayroom, was inconclusive as to Poole. The sample taken from the towel recovered from cell fifteen contained DNA of three individuals which was inconsistent as to Bostic, Jones, Gyton, and co-defendants Edwards, Peay, and Poole. N.T. 5.6.2013 at 18-19, 34-36, 43-45.

On June 23, 2011, at 10:30 p.m., Gyton gave a statement to police while he was at the hospital being treated for his injuries. On June 25, 2011, Gyton completed an incident memorandum for the Philadelphia Prison System about the incident that was consistent with his statement give to police. In those statements Gyton explained that on June 21, 2011, he and Young were in their cell during lock down. Sullivan was in the day room because he was a cell worker. Young and Sullivan were arguing about the block worker job, and Sullivan said he would come back when the doors opened. When the cells were opened, Sullivan came to cell

³ Inconclusive in that it could not be determined whether the individuals did or did not contribute to the DNA. N.T. 5.6.2013 at 35.

⁴ 255.2 quintillion times more likely than three unrelated individuals. N.T. 5.6.2013 at 36.

fifteen and Young asked if Sullivan wanted to fight but he refused. Gyton and Young then went to play basketball. N.T. 5.1.2013 at 246, 253, 262-264; N.T. 5.2.2013 at 84-85.

When Gyton and Young returned to their cell, they were followed by Sullivan, Poole, Peay, and Thompson who were all holding knives or shanks. Sullivan stabbed Young in the hand. Young and Gyton fell on the bed and everyone started stabbing them. Sullivan stabbed Young in the head and Gyton in the arm. Gyton swung at Sullivan and someone stabbed him in his stomach. When someone said the correctional officers were coming, everyone ran out into the day room. N.T. 5.1.2013 at 254-256.

In the dayroom, Gyton tried to punch Sullivan, who ran away. Jones attempted to stab Gyton, but missed. The correctional officers responded to the fight and put everyone in their cells. Gyton and Young returned to their cell until they were given medical attention. N.T. 5.1.2013 at 254.

On December 28, 2011, at the preliminary hearing, Gyton gave testimony consistent with his police statement. Additionally, Gyton testified that he saw Bostic watching TV, when Sullivan and co-defendants Edwards, Peay, and Poole attacked and stabbed him. N.T. 5.1.2013 at 278-296, 304; N.T. 5.2.2013 at 130.

At trial, Gyton testified that he did not know who stabbed him and that he did not see who stabbed Bostic. In his Department of Corrections Inmate Query it was documented that Gyton requested to be separated from Peay, Sullivan, and Jones. Gyton gave the reason that he was stabbed by these individuals in the county prison system. On April 14, 2013, Gyton wrote a letter to the co-defendants apologizing for accusing them of committing the stabbings at CFCF. N.T. 5.1.2013 225-233; N.T. 5.2.2013 at 12-15, 34-37, 70.

On June 22, 2011, Tyrell Rivers, who was housed in cell thirty-one at the time of the incident, gave a statement to homicide detectives. According to his statement, on June 21, 2011, Rivers was coming down the stairs heading to the showers when he heard a commotion. Young ran out of his cell bleeding from his head. Gyton, Slade, and Sullivan followed Young out from cell fifteen. Sullivan was holding a silver, four inch long piece of metal that was wrapped in a white stringy cloth. N.T. 5.2.2013 at 157, 179, 184-186.

Jones approached Bostic and stabbed him in the hand and neck with a silver, six to seven-inch long piece of metal that was wrapped in white cloth. Bostic fell to the ground. The correctional officers came in and everyone was placed in their cells. At trial, Rivers claimed he didn't see these events. N.T. 5.2.2013 at 185, 189.

At trial, Omar Fulton, Bostic's cellmate, testified that on the night of the incident, someone told Fulton to go to Young's cell after they the block was opened. When the dayroom was opened, Fulton, Bostic, Young, Gyton, and Slade gathered at cell fifteen along with Jones, Sullivan, Edwards, and Peay for a fight between Sullivan and Young. Although Fulton did not see any bangers, he knew that everyone in the group had them. Sullivan wanted to fight with bangers and Young wanted to engage in a fist fight. After some words were exchanged, everyone separated. A little while later, people started running around and Jones and Sullivan stabbed Bostic while he watching TV. At that time, the correctional officers came in and the pod was locked down. N.T. 5.3.2013 at 18-19, 31-35, 41, 44-45, 121.

