

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
TAJMIR YOUNG	:	
	:	
Appellant	:	No. 2057 EDA 2022

Appeal from the Judgment of Sentence Entered April 4, 2022  
In the Court of Common Pleas of Philadelphia County Criminal Division at  
No(s): CP-51-CR-0000371-2019

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

MEMORANDUM BY BENDER, P.J.E.:

**FILED NOVEMBER 22, 2023**

Appellant, Tajmir Young, appeals from the judgment of sentence of life imprisonment, without the possibility of parole, imposed after he was convicted by a jury of first-degree murder (18 Pa.C.S. § 2502(a)), conspiracy to commit murder (18 Pa.C.S. § 903), carrying a firearm without a license (18 Pa.C.S. § 6106), carrying a firearm in public in Philadelphia (18 Pa.C.S. § 6108), and possessing an instrument of crime (18 Pa.C.S. § 907). After careful review, we affirm.

The trial court provided a detailed recitation of the facts and procedural history of Appellant's case, which we adopt herein. **See** Trial Court Opinion (TCO), 10/31/22, at 1-7. We only briefly reiterate that, on April 4, 2022, a jury convicted Appellant of the above-stated offenses based on evidence that he shot and killed Basil Adams on March 5, 2017. The same day Appellant was convicted, the court sentenced him to an aggregate term of life

imprisonment, without the possibility of parole. He filed a timely post-sentence motion, which was denied. Appellant then filed a timely notice of appeal, and he 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 October 31, 2022. Herein, Appellant states six issues for our review:

1. Whether the [t]rial [c]ourt erred and otherwise abused its discretion by denying counsel's motion for a mistrial following inappropriate statements during the Commonwealth's closing argument that amounted to prosecutorial misconduct and exploited objectionable questions and answers from earlier in the trial?
2. Whether the [t]rial [c]ourt erred and otherwise abused its discretion in denying the mistrial motion made by counsel after it was determined that the Commonwealth failed to disclose that a search warrant was executed on the rented Kia Soul and that pertinent evidence was recovered, all of which violated discovery rules, [and] affected counsel's trial strategy and [Appellant's] ability to reject the plea offer in a knowing, intentional[,], and voluntary fashion?
3. Whether [Appellant's] rejection of the plea offer was knowing, intentional[,], and voluntary where the existence of material, relevant evidence was not disclosed in violation of the rules of discovery?
4. Whether [Appellant's] state and federal due process rights were violated insofar as the [c]ourt did not conduct a full and complete colloquy to ensure that [Appellant] was waiving his right to twelve jurors in a knowing, intentional[,], and voluntary fashion and his election was in fact not knowing, intentional[,], and voluntary?
5. Whether the evidence was insufficient to prove the charges against [Appellant] insofar as:
  - a. the Commonwealth failed to prove identity and specific intent to kill beyond a reasonable doubt?

b. the Commonwealth failed to prove an agreement to commit murder?

6. Whether the [t]rial [c]ourt abused its discretion in ruling on [Appellant's] challenge to the weight of the evidence?

Appellant's Brief at 10-11 (citations to the record omitted).<sup>1</sup>

Initially, we observe that Appellant's Argument presents a seventh issue not set forth in his Statement of the Questions Presented. Specifically, he claims that "the court erred when it permitted the Commonwealth to play a video of [Appellant's] signing a medical checklist in violation of his right to remain silent and confrontation [rights]." ***Id.*** at 40 (unnecessary capitalization omitted). Appellant did not raise this issue in his Rule 1925(b) statement; however, on October 4, 2022, his attorney filed a "Motion for Leave to Supplement 1925(b) Statement[,]" indicating that counsel had just been retained by Appellant, who had informed counsel that he wished to "add one additional issue to the [Rule] 1925(b) statement that was timely[-]filed with the [c]ourt" by Appellant's prior attorney. Motion for Leave to Supplement 1925(b) Statement, 10/4/22, at 3. Counsel stated that, "[s]pecifically, [Appellant] wishes to challenge the [c]ourt's ruling permitting the Commonwealth to play the video of [Appellant's] signing paperwork during trial." ***Id.*** at 3-4.

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<sup>1</sup> We note that in Appellant's Argument, he presents his six issues (as well as a seventh claim, discussed *infra*), out of order to what he sets forth in his Statement of the Questions Involved. We did not reorder his issues, as they align with the order in which the trial court addresses them in its Rule 1925(a) opinion.

