

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MICHAEL PURVIS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2423 EDA 2014

Appeal from the Judgment of Sentence March 26, 2014
in the Court of Common Pleas of Philadelphia County
Criminal Division at No.: CP-51-CR-0006879-2009

BEFORE: GANTMAN, P.J., LAZARUS, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED SEPTEMBER 11, 2015

Appellant, Michael Purvis, appeals from the judgment of sentence imposed after a jury convicted him of murder of the first degree,¹ carrying a firearm without a license,² and possessing instruments of crime.³ Appellant challenges the weight and sufficiency of the evidence as well as various evidentiary rulings. None of his claims merit relief. Accordingly, we affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. (**See** Trial Court Opinion,

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 2502(a).

² 18 Pa.C.S.A. § 6106.

³ 18 Pa.C.S.A. § 907.

12/08/14, at 2-12). Therefore, we have no reason to restate them at length here.

For convenience of reference, we note briefly that the victim, Samir Thomas, was shot in the head as he stepped off a bus in Philadelphia around 2:10 P.M. on August 28, 2008. As Mr. Thomas lay on the ground, Appellant shot him three more times. The shots penetrated his lung, spine, hemidiaphragm⁴ and liver. All four shots were fatal. Emergency medical technicians rushed the victim to Temple University Hospital but he was pronounced dead at 2:59 P.M.

Two passengers on the bus and several acquaintances who saw Appellant in the immediate aftermath of the murder soon gave inculpatory written statements to the police. However, after various intimidations, direct threats, and in one instance, a prison stabbing, most became very reluctant witnesses and recanted. At trial, they claimed memory loss, or denied identifying Appellant as the shooter altogether. One witness even became romantically involved with Appellant. They would not make an in-court-identification. Their previous statements to the police were read into the trial record.

⁴ Hemidiaphragm: Half of the diaphragm, the muscle that separates the chest cavity from the abdomen and that serves as the main muscle of respiration. **See** Dictionary *MedicineNet.com*.

Appellant objects on appeal to the introduction into evidence of a photograph of him from a PennDOT website (his driver's license photograph) dated May 3, 2008 showing him clean-shaven. The photograph was offered to refute testimony that at the time of the murder he had a goatee or other facial hair.

This was Appellant's third trial. The jury was unable to reach a verdict in the previous two. On appeal, Appellant complains, *inter alia*, that the new judge presiding over the third trial (in 2014) declined to permit him to display his tattoos (offered to refute the original identifications, which apparently did not mention tattoos) to the jury. Appellant argues that the evidentiary rulings in the previous two trials, permitting display of the tattoos, "became the law of the case." (Appellant's Brief, at 25). Also at trial, Appellant sought to question witnesses about their testimony in other unrelated murder trials. The court limited this questioning.

In this appeal, Appellant presents twelve issues, framed as five questions, for our review:

I. Whether the adjudication of guilt is against the weight of the evidence and shocking to one's sense of justice for the following reasons:

a. there was no physical evidence linking the defendant to the murder;

b. there was non-existent and implausible evidence of a motive;

c. there was no evidence that the Appellant was associated with, had contact with, had any ill will towards or had knowledge of the location of the victim;

d. the photo identifications were suggestive, tentative, implausible, suspect and possessed all of the characteristics warranting that they be viewed with extreme caution;

e. there was no identification of the Appellant in the courtroom;

f. the physical descriptions of the shooter made by identification witnesses did not match the physical characteristics of the Appellant;

g. the witnesses testifying against the Appellant were admitted fabricators of evidence, had obvious motives to fabricate and their statements to police contained contradictions that could not be logically reconciled; and

h. the police made false assumptions and failed to follow up on leads that pointed to a different explanation for the murder.

II. Whether the Appellant's conviction for Murder in the First Degree is based upon insufficient evidence where the circumstantial inferences are illogical[?]

III. Whether the [c]ourt erred when it would not permit the Appellant to display his tattoos to the jury as had been permitted in his first two trials because the rulings permitting the Appellant to display his tattoos became the law of the case[?]

IV. Whether the [c]ourt erred when it denied the Appellant the opportunity to cross examine Commonwealth witnesses Derrick Williams, Zikia Taylor and Kelly Williams in detail about the particular facts pertaining to the other murders they gave statements about and pertaining to their participation therein[?].

V. Whether the [c]ourt erred when it admitted into evidence a photograph of the Appellant purportedly taken in May

of 2008 by PENNDOT without reliable evidence that the photograph was actually taken in May of 2008[?]

(Appellant's Brief, at 6-7) (some capitalization omitted).

Preliminarily, we note that the Commonwealth argues that Appellant has waived his fourth claim, challenging the trial court's ruling limiting the questioning of witnesses about other unrelated murders. (**See** Commonwealth's Brief, at 19-21). Appellant argues that the law of the case doctrine controls. (**See** Appellant's Brief, at 27-28). The Commonwealth argues that Appellant's issue is undeveloped and meritless. (**See** Commonwealth's Brief, at 19-21). On independent review, we agree.

With one solitary exception, Appellant fails to develop an argument or support his claim with any authority whatsoever. (**See** Appellant's Brief, at 27-28). In the single exception, **Commonwealth v. Paddy**, 800 A.2d 294, 311 (Pa. 2002), Appellant quotes our Supreme Court out of context, and, ignores or simply disregards, the controlling exception, which applies to this case. (**See id.** at 27). We quote the paragraph in full for clarity:

In addition, Paddy's reliance on the law of the case doctrine is **misplaced**. The core of the doctrine is that a court acting at a later stage of a case should not reopen questions decided at an earlier stage by another judge of the same court or by a higher court. **See Commonwealth v. Starr**, 541 Pa. 564, 574, 664 A.2d 1326, 1331 (1995). **Because the grant of a new trial "wipes the slate clean," see Commonwealth v. Mulholland**, 549 Pa. 634, 652, 702 A.2d 1027, 1035-36 (1997), so that **a previous court's ruling on the admissibility of evidence generally does not bind a new court upon retrial, see Commonwealth v. Hart**, 479 Pa. 84, 86, 387 A.2d 845, 847 (1978), it is not evident that the doctrine applies in the present procedural context.

