NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JASMIN MANUEL YOUNG, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3094 EDA 2011

Appeal from the Judgment of Sentence June 14, 2011
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0003724-2009

BEFORE: BOWES, GANTMAN, and MUSMANNO, JJ.

MEMORANDUM BY BOWES, J.: Filed: April 5, 2013

Jasmin Manuel Young appeals from the judgment of sentence of thirty-two to sixty-five years incarceration that was imposed after a jury found him guilty of two counts of attempted murder, four counts of aggravated assault, and one count each of possession of a firearm with an altered manufacturer's number and carrying an unlicensed firearm. We affirm.

Appellant's convictions stem from a shooting incident that occurred at approximately 1:30 a.m. on April 18, 2009, in the vicinity of 10th and Linden Streets, Allentown, where the Hotel Grand, a bar, is located. Police were called to the area based on multiple reports of shots fired on 10th and Linden Streets by a male in a red shirt. Michelle Caula's call to the police was generated by the following facts. She was in her vehicle stopped at a light controlling the intersection of 10th and Linden Streets when she saw

numerous people flee from Hotel Grand and then saw and heard four to five gunshots. She observed an individual wearing a red shirt, whom she could not identify, holding the gun responsible for the shots.

Allentown Police Officer David Howells, III, was the first responding officer at the scene within seconds of the reports. As he approached 10th and Linden Streets, Officer Howells did not see anyone and proceeded toward the parking lot used for the Hotel Grand. He looked down Plum Street, an alley located behind the Hotel Grand that led to the parking lot, and observed a large group that appeared as if "it was split up into two–two groups. One group was huddled around the male in the red shirt[.]" N.T. Trial, 3/8/11, at 138. That group was attempting to pull the man, who was the only individual in a red shirt, away from the other group.

Officer Howells proceeded down Plum Street. He heard people in the alley yell that police were in the vicinity, and everyone scattered in front of the officer. At that time, Officer Howells received information from "the bar owner saying that the male, the actor, the shooter, who was in the red shirt, is now in the back alley behind the Hotel Grand, which is . . . Plum Street." ***Id***. at 142. Officer Howells also was informed that the red shirt contained "some type of lettering or graffiti type of design on the back of this shirt." ***Id***. at 142-43. The red shirt on the man who was pulled away from the group of people had a design on the back.

Therefore, Officer Howells followed the male in the described shirt, Appellant, down Plum Street and into a parking lot. Officer Howells stopped and exited his marked cruiser, which had its lights activated. Appellant was the only suspect in the parking lot. By that time, Allentown Police Officer Alex De la Iglesia had arrived at the scene on foot. Officer Howells heard Officer De la Iglesia direct the following language at Appellant, "Stop – police – show me your hands." ***Id***. at 147. Appellant disregarded this command.

Appellant's back was toward Officer Howells and his hands were in front of his body. Officer Howells immediately repeated the directive that Officer De la Iglesia had disseminated, demanding that Appellant stop and show his hands. Appellant again failed to respond. Instead, Appellant moved his body and lifted his left arm. At that point, Officer Howells saw a black revolver. At trial, he described the ensuing events: "I saw the barrel come out — slowly—slowly more. Then I saw the cylinder, where the bullets are kept in the revolver, I saw that protrude from his arm originally pointing directly right at Officer De la Iglesia." ***Id***. at 149. Appellant immediately pivoted in the direction of Officer Howells. While Appellant was making these movements, Officer Howells "heard the manipulation of the trigger, the Defendant pulling the trigger" and attempting "to fire his gun." ***Id***. at 149. Appellant fired his gun twice, but it was empty, so Officer Howells only heard "click — click — two clicks at that point." ***Id***.

Officer Howells immediately alerted Officer De la Iglesia that Appellant had a firearm, and he fired one shot at Appellant. Officer De la Iglesia also fired a single shot at Appellant. Since Appellant remained standing and armed with his gun, Officer Howells fired his weapon a second time, and Appellant fell to the ground. Officer Howells approached Appellant and observed a .38 caliber weapon two to three feet above Appellant's left shoulder. An ambulance was immediately summoned, and Appellant was taken to the Lehigh Valley Hospital. The Commonwealth's evidence established that the weapon found next to Appellant was operational, and, it contained five bullet casings from spent bullets, the maximum that it could hold.