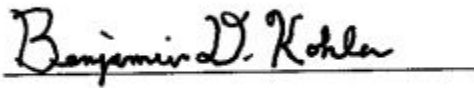
The docket does not indicate that the court issued any order disposing of Appellant's motion to file a supplemental Rule 1925(b) statement adding this seventh claim. Nevertheless, in the court's Rule 1925(a) opinion, it listed that issue when reproducing the claims raised by Appellant in his concise statement, **see** TCO at 2, and it addressed the merits of the claim, **see id.** at 18-19. Thus, it appears that the court exercised its discretion to grant Appellant's motion to supplement his Rule 1925(b) statement, thereby preserving his seventh issue for our review. **See** Pa.R.A.P. 1925(b)(2)(i) ("Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed."). Additionally, given that Appellant presents a distinct and developed argument regarding this claim, we presume that his failure to include it in his Statement of the Questions Presented was merely an oversight. As that error does not hinder our review, we do not consider his seventh issue waived on this basis, either.

Thus, we proceed to the merits of Appellant's seven claims. In considering each of his issues, we have reviewed the briefs of the parties, the certified record, and the applicable law. We have also assessed the opinion of the Honorable Rose Marie DeFino-Nastasi of the Court of Common Pleas of Philadelphia County. We conclude that Judge DeFino-Nastasi's well-reasoned decision accurately disposes of Appellant's claims, thoroughly detailing why they are meritless. **See** TCO at 7-19. Therefore, we adopt Judge DeFino-

Nastasi's opinion as our own, and affirm Appellant's judgment of sentence for the reasons set forth therein.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 11/22/2023

**FILED****OCT 31 2022**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
CRIMINAL TRIAL DIVISION**

Appeals/Post Trial  
Office of Judicial Records

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0000371-2019
	:	
v.	:	
	:	
TAJMIR YOUNG	:	2057 EDA 2022

**OPINION**

Rose Marie DeFino-Nastasi, J.

October 31, 2022

**PROCEDURAL HISTORY**

On March 25, 2017, Tajmir Young (the “Defendant”) shot and killed Basil Adams on the 900 block of Sanger Street, in Philadelphia, PA.

On April 4, 2022, the Defendant was found guilty after a jury trial, presided over by the Honorable Rose Marie Defino-Nastasi, of first-degree murder,<sup>1</sup> conspiracy to commit murder,<sup>2</sup> firearms not to be carried without a license,<sup>3</sup> carrying firearms in public in Philadelphia,<sup>4</sup> and possession of an instrument of crime.<sup>5</sup>

That same day, the Defendant was sentenced to an aggregate sentence of life imprisonment without the possibility of parole.

On April 12, 2022, the Defendant filed a Post-Sentence Motion which was denied on August 8, 2022.

On August 8, 2022, the Defendant filed a Notice of Appeal to the Superior Court.

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<sup>1</sup> 18 Pa.C.S. § 2502(a).

<sup>2</sup> 18 Pa.C.S. § 903.

<sup>3</sup> 18 Pa.C.S. § 6106.

<sup>4</sup> 18 Pa.C.S. § 6108.

<sup>5</sup> 18 Pa.C.S. § 907.

On August 31, 2022, the Defendant filed a Rule 1925(b) Statement of Matters Complained of on Appeal, pursuant to an order of the court, raising the following issues:

1. Whether the Trial Court erred and otherwise abused its discretion by denying counsel's motion for a mistrial following inappropriate statements during the Commonwealth's closing argument that amounted to prosecutorial misconduct and exploited objectionable questions and answers from earlier in the trial? See N.T. April 4, 2022 at 109-110.
2. Whether the Trial Court erred and otherwise abused its discretion in denying the mistrial motion made by counsel after it was determined that the Commonwealth failed to disclose that a search warrant was executed on the rented Kia Soul and that pertinent evidence was recovered, all of which violated discovery rules, affected counsel's trial strategy and Mr. Young's ability to reject the plea offer in a knowing, intentional, and voluntary fashion? See N.T. April 1, 2022 at 5-6.
3. Whether Mr. Young's rejection of the plea offer was knowing, intentional and voluntary where the existence of material, relevant evidence was not disclosed in violation of the rules of discovery?
4. Whether Mr. Young's state and federal due process rights were violated insofar as the Court did not conduct a full and complete colloquy to ensure that Mr. Young was waiving his right to twelve jurors in a knowing, intentional and voluntary fashion and his election was in fact not knowing, intentional and voluntary?
5. Whether the evidence was insufficient to prove the charges against Mr. Young insofar as:
  - a. The Commonwealth failed to prove identity and specific intent to kill beyond a reasonable doubt?
  - b. The Commonwealth failed to prove an agreement to commit murder?
6. Whether the trial court abused its discretion in ruling on Mr. Young's challenge to the weight of the evidence?
7. Whether the Court erred by permitting the Commonwealth to show a video of Mr. Young signing paperwork following his arrest insofar as it was a violation of his right to remain silent and his right to confrontation?

## **FACTS**

This case stems from the murder of Basil Adams (hereinafter the "decedent") on March 25, 2017.