Paddy, supra at 311 (emphases added).

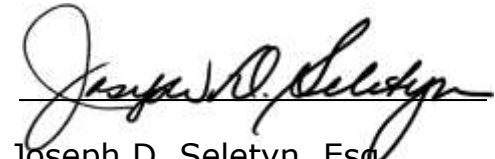
Appellant's claims are waived and meritless.

On the remaining claims, after a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court, we conclude that there is no merit to any of the issues Appellant has raised on appeal. The trial court opinion properly disposes of the questions presented. (**See** Trial Court Opinion, 12/08/14, at 13-21) (concluding that: (1) the trial court properly determined that the verdict was not against the weight of the evidence, the physical evidence corroborated the Commonwealth witnesses' testimony, the Commonwealth was not required to prove motive, and the direct and circumstantial evidence against Appellant was overwhelming; (2) viewed in the light most favorable to the Commonwealth as verdict winner, the evidence was clearly sufficient to support Appellant's conviction; (3) Appellant waived objection to ruling prohibiting him from displaying his tattoos, and in any event trial court was not bound by "the law of the case" on evidentiary rulings at re-trial; (4) Appellant waived claim, by failure to make timely, specific objection to trial court, and court properly admitted Appellant's PennDOT [driver's license] photo, along with other photos of Appellant). Accordingly, in addition to our own conclusions, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

J-S51039-15

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/11/2015

551039-15

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

COMMONWEALTH OF PENNSYLVANIA

:
: CP-51-CR-0006879-2009
:

v.

: SUPERIOR COURT
: NO. 2423 EDA 2014

FILED

MICHAEL PURVIS,

DEC 08 2014

Criminal Appeals Unit
First Judicial District of PA

OPINION

BRINKLEY, J.

DECEMBER 8, 2014

Defendant Michael Purvis appeared before this Court for a jury trial and was convicted of murder of the first degree, carrying a firearm without a license, and possession of an instrument of crime ("PIC"). This Court sentenced the defendant to a mandatory sentence of life without the possibility of parole on the first-degree murder charge, and concurrent terms of imprisonment of 3½ to 7 years on the carrying a firearm without a license charge and 2½ to 5 years on the PIC charge. Defendant appealed this judgment of sentence to the Superior Court and raised the following issues on appeal: (1) the adjudication of guilt was against the weight of the evidence and shocking to one's sense of justice; (2) the defendant's conviction for murder in the first degree was based upon insufficient evidence; (3) the Court erred when it would not permit the defendant to display his tattoos to the jury as had been permitted in his first two trials; (4) the Court erred when it denied the defendant the opportunity to cross-examine Commonwealth witnesses Derrick Williams, Zikia Taylor, and Kelly Williams in detail about the particular facts pertaining to other murders they gave statements about and pertaining to their participation therein; (5) the Court erred when it admitted into evidence a photograph of the defendant

purportedly taken in May of 2008 by PENNDOT without reliable evidence that the photograph was actually taken in May of 2008; (6) the Court erred when it asked questions of witnesses.

PROCEDURAL HISTORY

On January 30, 2009, the defendant was arrested and charged with murder of the first degree, PIC, carrying a firearm in public, carrying a firearm without a license, and recklessly endangering another person. From March 17 to March 25, 2014, a trial was held in the presence of a jury.¹ On March 26, 2014, the defendant was found guilty of first-degree murder, carrying a firearm without a license, and PIC. This Court sentenced him to the mandatory sentence of life without the possibility of parole on the murder of the first degree charge, and concurrent terms of imprisonment of 3½ to 7 years on the carrying a firearm without a license charge and 2½ to 5 years on the PIC charge.

On April 1, 2014, the defendant filed a post-sentence motion, which was denied by operation of law on July 31, 2014. On August 19, 2014, the defendant filed a Notice of Appeal to the Superior Court. On October 24, 2014, after receiving all the notes of testimony, this Court ordered defense counsel to file a Concise Statement of Errors pursuant to Pa.R.A.P. 1925(b) and defense counsel did so that same day.

FACTS

From March 17-25, 2014, this Court conducted a trial in the presence of a jury. Taria Hassell (“Hassell”) testified first for the Commonwealth. Hassell testified that on August 28th, 2008, at approximately 2:10 p.m., she was standing at the corner of 21st Street and Susquehanna Avenue waiting for the 33 bus to arrive. Hassell heard about four gunshots and screaming come from the area of 21st and Diamond Streets, about a block away. Less than a minute later, Hassell

¹ The defendant’s previous two jury trials had resulted in mistrials on June 21, 2012 and March 7, 2013, before other judges.

saw a man, later identified as the defendant, run up 21st Street from Diamond Street. Hassell testified that the man was holding his right pocket. Hassell described the man as a black male, about 5'9" tall, with a low hair cut. The man ran towards the area of 22nd Street and Susquehanna Avenue. Immediately after the man ran past, Hassell boarded the 33 bus. The other bus passengers told Hassell that they had just witnessed a shooting. Hassell heard a loud noise and then the bus stopped. Subsequently, everyone on the bus was transported to the police district to speak to detectives. N.T. 3/18/2014 at 52-57, 62.

