NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JEROME SAMUELS,	:	
	:	
Appellant	:	No. 2151 EDA 2013

Appeal from the Judgment Nunc Pro Tunc February 14, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division No(s).: CP-51-CR-0011743-2009

BEFORE: BOWES, WECHT, AND FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED JULY 23, 2014**

Appellant, Jerome Samuels, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas following a jury trial and his convictions for, *inter alia*, first-degree murder.[1] Appellant challenges the sufficiency and weight of the evidence for first-degree murder and asserts the trial court erred by not granting a mistrial. We affirm.

We adopt the facts set forth by the trial court's opinion. ***See*** Trial Ct. Op., 10/21/13, at 3-5. The jury began deliberation on January 28, 2013. At 11:00 a.m. on January 29, 2013, the jury sent the following note: "All 12 [jurors] cannot come to [an] agreement on the charges pending." Ex. A-1

[1] 18 Pa.C.S. § 2502.

to Trial Ct. Op. The trial court asked the jury to continue deliberating until lunch and advised the jury that the issue could be revisited after lunch. At 12:56 p.m., the jury sent the following note: "We still are not in agreement. And have not come any conclusion. Further time will not change this outcome." Ex. A-2 to Trial Ct. Op. At 2:00 p.m., the jury sent another note, as follows:

> We, the people of the jury have reached an impasse. Many of us are undecided. Some believe the defendant is guilty, while others find him not guilty. We all believe that at this point any persuasion in either direction would constitute a mistrial. We understand the definitions and the directions of the task you have given us, but in a case with such limited information, we cannot reach consensus. We have tried our best, but cannot give you any further determination.

Ex. A-3 to Trial Ct. Op. This note was in different handwriting than the prior notes, but all three notes were signed by the foreperson. Trial Ct. Op. at 10.

In response, the court addressed the jury as follows:

> All right. We are here. I actually received two questions from jury. The first question I got was, "We still are not in agreement and have not come to any conclusion. Further time will not change this outcome." That was at 12:56 and that was signed by your foreperson.
>
> I believe that we got a different question not from the foreperson that said, "Judge Carpenter, Your Honor, we the people of the jury have reached an impasse. Many of us are undecided. Some believe the defendant is guilty while others find him not guilty. We all believe that at this point any persuasion in either direction would constitute a mistrial. We understand the definitions and the directions of the task you have given us but in a case with such limited information, we cannot reach consensus. We have

tried our best but cannot give you any further determination." Signed by the foreperson, I believe, but it's not in the foreperson's handwriting.

What I am going to tell my jury is I'm going to remind you that your job is to deliberate, not to persuade, but to deliberate. Okay? You are meant to deliberate. Each of you took an oath. All of you took an oath and you promised to deliberate as a jury, to use your common sense, knowledge and every-day experience to determine whether something is probable, logical, or reasonable. But you cannot draw from any information other than testimony or evidence or the law that has been presented here at trial in making your determinations in your deliberation.

I'm going to remind you, and I heard some things in that last question that concerns me that you're talking about law that you heard somewhere other than from me. All right? I am the one to tell you what the law is in this case, and you must follow it. Remember, I gave you this instruction when we first met. You must follow the law throughout this entire trial as it is set out in my instructions. If you fail to follow the law, any verdict you render will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.

This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and the exhibits and evidence and my instructions. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone. Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence and law contained in these instructions.

And I'm going to give you a further instruction. I did ask if there was any evidence, anything that I may have read for you that may be helpful in making your decision. I didn't get anything back except that last answer. So I'm going to read this for you.

Now, this case has taken approximately three days and many hours of preparation from all the parties. We all are relying upon you to take your oath seriously and reach a decision if you can fairly do so. Now, you have deliberated I know for you what seems like a long time, but at the time when I first got that back it was one o'clock, the first question from you. So at that time, you've been deliberating Monday and Tuesday, so that, you know, maybe almost eight hours. So I know that you guys have been working hard and I know that you've been talking back and forth. So that I know that you are working hard and that you are telling me that you're experiencing difficulty in arriving at a verdict. This is an important case and a serious matter to all concerned. You are the exclusive judges of the facts. I am the judge of the law, as I've reminded you and told you.

Now, I most respectfully and earnestly request of you that you return to your jury room and you resume deliberations. All right? This isn't a fight of persuasion. This is deliberations. Further open and frank discussion of the evidence and law submitted to you in this case may aid you in arriving at a verdict. This does not mean that those favoring any particular position should surrender their honest convictions as to the weight or effect of any evidence solely because of the opinion of other jurors or because of the importance at arriving at a decision. No juror should ever agree to a verdict that is contrary to the law and my instructions to you, nor find a fact or concur in a verdict which in good conscience he or she believes to be untrue.

Now, this does not mean that you should give any disrespect or like this, and for my record I'm going like this (indicating). I'm not asking you guys to do this when you go in the back, but I am asking that you give respectful consideration to the other views. So you've told me there's people on different sides. How about trying to figure, maybe you can step into their shoes, see if you can give their point of view and vice-versa. Give respectful consideration to each other's views. So if you've told me that some are on one side, some are on another, well, see if you can repeat back what it is. Don't, please. Because I'm telling you, you have to go back and deliberate and I'm

> trying to give you a way that maybe you can lead your deliberations or choose your own way, but I'm telling you, you need to continue deliberating and talk over any differences of opinions in the spirit of fairness and candor. All right? If at all possible, you should resolve any differences and come to a common conclusion so that this case may be completed. Each juror should respect the opinion of his or her fellow jurors as he or she would have them respect their own.
>
> Now, make an earnest and diligent effort, not one where you stick your heels in and say I'm not going to do it, I'm not doing it. I'm telling you to go deliberate. Don't stick your heels in. I'm not asking you to give up an honestly held conviction, but I want you to have an internal conversation with yourself and say am I making an earnest and honest deliberation or am I digging my heels in? That's all I'm asking of you. Deliberate.
>
> Now, in telling you what I'm telling you, I again repeat, you are the judges of the facts. I'm the judge of the law. In making these statements to you and trying to tell you please go back and deliberate, I have not now nor do I express or infer or indicate in any way any of the conclusions to be reached in this case, nor do intend in any way or manner to coerce a verdict nor directly or indirectly force a verdict in this case. I am only asking you to return to the jury room and again diligently and earnestly resume your oath to deliberate. And I ask you again if when you're trying to say, well, I felt this way about it and you feel this way, run through the evidence and if there's something that I can give to you, read to you or clarify to you, please write that down. Otherwise, please diligently and earnestly in accordance with your oath resume your deliberations. And am sending you back to the jury room.
>
> (The jury retired to resume its deliberations at 2:23 p.m.)

