NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KEON RENKINS	:	
Appellant	:	No. 1465 EDA 2022

Appeal from the Judgment of Sentence Entered August 11, 2020
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0000861-2017

BEFORE: BENDER, P.J.E., LAZARUS, J., and SULLIVAN, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED NOVEMBER 22, 2023**

Appellant, Keon Renkins, appeals *nunc pro tunc* from the August 11, 2020 judgment of sentence of an aggregate term of 16 to 32 years' incarceration, imposed after a jury convicted him of robbery (threat of immediate serious bodily injury), robbery of a motor vehicle, theft by unlawful taking, fleeing or attempting to elude an officer, possessing an instrument of crime, and simple assault. After careful review, we affirm.

The trial court summarized the pertinent facts and procedural history of this case, which we adopt herein. ***See*** Trial Court Opinion (TCO), 12/5/22, at 1-3. Briefly, Appellant was convicted of the above-stated offenses based on evidence that he robbed a car salesman of a Cadillac Escalade truck during a test drive of the vehicle. Appellant's jury trial was conducted in January of

2020, and he was convicted of the above-stated offenses.[1] After a presentence report was prepared and a mental health evaluation was conducted, the court sentenced Appellant on August 11, 2020, to the term set forth *supra*.

Appellant did not file a timely appeal, but he was subsequently granted the reinstatement of his post-sentence motion and appellate rights via the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. He thereafter filed a post-sentence motion, which was denied, and then a *nunc pro tunc* appeal. Appellant also complied with the court's order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. The court filed its Rule 1925(a) opinion on December 5, 2022. Herein, Appellant states three issues for our review:

> I. Whether the verdict was against the weight of the evidence.
>
> II. Whether Appellant's sentence was unduly harsh and excessive.
>
> III. Whether the court erred in granting the Commonwealth's motion to introduce four prior bad acts from previous allegations of theft as the prejudicial value outweighed the probative value.

Appellant's Brief at 8 (unnecessary capitalization omitted).

In assessing Appellant's issues, we have reviewed the certified record, the briefs of the parties, and the applicable law. Additionally, we have examined the well-reasoned opinion of the Honorable Anne Marie B. Coyle of the First Judicial District of Pennsylvania Court of Common Pleas. We conclude

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[1] The jury could not reach a unanimous verdict on a charge of possession of a firearm by a person prohibited and, thus, the Commonwealth agreed to *nol pros* that charge.

that Judge Coyle's comprehensive opinion accurately disposes of the issues presented by Appellant. Accordingly, we adopt Judge Coyle's opinion as our own and affirm Appellant's judgment of sentence for the reasons set forth therein.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/22/2023

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

COMMONWEALTH OF PENNSYLVANIA	:	**CP-51-CR-0000861-2017**
vs.	:	
KEON RENKINS[1]	:	**SUPERIOR COURT NO. 1465 EDA 2022**

OPINION

COYLE, J. **DECEMBER 5, 2022**

Keon Renkins, the above-named Appellant and Defendant, seeks review of the Order and Judgment of Sentence imposed on August 11, 2020, by the Honorable Anne Marie B. Coyle, Judge of the First Judicial District of Pennsylvania Court of Common Pleas, hereinafter referenced as "this Court." In his Statement of Errors Complained of on Appeal filed pursuant to Pa. R. P. 1925(b), Appellant contends that the jury verdicts had been entered against the weight of the evidence. He further avers that the trial court had erred by granting the Commonwealth's Motion to Admit Other Acts Evidence and claims that the imposed sentences were excessive.

Review of the record, however, demonstrated that sufficient evidence had supported the convictions and that the Order and Judgment of Sentence had been reasonably imposed after a full and fair sentencing hearing had been conducted. The record also reflected that the decision to admit other acts evidence had constituted a reasonable exercise of trial court discretion.

[1] The correct spelling of Appellant's last name is "Rankins". Additionally, some of the notes of testimony can be found on CRS under the correct spelling with docket number CP-51-CR-0000862-2017.

I. FACTS AND PROCEDURAL HISTORY

On June 16, 2016, Appellant Keon Rankins was arrested and charged with *inter alia* Robbery; Robbery of a Motor Vehicle; Theft by Unlawful Taking; Fleeing or Attempting to Elude an Officer; Possession of an Instrument of Crime; and Simple Assault for events that had occurred on January 16, 2016, at approximately 3:00 p.m., at or near Best Buy Imports, around the intersection of Torresdale and Frankford Avenues in the City and County of Philadelphia. Appellant entered the car lot premises and was permitted by the Best Buy Import sales manager to test drive a black Cadillac Escalade truck, despite not producing a driver's license or insurance. During the test drive, Appellant brandished a firearm and robbed the assigned salesman, complainant Emanuel Connor. Appellant later led the pursuing police officer on a dangerous high-speed chase on the Interstate 95 highway.

A jury trial was conducted before this Court on January 28, 2020. At the conclusion of trial, the jury found Appellant guilty of Robbery – Threat of Immediate Serious Injury; Robbery of a Motor Vehicle; Theft by Unlawful Taking – Movable Property; Fleeing or Attempting to Elude an Officer; Possessing an Instrument of Crime; and Simple Assault.[2] The jury was hung on the charge of Violation of the Uniform Firearms Act– Possession of a Firearm Prohibited. Sentencing was deferred pending completion of pre-sentence report and mental health evaluation.