Police Officer Milord Celce ("Celce") testified next for the Commonwealth. Celce testified that at about 2:15 p.m. on the day of the murder, he responded to a radio call of shots fired at 21st and Diamond Streets. Celce observed a group of people standing around a man, later identified as Samir Thomas, suffering from a gunshot wound to the head laying on 21st Street. Someone in the group told Celce that the shooter may have been on the bus that just drove away. Celce got in his car and stopped the 33 bus near 21st Street and Susquehanna Avenue. When Celce was boarding the bus he noticed that one of the back windows was shattered. Celce found a young man next to the broken window who had cuts on his hands and was frightened. The young man stated that he had broken to window in an attempt to escape the bus. After stopping the bus and taking the names of the passengers, Celce went back to 21st and Diamond Streets. Celce observed the medics roll Thomas's body over and reveal a revolver. N.T. 3/18/2014 at 73-76, 80, 84.

The Commonwealth next presented a stipulation that Officer Theresa Paris, the custodian of all visitor records in the Philadelphia Prison System, would testify that Zikia Taylor visited the defendant while he was incarcerated in the Philadelphia Prison System on May 18th, 2012, June

25th, 2012, August 10th, 2012, October 5th, 2012, and November 8th, 2012. N.T. 3/18/2014 at 102-104.

The Commonwealth next presented a stipulation that if Officer Will Smith (“Smith”), the custodian of all prison recordings in the Philadelphia Prison System, was called to testify, he would identify digital recordings of phone calls made by the defendant between December 23rd, 2010 and December 13th, 2012. Smith also would identify a call log of all calls made by the defendant to the phone number 267-231-8129 between May 30th, 2012 and December 13th, 2012. N.T. 3/18/2014 at 105-107.

Zikia Taylor (“Taylor”) testified next for the Commonwealth. Taylor testified that on the afternoon of August 28, 2008, she was in the Germantown neighborhood of Philadelphia. Taylor stated that she did not know anything about the murder that occurred in the area of 21st and Diamond Streets that day. Then Taylor was confronted with the statement she gave to detectives on December 16th, 2008. In that statement, Taylor explained that on the afternoon of the murder, she was sitting on the steps of her grandmother’s house located at 2235 North Van Pelt Street with her grandmother, her boyfriend Derrick Williams, and his mother Kelly Williams. Taylor saw the defendant run from Susquehanna Avenue onto Van Pelt Street. The defendant was holding the side of his pants. The defendant ran into the Williams’ house across the street.

Derrick Williams and Kelly Williams followed him inside. About five to ten minutes later, the defendant came out of the house and ran back the way he came. Derrick Williams said he gave the defendant a shirt. Derrick Williams told Taylor that the defendant admitted that he shot someone. Derrick Williams then went to see the crime scene. About ten minutes later Derrick Williams returned and said “Oh, my God, Za. He shot him in the head. He got the gun in the back.” About a week later, Taylor was at Derrick Williams’ house when Kelly Williams told

Derrick that the defendant had left one hundred dollars for Derrick in exchange for hiding the gun. The next day, Derrick Williams learned that the defendant had given Kelly Williams six hundred dollars, causing an argument between the two. In her statement to detectives, Taylor identified the defendant as the man she saw on the day of the murder run into the Williams' house. She indicated that she had known the defendant for over a year because previously she had dated the defendant's brother. N.T. 3/18/2014 at 113, 120-123, 129-135; N.T. 3/19/2014 at 25; N.T. 2/21/2014 at 151.

At trial, Taylor testified that she did not remember giving the statement and denied giving it. The Commonwealth presented Taylor with the prison visitor logs showing that she had visited the defendant and confronted her with phone calls between her and the defendant. Taylor explained that she had begun a relationship with the defendant after he was incarcerated and she believed the defendant loved her. Taylor had refused to come to court to testify in this case on prior occasions. A bench warrant was issued for Taylor. She was subsequently convicted of contempt and sentenced to less than six months incarceration. N.T. 3/18/ at 123, 149, 177; N.T. 3/19/2014 at 34, 37.

The Commonwealth next presented testimony from Kelly Williams ("Ms. Williams").

Ms. Williams testified that on the afternoon of the murder, she was outside on Van Pelt Street with her son and his girlfriend. Ms. Williams stated that she did not see anyone run on the block and she did not see anyone with a gun. The Commonwealth confronted Ms. Williams with the statement she gave to detectives on December 22, 2008. In her statement, Ms. Williams stated that on the afternoon of the murder, she was on Lurendia West's steps across the street from her home on Van Pelt Street with her son and his girlfriend. Ms. Williams heard gunshots and a few minutes later saw the defendant run from Susquehanna Avenue on the Van Pelt Street. The

defendant ran into Ms. Williams' house, located at 2228 Van Pelt Street. Ms. Williams and her son, Derrick Williams, went into their home and spoke with the defendant. The defendant explained that someone was shooting at him and asked for Derrick Williams' shirt. Mr. Williams gave the defendant his shirt. As the defendant changed shirts, Ms. Williams saw a gun in the defendant's waistband. The defendant gave Mr. Williams the gun, which he wrapped in a t-shirt. The defendant and Mr. Williams went into the backyard. The defendant returned and left the house. About a week after the murder, the defendant returned to Ms. Williams' home and requested that she return his gun. Ms. Williams gave the defendant his gun and the defendant gave her \$100 in return. In her statement to police, Ms. Williams identified the defendant as the man who gave her son the gun. Ms. Williams explained that she knew the defendant because he had dated her daughter. N.T. 3/19/2014 at 52, 53, 61-68, 70, 92.