N.T. Trial, 1/29/13, at 6-13.

The jury resumed deliberations at 2:23 p.m., and returned on January 30, 2013, to continue deliberating. On January 30, 2013, the third day of

deliberation, a jury convicted Appellant, and on February 14, 2013, the court sentenced Appellant to a mandatory sentence of life imprisonment without parole. Appellant filed a timely post-sentence motion, which was denied by operation of law on June 19, 2013. Appellant timely appealed and timely filed a court-ordered Pa.R.A.P. 1925(b) statement.

Appellant raises the following issues:

> Is [Appellant] entitled to an arrest of judgment on the charge of murder in the first degree and on the charge of criminal conspiracy where the evidence is insufficient to sustain the verdict as the evidence does not establish that [Appellant] was a principal, conspirator nor an accomplice to the murder in question and alternatively, does not establish premeditation nor specific intent for the crime of first degree murder?
>
> Is [Appellant] entitled to a new trial as the verdict is not supported by the greater weight of the evidence?
>
> Did the trial court err when it failed to grant a mistrial during jury deliberations when the jury clearly and unequivocally indicated that it was deadlocked and that future deliberations would be futile?

Appellant's Brief at 3.

For Appellant's first two issues, Appellant suggests the Commonwealth failed to meet its burden of proof because the eyewitness testimony was insufficiently detailed and lacked specificity as to the firearm he allegedly used. Appellant alternatively maintains there was a lack of evidence regarding his specific intent to kill the victim. He similarly maintains the verdict was against the weight of the evidence. We hold Appellant is not entitled to relief.

The standard of review for a challenge to the sufficiency of evidence is *de novo*, as it is a question of law. ***Commonwealth v. Sanford***, 863 A.2d 428, 431 (Pa. 2004).

> [T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . does not require a court to ask itself whether **it** believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict.

Commonwealth v. Ratsamy, 934 A.2d 1233, 1235-36 (Pa. 2007) (citations and quotation marks omitted). "When reviewing the sufficiency of the evidence, an appellate court must determine whether the evidence, and all reasonable inferences deducible from that, viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish all of the elements of the offense beyond a reasonable doubt." ***Id.*** at 1237.

We will sustain a conviction of first-degree murder where the Commonwealth has established "that the defendant acted with the 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 premeditation or deliberation." ***Commonwealth v. Spotz***, 759 A.2d 1280, 1283 (Pa. 2000); ***see also*** 18 Pa.C.S. § 2502(a). "The period of reflection necessary to constitute premeditation may be very brief; in fact the design to kill can be formulated in a fraction of a second. Premeditation and deliberation exist whenever the assailant possesses the conscious purpose to bring about

death." ***Commonwealth v. Fisher***, 769 A.2d 1116, 1124 (Pa. 2001). The Commonwealth may establish the specific intent to kill through circumstantial evidence. ***See Commonwealth v. Randall***, 758 A.2d 669, 674 (Pa. Super. 2000). The ***Randall*** Court held that the repeated, deliberate firing of a deadly weapon at a vital part of the victim's body may demonstrate specific intent. ***See id.*** at 674-75.

On the issue of whether the jury's verdict is contrary to the weight of the evidence, our Supreme Court has held that "[t]he decision to grant or deny a motion for a new trial on the ground that the verdict is against the weight of the evidence is committed to the sound discretion of the trial court." ***Commonwealth v. Pronkoskie***, 445 A.2d 1203, 1206 (Pa. 1982). In such circumstances, "[t]he role of an appellate court in reviewing the weight of the evidence is very limited." ***Commonwealth v. Sanders***, 627 A.2d 183, 185 (Pa. Super. 1993) (citation omitted). "Relief on a weight of the evidence claim is reserved for extraordinary circumstances, 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. Sanchez***, 36 A.3d 24, 39 (Pa. 2011) (citation and quotation marks omitted). An argument that witnesses are not credible is an argument challenging the weight of the evidence. ***Commonwealth v. Lewis***, 911 A.2d 558, 566 (Pa. Super. 2006). The evaluation of the credibility of witnesses is within the exclusive

domain of the fact-finder. ***Commonwealth v. Akers***, 572 A.2d 746, 752 (Pa. Super. 1990).

Instantly, after carefully reviewing the parties' briefs, the certified record including the trial transcript, and the decision of the Honorable Linda Carpenter, we affirm Appellant's first issue on the basis of the trial court's opinion. ***See*** Trial Ct. Op. at 2-4 (summarizing trial testimony and holding evidence, viewed in light most favorable to Commonwealth, established that eyewitness identified Appellant as culprit and multiple witnesses corroborated Appellant's motive). We also discern no abuse of discretion in the trial court's determination that the verdict was not against the weight of the evidence. ***See Pronkoskie***, 445 A.2d at 1206.

Appellant, for his last issue, states that the trial court erred by not declaring a mistrial when the jury "made a clear and direct statement that an impasse had been reached and that future deliberations would not result in a verdict." Appellant's Brief at 16.[2] We hold Appellant is due no relief.