On August 11, 2020, this Court imposed consecutive sentences of ten (10) years to twenty (20) years of state supervised confinement on each first-degree felony conviction for Robbery – Threat of Immediate Serious Injury and Robbery of a Motor Vehicle and not less than three and

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2 Charges are respectively: 18§3701§§(A)(1)(ii)- Robbery-Threat Immediate Serious Injury (F1); 18§3702§§A (F1); 18§3921§§A-Theft by Unlawful Taking-Movable Property(f3); 75§3733§§A; Fleeing or Attempting to Elude Officer(F3); 18§907S§§A-Possession Instrument of Crime with Intent(M1);18§2701§§A-Simple Assault(M2)

one-half (3½) years nor more than seven (7) years of confinement for the felony of the third-degree conviction of Fleeing or Attempting to Elude an Officer. For the first-degree misdemeanor conviction of Possessing an Instrument of Crime, a sentence of not less than two and one-half (2½) years to nor more than five (5) years of incarceration was imposed. The convictions for Theft by Unlawful Taking – Movable Property and Simple Assault merged for purposes of sentencing. Thus, the aggregate sentence of sixteen (16) years to thirty-two (32) years of state supervised confinement resulted. Max Kramer, Esquire, represented Appellant at trial and during sentencing. Post-sentence motions were not filed. No appeal was filed.

On June 15, 2021, Appellant filed a *pro se* petition for Post-Conviction Relief. Peter A. Levin, Esquire was appointed as counsel and filed an Amended Petition alleging trial counsel's ineffectiveness for failing to file a post-sentence motion or direct appeal. On January 14, 2022, this Court granted Appellant's Petition for *Nunc Pro Tunc* relief and reinstated Appellant's appellate rights. On January 13, 2022, Mr. Levin filed a post-sentence motion on behalf of Appellant which had been denied by operation of law on May 16, 2022. Notice of Appeal in the Superior Court was filed on May 24, 2022. A Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. Rule 1925 (b) was ordered by this Court on June 3, 2022. This Statement was filed on June 14, 2022.

II. ISSUES ON APPEAL

In his Concise Statement of Errors Complained of on Appeal, Appellant cited the weight of the evidence, the admission of other acts evidence, and the excessiveness of the sentence.

III. DISCUSSION

Prior Bad Acts Evidence

Appellant challenged the trial court's decision to grant the Commonwealth's pretrial

Motion to Admit Other Acts Evidence related to multiple similar carjacking and automobile thefts that had been committed by Appellant during August and September of 2007. The record however reflects that this decision had constituted a sound exercise of trial court discretion and that the proffered evidence had been properly admitted pursuant to the reasonable interpretation and application of Pennsylvania Rules of Evidence 403 and 404(b). Pa.R.E. 404 (b), provides:

> (b) Other Crimes, Wrongs, or Acts.
>
> (1) *Prohibited Uses.* Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) *Permitted Uses.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.
>
> (3) *Notice in a Criminal Case.* In a criminal case the prosecutor must provide reasonable written notice in advance of trial so that the defendant has a fair opportunity to meet it, or during trial if the court excuses pretrial notice on good cause shown, of any such evidence it intends to introduce at trial.

Pa.R.E. 404(b).

In *Commonwealth v. Sherwood,* 603 Pa. 92, 982 A.2d 483 (2009), the Pennsylvania Supreme Court set forth the general principles regarding the admissibility of prior bad acts at trial as follows:

> Generally, evidence of prior bad acts or unrelated criminal activity is inadmissible to show that a defendant acted in conformity with those past acts or to show criminal propensity. Pa.R.E. 404(b)(1). However, evidence of prior bad acts may be admissible when offered to prove some other relevant fact, such as motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident. Pa.R.E. 404(b)(2). In determining whether evidence of other prior bad acts is admissible, the trial court is obliged to balance the probative value of such evidence against its prejudicial impact.

Id. at 497, citing *Commonwealth v. Powell,* 598 Pa. 224, 956 A.2d 406, 419 (2008). See also *Commonwealth v. Sitler*, 2016 PA Super 168, 144 A.3d 156, 163–65 (2016). "The Commonwealth must prove beyond a reasonable doubt that a defendant has committed the particular crime of which he is accused, and it may not strip him of the presumption of innocence by proving that he has committed other criminal acts." *Commonwealth v. Ross,* 57 A.3d 85, 98–99 (Pa.Super.2012) (*en banc*) (citations omitted).

A challenge to the admission of evidence is evaluated as an abuse of discretion. The Pennsylvania Supreme Court has instructed:

> Generally, evidence of prior bad acts or unrelated criminal activity is inadmissible to show that a defendant acted in conformity with those past acts or to show criminal propensity.