Officer De la Iglesia testified as follows. When he first arrived at the Hotel Grand, he encountered a man in a black shirt armed with a handgun. That man was a security guard, told the officer that someone had shot at him, and directed the officer to Plum Street. At that point, Officer Howells broadcast that the shooter was in a red shirt and was heading toward the parking lot at the end of Plum Street. Officer De la Iglesia proceeded to the area and observed Officer Howells's cruiser and the crowd of people dispersing in front of it. Officer De la Iglesia caught up with the cruiser after it was parked. He saw Appellant in the parking lot and drew his service weapon. The officer testified that at that point,

> I yelled, "Police — stop." I then yelled, "Let me see your hands." "Let me see your hands," one more time, because I wasn't getting any response or compliance.
>
> And then, the third time, I said, I upped up another level and I said, "Let me see your f__ing hands."

N.T. Trial, 3/9/11, at 45. Officer De la Iglesia overheard Officer Howells giving Appellant, who continued to be nonresponsive to the directives, the identical commands.

Officer De la Iglesia then observed Appellant's left shoulder "lift up in his armpit area. His right side moves over and an object appears underneath his armpit. I then see him look over his shoulder." ***Id***. at 48. Officer Howells screamed, "Gun — Gun — Gun." ***Id***. Officer De la Iglesia saw the revolver at that point and heard the "trigger being pulled and the hammer striking." ***Id***. The officer related that he definitely heard two hammer strikes and possibly a third. ***Id***. at 49. Officer De la Iglesia stated, "I heard the hammer strikes, I believed that I was going to be shot and possibly killed." ***Id***. Officer De la Iglesia indicated that by then, Allentown Officer Kyle Pammer had arrived on the scene and was located behind Officer De la Iglesia. Officer De la Iglesia continued that "the gun was pointed immediately in our direction, so I was in fear for both of our lives." ***Id***. He discharged his service revolver once at Appellant and heard Officer Howells fire his weapon twice.

Allentown Police Officer Patrick Bull testified as follows. On April 22, 2009, he was guarding Appellant in his room at Lehigh Valley Hospital.

When a nurse started to change Appellant's bandages, Appellant asked her if he was still bleeding. The nurse responded that he would recover from his injuries and that he was not bleeding. Shortly thereafter, the nurse returned to check on Appellant's vital signs. "And at that point [Appellant] looked up at her and then said, 'Did I shoot somebody?'" N.T. Trial, 3/10/11, at 30. Appellant was interviewed on April 23, 2009, at the hospital by police. He admitted that he possessed a revolver on the night of the shooting and represented that he purchased it in Philadelphia three years prior to the incident for protection.

Appellant's defense was that he was not in possession of a gun on the night in question. Jabil Myers, his friend, testified as follows. On April 17-18, 2009, they were going from bar to bar to celebrate Appellant's birthday. When they arrived at the Hotel Grand, they were checked for weapons prior to being admitted. A fight occurred in the bar, but Appellant and Myers were not participants. Thereafter, Appellant, who was wearing a red shirt, exited the Hotel Grand. Myers stated that another person fired the shots outside the Hotel Grand and that he did not see Appellant with a gun that night. Vontoya Grimsley, who lived with Appellant, also represented to the jury that she did not see Appellant in possession of a gun that day. She related that she saw the shooting from her residence, which was in the vicinity of the parking lot where Appellant was shot while he was adjusting his pants, and that she did not see a gun on the ground after he was shot by police.

Based on this evidence, Appellant was convicted by a jury of two counts of attempted murder of Officers Howells and De la Iglesia, two counts of aggravated assault under 18 Pa.C.S. § 2702(a)(2) as to Officers Howells and De la Iglesia, two counts of aggravated assault under 18 Pa.C.S. § 2702(a)(6) as to Officers Howells and De la Iglesia, carrying an unlicensed firearm, and possession of a firearm without a license. He proceeded to sentencing on June 14, 2011, when the Commonwealth withdrew a pending charge of persons not to possess a firearm.