On June 24, 2011, Omar Fulton gave a statement to homicide detectives that was consistent with his trial testimony. Fulton added that when Gyton and Young were playing basketball, Sullivan, Peay, Poole, Thompson, and Jones were huddled together having a conversation. In addition to seeing Jones and Sullivan stab Bostic, Fulton saw Peay, Poole, and

Edwards run out of cell fifteen during the commotion. He saw Peay throw something. N.T.

5.3.2013 at 52, 54-55, 60, 65.

On December 28, 2011, at the preliminary hearing, Fulton testified that he saw Peay, Poole, and Edwards stab Gyton and Young. On February 27, 2013, Fulton testified at Jones and Sullivan's trial that he saw Edwards, Poole, and Peay come out of cell fifteen holding bangers. However, he testified that he did not see anyone stab Bostic. N.T. 5.3.2013 at 60, 65, 67, 83-84, 86, 115-116.

Fulton received a separation order at SCI Camp Hill because he indicated that he had testified against Sullivan and Jones and feared retaliation. Fulton received threats while in prison against himself and his family and believed that Jones had put a \$10,000 bounty on his head. Fulton was also attacked in the yard at SCI Graterford. In November of 2012, Fulton sent a letter to the prosecutor requesting that he not be called a witness in this case. On February 27, 2013, Fulton was brought to the Criminal Justice Center to testify. The day before he testified he was placed in the receiving room with co-conspirators Jones and Sullivan for two hours. N.T. 5.3.2013 at 98-102, 108, 111.

Issues

Sufficiency of the Evidence

All three co-defendants challenge the sufficiency of the evidence supporting their convictions.⁵ Evidence presented at trial is sufficient when, viewed in the light most favorable to

⁵ Peay challenges the Court's denial of his request for a directed verdict. This Court addresses Peay's challenge as a sufficiency of the evidence claim. See Pa. R. Crim. P. 606(A)(A defendant may challenge the sufficiency of the evidence to sustain a conviction of one or more of the offenses charged in one or more of the following ways: (1) a motion for judgment of acquittal at the close of the Commonwealth's case-in-chief; (2) a motion for judgment of acquittal at the close of all the evidence; and/or (7) a challenge to the sufficiency of the evidence made on appeal.); *Commonwealth v. Duncan*, 373 A.2d 1051, 1053 n.2 (Pa. 1977)(A demurrer and a claim of insufficiency of the evidence differ only with respect to the stage of the proceedings at which they are raised.).

the Commonwealth as verdict winner, the evidence and all reasonable inferences derived therefrom are sufficient to establish all elements of the offense beyond a reasonable doubt. *Commonwealth v. Baumhammers*, 960 A.2d 59, 68 (Pa. 2008). The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. *Commonwealth v. Estep*, 17 A.3d 939, 943 (Pa. Super. 2011) (citing *Commonwealth v. Brooks*, 7 A.3d 852, 856-57 (Pa. Super. 2010)). The fact-finder is free to believe all, part, or none of the evidence, and credibility determinations rest solely within the purview of the fact-finder. *Commonwealth v. Treiber*, 874 A.2d 26, 30 (Pa. 2005).

Poole and Edwards assert the evidence was insufficient to establish the defendants were the perpetrator, an accomplice, or a conspirator. “[E]vidence of identification need not be positive and certain to sustain a conviction.” *Commonwealth v. Orr*, 38 A.3d 868, 874 (Pa. Super. 2011)(quoting *Commonwealth v. S. Jones*, 954 A.2d 1194, 1197 (Pa. Super. 2008), *appeal denied*, 962 A.2d 1196 (2008)). Here, three eyewitnesses identified the co-defendants within days of the murder. All three eyewitnesses, Moore, Gyton, and Fulton, lived with the co-defendants at CFCF before the incident. This evidence is sufficient to identify the co-defendants.

To sustain a conviction for Criminal Conspiracy, the Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy. *Commonwealth v. McCall*, 911 A.2d 992, 996 (Pa. Super. 2006)(citing *Commonwealth v. Hennigan*, 753 A.2d 245, 253 (Pa. Super. 2000)). An explicit or formal agreement to commit crimes can seldom, if ever, be proved, but a conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators sufficiently prove the formation of a criminal confederation.