Pa.R.E. 404(b)(1). However, evidence of prior bad acts may be admissible when offered to prove some other relevant fact, such as motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident. Pa.R.E. 404(b)(2). In determining whether evidence of other prior bad acts is admissible, the trial court is obliged to balance the probative value of such evidence against its prejudicial impact. *Commonwealth v. Gilliam*, 2021 PA Super 40, 249 A.3d 257, 271–74, *reargument denied* (May 19, 2021), *appeal denied*, 267 A.3d 1213 (Pa. 2021) citing *Commonwealth v. Sherwood*, 603 Pa. 92, 982 A.2d 483, 497 (2009).

To establish one of the exceptions set forth in Rule 404(b)(2), there must be "a close factual nexus sufficient to demonstrate the connective relevance of the prior bad acts to the crime in question[.]" *Commonwealth v. Sami*, 2020 PA Super 294, at *6, 243 A.3d 991, 999 (Pa. Super. 2020) (citation and emphasis omitted). Additionally, the term "unfair prejudice" in Rule 404(b)(2) "means a tendency to suggest a decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." *Commonwealth v.*

Dillon, 592 Pa. 351, 925 A.2d 131, 141 (2007). "[W]hen weighing the potential for prejudice, a trial court may consider how a cautionary jury instruction might ameliorate the prejudicial effect of the proffered evidence." *Id.*

In this appeal, the two pertinent 404(b) exceptions are "common plan or scheme" and "absence of mistake." Concerning the former, the Superior Court has stated:

> When ruling upon the admissibility of evidence under the common plan exception, the trial court must first examine the details and surrounding circumstances of each criminal incident to assure that the evidence reveals criminal conduct which is distinctive and so nearly identical as to become the signature of the same perpetrator. Relevant to such a finding will be the habits or patterns of action or conduct undertaken by the perpetrator to commit crime, as well as the time, place, and types of victims typically chosen by the perpetrator. Given this initial determination, the court is bound to engage in a careful balancing test to assure that the common plan evidence is not too remote in time to be probative. If the evidence reveals that the details of each criminal incident are nearly identical, the fact that the incidents are separated by a lapse of time will not likely prevent the offer of the evidence unless the time lapse is excessive. Finally, the trial court must assure that the probative value of the evidence is not outweighed by its potential prejudicial impact upon the trier of fact. To do so, the court must balance the potential prejudicial impact of the evidence with such factors as the degree of similarity established between the incidents of criminal conduct, the Commonwealth's need to present evidence under the common plan exception, and the ability of the trial court to caution the jury concerning the proper use of such evidence by them in their deliberations.

Commonwealth v. Tyson, 119 A.3d 353, 358-59 (Pa. Super. 2015) (*en banc*) (citation omitted); *see also id.* at 360 n.3 ("The common scheme exception does not require that the two scenarios be identical in **every** respect." (emphasis in original)). The standard for admission of evidence under the "absence of mistake" exception is virtually the same as the common plan or scheme exception; namely, the evidence "must be distinctive and so nearly identical as to become the signature of the same perpetrator, and its probative value must not be undermined by the lapse in time between incidents."

Here, Appellant asserts that trial court had erred by granting the Commonwealth's Motion to Admit Evidence Pursuant to 404(b) and by admitting evidence of Appellant's prior convictions. Appellant argues that the prior convictions had been remote in time and had no probative value. After considering the totality of the circumstances of each alleged incident, however this Court reasonably determined that the incidents involving Appellant's previous convictions of theft by taking of a vehicle by carjacking the owner. had been substantially similar to the events presented in the current case.

As he did in the instant matter, in the previous cases, Appellant had entered a business that sold cars and asked to test drive a vehicle, sometimes after displaying a driver's license and sometimes without one. Appellant employed a similar ruse on every occasion. He claimed that he had wanted to show the car to his absent girlfriend who had been interested in the car and was not present. In each instance, if the salesperson was physically inside the car for the test drive, Appellant would drove to a location where his girlfriend supposedly was waiting and then ask the salesperson to get out of the car and ring the door- bell to get her attention. If the salesperson refused, Appellant threatened the salesman with a gun to force the person out of the car. Appellant would then speed off with the vehicle without making payment and without permission.

Although the complaints were made by different salesmen and one private seller of different ages and had occurred at different nearby locations, all complaints involved strikingly parallel circumstances. Appellant repeatedly claimed that he had been purchasing a car for someone else to encourage a test drive. In each case during the test drive the other person is forced out of the vehicle.

In short, the reported methodologies, common plan, scheme, and design of every case had been so substantially similar such that they had demonstrated Appellant's identity and intent and dispelled any defense of mistake or misunderstanding of purpose. The circumstances underlying the previous convictions had been nearly identical to the instant case. (N.T. 4/11/2019, pp. 16-22; 1/29/2020, pp. 19-27). In determining the admission of prior bad acts, the court must also consider the remoteness of the prior bad acts. The previous incidents at issue had occurred from August and September 2007 which was about nine (9) years before the current incident. In the intervening period Appellant had been incarcerated at various intervals. Thus, this time frame had been substantially interrupted. Even without the discount however, the overall intervening period was not deemed to be too remote particularly given their unusually similar circumstances. Those incidents therefore had retained their probative value.