The court had the benefit of a presentence report. Appellant had a prior record score of four, stemming from drug charges and one escape conviction, and the deadly weapon enhancement applied. Appellant received standard range sentences of ten to twenty years imprisonment on the two attempted murder counts, and standard range sentences of five to ten years on the two counts of § 2702(a)(2) aggravated assault. These sentences were all consecutive. Appellant received no sentence as to the two counts of § 2702(a)(6) aggravated assault. On the firearms offenses, Appellant received standard range sentences that were concurrent with each other, but consecutive to the sentences imposed on the other four offenses, which amounted to an additional two to five years incarceration. Appellant's overall sentence was thirty-two to sixty-five years imprisonment.

Appellant filed a post-sentence motion, which included a claim that the verdict was against the weight of the evidence, and a request that the

sentence be modified. That motion was denied after a hearing and this appeal followed. Appellant raises these averments on appeal:

> (A) Whether the trial court abused its discretion in sentencing the Appellant to 32 to 65 years imprisonment where the sentence was clearly unreasonable and excessive and the court placed undue emphasis upon the impact to the victims?
>
> (B) Whether the evidence was insufficient and against the weight of the evidence to establish the offenses of attempted homicide where the Appellant pointed an unloaded weapon at the officers and they heard two "clicks"?
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> (C) Whether the evidence was insufficient to establish that the Appellant committed the crimes of aggravated assault under 18 Pa.C.S.A. § 2702(a)(2) when he pointed an unloaded gun at the officers and clicked it two times?
>
> (D) Whether the trial court erred in failing to suppress the Appellant's statements made in the hospital where there was unreasonable delay between arrest and the preliminary arraignment?
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> (E) Whether the trial court erred in failing to suppress the Appellant's statements where the Appellant invoked his right to remain silent when he refused to allow detectives to audiotape his [s]tatement?
>
> (F) Whether the trial court erred in failing to preclude the Appellant's statement "Did I shoot somebody?" while he was in the hospital?

Appellant's brief at 7-8.

Appellant's second issue challenges the sufficiency of the evidence and, if meritorious, would result in discharge. We will therefore address that contention first. ***Commonwealth v. Dale***, 836 A.2d 150 (Pa.Super. 2003). "In conducting our review, we consider all of the evidence actually admitted

at trial and do not review a diminished record." ***Id***. at 152. We employ the following principles as to this issue:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined 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 trier 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.

Commonwealth v. Knox, 50 A.3d 749, 754 (Pa.Super. 2012) (quoting ***Commonwealth v. Brown***, 23 A.3d 544, 559–60 (Pa.Super. 2011) (*en banc*)).

In this case, Appellant first assails his convictions of attempted murder. "A person may be convicted of attempted murder if he takes a substantial step toward the commission of a killing, with the specific intent in mind to commit such an act." ***Commonwealth v. Dale***, ***supra*** at 152; ***see also Commonwealth v. Geathers***, 847 A.2d 730, 734 (Pa.Super. 2004). Appellant challenges the sufficiency of the Commonwealth's proof in both respects, and focuses upon the fact that the gun retrieved near his body did

not contain bullets. Appellant's brief at 24. Appellant provides no analogous cases and merely tries to distinguish decisions where we upheld the sufficiency of the evidence supporting the crime of attempted murder.

Initially, we note that the fact that the gun did not contain bullets when Appellant fired it at the two officers affords him no relief. Specifically, the crime of criminal attempt is outlined in 18 Pa.C.S. § 901, which states that, "A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa.C.S. § 901(a). Pursuant to § 901(b), impossibility, "It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the crime attempted." Thus, to the extent that Appellant has implied that his convictions are infirm due to the absence of bullets in the gun, he is incorrect. As we noted in ***Commonwealth v. Henley***, 459 A.2d 365, 366 (Pa.Super. 1983), the defenses of legal and factual impossibility have both been abolished in Pennsylvania. In this case, Officers Howells and De la Iglesia testified unequivocally that Appellant pointed his gun at them and fired it twice. The gun was devoid of bullets because he already had fired the weapon five times, which rendered Appellant's effort to kill the two police officers ineffective. Herein, the fact that it was impossible for the gun to discharge a bullet is not a defense to criminal attempt.