Commonwealth v. Perez, 931 A.2d 703, 708-09 (Pa. Super. 2007); *Commonwealth v. Jones*, 874 A.2d 108, 121-22 (Pa. Super. 2005).

The Superior Court has identified four factors to be considered in determining the sufficiency of the evidence supporting the existence of a conspiracy: “(1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) in some situations, participation in the object of the conspiracy.”

Commonwealth v. Lambert, 795 A.2d 1010, 1016 (Pa. Super. 2002).

In *Commonwealth v. Ransome*, 402 A.2d 1379, 1381 (Pa. 1979), the decedent died of multiple stab wounds received when he and two others were walking down a street when they were attacked by appellant and eleven other assailants. The Supreme Court of Pennsylvania rejected appellant’s argument that appellant only intended to engage in a fist fight. *Id.* The testimony showed that a remark made in appellant’s presence made him aware that some of the individuals in his group were carrying weapons. *Id.* Thus, as the defendant was an organizer of and participant in the attack, the evidence was sufficient to support his conviction of Murder in the Third Degree, Aggravated Assault, and Criminal Conspiracy irrespective of who stabbed the victim. *Id.*

Here, there is significantly more evidence of a conspiracy than in *Ransome*. It is evident that the co-defendants, along with their co-conspirators, were involved in a conspiracy to stab and kill Young, Gyton, and Bostic. Before the block was opened, Sullivan distributed homemade weapons to Peay’s and Edwards’ cells. N.T. 5.1.2013 at 88-94. When the block opened up, all three co-defendants as well as co-conspirators Sullivan and Jones went to cell fifteen together for a fight. N.T. 5.1.2013 at 96-101; N.T. 5.3.2013 at 32-33. All of the co-defendants and co-conspirators had weapons and Sullivan insisted on fighting Young with a weapon despite

Young's protests. N.T. 5.1.2013 at 100-104; N.T. 5.3.2013 at 34-35. Poole, Peay, and Sullivan walked around the block with their hands in their pants, holding weapons, and they huddled together planning the attack. N.T. 5.1.2013 at 107; N.T. 5.3.2013 at 67. Peay and Poole attacked Young and Gyton while Edwards attacked Moore, preventing him from assisting Young and Gyton. N.T. 5.1.2013 at 127-131. Peay and Poole then stabbed Bostic to death. N.T. 5.1.2013 at 132, 295-296; N.T. 5.2.2013 at 130.

This evidence shows that the co-defendants were part of a conspiracy to attack and stab Young, Gyton, and Bostic. The co-defendants were associated with one another and had the shared intent to commit murder. All of the co-defendants possessed hand crafted weapons that they intended to use to stab the victims, despite Young's desire to fight without weapons. All three co-defendants completed an overt act in furtherance of this conspiracy when they participated in the attack and stabbed the victims. The evidence is sufficient to support the co-defendants' Criminal Conspiracy convictions.

18 Pa.C.S. § 2502 establishes that Murder in the Third Degree is any murder that is not committed as an intentional killing, and is not committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony. Third Degree Murder is a killing with malice. *See Commonwealth v. Thomas*, 717 A.2d 468, 479-80 (Pa. 1998). Malice can be established by a wickedness of disposition, hardness of heart, cruelty, recklessness of consequences and a mind regardless of social duty, which indicates an unjustified disregard for the likelihood of death or great bodily harm, and an extreme indifference to the value of human life, such as that exhibited by exercise of an intent to cause serious bodily injury that results in death. *Id.*; *see also Commonwealth v. Williams*, 980 A.2d 510, 524 (Pa. 2009). Malice can be inferred from the use of a deadly weapon upon a vital part of the victim's body. *Commonwealth*

v. Thomas, 54 A.3d 332, 335-36 (Pa. 2012). In *Commonwealth v. Whack*, 393 A.2d 417, 418-419 (Pa. 1978), the Court found the evidence sufficient to support appellant's conviction of Third Degree Murder when during a bar fight between the decedent and another patron, the appellant removed a knife from his pocket and stabbed the deceased one time.