As to the claim that the probative value had been outweighed by the potential prejudicial effect of this evidence, this argument fails to consider that the trial court has discretion to balance the respective weights. In this case the conclusion that the probative value had greatly outweighed its potential prejudicial effect had been derived reasonably. The Commonwealth had amply demonstrated that Appellant's methodology in the commission of the prior robberies had been strikingly similar to his conduct in the present case. The Commonwealth justified the critical need for presentation of this evidence to show the perpetrator's identity, intent, and lack of mistake or accident. This jury as factfinder required the opportunity to decide whether Appellant, after pleading guilty and experiencing legal consequences for the same type of behavior, could have forced this complainant out of a vehicle with threats to shoot them, and then take that vehicle. The defense in current case concentrated upon the victim's credibility as it related to the presence of an immediate threat of harm. Moreover, this Court provided a curative

instruction to sufficiently prevent the jury from considering the testimony for any inappropriate purpose.

The allegations involving this complainant are substantially like the allegations at the four underlying dockets. The common plan scheme and design that been established from the Appellants' conduct in the four robberies had been inescapably illuminating. In each case, Appellant walked into a car dealership and expresses a purchase interest in a vehicle. He claimed an ability to make a cash purchase, and that he had wanted to either buy the car for his girlfriend or show it to her before purchasing it. During the test drive, he tried to lure the salesman out of the car and when the victim refused to exit, he threatened to shoot him.

For each docket, there had only been two (2) witnesses who had been present at the time of the thefts. Therefore, in the current case the jury must decide whether to believe the victim's version of events. Did the crime only involve a theft of a vehicle from an unwitting and careless salesperson who had allowed Appellant to drive off with the car? Did the theft of the vehicle occur because the victim had been threatened with a gun? Thus, the supporting other crimes evidence that had been established by Appellant's repeated conduct had been highly relevant to the jury's decision-making process and to proving that Appellant had the requisite intent for the alleged criminal acts.

Finally, the curative instruction that had been provided to the jury had duly guided this jury to prevent improper use of Appellant's complicity in the prior robberies. It is well established that a curative instruction is sufficient to guide the jury in the appropriate use of this evidence, as it is presumed that jurors will follow the instructions provided by the court. See, e.g., *Commonwealth v. Gordon*, 543 Pa. 513, 673 A.2d 866, 869-70 (1996) (holding evidence of appellant's similar prior sexual assaults was not unduly prejudicial under Rule 404(b)(2) where

Commonwealth was required to prove non-consensual sexual touching occurred; evidence was necessary for prosecution of case, where uncorroborated testimony of victim might lead jury to determine there was reasonable doubt as to whether appellant committed crime charged); *Commonwealth v. Tyson*, 119 A.3d 353 (Pa. Super 2015). (reversing trial court's exclusion of defendant's prior rape conviction in case charging defendant with rape and related sex offenses; evidence of prior rape conviction was admissible under common plan or scheme exception where facts of prior conviction and facts of current case showed defendant was an invited guest in each female victims' home, was cognizant of each victims' compromised state, and had vaginal intercourse with each victim while victim was unconscious; any differences between incidents concerned details which were not essential to alleged common scheme); see also *Commonwealth v. Aikens*, 990 A.2d 1181, 1185-86 (Pa. Super. 2010) (holding 10-year time lapse was not excessive for admissibility of evidence under the common plan exception). In sum, the trial court did not err in granting the Rule 404(b) Motion and admitting the challenged testimony under the common plan and absence of mistake exceptions.

Weight of the Evidence

Appellant's claim that the verdict was against the weight of the evidence also fails. The appellate courts' standard of review for evaluating a weight-of-the-evidence claim is well established; the scope of review for such a claim is very narrow. The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and that decision will not be disturbed absent an abuse of discretion. *Commonwealth v. Young*, 692 A.2d 1112 (Pa. Super. 1997); *Commonwealth v. Pronkoskie*, 445 A.2d 1203 (Pa. 1982); *Commonwealth v. Hunter*, 554 A.2d 550, 555 (Pa. Super. 1989). Where issues of credibility and weight of the evidence are concerned, it is not the function of the

appellate court to substitute its judgment based on a cold record for that of the trial court. *Young, supra. Commonwealth v. Paquette*, 301 A.2d 837, 841 (Pa. 1973).

The weight to be accorded conflicting evidence is exclusively for the factfinder, whose findings will not be disturbed on appeal if they are supported by the record. *Commonwealth v. Zapata*, 290 A.2d 114 (Pa. 1972). A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the 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. Thomas,* 194 A.3d 159, 167 (Pa. Super. 2018).

In the instant case, the evidence was sufficient to sustain Appellant's convictions. The complainant, Emanuel Connor, credibly testified that while he was working as a salesman at Best Buy Imports on January 16, 2016, Appellant, despite not having a driver's license or insurance, was permitted by Mr. Connor's manager to test drive a black Cadillac Escalade. Appellant had claimed that he wanted to show his girlfriend the car and to get her driver's license to make the purchase, and when Mr. Connor wouldn't exit the vehicle to get Appellant's girlfriend from a pizza shop, Appellant brandished a gun and robbed the complainant at gunpoint while on the test drive. Mr. Connor's testimony was credible and compelling particularly when had described his terror.