In resolving Appellant's challenge to the sufficiency of the evidence supporting the attempted murder offenses, we conclude that our decision in ***Commonwealth v. Jackson***, 955 A.2d 441 (Pa.Super. 2008), is dispositive. In that case, the defendant was convicted of attempted murder based solely on the fact that he pointed his weapon in the direction of a police officer, who immediately responded by firing his gun at the defendant. We concluded that "based on the actions Appellant took, the fact finder could have reasonably found that Appellant took a substantial step toward intentionally killing the [police] detective." ***Id***. at 445. We noted that when we examine the evidence supporting an attempted murder conviction, we focus upon the steps that were taken and not those that were incomplete.

In upholding the defendant's conviction in ***Jackson***, we relied upon our decision in ***Commonwealth v. Donton***, 654 A.2d 580 (Pa.Super. 1995). Therein, we affirmed a husband's conviction of attempted murder. The husband had loaded a gun containing a scope, traveled a significant distance to where his wife was located, and began to conduct reconnaissance with the gun nearby. In that case, the gun was neither aimed nor fired at the wife.

In the present case, Appellant took more actions toward completion of the crime of murder than either defendant in the above cases. Appellant was told numerous times to show his hands by uniformed police, and he ignored those repeated directives. Instead, he aimed his gun from under his

arm at two police officers and pulled the trigger twice. He took a substantial step toward killing the officers when he aimed and fired his gun. His specific intent to murder was demonstrated by his use of a deadly weapon, which he aimed at the officers. Hence, we reject his claim that the evidence was insufficient to support his convictions for attempted murder.

Appellant also claims that the Commonwealth's proof was insufficient to support his convictions of aggravated assault under § 2702(a)(2) (a person is guilty of aggravated assault is he "attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c) [which includes police officers] . . . while in the performance of duty[.]"). Appellant suggests that he only aimed his gun at the two officers, and he relies upon case law wherein we have opined that the mere act of pointing a gun at a person does not constitute aggravated assault. ***Commonwealth v. Alford***, 880 A.2d 666 (Pa.Super. 2005). In ***Alford***, the defendant was convicted under § 2702(a)(1) of aggravated assault after he momentarily pointed a gun at a woman. A person is guilty of aggravated assault under § 2702(a)(1) if he "attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." Thus, the language is identical to that at issue herein. In reversing that conviction, we in ***Alford*** noted, "It is well settled that merely pointing a gun at another

person in a threat to cause serious bodily injury does not constitute an aggravated assault." ***Id***. at 671; ***see also Commonwealth v. Savage***, 418 A.2d 629, 632 (Pa.Super. 1980).

Appellant's reliance upon this case law is misguided. Appellant did much more than merely point his weapon at Officers Howells and De la Iglesia. He fired that weapon. Thus, he unquestionably attempted to cause serious bodily injury to the two officers. ***Commonwealth v. Bond***, 396 A.2d 414, 416 n.2 (Pa.Super. 1978) (evidence sufficient to sustain conviction for aggravated assault when defendant's gun clicked, but did not discharge bullet, several times while the gun was pointed at victim during a struggle).

Furthermore, our confidence in the principle outlined in ***Alford*** has been eroded by our Supreme Court's later pronouncement in ***Commonwealth v. Matthew***, 909 A.2d 1254 (Pa. 2006). Therein, the defendant was convicted of aggravated assault under § 2701(a)(1) after he momentarily placed a loaded gun against the victim's throat and then continued to point it at him and threatened to kill him. The Supreme Court upheld the sufficiency of the evidence supporting that conviction. It reaffirmed that the totality of the circumstances are examined to determine if a defendant demonstrated the intent to inflict serious bodily injury. ***See Commonwealth v. Alexander***, 383 A.2d 887 (Pa. 1978).

The ***Matthew*** Court concluded that the defendant therein "attempted to inflict serious bodily injury upon [the victim] and intended to do so" in light of the fact that he "placed a loaded gun against [the victim's] throat, repeatedly pointed it at him, and threatened to kill him seven to ten times." ***Matthew***, ***supra*** at 1258. Significantly, the ***Matthew*** Court continued that, if the "threats alone were not enough to establish his intent, the fact-finder could determine his intent from pushing the loaded gun against [the victim's] throat and otherwise pointing it at him." ***Id***. at 1259.