At trial, Ms. Williams asserted that she did not remember giving the above-mentioned statement to detectives. The Commonwealth presented evidence that Ms. Williams failed to appear in court for this matter in 2012 and was subsequently convicted of contempt and sentenced to less than six months imprisonment. Ms. Williams did not explain why she did not come to court. The Commonwealth also presented Ms. Williams with a statement she gave to detectives on December 16, 2011. In her statement, Ms. Williams explained that the week prior she had received two threatening phone calls warning her not to testify. N.T. 3/19/2014 at 72, 74, 77-78.

The Commonwealth next presented testimony from Sergeant Kevin Bernard ("Bernard"). Bernard testified that on August 28, 2008, in response to a radio call, he arrived at 21st and Diamond Streets and found Thomas, who had been shot in the head. Bernard gave first aid to Thomas until a rescue squad arrived. When medics took over, they moved Thomas and found a

firearm located in Thomas's front waistband. Bernard recovered a .38-caliber firearm, fully loaded with five live rounds from Thomas. N.T. 3/20/2014 at 8-10.

The Commonwealth next presented testimony from Police Officer Joanne Gain ("Gain"). Gain testified that she arrived at the scene of the murder as part of the Crime Scene Unit. Gain recovered five .40-caliber fired cartridge casings and four projectiles from the scene of the murder. N.T. 3/20/2014 at 47-48.

The Commonwealth next presented evidence from Dr. Edwin Lieberman, an expert in forensic pathology. Dr. Lieberman testified that Samir Thomas was pronounced dead at 2:59 p.m. at Temple University Hospital. Dr. Lieberman determined that Thomas's manner of death was homicide and his cause of death was multiple gunshot wounds, as all of his wounds were fatal. Thomas suffered four perforating gunshot wounds: one to the back of the head and three to his back hitting his lungs and liver. N.T. 3/20/2014 at 61-63, 65-67, 69-70.

The Commonwealth next presented testimony from Derrick Williams ("Mr. Williams"). Mr. Williams testified that on August 28, 2008, he was living in the West Oak Lane neighborhood of Philadelphia. Mr. Williams testified that he did not remember where he was or what happened on that August afternoon. The Commonwealth confronted Mr. Williams with the statement he gave to detectives on December 3, 2008. In his statement, Mr. Williams detailed that on the afternoon of the murder he was sitting on the steps of West's house with Taylor. Mr. Williams heard four gunshots and shortly thereafter saw the defendant run onto Van Pelt Street from Susquehanna Avenue. The defendant had a gun in his hand and ran into Mr. Williams' home. Inside the house the defendant told Mr. Williams that "I just got into a shootout and I need something to put on." The defendant was wearing a blue shirt with orange on it. Mr. Williams gave the defendant a green shirt, which he put on and left the house. Mr. Williams walked to the

crime scene and observed that the victim had a gunshot wound to the head. Mr. Williams called the defendant and asked where the defendant had left the gun. The defendant told him the gun was under the couch. Mr. Williams returned to his home and looked at the firearm the defendant had left under the couch, which he described as a black and silver .40-caliber Glock. Mr. Williams hid the gun in the backyard. The next day, the defendant told Mr. Williams that he was standing at the bus stop and when Thomas got off a bus the defendant started shooting. The defendant did not explain why he began shooting. A few days later, the defendant retrieved his gun from Ms. Williams. In his statement to police, Mr. Williams identified the defendant as the man who confessed to shooting the man who came off the bus. Mr. Williams explained that he had known the defendant for three years. N.T. 3/20/2014 at 86, 96-102, 115.

The Commonwealth next presented testimony from Police Officer Robert Stott ("Stott"), an expert in ballistics and firearms identification. According to Stott, all five fired cartridge cases recovered from the scene of the murder were .40-caliber Smith and Wesson Winchester brand. The fired cartridge casings were all fired from the same unrecovered firearm. The fired cartridge casings were not fired from the .380-caliber revolver recovered from Thomas. None of the projectiles recovered from the scene were suitable for comparison. N.T. 3/21/2014 at 34-35, 41-42.

The Commonwealth next presented testimony from Lurendia West ("West"). West testified that on the afternoon of the murder, she was outside her home with her granddaughter, Taylor, and her neighbors: Kelly, Derrick, and Anita Williams. West testified that she saw a man whom she did not recognize run into Ms. Williams' home. Kelly and Derrick Williams followed the man into their home. N.T. 3/21/2014 at 56, 59-60.

The Commonwealth next presented testimony from Jamice Byrd (“Byrd”). Byrd testified that on August 28, 2008, at about 1:30 p.m., she was riding the 33 bus to her home in North Philadelphia. When the bus was stopped in the area of 21st and Diamond Street, Byrd heard a loud noise. She dropped to the ground and heard more shots. A few hours after the incident, Byrd gave a statement to police in which she stated that before the shooting, she had seen Thomas exit the bus using the back door. After hearing the first gunshots Byrd looked out the window and saw a man on the ground and another man holding a gun. The shooter moved towards the man on the ground and shot him in the head. The shooter then ran towards 20th Street. Byrd described the shooter as a young black man, with a thin build and dark skin, who was wearing a t-shirt, blue jeans, and sneakers. Byrd described the gun as a silver and black semiautomatic. On December 26th, 2008, Byrd gave a statement to police in which she identified the defendant as the shooter from a photo array. The statement was not signed by Byrd. At trial, Byrd testified that she did not remember identifying the defendant. N.T. 3/21/2014 at 84, 86, 93-94, 97-98, 102-103.

The Commonwealth next presented testimony from Detective Timothy Scally (“Scally”). Scally testified that he interviewed Kelly Williams. Scally explained the circumstances of Ms.