Police Officer Patrick Dooley testified that he responded to a radio call of a person with a gun and a person shot on March 25, 2017, at 12:48 p.m., in an alleyway between 900 Sanger street and 900 Carver St, in Philadelphia, Pennsylvania. Officer Dooley and his partner, Officer Postowski, were the first officers to arrive on location. The decedent was unresponsive, laying in the middle of the alleyway, with multiple gunshot wounds. Officer Dooley placed the decedent in his vehicle and drove the decedent to Einstein Hospital where he died. Notes of Testimony (“N.T.”), 3/29/2022 at 79-95.

Dejahvaun Vital testified that he was hanging with his friend Jabbar Young (Jabbar) in the alleyway at 919 Sanger Street. Jabbar sold marijuana in that alleyway at the back of his house, and the Defendant was a customer. The Defendant parked his black Kia Soul in the alleyway and spoke to Jabbar, who retrieved marijuana from his house and gave it to the Defendant. The decedent arrived on foot shortly thereafter and spoke to Jabbar. While they were talking, the Defendant asked Vital to move the Defendant’s car, which Vital did. *Id.*, at 107-120.

Vital parked the car and observed the decedent talking to Jabbar. The Defendant then came up behind the decedent, who reacted by raising his hands, but then turned and ran. Vital heard gunshots and saw the Defendant firing a silver gun at the decedent, who was struck and fell to the ground. Jabbar also raised a gun and pointed it at the decedent as he was running but did not fire it. *Id.*, at 120-122, 189.

Vital jumped into the Defendant’s car and left the alleyway. The Defendant ran from the alley on foot. Vital picked up Jabbar in the front of Jabbar’s house. While driving, they spotted a police vehicle, parked, and began walking. They were apprehended by officers. *Id.*, at 123-131.



A security video of the killing was played for Vital, and he identified himself, the decedent, Jabbar, and the Defendant in the video. *Id.*, at 139-146.

Dr. Khalil Wardak, Assistant Medical Examiner, testified that he reviewed the photographs and autopsy report written by Dr. Sam Gulino, who examined the body of Basil Adams. The autopsy revealed two gunshot wounds to the decedent's back. Two bullet fragments were recovered from the decedent's body. Dr. Wardak opined that the decedent's cause of death was multiple gunshot wounds, and the manner of death was homicide. *Id.*, at 243-255.

Sergeant Joseph Burke testified to interviewing a female near the scene who overheard the gunshots and saw a small black SUV, possibly a Kia, drive away. Sergeant Burke searched the area for suspects, and came across a small, dark-colored SUV, which he pursued. The vehicle stopped, and the occupants, who were Vital and Jabbar, started walking quickly away from the vehicle. They were eventually apprehended on foot by Sergeant Burke and taken in for investigation. *Id.*, at 256-274.

Officer Terry Tull, from the Crime Scene Unit, investigated the alleyway within hours of the incident. Officer Tull recovered one silver lead core bullet fragment, some personal items, but no fired cartridge casings. *Id.* 20-50.

Officer Lawrence Flagler, from the Firearms Identification Unit, examined the bullet fragment recovered by Officer Tull. Officer Flagler could not determine if the bullet fragment matched the two bullet fragments recovered from the decedent's body. All three bullet fragments had a similar twist pattern and were expanding hollow point bullets. Lastly, Officer Flagler observed the surveillance video of the shooting. He opined that the decedent was shot and killed with a revolver and that Jabbar was holding a semi-automatic gun. *Id.* at 57-101.

Detective Thorstein Lucke, from the Homicide Unit, testified that he extracted information from Jabbar's Apple iPhone. Jabbar's phone records showed that he often texted and called the Defendant. The texts were in relation to the Defendant buying marijuana from Jabbar, and the calls were typically under a minute. *Id.*, at 175-210.

Detective Lucke testified to his experience of recovering, archiving, and analyzing video footage. Two surveillance videos were recovered from the incident. One of the videos was from a private residence at 920 Carver Street, and the other was from a minimarket in the 800 block of Sanger Street. A video compilation was presented by Detective Lucky to the jury. *Id.*, at 217-228.

The video of the murder was not continuous since the camera in the alley was motion activated, however, it included audio. The footage showed the decedent arrive on foot and approach Jabbar, who was standing in the alleyway at the back of his home. The defendant can be seen secreting himself in an alcove on the side of the house.

The video is then reactivated showing Jabbar exiting his house and interacting with the decedent a second time. The Defendant can be seen coming out of the alcove and approaching the decedent. The Defendant's Kia Soul is being moved from its parking spot, which is in camera view, out of the view of the camera. The Defendant then points a gun at the decedent who turns and runs. The Defendant fires toward the decedent as he runs out of the camera's range five times with his left hand. The gunshots are heard on the audio from the footage. Jabbar then runs after the decedent and points his gun at the decedent but does not fire his weapon.