In ***Commonwealth v. Greer***, 951 A.2d 346 (Pa. 2008), our Supreme Court set forth the following:

> We review jury charges, including supplemental jury charges, for an abuse of discretion. Further, the question of the proper duration of jury deliberations is one that rests within the sound discretion of the trial court, whose decision will not be disturbed unless there is a showing that the court abused its discretion or that the jury's

[2] Given that the jury deliberated only three days, Appellant specifically refused to raise "jury fatigue" as an argument. ***Id.***

verdict was the product of coercion or fatigue. 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.

The use of supplemental charges to the jury has long been sanctioned. Moreover, this Court in [***Commonwealth v. Spencer***, 275 A.2d 299 (Pa. 1971),] recognized that, "[d]eadlocked juries are a matter of concern to both the bench and the bar." 275 A.2d at 304. On the other hand, ***Spencer*** also emphasized that a conviction will be reversed if it was coerced by the court's charge. ***Id.*** at 303; ***accord*** [***Lowenfield v. Phelps***, 484 U.S. 231, 241 (1988)] ("Any criminal defendant . . . being tried by a jury is entitled to the uncoerced verdict of that body.").

Proper disposition of this appeal requires appreciation of the origins and subsequent experience of the ***Allen*** charge, particularly as the charge has been employed in Pennsylvania. ***Allen v. United States***, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896) involved a federal capital prosecution. The judge's supplemental charge in ***Allen*** is not set out verbatim in the opinion; rather, the High Court summarized the substance of the charge as follows:

> [T]hat in a large proportion of cases absolute certainty could not be expected; that, although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself.

> If, upon the other hand, the majority were for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.

164 U.S. at 501, 17 S. Ct. 154. The ***Allen*** Court found "no error" in this charge, emphasizing that:

> While, undoubtedly, the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves. It certainly cannot be the law that each juror should not listen with deference to the arguments and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself.

Id. at 501–02, 17 S. Ct. 154. . . .

Spencer was litigated in the trial court specifically to test the vitality of ***Allen*** deadlock charges—*i.e.*, the trial judge was disinclined to so charge the deadlocked jury but relented, upon request of the District Attorney, "if for no other reason than to test [***Allen's***] continuing validity." 275 A.2d at 302. The supplemental charge issued in ***Spencer*** tracked the substance of ***Allen***, including the focus upon "dissenting jurors" reconsidering their views in light of the inclination of the majority. The issue on appeal was whether the ***Allen*** charge has a prohibited coercive effect. The defendant argued that the portion of the charge which directed jurors in the minority to listen with deference to the majority and re-examine their minority position implied two troublesome points: (1) that jurors in the minority should yield to the majority; and (2) that those without reasonable doubt (the majority) need not re-examine their position despite the existence of reasonable doubt in the mind of a minority juror. ***Spencer*** noted that "each notion is contrary to the hallowed tradition of trial by

jury" secured by both the federal and the Pennsylvania Constitutions. ***Id.*** at 304. We then summarily noted our agreement with "the vast majority of jurisdictions that the ***Allen*** charge contains these potential abuses," and therefore declared (presumably as a supervisory matter, since we made the rule prospective only) "that the ***Allen*** charge should not be employed by trial judges of this Commonwealth after the date of this opinion." ***Id.*** (emphasis omitted).

With respect to concluded trials, however, ***Spencer*** stated that consideration would be on an *ad hoc* basis, with a view to determining "whether or not the ***Allen*** charge unduly influenced the jury." ***Id.*** We then held that the ***Allen*** charge did not so influence the ***Spencer*** jury. In so holding, we approved of the Superior Court's analysis, which had emphasized that: the jury's verdict came seven hours after the ***Allen*** charge; in those seven hours, the jury had deliberated for three separate intervals; the jurors also had a leisurely dinner in that time; and the jury asked that certain testimony be read back, indicating awareness of its duty—all of which was "not the mark of a coerced jury," rendering any error in the ***Allen*** charge harmless. ***Id.*** (citing ***Commonwealth v. Spencer***, 216 Pa. Super. 169, 263 A.2d 923, 926 (1970)).

Finally, ***Spencer*** cited with approval to then-recently promulgated guidelines from the American Bar Association governing jury deadlock, noting that "[s]uch guide lines may avoid the evils inherent in the ***Allen*** charge and with proper usage may aid in the alleviation of problems which arise when juries are deadlocked." ***Id.*** at 305. Those guidelines provided as follows:

> (a) Before the jury retires for deliberation, the court may give an instruction which informs the jury:
>
> > (i) that in order to return a verdict, each juror must agree thereto;
> >
> > (ii) that jurors have a duty to consult with one another and to deliberate with a view to

> reaching an agreement, if it can be done without violence to individual judgment;
>
> (iii) that each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;
>
> (iv) that in the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and
>
> (v) that no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.
>
> (b) If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give or repeat an instruction as provided in subsection (a).

Id. at 304 n. 7.

Greer, 951 A.2d at 356-57 (some citations omitted).

> Nothing in the law requires that deliberations be aborted because jurors may feel uncomfortable in being directed to listen to each other and to attempt to hammer out their differences. Indeed, if avoidance of conflict or discomfort were the prime directive, we could do away with deliberation entirely and tally private, individual votes from the jury. As the ***Allen*** Court noted, and the ***Lowenfield*** Court reaffirmed:
>
> > The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves. It certainly cannot be the law that each juror should not listen with deference to the arguments and with a distrust of his own

> judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself. It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his opinion of the case at that moment; or, that he should close his ears to the arguments of men who are equally honest and intelligent as himself.
>
> ***Lowenfield***, 484 U.S. at 237, 108 S. Ct. 546 (quoting ***Allen***, 164 U.S. at 501–02, 17 S. Ct. 154). To this, we would add (and this is what ***Spencer*** refines ***Allen*** to accomplish), there is nothing improper in directing all jurors to be open to the arguments of their fellow jurors.

Greer, 951 A.2d at 361-62.