Williams’ interview and read Ms. Williams’ statement to the jury. N.T. 3/21/2014 at 134, 138-144.

The Commonwealth next presented testimony from Detective Gregory Rodden (“Rodden”). Rodden testified that he interviewed Derrick Williams, Zikia Taylor, and Lurendia West. Rodden explained the circumstances of under which the interviews of Williams, Taylor and West were taken. Rodden read the statements of Mr. Williams, Taylor, and West to the jury. Rodden also testified that on December 26th, 2008, he went to Byrd’s home and showed her a

photo array. Byrd identified the defendant as the shooter from the photo array. He explained that Byrd did not want to sign the photo array and that he did not force her to do so. N.T. 3/21/2014 at 166-190.

The Commonwealth next presented testimony from Detective Robert Hesser (“Hesser”), the assigned lead investigator in this case. Hesser testified that he received information that Derrick Williams may have information regarding the murder, which led Hesser to arrange for Mr. Williams to be interviewed. Based on Mr. Williams’ interview and the interviews of witnesses mentioned by Mr. Williams, on January 30, 2009 an arrest warrant was prepared and executed for the defendant. Hesser testified that on November 6th, 2009, he took a statement from Derrick Williams. In that statement, Mr. Williams explained that while he was incarcerated he received threatening notes calling him a “rat”, that his statement to police had been distributed around the prison, and that he had been attacked. Hesser also explained that in February of 2011, he took a statement from Kelly Williams in which she stated that she had received threatening phone calls. N.T. 3/24/2014 at 6, 9, 19-27.

The Commonwealth next presented a stipulation that on August 28th, 2008 the defendant did not have a valid license to carry a firearm in the state of Pennsylvania. N.T. 3/24/2014 at 63.

At this time, the Commonwealth moved its exhibits into evidence and rested.

The defense presented two stipulations. First, that Derrick Williams gave statements to homicide detectives about four murders, including the murder of Samir Thomas. Second, that Zikia Taylor and Kelly Williams, in addition to the statements they gave regarding the murder of Thomas, also gave statements to homicide detectives regarding another murder about which Derrick Williams also had given a statement. N.T. 3/24/2014 at 74.

The defense next presented testimony from Sidney Purvis, the defendant's brother.

Sidney Purvis testified that in 2008 the defendant was living in Southwest Philly. He stated that in 2008 the defendant had a goatee and tattoos on his arms and wrists. Sidney Purvis identified a picture of the defendant from around Thanksgiving of 2008 in which the defendant had facial hair. The Commonwealth questioned Sidney Purvis regarding a picture taken of the defendant by Pennsylvania Department of Transportation (Penndot) on May 3, 2008 in which he did not have facial hair. Sidney Purvis admitted that the photograph was of his brother, but did not believe it accurately reflected the defendant's appearance at that time. N.T. 3/24/2014 at 76, 78, 82.

Next, defense counsel entered two photographs by way of stipulation by and between counsel. The defense presented two photographs of the defendant with facial hair, one taken October 3rd, 2008 and the other taken January 30, 2009. N.T. 3/24/2014 at 106-107.

The defense next presented testimony from Lydia Jenkins ("Ms. Jenkins"). Ms. Jenkins testified that on the afternoon of the murder she was riding the 33 bus when she heard a loud pop noise. Ms. Jenkins looked out the window and saw a young man shooting another young man. Ms. Jenkins described the shooter as black, but not dark skinned, in his early 20s, about 5'11" or 6' tall, medium build, with a close hair cut. She described that the shooter was wearing a t-shirt.

N.T. 3/24/2014 at 108, 115.

At this time, defense counsel entered his exhibits into evidence and rested.

The Commonwealth presented testimony from Charles Jenkins ("Mr. Jenkins") on rebuttal. Mr. Jenkins, who suffers from a head injury, testified he did not remember anything that happened on August 28, 2008. The Commonwealth presented Mr. Jenkins' statement that he gave to police on August 28, 2008. In that statement, Mr. Jenkins stated that he was riding the 33 bus with his mother, Lydia Jenkins. Mr. Jenkins stated that he saw the shooting and that the

shooter used a black and silver gun. On January 29, 2009, Mr. Jenkins identified the defendant and one other person as looking like the shooter from a photo array. N.T. 3/24/2014 at 129, 133-134.

At this time, the Commonwealth moved its exhibits into evidence and rested.

ISSUES

- I. **THE ADJUDICATION OF GUILT WAS AGAINST THE WEIGHT OF THE EVIDENCE AND SHOCKING TO ONE'S SENSE OF JUSTICE;**
 - a. **THERE WAS NO PHYSICAL EVIDENCE LINKING THE DEFENDANT TO THE MURDER,**
 - b. **THERE WAS NON-EXISTENT AND IMPLAUSIBLE EVIDENCE OF A MOTIVE,**
 - c. **THERE WAS NO EVIDENCE THAT THE DEFENDANT WAS ASSOCIATED WITH, HAD CONTACT WITH, HAD ANY ILL WILL TOWARDS OR HAD KNOWLEDGE OF THE LOCATION OF THE VICTIM,**
 - d. **THE PHOTO IDENTIFICATIONS WERE SUGGESTIVE, TENTATIVE, IMPLAUSIBLE, SUSPECT, AND POSSESSED ALL OF THE CHARACTERISTICS THAT THEY BE VIEWED WITH EXTREME CAUTION,**
 - e. **THERE WAS NO IDENTIFICATION OF THE DEFENDANT IN THE COURTROOM,**
 - f. **THE PHYSICAL DESCRIPTIONS OF THE SHOOTER MADE BY IDENTIFICATION WITNESSES DID NOT MATCH THE PHYSICAL CHARACTERISTICS OF THE DEFENDANT,**
 - g. **THE WITNESSES TESTIFYING AGAINST THE DEFENDANT WERE ADMITTED FABRICATORS OF EVIDENCE, HAD OBVIOUS MOTIVES TO FABRICATE AND THEIR STATEMENTS TO POLICE CONTAINED CONTRADICTIONS THAT COULD NOT BE LOGICALLY RECONCILED,**
 - h. **THE POLICE MADE FALSE ASSUMPTIONS AND FAILED TO FOLLOW UP ON LEADS THAT POINTED TO A DIFFERENT EXPLANATION FOR THE MURDER.**