After the shooting, the Kia Soul backs up and stops for Jabbar, who does not get in, but runs toward his house. The Kia drives in the same direction as the Defendant but he does not get in the car. The Defendant exits the alleyway onto Summerdale Avenue, heading south. The Kia exits the alleyway onto Summerdale Avenue heading North, towards the front of Jabbar's house.

Two photos were shown in the video compilation to compare the Defendant to the shooter. The photos were recovered from Jabbar's cell phone and depicted the Defendant in the same alleyway a few days before the incident. The photos show the Defendant in white sneakers, black pants, and a black shirt with a small logo. The clothing the Defendant wore in the photos was similar to his outfit in the video. Furthermore, the Defendant's tattoos and the Kia Soul can be seen in the pictures and on the video. *Id.*

Jabbar Young testified that he sold marijuana in the alleyway behind his house to people in the neighborhood. Jabbar regularly sold marijuana to the Defendant and hung out with him in that alleyway. The decedent was also a customer. N.T. 3/31/2022, at 99-105.

Prior to the murder, the decedent gave Jabbar counterfeit bills while purchasing marijuana. Jabbar told Vital and the Defendant that he wanted to confront the decedent about the counterfeit money. *Id.*, at 105-113.

On the day of the incident, the decedent called Jabbar to buy some marijuana. Jabbar was hanging out with Vital, and the Defendant unexpectedly arrived in his Kia Soul about five minutes before the decedent. *Id.*

When the decedent arrived, Jabbar retrieved some marijuana from his house for him and confronted the decedent about previously paying with counterfeit money. The decedent denied giving Jabbar counterfeit money. Just then, the Defendant came up behind the decedent and put a gun to his back. The decedent ran and the Defendant fired the gun five times. *Id.*, at 115-123

Jabbar admitted to raising his gun to shoot the decedent but did not fire after he saw how many times the decedent was hit. *Id.*

After the shooting, the Defendant ran away, Vital drove away, and Jabbar ran into his house. Jabbar put his gun in a safe, went out the front door and entered Defendant's Kia Soul that

Vital was driving. They were eventually spotted by officers in the car, so they parked, began walking and were promptly apprehended. While in custody, Jabbar told Officers that the Defendant was the shooter. *Id.*, at 135-145.

The video of the incident was played for Jabbar. He identified each person in the video. *Id.*, at 126-135.

Detective Joseph Knoll testified to reviewing a medical checklist with the Defendant when he was brought in for questioning. The Defendant used his left hand to sign the paperwork. *Id.*, at 125-131.

## ANALYSIS

### ISSUE I

Whether the Trial Court erred and otherwise abused its discretion by denying counsel's motion for a mistrial following inappropriate statements during the Commonwealth's closing argument that amounted to prosecutorial misconduct and exploited objectionable questions and answers from earlier in the trial? See N.T. April 4, 2022 at 109-110.

An abuse of discretion "is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." *Commonwealth v. Poplawski*, 130 A.3d 697, 718 (Pa. 2015), citing *Commonwealth v. Walker*, 92 A.3d 766, 772–73 (Pa. 2014). Furthermore, a mistrial is an extreme remedy, and is only appropriate when an incident occurs that deprives the defendant of a fair trial. *Commonwealth v. Szakal*, 50 A.3d 210, 218 (Pa. Super. 2012).

A mistrial is granted "only where the incident upon which the motion is based is of such a nature that its unavoidable effect is to deprive the defendant of a fair trial by preventing the jury from weighing and rendering a true verdict." *Commonwealth v. Simpson*, 754 A.2d 1264, 1272

(Pa. 2000). A mistrial “is not necessary where cautionary instructions are adequate to overcome prejudice.” *Commonwealth v. Cash*, 137 A.3d 1262, 1273 (Pa. 2016) (citing *Commonwealth v. Chamberlain*, 30 A.3d 381, 422 (Pa. 2011)).

The statement at issue made by the Commonwealth is as follows:

**The Commonwealth:** On this date, March 25, 2017, the Defendant ran. After he killed Basil Adams, he ran. He ran because he was guilty of murder. He ran because he had a guilty conscience. He ran because he knew if he stuck around, he would stay. He would get arrested. If he stuck around, he would get arrested, so he ran and he kept running. He has been running from the truth ever since. For 18 months, he ran, when his mom knew that there was a warrant out for his arrest, when his friends knew there was a warrant out for his arrest.

**Defense Counsel:** I will object, Your Honor.

**The Court:** Sustained.

**Defense Counsel:** Move to strike.

**The Court:** Stricken.

**The Commonwealth:** He kept running. They were passing out all of the wanted posters and he kept running. Are we to believe that his mom and his friends didn't tell him that they talked to detectives?