Applying the above precepts, the ***Greer*** Court addressed whether the following ***Spencer*** charges were unduly coercive:

> [The trial court] issued a supplemental instruction which, *inter alia*:
>
> • stressed that jurors were not expected "to surrender deeply held personal views just to reach a verdict because that would be unfair as well;"
>
> • asked the jurors to go back and isolate the areas where there was an uncertainty, dispute, or issue;
>
> • suggested that the jurors could identify the issue in writing for the court and it could be addressed;
>
> • noted that the parties entrusted the case to the jury for a decision, but the verdict was whatever was the jury's judgment;
>
> • reiterated ("I can't say this strongly enough") that the court did not expect individual jurors "to surrender deeply- held views only to reach a verdict" but rather, "our overriding concern, our overriding interest is that

> you do justice, that you do what's right, not just reach a verdict so that we can all go home;"
>
> • asked that the jury "spend time, that you deliberate, that you try to isolate what areas divide you and try to reach a reasonable verdict;"
>
> • reiterated the importance of the jury in the criminal justice system; and
>
> • reiterated that the parties were relying on the jury to resolve the case in a way that is "fair and consistent with the law."

Greer, 951 A.2d at 349-50 (citation omitted). The ***Greer*** Court also resolved the propriety of the trial court's second ***Spencer*** charge, which we set forth below:

> I'm just going to ask that you go back for a little bit. What this indicates to me is either someone is not talking or someone is not listening. And, you know, I mean you owe that to the parties here.
>
> I mean again, I have a sense of fairness to the people here. That's why you're here. That's why you were picked. You promised us that you would be fair and that you would listen to your fellow jurors, and that you would give us a fair verdict. I mean that's really all that we we're asking for. Parties just want a fair shot which is what everybody is entitled to.
>
> And a jury verdict is a—it's a jury of 12 people speaking as one. And, you know, if it were easy, anybody could do it . . . . But it's not easy.
>
> This is one of the most serious, difficult citizen participation functions that we have in American government . . . . Parties entrust you to reach a verdict.
>
> Now, you're almost there. You're there on one count. But we need your best efforts. We need you to talk. This is not time for people to stand on ego. There's people's lives

> that are depending on your verdict and on your participation, if you can fairly do so. If you can.
>
> And there's always that caveat because, as I said, you know—this is probably the third or fourth time—don't ask people to surrender deeply-held beliefs just to get out of here and reach a verdict because that's not right.
>
> On the other hand, each of you has views and just judging by what the note says, you're close, but no cigar. So we need you to go back and try to do and resolve this case.
>
> I mean that's—we've been here almost a week. It's a lot of time. It's a lot of your time. I'm here everyday, I work here. But you are serving the system and the community in an effort to reach a verdict, if you can fairly do so.
>
> So I'm going to asking [sic] you to go back. We're not going to keep you here over the weekend. Don't worry about that. We're going to ask you to go back and try because I think you can do it. But just keep an open mind. Listen to each other. Okay? Go on.

Greer, 951 A.2d at 350-51. The ***Greer*** Court held that the above supplemental charge "did not begin to approach" the potential coerciveness of the charge addressed in ***Spencer***. ***Id.*** at 360.

> The trial court here, like the trial court in ***Lowenfield***, ***supra***, did not purport to separately address the jurors in the minority, nor did it suggest to jurors holding a minority view that they should defer to the majority view. The court did not say anything along the lines of "a dissenting juror should consider whether his doubt is a reasonable one if it made no impression upon the minds of so many other jurors." Nor did the court suggest that jurors in the minority should "distrust [their] own judgment" because their views differ from that of the majority. ***See Spencer***, 275 A.2d at 303 (quoting ***Allen*** charge). Rather, the trial court addressed the jury as a whole, and while repeatedly advising the jurors that they were not expected to surrender deeply-held views, reminded them of their duty

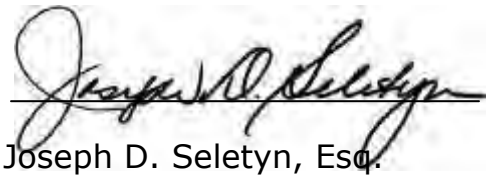
> and function, and directed them to continue to deliberate and to try to reach a verdict.

Greer, 951 A.2d at 360.

Instantly, we discern no substantive difference between the charge at issue and the one advanced by the trial court in ***Greer***. Just as in ***Greer***, the instant trial court stressed that the jury's obligation was to deliberate. ***See Greer***, 951 A.2d at 349-51. The court—as did the court in ***Greer***—repeatedly asked the jury to not surrender honestly-held convictions and respectfully consider differing viewpoints. ***See id.*** As did the ***Greer*** Court, we discern nothing in the instant supplemental charge approaching the potential coerciveness of an ***Allen*** charge. ***See id.*** at 360. The instant trial court did not suggest that jurors with a minority viewpoint cede to a majority viewpoint. ***See id.*** The trial court also did not suggest that those in the minority should distrust their own judgment and, in fact, repeatedly emphasized that jurors should not surrender their honest convictions. ***See id.*** Accordingly, having discerned no abuse of discretion or error of law, we affirm the judgment of sentence. ***See id.*** at 361-62.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	**CP-51-CR-0011743-2009**
	:	
JEROME SAMUELS	:	

OPINION

CARPENTER, J. October 21, 2013

Defendant Jerome Samuels ("Samuels") was charged with and found guilty of Murder of the First Degree (H1), Conspiracy to Commit Murder (H1) and Possession of Instrument of Crime (M1) on bill of information CP-51-CR-0011743-2009. These charges arose from the shooting death of Tyleigh Perkins on September 14, 2008 on the 2200 block of West Harold Street in the City of Philadelphia. This court requests that the Superior Court uphold the convictions and affirm the sentence imposed in this matter.