- II. **THE DEFENDANT'S CONVICTION FOR MURDER IN THE FIRST DEGREE WAS BASED UPON INSUFFICIENT EVIDENCE;**

- III. **THE COURT ERRED WHEN IT WOULD NOT PERMIT THE DEFENDANT TO DISPLAY HIS TATTOOS TO THE JURY AS HAD BEEN PERMITTED IN HIS FIRST TWO TRIALS;**

- IV. THE COURT ERRED WHEN IT DENIED THE DEFENDANT THE OPPORTUNITY TO CROSS-EXAMINE COMMONWEALTH WITNESSES DERRICK WILLIAMS, ZIKIA TAYLOR, AND KELLY WILLIAMS IN DETAIL ABOUT THE PARTICULAR FACTS PERTAINING TO THE OTHER MURDERS THEY GAVE STATEMENTS ABOUT AND PERTAINING TO THEIR PARTICIPATION THEREIN;
- V. THE COURT ERRED WHEN IT ADMITTED INTO EVIDENCE A PHOTOGRAPH OF THE DEFENDANT PURPORTEDLY TAKEN IN MAY OF 2008 BY PENNDOT WITHOUT RELIABLE EVIDENCE THAT THE PHOTOGRAPH WAS ACTUALLY TAKEN IN MAY OF 2008;
- VI. THE COURT ERRED WHEN IT ASKED QUESTIONS OF WITNESSES.

DISCUSSION

I. THE VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

The verdict rendered by the jury was not against the weight of the evidence. A weight of the evidence claim concedes that the evidence was sufficient to sustain the verdict.

Commonwealth v. Smith, 853 A.2d 1020, 1028 (Pa. Super. 2004) (citing Commonwealth v. Bennett, 827 A.2d 469 (Pa. Super. 2003)). The weight of the evidence is “exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses.” Commonwealth v. Rice, 902 A.2d 542, 546 (Pa. Super. 2006) (quoting Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003)). In addition, “where the trial court has ruled on the weight claim below, an appellate court’s role is not to consider the underlying question of whether the verdict is against the weight of the evidence, . . . rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.” Commonwealth v. Kim, 888 A.2d 847, 851 (Pa. Super. 2005) (quoting Champney, 832 A.2d at 408). An appellate court cannot substitute its judgment for that of the fact finder; therefore, a verdict will be reversed only in the extraordinary situation where 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. Tharp, 830 A.2d 519, 528 (Pa. 2003) (citing Commonwealth v. Brown, 648 A.2d 1177, 1189 (Pa. 1994)); Commonwealth v. Smith, 861 A.2d 892, 896 (Pa. 2004) (citing Commonwealth v. Drumheller, 808 A.2d 893, 908 (Pa. 2002)).

First, the defendant argued that there was no physical evidence connecting the defendant to the murder. The defendant is mistaken. All five of the fired cartridge casings recovered from the scene of the murder were determined to be fired from the same unrecovered .40-caliber firearm. N.T. 3/20/2014 at 47-48; N.T. 3/21/2014 at 34. This is consistent with Derrick Williams' statement that the defendant left a .40-caliber, silver and black firearm at his home. N.T. 3/20/2014 at 99. In addition, both Byrd and Mr. Jenkins also described the gun used by the shooter as a silver and black semiautomatic. N.T. 3/21/2014 at 98; N.T. 3/24/2014 at 129. Thus, the physical evidence recovered from the scene corroborates three of the Commonwealth witnesses' testimony.

Second, the defendant argued that his conviction was against the weight of the evidence because no motive was presented. It is axiomatic that the Commonwealth is not required to prove motive to establish guilt even where the crime charged is murder of the first degree.

Commonwealth v. Keaton, 729 A.2d 529, 536 (Pa. 1999)(quoting Commonwealth v. Brantner, 406 A.2d 1011, 1013 (Pa. 1979)).

Third, the defendant challenged the identification of the defendant stating the identifications were suggestive and the Commonwealth did not present an in-court identification. It is well settled that "evidence 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). In Commonwealth v. Orr, the Superior Court held that notwithstanding the lack of in-court

identification of appellant at trial, the circumstantial evidence linking appellant to the crimes charged was sufficient to sustain the convictions.

The Commonwealth presented ample evidence identifying the defendant as the shooter. First, defendant was identified in statements made to detectives by witnesses Taylor, Derrick Williams, and Kelly Williams, all three of whom had known the defendant before the incident. N.T. 3/19/2014 at 135; N.T. 3/19/2014 at 66; N.T. 3/20/2014 at 102. Second, the defendant was identified as the murderer by two passengers on the bus, Byrd and Mr. Jenkins. Although Byrd's statement was not signed, she identified the defendant as the murderer in a photo array. N.T. 3/21/2014 at 102. In addition, Charles Jenkins selected the defendant and one other man from a photo array as looking like the shooter. N.T. 3/24/2014 at 133-134. Thus, this evidence established the identity of the defendant.