**Defense Counsel:** Objection, Your Honor.

**The Court:** Sustained.

**Defense Counsel:** Move to strike

**The Court:** Stricken

**Defense Counsel:** I have a motion for mistrial.

**The Court:** No, that is denied. It's argument, Counsel

N.T. 4/4/2022, at 109-110.

After closing arguments, defense counsel renewed her objection claiming that the Commonwealth's argument regarding flight contained hearsay evidence that was not admitted at trial. Specifically, counsel claimed that the Commonwealth argued that the Defendant's mom told

the Defendant that he was wanted by detectives, which was hearsay. Counsel misapprehended the Commonwealth's argument. The argument was asking the jury to make a common-sense inference that if Defendant's mom and Defendant's friends knew he was wanted, one could infer that someone told the Defendant that he was wanted. This argument makes a fair inference based on the evidence and does not include hearsay since Detective Bass testified that he told the Defendant's mom and Defendant's friends that the Defendant was wanted. N.T. 4/4/2022, at 149-150, N.T. 3/30/2022, at 122-125, 135. In addition, knowledge can be inferred since the Defendant was featured twice in Philadelphia Daily News, under the 'Week's Most Wanted' section. N.T. 3/30/2022, at 131-132, 138.

Here, the court informed the jury at the start of the trial that statements made by the attorneys are argument and not evidence. N.T. 3/29/2022, at 44-46. Furthermore, when the court charged the jury, it was informed to make its determination based on facts and not the attorneys' arguments. N.T. 4/4/2022, at 114. Lastly regarding the Defendant's flight, the jury was given a flight charge so inferences during argument regarding flight were admissible. *Id.*, at 139.

### **ISSUES II & III**

Whether the Trial Court erred and otherwise abused its discretion in denying the mistrial motion made by counsel after it was determined that the Commonwealth failed to disclose that a search warrant was executed on the rented Kia Soul and that pertinent evidence was recovered, all of which violated discovery rules, affected counsel's trial strategy and Mr. Young's ability to reject the plea offer in a knowing, intentional and voluntary fashion? See N.T. April 1, 2022 at 5-6.

Whether Mr. Young's rejection of the plea offer was knowing, intentional and voluntary where the existence of material, relevant evidence was not disclosed in violation of the rules of discovery?

By way of background, the defense asserted in its opening that the Kia Soul that was observed fleeing the scene could not be connected to the Defendant. On the fourth day of trial, the

Commonwealth discovered that there was a search warrant executed on the Defendant's Kia Soul resulting in the recovery of a pill bottle with the Defendant's name and address which contained a bullet. N.T. 4/1/2022, at 1-4. The Commonwealth and Defense agreed that this evidence was not intentionally withheld, and the court ruled that the evidence could not be introduced at trial due to its late discovery. *Id.* at 5.

The Commonwealth did not introduce the pill bottle as evidence. Defense Counsel argued again, at closing, that there was no evidence tying the Defendant to the Kia Soul. N.T. 3/29/2022, at 72-74, N.T. 4/4/2022, at 25-29. The Commonwealth argued that the car belonged to the Defendant based on the testimony of witnesses that the Defendant arrived in the car, asked Vital to move the car, and was depicted in a picture standing with the car. N.T. 3/29/2022, at 53, 56-58, N.T. 4/4/2022, at 98-99.

The Due Process clause of the Fourteenth Amendment of the U.S. Constitution requires the prosecution to disclose evidence favorable to the accused where the evidence is material to either guilt or punishment. *Brady v. Maryland*, 373 U.S. 83 (1963). To establish a violation under *Brady*, the Petitioner must show: (1) the prosecution suppressed the evidence, either willfully or inadvertently; (2) the evidence is favorable to the defense; and (3) the evidence is material. *Commonwealth v. Birdsong*, 24 A.3d 319, 327 (Pa. Super. 2011). Evidence is material if there is a reasonable probability that, had the evidence not been suppressed by the prosecution, the result of the proceeding would have been different. *Id.* The Defendant must have been prejudiced by the prosecution's failure to disclose the material evidence. *Commonwealth v. Chambers*, 807 A.2d 872, 887 (Pa. 2002).

The evidence at issue fails two of the *Brady* prongs, as the evidence was not favorable to the defense, and the evidence was not material but cumulative, as two witnesses testified to the vehicle belonging to the Defendant. Moreover, there was never any contention that the Defendant left the scene in the car since he can clearly be seen on video leaving on foot.

The defense's strategy was not affected in any way by the late notice of the evidence recovered from the car since it was not admitted into evidence and the defense was able to maintain its argument that there was no direct evidence linking the Defendant to the Kia Soul. Furthermore, Counsel entered a stipulation before the jury that the Kia Soul was rented by an unknown person. Finally, whether or not the Kia Soul belonged to the Defendant was not a material issue at trial. It merely was corroboration that the Defendant was on scene, for which there was overwhelming evidence independent of the car.