PROCEDURAL HISTORY

On November 16, 2011, the Honorable Carolyn Engel Temin declared a mistrial in the instant matter and the matter was reassigned to this court for re-trial. On January 23, 2013, Samuels elected to exercise his right to a jury trial and pled not guilty to the above listed charges. On January 30, 2013, the jury

found Samuels guilty of Murder of the First Degree (H1), Conspiracy to Commit Murder ("Conspiracy") (H1) and Possession of Instrument of Crime ("PIC") (M1). At the conclusion of the trial, sentencing was deferred to February 14, 2013. On February 14, 2013, this court sentenced Samuels to Life imprisonment without parole on the homicide charge. He received no further penalty on the remaining charges. On February 15, 2013, Samuels filed a Post-Sentence Motion, which was denied by operation of law on June 19, 2013.

On July 18, 2013, this court received a Notice of Appeal and on August 5, 2013, upon completion of the notes of testimony, Samuels was served an Order directing him to file a concise statement of the matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). On August 26, 2013, this court received Samuels' 1925(b) response which raised the following issues on appeal:

1. The defendant must receive an arrest of judgment on the charges of murder in the first degree, criminal conspiracy and possession of an instrument of crime (PIC), as the evidence was insufficient to sustain the verdict. The Commonwealth's evidence did not prove that the Defendant was the perpetrator of the crime, nor that he acted with the specific intent to kill, nor with malice. In that the Commonwealth did not prove that this Defendant was the perpetrator, nor did they prove the elements of first degree murder, the Commonwealth did not prove its case beyond a reasonable doubt and, hence, the evidence is legally insufficient.

2. The Defendant must be awarded a new trial as the greater weight of the evidence does not support the verdict. Rather, the greater weight of the evidence would only support the proposition that the Commonwealth did not prove the identity of the perpetrator, nor did it prove the elements of first degree murder, including malice and the specific intent to kill. The verdict is not based on a necessary level of proof but, instead was based on speculation, conjecture and surmise, which is not permitted nor tolerated. Given that the weight of the evidence does not support the verdict, a new trial must be awarded.

3. Defendant must be awarded a new trial as the result of [this court's] error, when [this court] failed to grant a mistrial, as requested by the defense,

> after the jury had returned with its third "hung jury" note. The repeated act of sending the jury out served to coerce the jury into returning a verdict. Thus, the Defendant was denied an opportunity to a fair trial as the will of [this court] was imposed upon the jury and where the jury of twelve did not get to return its findings to [this court], but simply served to return a verdict that it felt was imposed upon them. A new trial is required.

FACTS

On September 14, 2008, at approximately 1:02 a.m., Tyleigh Perkins ("Sy") and Tyrone Edgefield ("Hawk") were sitting on the adjoining stoops of 2230 and 2232 West Harold Street in the City of Philadelphia. As Sy and Hawk sat on the steps, a gray sedan with black tinted windows approached and pulled directly in front of them. The vehicle idled and then the driver's side window rolled down. The driver, Carl Johnson ("Carl-Carl"), looked out the window at Sy and Hawk and then leaned back as defendant Samuels came into view from the passenger's seat. Samuels leaned over Carl-Carl, whose side of car was nearest to Sy and Hawk, and fired multiple shots at Sy. Sy suffered multiple gunshot wounds to his arm and torso. Officer Hiller was the first respondent to the scene, whereupon Hawk and Darnell Williams, a neighbor who had come to the aid of Sy after hearing the gunshots, placed Sy in the back of Officer Hiller's vehicle. Sy was immediately transported to Temple University Hospital, where he was pronounced dead at 6:30 a.m.

DISCUSSION

Sufficiency of the evidence

The standard applied when reviewing the sufficiency of evidence is whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner,

there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt.[1] In applying this test, the Superior Court may not weigh the evidence and substitute its judgment for that of the fact-finder. The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless, the evidence is so weak and inconclusive that as a matter of law, no probability of fact may be drawn from the combined circumstance.[2] The Commonwealth may satisfy its burden of proving an element of the crime beyond a reasonable doubt through the use of wholly circumstantial evidence. In applying the test, the whole record must be evaluated and all evidence received must be considered.[3] Additionally, any challenge to the sufficiency of the evidence must specify the element or elements upon which the evidence was insufficient; otherwise the claim is waived.[4]

On appeal, Samuels asserts that the evidence was insufficient to support the verdict, as the Commonwealth did not prove that Samuels was the perpetrator of the crime, nor that he acted with the specific intent to kill, nor with malice. This court disagrees, having found the evidence to be more than sufficient to support the jury's verdict. The testimony of eye-witness Tyrone Edgefield established that he and Sy were sitting on the stoops of 2230 and 2232 West Harold Street at 1:00 a.m. on September 14, 2008 when a sedan pulled up in front of therm. He saw the driver, Carl-Carl, look out the window and then lean back as Samuels reached out and fired multiple shots directly at Sy. Edgefield identified both Carl-Carl and Samuels, via photo spread,

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[1] *Com. v. Heberling*, 678 A.2d 794, 795 (Pa. Super. 1996) (citing *Com. v. Williams*, 650 A.2d 420 (Pa. 1994)).
[2] *Com. v. Cassidy*, 668 A.2d 1143, 1144 (Pa. Super. 1995).
[3] *Com. v. Valette*, 613 A.2d 548, 549 (Pa. 1992).
[4] *Com. v. Williams*, 959 A.2d 1252, 1257 (Pa. Super. 2008).

as the driver and shooter, respectively, and he also positively identified Samuels as the shooter in a subsequent line up. Additionally, the testimony of neighbor Darnell Williams corroborated that of Edgefield and described an earlier fight between Carl-Carl's younger brother, Shawn, and another male from the neighborhood, after which Sy ended up with Shawn's phone. Carl-Carl was angry about the incident and continued to drive around the neighborhood looking for the phone. Further, the testimony of Officer Hiller, Officer Guaraldo, Officer Walker, Detective Gaul, and Detective Urban collectively provided an account of the crime scene, the aftermath of the shooting, the investigation, and the determination that the same 45 caliber gun had fired the bullets extracted from Sy's body. Finally, Dr. Gulino's testimony established that Sy's death was a homicide caused by multiple gunshot wounds to the torso, two of which contributed to his death.