Finally, the defendant claimed the witnesses were biased. "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). Here, defense counsel explored biases of each witness on cross-examination. The jury obviously chose to believe the prior written statements given by all of the witnesses as they were given closer to the time of the murder.

The Commonwealth presented two eyewitnesses to the killing and three other witnesses who observed the defendant run from the scene of the crime carrying a firearm and change his shirt. These three witnesses knew the defendant. Moreover, the defendant himself admitted to Derrick Williams that he shot Thomas. The direct and circumstantial evidence against the defendant was overwhelming and did not shock the conscience of the Court. Therefore, defendant's convictions were not against the weight of the evidence.

II. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S FINDING OF GUILT ON THE CHARGE OF MURDER OF THE FIRST DEGREE.

The evidence adduced at trial was sufficient to support the jury's finding of guilt on the charge of murder of the first degree.

A. Sufficiency of Evidence

A review of the sufficiency of the evidence to support a conviction requires that the evidence be reviewed in the light most favorable to the Commonwealth as verdict winner. Commonwealth v. Walter, 849 A.2d 265, 267 (Pa. Super. 2004) (citing Commonwealth v. Rose, 344 A.2d 824, 825 (Pa. Super. 1975)). The Commonwealth is also entitled to all favorable inferences which may be drawn from the evidence. Commonwealth v. Sanchez, 907 A.2d 477 (Pa. 2006) (citing Commonwealth v. Collins, 703 A.2d 418, 420 (Pa. 1997)). The evidence put forth by the Commonwealth will be considered sufficient if it establishes each material element of the crime beyond a reasonable doubt, even if by wholly circumstantial evidence. Commonwealth v. Dargan, 897 A.2d 496, 503 (Pa. Super. 2006) (citing Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001)).

When determining whether the evidence is sufficient to support a guilty verdict, the appellate court must examine the entire trial record and consider all of the evidence actually received. Id. However, the trier of fact is entitled to believe all, part or none of the evidence received at trial and the appellate court cannot substitute its judgment for that of the fact-finder. Commonwealth v. Frisbie, 889 A.2d 1271, 1274 (Pa. Super. 2006) (citing DiStefano, 782 A.2d at 574); Commonwealth v. Kim, 888 A.2d 847, 851 (Pa. Super. 2005) (citing Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003)). The facts and circumstances established by the Commonwealth need not eliminate any possibility of the defendant's innocence; rather, any

doubt is to be resolved by the fact-finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact could be concluded. Commonwealth v. Lambert, 795 A.2d 1010 (Pa. Super. 2002) (citing Commonwealth v. Cassidy, 668 A.2d 1143, 1144 (Pa. Super. 1994)).

B. Murder of the First Degree

18 Pa.C.S. § 2502 establishes that murder of 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. Commonwealth v. Ramtahal, 33 A.3d 602, 607-608 (Pa. 2011)(citing Commonwealth v. Houser, 18 A.3d 1128, 1134 (Pa. 2011)(finding single bullet fired from an inaccurate handgun at a considerable distance that struck the victim in the buttocks was sufficient to support a finding of premeditation).

In the present case, the evidence was clearly sufficient to support the defendant’s conviction. The defendant shot Thomas four times including one while standing over the victim as he lay on the ground. The defendant shot the victim once in the head and three times in his back hitting his lungs and liver and all of the shots were fatal. N.T. 3/20/2014 at 63, 65-67. The defendant used a deadly weapon on multiple vital parts of the victim’s body. Thus, the evidence

established the defendant acted with the requisite specific intent and malice to commit the crime of Murder of the First Degree.

III. THE COURT PROPERLY PROHIBITED THE DEFENDANT FROM DISPLAYING HIS TATTOOS TO THE JURY.

The defendant alleged that the Court erred in prohibiting the defendant from displaying his tattoos to the jury. This claim is waived. In response to this Court's ruling, defense counsel stated "I don't have an objection to that, Your Honor. I think that's a good ruling." N.T. 3/24/2014 at 95. An issue not raised in the trial court is considered waived for purposes of appellate review. Commonwealth v. Nunn, 947 A.2d 756, 762 (Pa. Super. 2008) (citing Pa. R. App. P. 302).

However, even if this claim were not waived, it is meritless. The defendant argued in his Statement of Matters Complained of on Appeal that because the defendant was permitted in his previous trials to display his tattoos, it was law of the case. Defendant's reliance on law of the case is misplaced. "The core of the doctrine is that a court acting at a later stage of a case should not reopen questions decided at an earlier stage by another judge of the same court or by a higher court. Because the grant of a new trial 'wipes the slate clean,' so that a previous court's ruling on the admissibility of evidence generally does not bind a new court upon retrial." Commonwealth v. Paddy, 800 A.2d 294, 311 (Pa. 2002)(citations omitted). This Court properly ruled that the defendant's tattoos were inadmissible. Thomas was murdered on August 28, 2008. Whether or not the defendant had tattoos in March of 2014, over five and a half years later, was irrelevant. The jury was shown photographs of the defendant from May 3, 2008, October 3, 2008, November 2008, and January 30, 2009. N.T. 3/24/2014 at 78, 106-107. These photographs depicted the defendant's appearance at or around the time of the murder. The defendant showing

his current tattoos, in addition being to irrelevant to his appearance in 2008, would also have been cumulative. Thus, this claim is likewise meritless.

IV. THE COURT DID NOT DENY THE DEFENDANT THE OPPORTUNITY TO CROSS-EXAMINE COMMONWEALTH WITNESSES REGARDING STATEMENTS GIVEN IN OTHER MURDER CASES.