The co-defendants planned a deadly attack on three inmates. During this attack, Poole and Peay used a deadly weapon to stab Bostic multiple times. N.T. 5.1.2013 at 132-136, 295-296; N.T. 5.2.2013 at 130. Bostic suffered nine stab wounds to the neck, chest, back, and right arm. Bostic's aorta was injured and he died of multiple stab wounds. N.T. 5.1.2013 at 15-16, 21, 39. Poole and Peay argue that the Commonwealth did not establish who was responsible for Bostic's death. However, each member of a conspiracy to commit murder can be convicted of murder, regardless of which of the conspirators inflicted the fatal wound. *Commonwealth v. Simpson*, 754 A.2d 1264, 1269 (Pa. 2000)(citing *Commonwealth v. Jones*, 668 A.2d 491, 500 (Pa. 1995); *Commonwealth v. Joseph*, 304 A.2d 163, 168 (Pa. 1973)). Poole and Peay were members of a conspiracy to commit murder. Poole and Peay acted with malice when they stabbed Bostic multiple times in vital parts of his body. This evidence is sufficient to support Poole's and Peay's convictions for Third Degree Murder.

18 Pa.C.S. § 901(a) states that a person commits attempt when "with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa.C.S. § 2502 establishes that Murder in the First Degree is a criminal homicide committed by an intentional killing. In order to support a charge of Murder of the First Degree, the Commonwealth must prove that "the defendant acted with a specific intent to kill; that a human being was unlawfully killed; that the person accused did the killing; and that the killing was done with deliberation." *Commonwealth v. Smith*, 861 A.2d 892, 895 (Pa. 2004). Specific

intent may be established through circumstantial evidence, such as the use of a deadly weapon on a vital part of the victim's body. *Commonwealth v. Ramtahal*, 33 A.3d 602, 607 (Pa. 2011)(citing *Commonwealth v. Smith*, 985 A.2d 886, 895 (Pa. 2009)). Malice also may be inferred from the use of a deadly weapon upon a vital part of the victim's body. *Ramtahal*, 33 A.3d at 607-608. In *Commonwealth v. Bryant*, 574 A.2d 590, 592 (Pa. 1990), the evidence was sufficient to support the appellant's conviction for first degree murder where the appellant and another inmate in a state correctional facility entered the victim's cell, held the victim down and stabbed him with a homemade knife fifteen times.

The evidence is sufficient to support Poole's and Peay's convictions for Attempt Murder. Poole and Peay armed themselves, ran into cell fifteen, and stabbed Young and Gyton. N.T. 5.1.2013 at 127. Peay, Poole, and Sullivan stabbed Gyton and Young multiple times in the head, hand, and stomach. *Id.* at 254-256, 283-285.

Both Gyton and Young suffered injuries to vital parts of their bodies by deadly weapons. Gyton suffered a stab wound to his abdomen and his right upper arm and underwent surgery where it was determined that he suffered a liver laceration, six puncture wounds to his small intestine, and injuries to the inferior vena cava and a retroperitoneal hematoma. N.T. 5.1.2013 at 48-50. Young suffered stab wounds to his head and left hand. N.T. 5.1.2013 at 52-54. Three eyewitnesses, including the victim himself, explained that Poole and Peay went into cell fifteen and participated in the attack on Gyton and Young, stabbing them multiple times. This evidence is clearly sufficient to establish Poole and Peay acted with specific intent to kill and with malice.

The evidence is also sufficient to support Edwards' convictions for Attempt Murder. Before the attack, Sullivan distributed a weapon to Edwards' cell. Later, according to Fulton, all

three co-defendants ran into cell fifteen and stabbed Young and Gyton. N.T. 5.3.2013 at 54-55, 60, 83-84, 115-116. This evidence is sufficient to support Edwards' convictions.

Even if the jury did not credit Fulton's testimony, the evidence is still sufficient to convict Edwards. Each member of a conspiracy to commit murder can be convicted of capital murder, regardless of which of the conspirators inflicted the fatal wound. *Commonwealth v. Simpson*, 754 A.2d 1264, 1269 (Pa. 2000)(citing *Commonwealth v. Jones*, 668 A.2d 491, 500 (Pa. 1995); *Commonwealth v. Joseph*, 304 A.2d 163, 168 (Pa. 1973)). Edwards was a member of a conspiracy to kill Gyton, Young, and Bostic. Edwards attacked Moore with a handmade weapon to prevent him from assisting Young and Gyton when they were being stabbed. N.T. 5.1.2013 at 128-130. The fact that Edwards was involved in the attack is supported by the evidence that the DNA taken from one of the weapons recovered from the guard's desk in C-2, P-2 matched his DNA.⁶ N.T. 5.6.2013 at 34-36. Edwards was involved in the conspiracy to kill Gyton and Young and participated in the attack. Accordingly, the evidence is sufficient to support Edwards' convictions for Attempt Murder.