Edgefield's identification of Samuels as the shooter, in both a photo spread and a line-up, squarely demonstrated Samuels to be the perpetrator of the shooting. Further, Edgefield's account of the shooting, as corroborated by Dr. Gulino's examination, established Samuel's specific intent to kill and malice on the night of the shooting. Our Superior Court has consistently held that "[s]pecific intent to kill can be inferred from the use of a deadly weapon upon a vital part of the victim's body."[5] The Commonwealth provided ample evidence of the gunshots to the torso area of Sy's body and the damage cause to his internal organs, including the liver, stomach, duodenum, small intestine, aorta, and lumbar vertebra. This court, in viewing all the evidence admitted at trial in the light most favorable to the Commonwealth, has determined that the evidence was sufficient to enable the jury to find, beyond a reasonable doubt, that Samuels was

[5] *Com. v. DeJesus*, 860 A.2d 102, 106 (Pa. Super. 2004).

the perpetrator and that he had the specific intent to kill and malice, requisite for Murder of the First Degree.

Weight of the evidence

The standard of review for a challenge to the weight of evidence is well settled in Pennsylvania. The fact finder is the exclusive judge of the weight of evidence, is free to believe all, part, or none of the evidence presented, and determines the credibility of the witnesses.[6] An appellate court cannot substitute its judgment for that of the fact finder.[7] A verdict will be reversed and a new trial granted only where the verdict is so contrary to the evidence as to "shock one's sense of justice."[8] 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 come to another conclusion.[9] Pennsylvania appellate courts have repeatedly emphasized that "[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."[10] Additionally, a challenge to the weight of the evidence that is too vague to allow the court to identify the issue raised on appeal is deemed to be waived.[11]

On appeal, Samuels asserts that the verdict was against the weight of the evidence, as the Commonwealth did not prove the identity of the perpetrator, nor did it prove the elements of first degree murder, including malice and the specific intent to kill.

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[6] *Com. v. Champney*, 832 A.2d 403, 408 (Pa. 2004).
[7] *Id.*
[8] *Com. v. Passmore*, 857 A.2d 697, 708 (Pa. Super. 2004).
[9] *Thompson v. City of Philadelphia*, 493 A.2d 669, 673 (Pa. 1985).
[10] *See Com. v. Forbes*, 867 A.2d 1268, 1273 (Pa. Super. 2005); *See also Com. v. Brown*, 648 A.2d 1177 (Pa. 1994).
[11] *Com. v. Seibert*, 799 A.2d 54, 62 (Pa. Super. 2002).

This court similarly disagrees with this claim, having found the weight of the evidence to support the jury's verdict. As discussed at length above, the jury heard testimony from eye-witness Edgefield and was able to assess his credibility as a witness. Although the jury heard that Edgefield did not identify the driver or the shooter in his initial police interview shortly after the shooting, Edgefield testified at trial that the lack of detail in his first statement to police was due the fact that he feared for his own safety. Similarly, the jury heard testimony from numerous police officers and detectives as well as from the medical examiner and a neighbor, all of which corroborated Edgefield's account of the shooting, and the jury was able to assess their credibility. The jury verdict, reflecting the assessment of all of the evidence presented at trial, was not so contrary to the evidence presented at trial as to "shock one's sense of justice." Therefore, this court finds no merit in Samuels' challenge to the weight of the evidence presented at trial.

Denial of Request for a Mistrial

The duration of jury deliberations is a matter within the sound discretion of the trial court and will not be disturbed absent a showing that there was an abuse of discretion or that the jury's verdict was the result of coercion or fatigue.[12] The factors used to make such an assessment include the charges at issue, the complexity of the issues, the amount of testimony to consider, the length of the trial, the solemnity of the proceedings, and indications from the jury on the possibility of reaching a verdict.[13] 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

[12] *Com. v. Moore*, 937 A.2d 1062, 1077 (Pa. 2007).
[13] *Id.*

partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.[14]

Additionally, the use of supplemental jury charges is also a matter within the sound discretion of the trial court and is considered by a reviewing court only for an abuse of discretion.[15] A conviction will be reversed if the jury's verdict was effectively coerced by the trial judge's charge.[16] While the use of supplemental charges "has long been sanctioned" by the Supreme Court of the United States and the courts of this Commonwealth, the charge must be considered "in its context and under all the circumstances."[17] As stated by the Supreme Court of the United States:

> The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves. It certainly cannot be the law that each juror should not listen with deference to the arguments and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself. It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his opinion of the case at that moment; or, that he should close his ears to the arguments of men who are equally honest and intelligent as himself.[18]

Moreover, the continuing vitality of such observations apply with even greater force in our Commonwealth following the Pennsylvania Supreme Court's decision in *Commonwealth v. Spencer.*[19] The *Spencer* court restricted the use of supplemental charges, specifically finding that the traditional *Allen*[20] charge, which targeted the

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[14] *Com. v. Greer*, 951 A.2d 346, 354-55 (Pa. 2008).
[15] *Id.* at 354.
[16] *Com. v. Spencer*, 275 A.2d 299, 303 (Pa. 1971).
[17] *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988); *Com. v. Greer*, 951 A.2d 346, 355 (Pa. 2008).
[18] *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988) (quoting *Allen v. United States*, 164 U.S. 492, 501-02 (1896)).
[19] 275 A.2d 299 (Pa. 1971); *Lowenfield v. Phelps*, 484 U.S. 231, 237-38 (1988).
[20] *See generally Allen v. United States*, 164 U.S. 492 (1896) (providing supplemental charge to jury).

minority jurors, was no longer permissible.[21] Notwithstanding this ruling, however, the Court's decision did not purport to eliminate all potential discomfort associated with jury deliberations.[22] As stated by the Court in *Commonwealth v. Greer*[23]:

> Nothing in the law requires that deliberations be aborted because jurors may feel uncomfortable in being directed to listen to each other and to attempt to hammer out their differences. Indeed, if avoidance of conflict or discomfort were the prime directive, we could do away with deliberation entirely and tally private, individual votes from the jury.[24]

In the instant appeal, Samuels avers that this court erred in denying his request for a mistrial after this court had instructed the jurors to continue with their deliberations after receiving the third note indicating that they could not reach a consensus. This court disagrees. In this court's closing remarks to the jury on January 25, 2013, before the jury retired to begin deliberations, this court provided the following instructions:

> Now, your verdict has to be unanimous, and this means that in order for you to return a verdict, each of you must agree to it. Now, you have a duty to consult with each other and to deliberate with a view to reaching an agreement if it can be done without doing, if it can be fairly done within your individual judgment. Each of you must decide the case for yourself but only after there has been impartial consideration with your fellow jurors. In the course of deliberations, each of you should not hesitate to re-examine your open views and change your opinion if you're convinced it's erroneous. However, no juror should surrender an honestly held belief as to the weight or effect of the evidence solely because of your fellow jurors or for the mere purpose of returning a verdict.[25]

The jury did not deliberate at all on January 25, 2013, due to concerns about an impending snow storm, and thus, returned January 28, 2013 to begin deliberations. They returned again on January 29, 2013 and at 11:00 a.m.

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[21] *Com. v. Spencer*, 275 A.2d 299, 304 (Pa. 1971).
[22] *Com. v. Greer*, 951 A.2d 346, 361-62 (Pa. 2008).
[23] 951 A.2d 346 (Pa. 2008).
[24] *Id.* at 361
[25] N.T. 1/25/2013 at 230:22-25; 231:2-16.

indicated that they could not reach an agreement. See Exhibit A-1. This court asked the jury to continue deliberating until lunch and the issue could be revisited, if necessary, after they had eaten. The jury sent two more notes at 12:56 p.m. and 2:00 p.m., both indicating that the jury could not reach a consensus. See Exhibits A-2 and A-3. This court addressed the jury with a supplemental charge and has included the full text below for ease of review.

> All right. We are here. I actually received two questions from jury. The first question I got was, "We still are not in agreement and have not come to any conclusion. Further time will not change this outcome." That was at 12:56 and that was signed by your foreperson.
>
> I believe that we got a different question not from the foreperson that said, "Judge Carpenter, Your Honor, we the people of the jury have reached an impasse. Many of us are undecided. Some believe the defendant is guilty while others find him not guilty. We all believe that at this point any persuasion in either direction would constitute a mistrial. We understand the definitions and the directions of the task you have given us but in a case with such limited information, we cannot reach consensus. We have tried our best but cannot give you any further determination." Signed by the foreperson, I believe, but it's not in the foreperson's handwriting.
>
> What I am going to tell my jury is I'm going to remind you that your job is to deliberate, not to persuade, but to deliberate. Okay? You are meant to deliberate. Each of you took an oath. All of you took an oath and you promised to deliberate as a jury, to use your common sense, knowledge and every-day experience to determine whether something is probable, logical, or reasonable. But you cannot draw from any information other than testimony or evidence or the law that has been presented here at trial in making your determinations in your deliberation.
>
> I'm going to remind you, and I heard some things in that last question that concerns me that you're talking about law that you heard somewhere other than from me. All right? I am the one to tell you what the law is in this case, and you must follow it. Remember, I gave you this instruction when we first met. You must follow the law throughout this entire trial as it is set out in my instructions. If you fail to follow the law, any verdict you render will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
>
> This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and the exhibits and evidence and my instructions. This case must not be decided for or against anyone

because you feel sorry for anyone or are angry at anyone. Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence and law contained in these instructions.

And I'm going to give you a further instruction. I did ask if there was any evidence, anything that I may have read for you that may be helpful in making your decision. I didn't get anything back except that last answer. So I'm going to read this for you.

Now, this case has taken approximately three days and many hours of preparation from all the parties. We all are relying upon you to take your oath seriously and reach a decision if you can fairly do so. Now, you have deliberated I know for you what seems like a long time, but at the time when I first got that back it was one o'clock, the first question from you. So at that time, you've been deliberating Monday and Tuesday, so that, you know, maybe almost eight hours. So I know that you guys have been working hard and I know that you've been talking back and forth. So that I know that you are working hard and that you are telling me that you're experiencing difficulty in arriving at a verdict. This is an important case and a serious matter to all concerned. You are the exclusive judges of the facts. I am the judge of the law, as I've reminded you and told you.

Now, I most respectfully and earnestly request of you that you return to your jury room and you resume deliberations. All right? This isn't a fight of persuasion. This is deliberations. Further open and frank discussion of the evidence and law submitted to you in this case may aid you in arriving at a verdict.

This does not mean that those favoring any particular position should surrender their honest convictions as to the weight or effect of any evidence solely because of the opinion of other jurors or because of the importance at arriving at a decision. No juror should ever agree to a verdict that is contrary to the law and my instructions to you, nor find a fact or concur in a verdict which in good conscience he or she believes to be untrue.