Philadelphia Police Officer Zaharia Neculiseanu who was seated solo in a marked patrol car, in full uniform, while parked on the corner where and when Mr. Connor had been forced out of the Escalade. The complainant ran up to the patrol car, screaming, and yelling that he had just gotten carjacked and that someone had pointed a gun at him. The complainant gave the officer a

description of the vehicle and what the male was wearing. Officer Neculiseanu put the Mr. Connor in the back of his car, and they surveyed the area for the vehicle.

About three blocks away, the officer and the victim spotted the stolen Escalade traveling northbound on Torresdale Avenue. The complainant was able to identify the vehicle by the dealer tag. Officer Neculiseanu followed the vehicle for about four or five blocks while radioing for assistance to stop the car in a safe manner. After getting the description over the radio as they approached the ramp leading to Interstate 95 north, Officer Neculiseanu activated his lights and sirens and attempted to cause the vehicle to stop. Instead of pulling over the Appellant drove off at a high rate of speed with speeds accelerated over hundred miles an hour going northbound on the busy Interstate 95 highway. According to Officer Neculiseanu, Appellant drove unsafely, recklessly, was tailgating, weaving in and out of traffic. (N.T. 1/ 28/2021, pp. 112-117).

Subsequently assigned Detective Peter Marrero of the Northeast Detectives Division learned from interviews of various witnesses that someone fitting the description of Appellant, had been at First Class Auto Land shortly before the robbery had taken place nearby at Best Buy Imports. Since there had been no working video cameras at Best Buy Imports, Detective Marrero went across the street to First Class Auto Body and retrieved their video feed from their working cameras.

Appellant had been depicted clearly in the First Class Auto Body video feed walking into the dealership and attempting unsuccessfully to convince the sales personnel to permit him to take a test drive. (N.T., 1/28/2020 p. 121; 1/29/2020, pp. 5 -11). Detective John Cawley, also from Northeast Detectives, testified that as the investigation developed, the First Class Auto Body video feed was released on the Philadelphia Police Department's YouTube website in the hope of getting tip calls. As a result, he, as well as his partner, Detective Ruddy, received

information about Appellant as a possible suspect. After receiving that information, Detective Ruddy prepared a "double-blind photo array" to prevent any taint of the identification process.

In short, the "double-blind photo array" is a method wherein the investigator who composes the photo array is not the same person who displays the array to the witness and the investigator who displays the array does not know who the suspect is or where that suspect's photograph is placed within the group. In the instant matter, Detective Ruddy placed Appellant's photograph within a group of photographs of similar looking males. The display was then handed to Detective Logan who was blind to the any knowledge of who the suspect was in the group to alleviate any possibility of guidance of the witness towards identification of a specific picture. Detective Logan showed the complainant the photo array and the complainant positively identified Appellant as the person who committed the robbery. (N.T., 1/29/2020, pp. 29 - 34).

David Marks, the private citizen whose car Appellant had taken in a prior incident, as one of the bases for the prior bad acts motion, testified that Appellant had expressed interest in purchasing a car from him and had wanted to take it for a test drive. Mr. Marks went with him for the test drive and Appellant drove to an apartment complex and asked Mr. Marks to knock on a door and talk to Appellant's girlfriend to show her the car. Mr. Marks stated that he wasn't getting out of the car because it didn't sound right. When Mr. Marks wouldn't get out of the car, Appellant became frustrated and drove away. Appellant drove up to the entrance of Interstate 95 Highway, and as Mr. Marks saw him get into the lane to turn onto 95, he got scared and grabbed the steering wheel. Mr. Marks testified that Appellant said, "I might have to take care of you and blow you away." Appellant said that he was going to shoot him more than once. Mr. Marks believed that he had a gun. As they got close to a

Seven-Eleven, traffic slowed them down so Mr. Marks unbuckled, opened the door, and jumped out of the car and ran. (N.T., 1/29/2020, pp. 37-48).

Detective John Logan, who is assigned to the Major Crimes, Auto Squad, testified that he had questioned Appellant about vehicles that had been stolen from multiple car dealerships in Philadelphia and Bensalem Township in 2007. Detective Logan read Appellant's statements into the record. Appellant had confessed to various auto theft crimes resulting in convictions. (N.T., 1/29/2020, pp. 65 - 80).

The cumulative evidence of guilt was overpowering. Thus, evidence sufficiently established all charges of which the Appellant was found guilty. Upon review of the challenge to the weight of the evidence, this Court concluded that the verdicts were not against the weight of the evidence and the record did not any verdict that was shocking to one's sense of justice.

Sentencing

Finally, Appellant argues that he had been given a harsh and excessive sentence. The record reflects however that the sentencing decision had constituted a reasonable exercise of the trial court's sentencing discretion. It is well-established law in the Commonwealth of Pennsylvania that that Sentencing Guidelines promulgated by the Pennsylvania Sentencing Commission are purely advisory in nature. As the Supreme Court explained in *Commonwealth v. Sessoms*, 516 Pa. 365, 532 A.2d 775, 780-81 (Pa. 1987), the Guidelines do not alter the legal rights or duties of the defendant, the prosecutor, or the sentencing court. The guidelines are merely one factor among many that the court must consider in imposing a sentence. *Sessoms*, 532 A.2d at 781. Consequently, the Supreme Court explained:

> The defendant has no "right" to have other factors take pre-eminence or be exclusive; therefore, to have the guidelines considered, whatever they may provide, does not change his rights.