For the charge of Aggravated Assault, the Commonwealth must establish that the defendant "attempted to cause serious bodily injury to another, or caused such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." 18 Pa.C.S. § 2702(a)(1). Serious bodily injury is defined as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of function of any bodily member or organ." 18 Pa.C.S. § 2301. Specific intent to cause serious bodily injury, as required to support aggravated assault conviction, can be inferred from use of deadly weapon on vital part of body.

⁶ It is 255.2 quintillion times more likely the DNA came from defendant Edwards than an unrelated individual. N.T. 5.6.2013 at 36.

Commonwealth v. Nichols, 692 A.2d 181 (Pa. Super.1997)(hitting victim in the head with a bat established intent to cause serious bodily injury); *See Commonwealth v. Gray*, 867 A.2d 560, 568 (Pa. Super. 2005)(evidence sufficient to infer appellant attempted to inflict serious bodily injury where victim suffered multiple stab wounds, including a wound above the eye and a wound to the scalp).

Here, as discussed *supra*, both Gyton and Young suffered serious bodily injury. The fact that the co-defendants acted intentionally was established when they planned and carried out an attack on Gyton and Young intending to kill them. The evidence is sufficient to support the co-defendants' convictions for Aggravated Assault.

In order to be convicted for PIC, the Commonwealth must show that the defendant possessed an instrument of crime with the intent to employ it criminally. 18 Pa.C.S. § 907(a). An instrument of crime is “[a]nything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.” 18 Pa.C.S. § 907(d)(2); *see also Commonwealth v. Robertson*, 874 A.2d 1200, 1208-09 (Pa. Super. 2005).

Under 18 Pa.C.S. A. § 908 “[a] person commits a misdemeanor of the first degree if, ... he makes repairs, sells, or otherwise deals in, uses, or possesses any offensive weapon. 18 Pa.C.S. A. § 908(a). Offensive weapons are defined as “[a]ny bomb, grenade, machine gun, sawed-off shotgun with a barrel less than 18 inches, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, any stun gun, stun baton, taser or other electronic or electric weapon or other implement for the infliction of serious bodily injury which serves no common lawful purpose.” 18 Pa.C.S. A. § 908(c).

Here, Sullivan distributed homemade weapons to the cells of Peay and Edwards. N.T. 5.1.2013 at 89-94. Moore saw Poole and Peay walking around with their hands in their pants as if they had weapons. *Id.* at 100, 107. Edwards attacked Moore with a banger. *Id.* at 128-130. Gyton saw Peay and Poole holding knives or shanks. *Id.* at 254, 256. Fulton stated that he knew that all three co-defendants had bangers and that he saw all three co-defendants run out of cell fifteen holding bangers. N.T. 5.3.2013 at 34-35, 65. 115-116. Both Gyton and Fulton saw all three co-defendants use weapons to stab the victims. N.T. 5.1.2013 at 295-296; N.T. 5.3.2013 at 60, 83-84. Finally, one of the weapons recovered had Edwards' DNA on it. N.T. 5.6.2013 at 35-36. All of the co-defendants possessed weapons and used them to attack three of their fellow inmates. This evidence is sufficient to support the co-defendants' convictions for PIC and Prohibited Offensive Weapons.

Haleem Poole

In addition to challenging the sufficiency of the evidence, Poole challenges the weight of the evidence, the testimony regarding threats made to Omar Fulton, the chain of custody of two weapons recovered from C-2, P-2, his sentence, and alleges misconduct by the prosecutor in his summation.