Now, this does not mean that you should give any disrespect or like this, and for my record I'm going like this (indicating [finger pointing]). I'm not asking you guys to do this when you go in the back, but I am asking that you give respectful consideration to the other views. So you've told me there's people on different sides. How about trying to figure, maybe you can step into their shoes, see if you can give their point of view and vice-versa. Give respectful consideration to each other's views. So if you've told me that some are on one side, some are on another, well, see if you can repeat back what it is. Don't, please. Because I'm telling you, you have to go back and deliberate and I'm trying to give you a way that maybe you can lead your deliberations or choose your own way, but I'm telling you, you need to continue deliberating and talk over any differences of opinions in the spirit of fairness and candor. All right? If at all possible, you should resolve any differences and come to a common conclusion so

> that this case may be completed. Each juror should respect the opinion of his or her fellow jurors as he or she would have them respect their own.
>
> Now, make an earnest and diligent effort, not one where you stick your heels in and say I'm not going to do it, I'm not doing it. I'm telling you to go deliberate. Don't stick your heels in. I'm not asking you to give up an honestly held conviction, but I want you to have an internal conversation with yourself and say am I making an earnest and honest deliberation or am I digging my heels in? That's all I'm asking of you. Deliberate.
>
> Now, in telling you what I'm telling you, I again repeat, you are the judges of the facts. I'm the judge of the law. In making these statements to you and trying to tell you please go back and deliberate, I have not now nor do I express or infer or indicate in any way any of the conclusions to be reached in this case, nor do intend in any way or manner to coerce a verdict nor directly or indirectly force a verdict in this case. I am only asking you to return to the jury room and again diligently and earnestly resume your oath to deliberate. And I ask you again if when you're trying to say, well, I felt this way about it and you feel this way, run through the evidence and if there's something that I can give to you, read to you or clarify to you, please write that down. Otherwise, please diligently and earnestly in accordance with your oath resume your deliberations. And I am sending you back to the jury room. (The jury retired to resume its deliberations at 2:23 p.m.)[26]

Following this instruction, the jury continued to deliberate for the rest of the day and returned January 30, 2013 to resume deliberations. On January 30, 2013, the jury asked for two statements in the morning and returned with a verdict at 3:40 p.m..

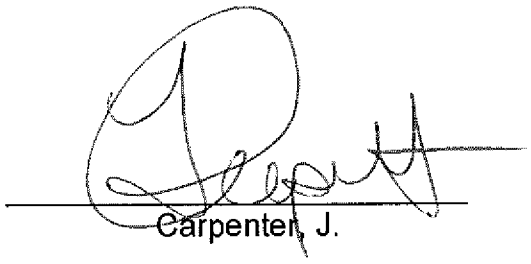
This court's supplemental instructions were neither coercive nor directed at minority jurors. Far from being coercive, this court's supplemental charge, like that in *Greer*, informed the jury of the importance of reaching a verdict and asked *all jurors* to further deliberate and try to resolve their differences while, at the same time, repeatedly emphasizing that no juror should surrender strongly held beliefs merely to reach a verdict. Minority jurors were not told to show deference to the majority and thus, the supplemental charge did not run afoul of *Spencer*

[26] N.T. 1/29/2013 at 6-13.

and was not unlawfully coercive. There is nothing coercive in instructing jurors to continue to deliberate, to respect one another's views, to talk over any differences of opinion in the spirit of candor and fairness, to follow the law, and to not dig their heels in without listening to fellow jurors. This court was careful to direct its charge to the jury *as a whole* and specifically emphasized that jurors were not to surrender deeply held beliefs merely to reach a verdict. Nor did this court suggest that jurors in the minority had a special obligation to reconsider, beyond that over the other jurors. Moreover, this court did not pressure the jury to reach a verdict under pain of being inconvenienced for any greater amount of time than previously estimated to the jurors at the beginning of trial. In consideration of the language of the supplemental charge and the context of the trial and deliberations in which the charge was given, this court's supplemental instruction was not coercive or otherwise improper.

CONCLUSION

For the reasons set forth in this Opinion, the Superior Court should affirm the jury's finding of guilt and the sentence imposed in this matter.



Carpenter, J.

The First Judicial District of Pa.

Date: 1-29-13

Time: 11:00

Question: ALL 12 PARTIES CAN NOT COME TO A AGREEMENT ON THE CHARGES PENDING.

TO my Jury: — Judy Cath O

P/S. keep deliberating until your lunches arrive and let me know whether there is anything that would be helpful to you in reaching an agreement. We can revisit this after you have eaten your lunch. Judy Cath

Foreperson signature

Juror #

1/29/13 11:30 a.m.

The First Judicial District of Pa.

Date: 1-29-13

Time: 12:56 p.

Question: WE STILL ARE NOT IN AGREEMENT. AND HAVE NOT CAME TO ANY CONCLUSION. FURTHER TIME WILL NOT CHANGE THIS OUTCOME.

Gregory F. Johnson
Foreperson signature

8
Juror #

Juror #7

The First Judicial District of Pa.

Date: 1-29-13

Time: 2:08

Question: Judge Carpenter, Your Honor,

We, the people of the jury have reached an impasse. Many of us ~~have~~ are undecided. Some believe the defendant is guilty, while others find him not guilty. We all believe that at this point any persuasion in either direction would constitute a mistrial.

We understand the definitions and the directions of the task you have given us; but in a case with such limited information, we cannot reach consensus.

We have tried our best, but cannot give you any further determination.

Thank you.

Foreperson signature

8

Juror #

Jury Ex #8

First Judicial District of Pennsylvania
Honorable Linda A. Carpenter
1418 Criminal Justice Center
1301 Filbert Street
Philadelphia, PA 19107

Commonwealth v. Jerome Samuels
CP-51-CR-0011743-2009

Date: October 21, 2013

PROOF OF SERVICE

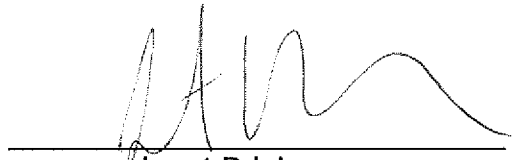
I hereby certify that I am this day serving the foregoing upon the person(s), and in the manner indicated below, which service satisfies the requirements of Pa. R. Crim. P. 114:

Defense Counsel/Party: Lee Mandell, Esquire
42 S. 15th Street, Suite 1312
Philadelphia, PA 19102

Type of Service: ( ) Personal (X) First Class Mail ( ) Other, please specify: _____

District Attorney: Hugh J. Burns, Jr., Esq.
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107 – 3499

Type of Service: ( ) Personal (X) First Class Mail ( ) Other, please specify: _____



Janet Brinkman