Herein, the facts and circumstances, as revealed in the trial transcript, are as follows. Appellant repeatedly shot his gun outside a bar in a large crowd. He ignored repeated directives from two police officers to display his hands. Instead, he turned toward them, aimed his gun, and fired it at them. In light of the circumstances herein, we conclude that Appellant evidenced the specific intent to cause serious bodily injury to the two officers and took a substantial step toward inflicting that injury. Hence, his convictions of aggravated assault under § 2702(a)(2) rest on sound evidence.

Now, we address Appellant's challenges to the weight of the evidence supporting his convictions. We employ an exceedingly narrow standard of review in this context. "[A] trial court's denial of a post-sentence motion 'based on a weight of the evidence claim is the least assailable of its rulings.'" ***Commonwealth v. Sanders***, 42 A.3d 325, 331 (Pa.Super. 2012) (partially quoting ***Commonwealth v. Diggs***, 949 A.2d 873, 880 (Pa.

2008)); ***accord Commonwealth v. Brown***, 648 A.2d 1177, 1189-90 (Pa. 1994) ("One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence[.]") (citation omitted). In this setting, "an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim." ***Sanders***, ***supra*** at 331 (quoting ***Commonwealth v. Champney***, 832 A.2d 403, 408 (Pa. 2003)). We reverse the trial court's ruling only if the verdict "is so contrary to the evidence as to shock one's sense of justice." ***Sanders***, ***supra*** at 331 (quoting ***Champney***, ***supra*** at 408).

Appellant first notes that his friend testified that they were searched for weapons prior to entry into the Grand Hotel and that the Commonwealth did not present evidence refuting this proof. He claims that there was not a "scintilla of evidence that the Appellant was the person reportedly shooting in the area of the Hotel." Appellant's brief at 28. Initially, we disagree with Appellant's characterization of the proof. There was a plethora of evidence that the shooter was wearing a red shirt and that Appellant was the only person in the vicinity wearing a red shirt. He was outside the Hotel Grand at the time of the shooting and went down Plum Street, where the security guard said that the shooter fled. Moreover, Appellant's convictions rest on

the testimony of Officers Howells and De la Iglesia regarding the events that occurred in the parking lot rather than his activities outside the Hotel Grand.

Indeed, since Appellant's convictions rested upon the events occurring in the parking lot, where he aimed and fired his weapon at two police officers, his position that he was not the shooter outside the Hotel Grand has no apparent connection to the crimes in question. However, we note that the jury was free to reject the testimony presented by Appellant that he was unarmed on April 18, 2009, and also was free to accept the proof offered by the Commonwealth witnesses, whose testimony supported that Appellant was indeed the shooter outside the Hotel Grand and had a weapon in the parking lot. ***Knox***, ***supra*** at 754 ("the trier 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"). Hence, we conclude that the trial court did not abuse its discretion in rejecting Appellant's weight-of-the-evidence claim.

Before proceeding to Appellant's sentencing issue, we next address Appellant's allegations that would, if accepted, require the grant of a new trial. We do so since the grant of a new trial would render any sentencing claim moot. His first contention in support of the grant of a new trial is that the court erred in not suppressing his admission to police that he possessed a gun on the night in question and had purchased it in Philadelphia three years prior to April 18, 2009, in order to protect himself. We review a claim

that evidence should have been suppressed under the following standard of review:

> Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions*784 are erroneous. Where, as here, the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review.

Commonwealth v. McAdoo, 46 A.3d 781, 783-84 (Pa.Super. 2012) (quoting ***Commonwealth v. Hoppert***, 39 A.3d 358, 361–62 (Pa.Super. 2012)).

Appellant first maintains that his hospital statement should have been suppressed because "there was unreasonable delay between the arrest and the preliminary arraignment in violation of Pennsylvania Rule of Criminal Procedure 519 and the 6 hour rule." Appellant's brief at 32 (capitalization altered). ***See*** Pa.R.Crim.P. 519 (1) (with an exception inapplicable herein, "when a defendant has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be

afforded a preliminary arraignment by the proper issuing authority without unnecessary delay").