Poole claims it was error to allow the Commonwealth to present testimony that Omar Fulton had been threatened as it was unrelated criminal activity and there was no evidence Poole was involved in the threats. Admissibility of evidence is a matter addressed to the sound discretion of the trial court, and will only be reversed by an appellate court for an abuse of discretion. *Commonwealth v. Claypool*, 495 A.2d 176, 178 (Pa. 1985)(citations omitted). "Evidence regarding threats made by a defendant against a witness is relevant and admissible when introduced for the purpose of explaining testimony which is inconsistent with an earlier,

pre-trial statement.” *Commonwealth v. Stein*, 548 A.2d 1230, 1234 (1988)(citing *Commonwealth v. Bryant*, 462 A.2d 785 (1983)).

At trial, Fulton testified that he saw Jones and Sullivan stab Bostic, but that he did not see who stabbed Young and Gyton. N.T. 5.3.2013 at 44-45. However, in his statement given to police and at the preliminary hearing, Fulton admitted to seeing all three co-defendants stab Gyton and Young. *Id.* at 60, 83-84. The fact that Fulton had been threatened was clearly relevant. This evidence was offered to explain Fulton’s motive for changing his testimony and assess his credibility as a witness. The evidence was properly admitted. Immediately following the testimony, this Court instructed the jury that the evidence could not be used against the co-defendants in any way and that the evidence was introduced solely to help the jury evaluate Fulton’s testimony. N.T. 5.3.2013 at 101-102. The law presumes that the jury will follow the court’s instructions. *See Commonwealth v. Spatz*, 587 Pa. 1, 896 A.2d 1191, 1224 (Pa. 2006).

Poole claims it was error for the Court to allow the Commonwealth to introduce two weapons recovered from the prison desk as the Commonwealth failed to establish a chain of custody. Pennsylvania Rule of Evidence 901 provides “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Pa.R.E. 901(a). This requirement is satisfied by testimony by a witness with knowledge that an item is what it is claimed to be or by distinctive characteristics of the item. Pa.R.E. 901(b).

Upon arriving, Police Officer Stark found two handmade weapons on the guard desk at C-2, P-2. N.T. 4.30.2013 at 201. C-2, P-2 had been immediately locked down after the incident and continued to be locked down while Police Officer Stark investigated. *Id.* at 130, 198. Police Officer Stark recovered the weapons and placed them on Property Receipt 9012537. *Id.* at 201-

202. A property receipt is a form used in the police department as a chain of custody receipt. *Id.* Each piece of evidence that is collected is put on a property receipt with a number that is specific to the piece of evidence so the Police Department can track the history of the evidence. *Id.* The weapons recovered from the prison were photographed and packaged into a brown paper evidence bag, which was sealed and signed by Police Officer Stark. *Id.* at 205. Police Officer Stark testified that the items that he brought to court were the items he recovered from the guard's desk. *Id.* at 201. The Commonwealth established a chain of custody for the weapons; thus, the weapons were properly admitted into evidence.

Poole claims he is entitled to a new trial as the Assistant District Attorney committed misconduct in his closing argument when he referred to facts not in evidence. Poole challenges the following comments:

Mr. Notaristefano: "We make sure they're separated, there's no incidents. And then, curiously, the night before trial people get put together. Graterford didn't even document it. You might want to think maybe some of the guards are aware of that money. I mean, Graterford, they put Shiz... in the same place."

Mr. Conner: "That's objected to, Judge..."

The Court: "There's no evidence. The jurors' memories will control, but there's no evidence about guards at Graterford." N.T. 5.6.2013 at 238.

...

Mr. Notaristefano: "Northampton County, do you wonder why we ship our witnesses to Northampton County?"

Mr. Conner: "Objection, Your Honor..."

The Court: "That's sustained. No speculation as to why they send them." N.T. 5.6.2013 at 243.

...

Mr. Notaristefano: "I submit to you that probably they weren't just magically there, we would have brought in that guard to testify to that."

Mr. Conner: "Objection, Your Honor..."

The Court: "That's sustained. Only consider testimony that you heard in this case." N.T. 5.6.2013 at 272.

...

Mr. Notaristefano: "The witnesses go to a county facility that actually has their ducks in a row."

Mr. Conner: "Judge, objection."

The Court: "That's overruled." N.T. 5.6.2013 at 243-244.

...

Mr. Notaristefano: "You heard Officer Patterson practically, you know, cracking up at the fact that Earl Bostic is on the ground bleeding to death. That guy ain't going to protect them."