Therefore, the court did not abuse its discretion in denying the Defendant's mistrial motion.

Regarding the withheld evidence affecting the Defendant's plea offer, it could not have affected the decision to plead guilty since the Defendant did not know it existed at the time of his plea and it was not used at trial, so it played no part in the calculus of the decision or the outcome of the trial.

If the Defendant's argument is that knowing of this evidence beforehand would have swayed his decision to one of pleading guilty, it is highly unlikely that the Defendant would have pleaded guilty had he known that the pill bottle with his name would be used against him at trial, since the shooter did not flee in the car, and the car was rented to an unknown person. Moreover, the pill bottle was merely cumulative of eyewitness testimony that the car belonged to the Defendant. Quite simply, the car was not a material fact at this trial, such that it would tip the scales in favor of a plea deal.



Therefore, the Defendant's decision to reject the plea deal was knowing, intelligent and voluntary.

#### **ISSUE IV**

Whether Mr. Young's state and federal due process rights were violated insofar as the Court did not conduct a full and complete colloquy to ensure that Mr. Young was waiving his right to twelve jurors in a knowing, intentional and voluntary fashion and his election was in fact not knowing, intentional and voluntary?

On the last day of trial, April 4, 2022, juror number six was hospitalized. There were no alternates remaining as they had previously been released due to scheduled flights. Prior to the conclusion of trial, the court asked the Defendant if he wanted to delay the trial until juror number six was out of the hospital or proceed with eleven jurors.

The following colloquy was performed by the court:

**The Court:** Mr. Young, I already know your age. Are you under the influence of drugs or alcohol today?

**The Defendant:** No, ma'am.

**The Court:** First of all, for the record, two jurors were released Friday afternoon due to flights that they have, although one told us about it. The second one did not tell us about it. So, we didn't anticipate that we would lose two jurors. We knew we would lose one alternate. So, they were released and now we are down to 12 and today we are going to close, and I am going to give the jury on the law and a call came in this morning that juror number 6 is in the hospital. So, you have the option of waiting for juror number 6 to get out of the hospital. We are not sure how long they will be in there. At this point, he was saying he should be out by the end of the day. We are not certain about that. So, you have the choice of waiting for him to come back, so that you have 12 jurors or to go with 11. Did your attorney talk with you about that?

**The Defendant:** Correct.

**The Court:** Did you understand everything that she was telling you?

**The Defendant:** Yes.

**The Court:** Did she give you her advice on that?

**The Defendant:** Yes, she gave me her advice.

**The Court:** What was her advice?

**The Defendant:** Her advice was if you want to go with it -- I will go with it, yes.

**The Court:** She was telling you that you would have to make up your mind?

**The Defendant:** Make up my mind, yes. It is my decision, yes. It is my decision.

**The Court:** What do you want to do? Do you want to wait for juror number 6 to get out of the hospital or proceed with 11?

**The Defendant:** I will proceed with 11, Your Honor.

**The Court:** Did anyone force you to do that?

**The Defendant:** No.

**The Court:** Did anyone threaten you to do that?

**The Defendant:** No.

**The Court:** Are you doing it of your own free will?

**The Defendant:** Yes.

**The Court:** Thank you.

N.T. 4/4/2022, at 6-9.

Not only is this issue waived since the Defendant failed to object; the Defendant actually assented after a full colloquy.

Pennsylvania Rule of Criminal Procedure 641 provides:

In all cases, at any time after a jury of twelve is initially sworn and before verdict, the defendant and the attorney for the Commonwealth, with approval of the judge, may agree to a jury of fewer than twelve but not fewer than six. Such agreement shall be made a part of the record. The verdict in such a case shall have the same force and effect as a verdict by a jury of twelve.

Pa. R. Crim. P. 641

In analyzing the language of Pa. R. Crim. P. 641, the Superior Court has held “[i]f a juror is dismissed, then only when so done over an objection from the defendant, may he refuse to proceed with fewer than twelve jurors. Thus, it would appear that the claim is waivable.” *Commonwealth v. Stewart*, 448 A.2d 598, 600 (Pa. Super.1982) (see also *Commonwealth v. Sayon*, 55 EDA 2015, 2015 WL 6161415, at \*4 (Pa. Super. Ct. Oct. 14, 2015).

Therefore, The Defendant’s due process rights were not violated.

## **ISSUE V**

Whether the evidence was insufficient to prove the charges against Mr. Young insofar as:

- a. The Commonwealth failed to prove identity and specific intent to kill beyond a reasonable doubt?
- b. The Commonwealth failed to prove an agreement to commit murder?