The following facts are pertinent. Detective Michael Millan, who is employed by the Lehigh County District Attorney's Office, testified as follows regarding the circumstances surrounding Appellant's arraignment and inculpatory remarks. Appellant's arraignment was delayed since he was in the trauma unit of a hospital. On the morning of April 23, 2009, Detective Millan, accompanied by Detective William Lake, spoke with Appellant while he was still being treated at Lehigh Valley Hospital. Neither detective was in uniform, and Allentown Police Officer Edward Zukal was in the room guarding Appellant when the two detectives arrived.

Before going to Appellant's room, Detective Millan spoke to the nurse in charge of Appellant's care, Lisa Worman, and ascertained that Appellant was capable of communicating and understanding questions. When the two men arrived at Appellant's room, Detective Lake told Appellant that he wanted to speak with him and that he had a tape recorder. Appellant "said he did not want to be taped." N.T. Suppression Hearing, 6/29/10, at 20. The tape recorder was removed, and Detective Lake asked Appellant if he wanted to "talk about the incident." ***Id***. at 21. Appellant did not respond, and, since Appellant appeared tired, Detective Millan "told him to get some sleep and we will come back and talk with you." ***Id***. Since Appellant was

not questioned, no ***Miranda*** warnings were given at that time. Detectives Millan and Lake left the room.

Detectives Millan and Lake returned to the hospital around 2:30 p.m., accompanied by Assistant Allentown Police Chief Ron Manescu, who was in civilian clothing, and Magisterial District Justice Mary Esther Merlo. At that time, the preliminary arraignment was conducted in front of the magistrate in the hospital room. Detective Millan explained that Appellant was not arraigned until April 23, 2009, because "he was being treated for his wound" from April 18, 2009, until that time. ***Id***. at 24. The arraignment was held on the afternoon of April 23, 2009, based on the fact that the nurse in charge of Appellant's care had informed Detective Millan earlier that day that Appellant was capable of understanding the proceeding and communicating. ***Id***.

Appellant remained awake and conversed appropriately during the arraignment. Magisterial District Justice Merlo left, and Detective Lake initiated another conversation with Appellant. At that time, Appellant was alert and appeared receptive to conversation. Appellant never asked to stop the conversation, never asked for an attorney, and never indicated that he did not wish to speak to the detectives. ***Id***. at 28. After delivering ***Miranda*** warnings, Detective Lake started questioning Appellant about the April 18, 2009 incident. The first question was why Appellant possessed a gun, and Appellant responded that "he possessed the gun for protection." ***Id***. at 30.

Appellant delineated that he owned the gun for three years, purchased it in Philadelphia, and it was a .38 caliber weapon. The interview lasted less than one hour, and the tone used during the questioning was never more than conversational.

In addressing Appellant's challenge to the admission of his April 23, 2009 remarks, we first observe that in ***Commonwealth v. Perez***, 845 A.2d 779 (Pa. 2004), the Supreme Court abrogated the so-called six-hour rule, upon which Appellant appears to rely. The six-hour rule mandated "suppression of a pre-arraignment confession simply because it was obtained more than six hours after arrest." ***Id***. at 780. In eliminating the six-hour rule, the Court held that "voluntary statements by an accused, given more than six hours after arrest when the accused has not been arraigned, are no longer inadmissible *per se.* Rather, in determining the admissibility of all statements, regardless of the time of their making, courts must consider the totality of the circumstances surrounding the confession." ***Id***. at 787 (footnote omitted). The ***Perez*** Court outlined these factors as pertinent to a determination of whether a pre-arraignment confession taken more than six hours after arrest should be suppressed: "the duration and means of interrogation; the defendant's physical and psychological state; the conditions attendant to the detention; the attitude exhibited by the police during the interrogation; and any other factors which may serve to drain one's powers of resistance to suggestion and coercion." ***Id***.