Mr. Conner: "Objection, Your Honor. That's not the evidence."

The Court: "That's overruled. That's a reasonable inference." N.T. 5.3.2013 at 257.

It is well-established that a prosecutor is free to present his argument with logical force and vigor so long as there is a reasonable basis in the record for the prosecutor's remarks. *Commonwealth v. Hutchinson*, 25 A.3d 277, 306 (Pa. 2011). Reversible error arises from a prosecutor's comments only where their unavoidable effect is to prejudice the jurors, forming in their minds a fixed bias and hostility toward the defendant such that they could not weigh the evidence objectively and render a fair verdict. *Commonwealth v. Tedford*, 960 A.2d 1, 33 (Pa. 2008). The prejudicial effect of the prosecutor's remarks must be evaluated in the context in which they occurred. *Commonwealth v. Gooding*, 649 A.2d 722, 727 (Pa. Super. 1994)(citing *Commonwealth v. D'Amato*, 526 A.2d 300, 309 (1987)(citations omitted)). The effect of remarks made in closing arguments is to be ascertained by the trial judge. *Commonwealth v. Williams*, 433 A.2d 505 (Pa. Super. 1981)(citing *Commonwealth v. Stoltzfus*, 337 A.2d 873, 882 (Pa. 1975)). The remedy to be applied in each case is within the discretion of the trial judge. *Stolfus*, 337 A.2d at 882; *Commonwealth v. Silvis*, 284 A.2d 740, 741 (Pa. 1971).

This Court sustained the defense objections and explained its ruling to the jury for three of the five comments Poole challenges. This Court sustained the defense objections and defense counsel did not ask for any further relief. Thus, as to the first three comments, Poole's claims must fail. Where the prosecutor approached the limit of lawful argument, this Court sustained defense objections and instructed the jury on the law. The two comments made by the prosecutor that the Court allowed were reasonable inferences drawn from the evidence presented at trial. The prosecutor's comments were not so harmful as to prejudice the jury. This claim is meritless.

Poole challenges the weight of the evidence reiterating verbatim his claims regarding the sufficiency of the evidence. Weight of the evidence and sufficiency of the evidence are discrete inquiries. An argument that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence. *Commonwealth v. Davis*, 799 A.2d 860, 865 (Pa. Super. 2002). An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. *Commonwealth v. Dupre*, 866 A.2d 1089, 1101 (Pa. Super. 2005)(citing *Commonwealth v. Sullivan*, 820 A.2d 795, 805-806 (Pa. Super. 2003); *Commonwealth v. Widmer*, 744 A.2d 745, 751-752 (Pa. 2000). "The factfinder is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Diggs*, 949 A.2d 873, 879 (Pa. 2008). The Superior Court has explained that the test is whether the evidence is "so tenuous, vague and uncertain that the verdict shocks the conscience of the court." *Commonwealth v. Sullivan*, 820 A.2d 795, 806 (Pa. Super. 2003). For one to prevail on a challenge of the weight of the evidence, the jury's verdict must be so contrary to the evidence as to shock one's sense of justice. *Id.* (citing *Commonwealth v. Goodwine*, 692 A.2d 233, 236 (Pa. Super. 1997).

The evidence presented at trial reveals that all three co-defendants, while incarcerated, joined together and planned an attack on their fellow inmates. The co-defendants armed themselves with homemade weapons and executed their attack on three unsuspecting victims. Poole, Peay, and Sullivan stabbed Young and Gyton multiple times in the head and stomach. Poole continued the attack on Bostic and stabbed him multiple times. This Court's conscience is not shocked where the evidence is overwhelming as to Poole's guilt.

Poole claims this Court abused its discretion in imposing an excessive sentence and for failing to state its reasons on the record. "Sentencing 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. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002) (citations omitted). On appeal, a sentencing court will not be found to have abused its discretion unless the record reveals that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will. *Id.* 42 Pa.C.S. § 9721(b) specifies that "the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant."