> Likewise, the prosecutor has no "right" to have a particular sentence imposed. Most important, the court has no "duty" to impose a sentence considered appropriate by the Commission. The guidelines must only be "considered" and, to ensure that such consideration is more than mere fluff, the court must explain its reasons for departure from them.

Id. Likewise, the Court explained in *Commonwealth v. Mouzon*, 571 Pa. 419, 812 A.2d 617, 621 (Pa. 2002), that despite the recommendations of the Sentencing Guidelines, "... trial courts retain broad discretion in sentencing matters, and therefore, may sentence defendants outside the Guidelines." The only line that a sentence may not cross is the statutory maximum sentence. *See Mouzon*, 812 A.2d at 621 n.4., *Commonwealth v. Saranchak*, 544 Pa. 158, 675 A.2d 268, 277 n.17. *See also Commonwealth v. Yuhasz*,[3]

Additionally, long-standing precedent recognizes that 42 Pa.C.S.A. § 9721 affords the sentencing court discretion to impose its sentence concurrently with or consecutively to other sentences being imposed at the same time or to sentences already imposed. *Commonwealth v. McHale*, 2007 PA Super 131, P22 (Pa. Super. Ct. 2007); *Commonwealth v. Pass*, 914 A.2d 442, 446-447 (Pa. Super. 2006); *Commonwealth v. Marts*, 889 A.2d 608 (Pa. Super. 2005) *citing Commonwealth v. Graham*, 541 Pa. 173, 184, 661 A.2d 1367, 1373 (1995); *see also Commonwealth v. Perry*, 883 A.2d 599 (Pa. Super. 2005). Any challenge to the exercise of this discretion ordinarily does not raise a substantial question. *Commonwealth v. Johnson*, 873 A.2d 704, 709 n. 2 (Pa. Super. 2005); *see also Commonwealth v. Hoag*, 445 Pa. Super. 455, 665 A.2d

[3] The Supreme Court in *Walls*, *infra.*, reaffirmed that the guidelines had no binding effect, created no presumption in sentencing, and did not predominate over other sentencing factors. They are valuable advisory guideposts which may provide an essential starting point, and which must be respected and considered; they recommend - rather than require - a particular sentence. *Commonwealth v. Walls*, 592 Pa. 557, 926 A.2d 957 (2007).

1212, 1214 (1995) (explaining that a defendant is not entitled to a "volume discount" for his or her crimes).

The Supreme Court has stated that the proper standard of review when considering whether to affirm the sentencing court's determination is whether an abuse of discretion has occurred. *Commonwealth v. Walls*, 592 Pa. 557, 926 A.2d 957 (2007) *citing Commonwealth v. Smith,* 543 Pa. 566, 673 A.2d 893, 895 (Pa. 1996) ("Imposition of a sentence is vested in the discretion of the sentencing court and will not be disturbed absent a manifest abuse of discretion."); *Commonwealth v. Campion*, 672 A.2d 1328 (Pa. Super. 1996), *appeal denied*, 681 A.2d 1340 (Pa. 1996) *citing Commonwealth v. Green*, 431 A.2d 918 (Pa. 1981); *Commonwealth v. Meo*, 524 A.2d 902 (Pa. Super. 1987), *appeal denied*, 533 A.2d 91 (Pa. 1987).

As stated in *Smith*, "An abuse of discretion is more than just an error in judgment and ... the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will." *Smith,* 543 Pa. at 571, 673 A.2d at 895. In more expansive terms, the Supreme Court has said: "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." *Walls,* 592 Pa. at 564, 926 A.2d at 961 *quoting Grady v. Frito-Lay, Inc.,* 576 Pa. 546, 839 A.2d 1038, 1046 (Pa. 2003). *See also Commonwealth v. Redman*, 864 A.2d 566 (Pa. Super. 2004); *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002).

The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that the sentencing court is "in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before

it." *Walls,* 592 Pa. at 565, 926 A.2d at 961 *quoting Commonwealth v. Ward*, 524 Pa. 48, 568 A.2d 1242, 1243 (Pa. 1990); *see also Commonwealth v. Jones*, 418 Pa. Super. 93, 613 A.2d 587, 591 (Pa. Super. 1992) (*en banc*) (offering that the sentencing court is in a superior position "... to view the defendant's character, displays of remorse, defiance or indifference and the overall effect and nature of the crime.").

As the Supreme Court stated in *Walls*, the sentencing court sentences flesh-and-blood defendants, and the nuances of sentencing decisions are difficult to gauge from the cold transcript used upon appellate review. Moreover, the sentencing court enjoys an institutional advantage to appellate review because it brings to its decisions an expertise, experience, and judgment that should not be lightly disturbed. Even with the advent of the sentencing guidelines, the power of sentencing is a function to be performed by the sentencing court. *Walls,* 592 Pa. at 565, 926 A.2d at 962, *citing Ward,* 568 A.2d at 1243. "Thus, rather than cabin the exercise of a sentencing court's discretion, the guidelines merely inform the sentencing decision." *Walls,* 592 Pa. at 565, 926 A.2d at 962; *see also United States v. Salinas*, 365 F.3d 582, 588 (7th Cir. 2004).