In reviewing the sufficiency of the evidence, the higher court must determine whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the factfinder to find every element of the crime beyond a reasonable doubt. In applying the above test, the higher court will not weigh the evidence and substitute their judgment for that of the factfinder. In addition, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the factfinder unless the evidence is so weak and inconclusive, that as a matter of law, no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated, and all evidence actually received must be considered. Finally, the finder of fact while

passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Furthermore, in viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, the court must give the prosecution the benefit of all reasonable inferences to be drawn from the evidence. *Commonwealth v. Harden*, 103 A.3d 107, 111 (Pa. Super. 2014) (citation and quotation omitted).

#### *First-Degree Murder*

First-Degree Murder is any unlawful killing committed with malice and the specific intent to kill. 18 Pa.C.S. § 2502(a); *Commonwealth v. Johnson*, 42 A.3d 1017, 1025 (Pa. 2012). Evidence is sufficient to sustain a conviction for first-degree murder when the Commonwealth establishes that: (1) a human being was unlawfully killed; (2) the accused is responsible for the killing; and (3) the accused acted with specific intent. 18 Pa.C.S. § 2502(a); *Commonwealth v. Chambers*, 980 A.2d 35, 44 (Pa. 2009). The Commonwealth may establish that a defendant intentionally killed the victim wholly 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)).

The Defendant claims that the Commonwealth failed to establish the identity of the shooter. The identity of the shooter was established through the testimony of eyewitness, co-conspirator, Jabbar Young, and eyewitness Dejahvaun Vital, which was corroborated by the video of the murder.

Vital knew the Defendant; he had seen him at least ten times in the past. Vital observed the Defendant shoot the decedent and identified him in the video and in court. Likewise, Jabbar Young knew the Defendant because he was a friend of Jabbar's older brother and was a regular purchaser

of marijuana from Jabbar. Phone records corroborated that the two had cell phone communications. Jabbar identified the Defendant in the video and in the courtroom.

The evidence of identity was sufficient to enable the jury to find it was the Defendant who committed the murder beyond a reasonable doubt.

The Defendant claims that the Commonwealth did not present sufficient evidence to establish that he possessed the specific intent to kill. The specific intent to kill is established through the video which captured the entire incident. The Defendant fired a gun at the decedent multiple times, hitting him twice in the upper right back, collapsing his lung and lacerating his brachiocephalic artery, causing massive blood loss. Such evidence certainly establishes that the Defendant used a deadly weapon on a vital part of the victim's body, which is sufficient to enable the jury to find the specific intent to kill, beyond a reasonable doubt.

### *Conspiracy*

To sustain a conviction for Criminal Conspiracy, the Commonwealth must demonstrate, beyond a reasonable doubt, that the defendant: (1) entered into an agreement to commit or aid in an unlawful act with another; (2) with a shared criminal intent; and (3) an overt act in furtherance of the conspiracy was done. *Com. v. Feliciano*, 67 A.3d 19, 25-26 (Pa. Super. 2013). The conduct of the parties and the totality of circumstances may create a web of evidence linking the defendant to the alleged conspiracy beyond a reasonable doubt. *Id.*, 26. The conspiratorial agreement can be inferred from a variety of circumstances including the relationship between the parties, knowledge of the crime, participation in the crime, and the circumstances and conduct of the parties. *Id.*

The evidence presented by the Commonwealth and reasonable inferences deduced therefrom, when taken in the light most favorable to the Commonwealth as verdict winner, support

the jury's verdict that the Defendant conspired with Jabbar Young to confront the decedent about counterfeit money, which culminated in the shooting death of the decedent.

The Commonwealth presented direct evidence from eyewitness co-conspirator, Jabbar Young, as to the words spoken to initiate the conspiracy. Jabbar told the Defendant that he wanted to confront the decedent regarding his previous payment for drugs with counterfeit money and that he was unsure how the decedent would respond. The Defendant ordered eye-witness Vital to move the Defendant's car out of the camera range. While Jabbar confronted the decedent, the Defendant secreted himself in a nearby alcove a few feet away. Once Jabbar confronted the decedent, the Defendant came from behind and shoved a gun into the decedent's back. The decedent ran, and the Defendant followed, shooting directly at the decedent five times. Meanwhile, Jabbar pulled his own weapon and pointed it at the decedent but did not fire because the decedent was already down. Jabbar's testimony was corroborated by the video of the incident and Dejahvaun Vital's testimony.

The circumstances surrounding the murder and conduct of the Defendant and Jabbar Young established a conspiracy beyond a reasonable doubt.

## **ISSUE VI**

Whether the trial court abused its discretion in ruling on Mr. Young's challenge to the weight of the evidence?