In sentencing Poole, this Court considered the seriousness of the offense, protection of society, the Sentencing Guidelines, as well as Poole's history, family, background, and rehabilitative needs. N.T. 8.2.2013 at 28. The Court had the benefit of a Pre-Sentence Report, a Mental Health Report, and a Sentencing Memorandum from the Commonwealth. *Id.* at 2. The Court heard testimony from Poole's mother, Chaera Clark, Poole's uncle, Darwin Poole, and Poole's aunt, Betty Page. The Court acknowledged the empathy Poole showed towards the victims' families at sentencing. *Id.* at 26-27. The Court considered Poole's childhood as well as

his depressive disorder. *Id.* at 7-9. This Court weighed the seriousness of the crime heavily as Poole, while in prison and subjected to strict controls, crafted a prohibited weapon and participated in an attack on three individuals. All of these circumstances led this Court to impose a total sentence of twenty to forty years of incarceration, a Sentencing Guidelines standard range sentence for Third Degree Murder.

This Court sentenced Poole to aggravated sentences for PIC and Prohibited Offensive Weapons. Such sentences are concurrent to the other sentences. While this Court did not specifically state its reasoning on the record, it is apparent from the record that Poole's possession of a handmade weapon was more egregious than usual because he crafted and possessed it in prison.

Rashawn Edwards

In addition to challenging the sufficiency of the evidence, Edwards challenges the testimony regarding threats made to Omar Fulton, the chain of custody of two weapons recovered from C-2, P-2, and alleges misconduct by the prosecutor in his summation.

With regard to Edwards' challenges to the testimony regarding threats made to Omar Fulton, the chain of custody of two weapons recovered from C-2, P-2, and the prosecutor's summation, as discussed *supra*, these claims are meritless.

Jalik Peay

In addition to the challenging the sufficiency of the evidence, Peay challenges the weight of the evidence and his sentence. Peay challenges the weight of the evidence arguing that it was undetermined which of the individuals engaged in the attack delivered the fatal wound to Bostic. This claim is of no moment. Dr. Rosen testified that Bostic's cause of death was multiple stab wounds. N.T. 5.1.2013 at 39. Furthermore, each member of a conspiracy to commit murder can

be convicted of murder, regardless of which of the conspirators inflicted the fatal wound.

Commonwealth v. Simpson, 754 A.2d 1264, 1269 (Pa. 2000)(citing *Commonwealth v. Jones*, 668 A.2d 491, 500 (Pa. 1995); *Commonwealth v. Joseph*, 304 A.2d 163, 168 (Pa. 1973)). The evidence presented at trial reveals that all three co-defendants, while incarcerated, joined together and planned an attack on their fellow inmates. Peay armed himself with a prohibited weapon and ambushed three unsuspecting victims. This Court's conscience is not shocked.


Peay claims this Court abused its discretion for imposing sentence without stating its reasons on the record. Peay is mistaken, as this Court thoroughly explained is reasoning at sentencing. In sentencing Peay, this Court considered the seriousness of the offense, Peay's needs, the protection of society, and the Sentencing Guidelines. N.T. 7.29.2013 at 13-14. The Court had the benefit of a Pre-Sentence Report, a Mental Health Report, and a Sentencing Memorandum from the Commonwealth. The Court also heard testimony from Sandra Peay, Peay's grandmother, Leroy Andre Peay, Peay's father, as well as the defendant himself, who did not express any remorse for his actions.

This Court considered the Peay's long criminal history, which he had accumulated at the young age of twenty-two. Peay had been arrested three times as juvenile with two adjudications of delinquency and three commitments. N.T. 7.29.2013 at 7. As an adult, Peay has convictions for Criminal Conspiracy, Burglary, Knowing and Intentional Possession of a Controlled Substance, Attempt Murder, Aggravated Assault, Firearms not to be Carried without a License, Carrying Firearms in Public in Philadelphia, and PIC, and at the time of sentencing was serving a sentence of twenty and a half to forty one years of incarceration. *Id.* at 8-9, 12. In addition to his criminal history, Peay had demonstrated extremely violent characteristics. Peay engaged in witness intimidation when he shot a witness to prevent him from testifying in another case and

he received a sentence of disciplinary custody for fighting while incarcerated. *Id.* at 18, 27. This Court acknowledged the gravity of the offense in that Peay had the specific intent to kill three individuals. Considering all of these factors, the Court sentenced Peay to a standard sentence within the Sentencing Guidelines of forty to eighty years of imprisonment.

For the foregoing reasons, the decision of this Court should be affirmed.

BY THE COURT,


Barbara A. McDermott, J.