Defense counsel alleged that this Court erred when it denied the defendant the opportunity to cross-examine Commonwealth witnesses Derrick Williams, Zikia Taylor, and Kelly Williams in detail about the particular facts pertaining to other murders about which they gave statements. Defense counsel is mistaken. In a discussion outside of the presence of the jury, this Court instructed defense counsel that he could ask about statements that the witness gave in other matters but that it would sustain any objections to questions calling for hearsay or implicating the witness's privilege against self-incrimination. N.T. 3/20/2014 at 78-83. Defense counsel indicated that he did not intend to ask about the particular facts of other murders, but only wanted to present the dates that the witness gave statements in other cases. *Id.* at 81. Defense counsel was permitted to do so. The defense presented evidence through a stipulation that Derrick Williams gave statements to homicide detectives about four murders, including the murder of Samir Thomas. N.T. 3/24/2014 at 74. Defense counsel also presented evidence through a stipulation that Zikia Taylor and Kelly Williams gave statements in two of those same murder investigations. *Id.*

Moreover, the Commonwealth first questioned Derrick Williams regarding his testimony in other cases and the statement he gave regarding Faith Anderson. N.T. 3/20/2014 at 107-108, 110, 112-113. Then, defense counsel was permitted to cross-examine Derrick Williams regarding the statements he gave regarding Faith Anderson, "Haneef", Donte Leek, and Edward Coaxum. *Id.* At 133-134. Defense counsel also was permitted to question Detective Hesser regarding

statements Derrick Williams gave in other cases. N.T. 3/24/2014 at 31-33, 39, 40. Defense counsel was prevented only from asking Detective Hesser regarding actions of other detectives, information outside of his personal knowledge. Id. at 39. A review of the record reveals no objections to any questions by the defense regarding the statements Derrick Williams, Kelly Williams, or Zikia Taylor gave in other matters. Therefore, the defense was not limited in his cross-examination of these witnesses in any way. Thus, this claim is meritless.

V. THE COURT PROPERLY ADMITTED INTO EVIDENCE A PHOTOGRAPH OF THE DEFENDANT TAKEN IN MAY OF 2008 BY PENNDOT.

The defendant failed to object to the introduction of the photograph of the defendant taken May 3, 2008 by Penndot. N.T. 3/24/2014 at 80-83. An issue not raised in the trial court is considered waived for purposes of appellate review. Commonwealth v. Nunn, 947 A.2d 756, 762 (Pa. Super. 2008) (citing Pa. R. App. P. 302). Thus, this claim is waived.

However, even if it were not waived, this issue is meritless. The admissibility of evidence is a matter of trial court discretion and a ruling thereon will only be reversed upon a showing that the trial court abused that discretion. See Commonwealth v. Stallworth, 781 A.2d 110, 117 (Pa. 2001)(citation omitted).

To 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. Evid. 901. Sidney Purvis testified that the photograph presented as Commonwealth Exhibit 88 was a photograph of his brother, the defendant. N.T. 3/24/2014 at 81. The photograph, taken from an official website, had the date the photograph was submitted by Penndot, May 3, 2008. This evidence is sufficient to support a finding that the photograph was a

photograph of the defendant taken by Penndot on May 3, 2008. Accordingly, the photograph was admitted into evidence properly.

VI. THE COURT DID NOT ERR WHEN IT QUESTIONED WITNESSES.

The defendant does not specify which of this Court's questions he is challenging. The Rule 1925(b) statement must be specific enough for the trial court to identify and address the issue an appellant wishes to raise on appeal. In re A.B., 63 A.3d 345, 350 (Pa. Super. 2013)(citation omitted). This Court's review of the record does not reveal that the defendant objected to this Court's questioning of witnesses. An issue not raised in the trial court is considered waived for purposes of appellate review. Commonwealth v. Nunn, 947 A.2d 756, 762 (Pa. Super. 2008) (citing Pa. R. App. P. 302). Thus, this claim is waived.

However, in the event this claim is not waived, it is meritless. It is always the right and sometimes the duty of a trial judge to interrogate witnesses. Commonwealth v. Manuel, 844 A.2d 1, 9 (Pa. Super. 2004)(citation omitted). Trial judges have broad discretion to question witnesses, and are often obligated to question witnesses in order to clarify confusing testimony. Ferreras v. Glunt, 2012 WL 2997757, at *9 (E.D. Pa. 2012)(citing United States v. Green, 544 F.2d 138, 147 (3d Cir. 1976); Commonwealth v. Carson, 913 A.2d 220, 249 (Pa. 2006)). Questioning from the bench should not show bias or feeling or be unduly protracted. Manuel, 844 A.2d at 9. "That does not mean that a trial judge must sit idly by, a mere evidential technician, silenced in the face of the impossible, absurd, ambiguous or the frivolous. Nor should he leave unasked or unanswered questions that center the matter or amplify relevant testimony on the question or issue." Com. v. Roldan, 572 A.2d 1214, 1214 (Pa. 1990). A new trial is required only when the trial court's questioning is prejudicial, that is when it is of such nature or substance or delivered in such a manner that it may reasonably be said to have deprived the defendant of a fair and

impartial trial. Manuel, 844 A.2d at 9. This Court's questioning of witnesses was impartial and deploying only in limited circumstances. Thus, this claim is meritless.

CONCLUSION

After a review of the applicable rules of evidence, statutes, case law and testimony, this Court committed no error. The verdict was not against the weight of the evidence. The evidence was sufficient to convict the defendant of murder of the first degree. The Court properly prohibited the defendant from displaying his tattoos to the jury. The Court properly permitted the defendant to cross-examine witnesses regarding their other statements to police. This Court properly admitted a photograph of the defendant taken by Penndot. This Court properly questioned witnesses. Therefore, this Court's decision should be upheld on appeal.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. J. ...", is written over a horizontal line.

J.