A claim alleging that the verdict is against the weight of the evidence "is addressed to the discretion of the trial court." *Commonwealth v. Clay*, 64 A.3d 1049, 1054–55 (Pa. 2013). Appellate review is therefore limited to determining whether the trial court abused its discretion in denying defendant's motion, not whether the verdict is in fact against the weight of the evidence. *Commonwealth v. Champney*, 832 A.2d 403, 408 (Pa. 2003). "[A] true weight of the evidence challenge concedes that sufficient evidence exists to sustain the verdict but questions which

evidence is to be believed.” *Commonwealth v. Thompson*, 106 A.3d 742, 758 (Pa. Super. 2014). In order to prevail, a defendant must show that the evidence is “so tenuous, vague and uncertain that the verdict shocks the conscience of the court.” *Commonwealth v. Sullivan*, 820 A.2d 795, 806 (Pa. Super. 2003). Consequently, a challenge to the trial court’s determination that the verdict was not against the weight of the evidence is “[o]ne of the least assailable reasons for granting . . . a new trial.” *Commonwealth v. Sebolka*, 205 A.3d 329, 341 (Pa. Super. 2019) (citations omitted). A trial judge should not grant a new trial due to “a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion.” *Commonwealth v. Clay*, 64 A.3d 1049, 1055 (Pa. 2013). Only where the jury verdict “is so contrary to the evidence as to shock one’s sense of justice” should a trial court afford a defendant a new trial. *Id.*

Here, the jury’s verdict did not “shock one’s sense of justice.” The murder was captured on video which corroborated the testimony of eyewitness’ Dejahvaun Vital and Jabbar Young, who knew the Defendant and identified him as the shooter. Photos from Jabbar’s phone show the Defendant wearing clothes matching those the shooter was wearing in the video. The photos also depict the Defendant’s sleeve of tattoos, which match that of the shooter in the video. Therefore, the verdict was not against the weight of the evidence.

## **ISSUE VII**

Whether the Court erred by permitting the Commonwealth to show a video of Mr. Young signing paperwork following his arrest insofar as it was a violation of his right to remain silent and his right to confrontation?

The video of the murder shows that the shooter fired the weapon with his left hand.

During the trial, Detective Joseph Knoll testified to observing the Defendant use his left hand to sign a medical checklist when he was brought into the police station for questioning. A video showing the same was then published to the jury. N.T. 4/1/2022, 125-132.

In *Commonwealth v. Jefferson*, 445 Pa. 1, 8, 281 A.2d 852, 856 (1971) it was held that the Fifth Amendment self-incrimination provisions did not apply to nontestimonial means of identification. Our Courts have held in many cases that the immunity from self-incrimination is intended to extend the privilege to speech or the equivalent of speech.

*Commonwealth v. Moss*, 334 A.2d 777, 780 (Pa. Super. 1975)

‘(B)oth federal and state courts have usually held that it (the privilege) offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand to assume a stance, to walk, or to make a particular gesture. The distinction which has emerged, often expressed in different ways, is that the privilege is a bar against compelling ‘communications’ or ‘testimony,’ but that compulsion which makes a suspect or accused the source of ‘real or physical evidence’ does not violate it.’ (Emphasis supplied). *Schmerber v. California*, 384 U.S. 757, 764, (1966).

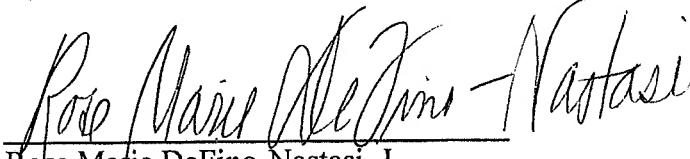
*Commonwealth v. Kahley*, 356 A.2d 745, 753 (Pa. 1976)

In accordance with caselaw, the act of the Defendant writing is a physical act and not a statement; hence, it is nontestimonial. Furthermore, there was no compulsion by detectives; the Defendant was merely signing routine medical paperwork. Lastly, the dominant hand one uses is public, for all to see. Therefore, the court did not err when it permitted the Commonwealth to show a video of Mr. Young signing paperwork.

### CONCLUSION

Based on the foregoing, the judgment of sentence of the trial court should be affirmed.

By the Court:

  
Rose Marie DeFino-Nastasi, J.



***Commonwealth v. Tajmir Young***  
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Opinion

**Proof of Service**

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

Defendant: Tajmir Young  
SCI Camp Hill  
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Camp Hill, PA 17001

Type of Service: Certified Mail

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Type of Service: First-class mail

District Attorney: Appeals Unit  
Philadelphia District Attorney's Office  
3 South Penn Square  
Philadelphia, PA 19107

Type of Service: Inter-Office mail

Date: October 31, 2022



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Michael Padasak  
Judicial Clerk to the  
Honorable Rose Marie DeFino-Nastasi