Appellant's claims constituted a broad challenge to the discretionary aspects of the sentence imposed by this Court. Appellant generally argued that the Court had erred and abused its discretion by imposing a sentence that was unreasonable and manifestly excessive aggregate sentence of sixteen (16) years to thirty-two (32) years of state supervised confinement for the serious offenses for which the Appellant had been found guilty. This Court deviated because of Appellant's uniquely patterned violent behavior. Moreover, the transcribed record reflected consideration of the guideline range recommendations of all offenses and succinct rationales provided for the sentences-imposed coupled with incorporated reasons for deviating from the Sentencing Guidelines, as required by 18 Pa.C.S. Section 9721(b):

THE COURT: Thank you, sir. Well, Mr. Rankins, I have evaluated all the materials in reference to you, and uniquely so, sir, since you have been before me so many times. I have observed you throughout time that you've been in this courtroom. And I particularly paid attention to how you have behaved before this Court both prior to trial, during trial, and presently.

I've evaluated again and going back again throughout the mental health assessments that were conducted of you. The best indicator of how someone will act in the future is how someone has behaved in the past; and to say that your record is deplorable is probably the biggest understatement that I have heard today or will speak today.

Your record is replete, sir, with an absolutely defiance of people's property rights, right to live in peace, and display of violations of authority in every way, shape or form to date. And unlike so many individuals that have come before me, you have no excuse for your behavior.

Now, depending on what version of past events that you present, since you presented so many conflicting versions of past offense and your biographical history, the biographical history of you is reflective of someone who had parents who cared about you, who tried to make it better, and who were defeated at every turn just like the various courts that have entered orders and judgments and sentences of you.

Your pattern of behavior is unique. You seem to be stuck on a note in terms of taking from others, which indicates someone who acts most selfishly with respect to the rights of others, particularly property rights of other people. You have a certain penchant for taking vehicles, which -- okay.

And despite every effort of various folks in authority, since the age of 17 you have rebelled with criminal behavior and violated terms and conditions of your parole and probationary periods and conditions of sentencing.

I go back to the initial arrest recorded with respect to you, for robbery at the age of 17, multiple counts, and after being deemed as an adult, Judge Clark sentenced you to a fairly light sentence, quite frankly, given that event. And you were sentenced to county time and parole granted very shortly thereafter.

And no sooner did you exit Bucks County's county confinement, bench warrants were issued for your absconding. Judge Clark revoked parole and ordered you serve the balance of your sentence upon apprehension. Similar activities occurred before Judge Cynthia Weaver with respect to your activities and similar occurrences and revocations by Judge Kenneth Biehn.

Your Bucks County events did not stop there. There were additional possession charges of controlled substances. And uniquely also to you, you had had a few escapes in there, yeah, which, you know, I don't see all that often; but, again, wild behavior.

Attempted thefts in Lehigh County; drug dealing in Bucks County -- we're now up to the grand age of 23 -- failure to abide by conditions of drug treatment; again, absconding after being granted various forms of releases including work release.

Retail thefts, theft by deceptions -- I'm now going up to age 26. There's another escape at age 27. Bucks County again. Now we're carrying a firearm, receiving stolen property. Interesting. Because when you pled guilty before Judge Cepparulo in Bucks County and received the five to ten years, you served that initially at Graterford, transferred over to parole to the community center in Morrisville and came back again as a parole violator, I think twice.

Additional theft charges by the age of 30. Another robbery of a motor vehicle in Bucks County, age of 30. Parole violator under that. Another theft charge out Lehigh County; similar violating behavior. Another theft charge in Bucks County, unauthorized use in Bucks County, now 31, then 39. Well, there's a couple years in there where you're incarcerated.

All right. There's a stoppage of activity. Bucks County, unauthorized use of auto. Apparently, there was entered lesser offense. A simple assault, which defies the argument that you've never been assaultive.

And then we go to the incident offenses occurring on or about January 16, 2016. And I do consider your behavior violent because when you point what is believed to be a firearm at someone and scare the living bejesus out of them, in so doing there's an effect upon that victim and it's intended.

I find that you are exceedingly intelligent, but instead of using your intelligence to go forward in life positively, you've used it as a way to deceive others and take from other people. Your pattern of behavior is extensive and it is most concerning to this Court.

I do recall that that pattern of deception occurred in this Court by you when you were pretending to be mentally incompetent to avoid justice. You weren't able to do that. Based upon your criminal history, I agree with the presentence investigator that you pose a significant risk for incurring future offenses and for violating whatever conditions that are going to be imposed by the Court.

I highly concur with the recommended, when you are paroled, sir, that parole be intensive in nature, that it be accompanied by frequent urine testing. First hot urine is deemed to be a violation before the parole probation authority and you are to avail yourself of whatever drug treatment is provided to you. Because I don't see an indication of you completing high school; in fact, the record is interestingly silent with respect to even your attendance at George School, which I tend to think you did go there.

You should do your level best to obtain vocational training and your GED. You will have random drug and alcohol testing. You will have random checks for weapons and/or illegal narcotics. You are prohibited from living in any location where drugs or weapons are located.

You are prohibited from being in any vehicle with drugs or weapons. You will submit to random checks of same. You are prohibited from posting in social media form, since we have to say that out loud these days that that's bad behavior, not to be tolerated; from displaying any proceeds or weapons or drugs illegal in nature.

You will comply with any recommended drug and alcohol treatment. You will attend a minimum of 200 hours of anger management training. You will avail yourself of vocational training because when you are paroled, sir, you will do your level best to obtain and maintain employment and provide proof of same. You are prohibited from entering any, any vehicle place. What's the right word?

MR. KRAMER: Dealership.
THE COURT: Thank you. Vehicle dealership. Period.

Okay. I do take into consideration the guideline calculation as stated and agreed upon. You are not triple RI eligible. You are not boot camp eligible. My sentence will run consecutively to any other sentence that you are serving.

There will be a complete stay-away order with respect to the complainant and the location at issue. No contact means no direct contact; indirect contact; no third-party contact; no social media contact of any kind. When you are eligible for parole or probation, you will be intensely, I repeat intensely supervised. Your first misstep is to be deemed a violation.

Okay. Looking at the elemental portions of the statutes of robbery under Sections 3701 of which you were convicted, threatening immediate serious bodily injury and robbery of a motor vehicle under Section 3702, there are elemental differences. They do not merge.

> I will be departing from the guideline calculations because your record calls for it. I note up until today complete lack of remorse. I do see an indication to the contrary in you today. You present slightly different posture than you did before, which is nice to see, so maybe in the future you will be on the mend. I don't really know.
>
> All right. So I covered the conditions, fines and cost. Quick question, restitution?
>
> **MR. SEGAL**: No, Your Honor. I have reached out to the complaining witness and I have not heard back.
> **THE COURT**: Okay. So I will, as I said, deviate from the guidelines because of your unique pattern of behavior and the high degree to which I believe that you are a danger to our community.

(N.T., 8/11/2020 pp. 25-34).

The aggregate sentence imposed, was "consistent with the protection of the public, the gravity of the offense as it relates to the impact of the life of the victim and on the community, and the rehabilitative needs of the defendant," 18 Pa.C.S. Section 9721(b). This Court considered the Guidelines, as well as the data gleaned from the pre-sentence investigative report, the mental health evaluation.

Pursuant to 42 Pa. C.S.A. § 9781(d)(1) and (3), this Court remained well within its discretionary right to impose the sentences consecutively. The sentencing court's exercise of discretion by imposing consecutive as opposed to concurrent sentences is not viewed as raising a substantial question that would allow the granting of allowance of appeal in our Commonwealth. *Commonwealth v. Marts*, 889 A.2d 608 (Pa. Super. 2005).

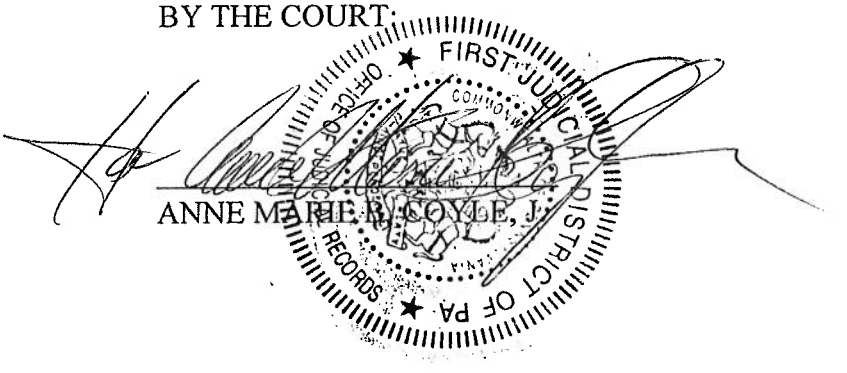
In the instant matter, individualized consecutive standard sentences were imposed only after careful consideration of all relevant sentencing factors including the gravity of the offense, the effect it had on the victim and the community, and Appellant's poor prospect for rehabilitation. No substantial question was raised from the fact that consecutively running sentences for the individual counts had been imposed.

Appellant had not borne his burden of establishing that he had received an illegal sentence since he has made no demonstration that this Court abused its discretion when imposing the respective sentences. Despite Appellant's argument to the contrary, the guidelines this Court considered the general standards for sentencing as required by 42 Pa.C.S. § 9721(b) and recommended guidelines. The need for protection of the public as well as the gravity of the offense as it relates to the impact on the life of the victim and the community were incorporated into the sentencing rationale. This Court was duly justified in determining that a lengthy period of confinement had been required to protect the public at large from Appellant's methodical destructive and depraved behavior. Appellant required substantial treatment and rehabilitation effort before he could safely return to society.

IV. CONCLUSION

Sufficient evidence supported each guilty verdict entered by the jury and all relevant sentencing factors had been considered before imposition of sentences that were well within the bounds of judicial discretion. Accordingly, the Appellant's claims of error must fail, and the Orders and Judgments of Sentence should be affirmed.

BY THE COURT:



ANNE MARIE B. COYLE, J.