The flaws in Appellant's invocation of Pa.R.Crim.P. 519 and the six-hour rule are legion. First, the six-hour rule is simply no longer the law of this Commonwealth. Second, Appellant's arraignment was held, contrary to his position, as soon as practicable under the circumstances. He had been placed in the trauma unit due to his gunshot wounds, and the arraignment was held after it was determined that Appellant was capable of understanding the proceeding. Thus, any delay was necessary under rule 519. Next, and most significantly, Appellant's April 23, 2009 remarks were not elicited until after the arraignment was held. Finally, none of the factors militating toward suppression of his statement exist herein. Hospital personnel confirmed that Appellant's mental acuity permitted a knowing and voluntary waiver of his rights, ***Miranda*** warnings were given prior to questioning, police did not use a coercive tone, police were in plain clothes, Appellant was not at a police station, and the interview was brief. Appellant was alert and cooperative and had just been arraigned. Therefore, the court did not err in refusing to suppress Appellant's April 23, 2009 remarks to police based upon a violation of Pa.R.Crim.P. 519 and the six-hour rule.

Appellant next maintains that the suppression court erred in failing to conclude that he invoked his Fifth Amendment right to remain silent when he refused to permit the police to use a tape recorder while questioning him. In ***Berghuis v. Thompkins***, 130 S.Ct. 2250 (2010), the defendant, who was convicted of murdering a young man, claimed that he invoked his right

to remain silent under the following circumstances. After his warnings under ***Miranda v. Arizona***, 384 U.S. 436 (1966), were disseminated, the defendant refused to execute a written waiver of those rights and declined to answer questions for nearly three hours. Police inquired about the defendant's belief in God, and, after he responded that he did, police asked the defendant whether he prayed for forgiveness for committing the crime in question. The defendant responded affirmatively.

During the three-hour interrogation, the defendant did not tell police that he wanted to remain silent, never said that he did not want to speak with them, and did not request an attorney. The United States Supreme Court rejected the position that the defendant's persistent silence for three hours was sufficient to invoke his right to remain silent. It ruled that invocation of the Fifth Amendment privilege against self-incrimination must be an unambiguous, affirmative statement that the defendant either wishes to remain silent or does not want to talk with police.

Herein, after he was given his ***Miranda*** warnings, Appellant did not tell police that he did not wish to answer questions, nor did he state that he wanted to invoke his just delineated Fifth Amendment right to remain silent. Instead, he proceeded to answer questions. He similarly had not voiced an objection to speaking with police earlier in the day on April 23, 2009. Appellant merely objected to the use of a recording device, much like the defendant in ***Berghuis v. Thompkins***, who would not sign a written

confession. As Appellant did not unambiguously profess a desire to remain silent, this second challenge to the admission of his April 23, 2009 statements fails.

Appellant also seeks a new trial on the basis that the trial court erroneously permitted Allentown Police Officer Patrick Bull to testify that, on April 22, 2009, Appellant asked his nurse whether he shot anyone. "The admission or exclusion of evidence is within the sound discretion of the trial court, and in reviewing a challenge to the admissibility of evidence, we will only reverse a ruling by the trial court upon a showing that it abused its discretion or committed an error of law." ***Commonwealth v. Lopez***, 57 A.3d 74, 81 (Pa.Super. 2012) (citation omitted). Appellant contends that the evidence was cumulative, irrelevant, and its prejudicial impact outweighed any probative value. We disagree with these assertions.

First, there is no rule of law prohibiting the admission of cumulative evidence; the Commonwealth is permitted to introduce all evidence at its disposal that is probative of guilt. Second, Appellant's question was highly relevant because it directly refuted Appellant's defense that he was not in possession of a gun on April 18, 2009. It also demonstrated that he was aware that he fired that weapon, which supported the Commonwealth's case. Finally, "since all Commonwealth evidence in a criminal case will be prejudicial to the defendant, exclusion of otherwise relevant evidence will only be necessary where the evidence is so prejudicial that it may inflame

the jury to make a decision based upon something other than the legal propositions relevant to the case." ***Commonwealth v. Kitchen***, 730 A.2d 513, 519 (Pa.Super. 1999). Appellant's remark did not cause the jury to render its verdict based upon something other than the legal principles applicable herein. Hence, the court did not abuse its discretion in admitting Appellant's April 22, 2009 question into evidence.

We now address Appellant's sentencing allegations.

> Challenges to the discretionary aspects of sentencing do not guarantee an appeal as of right. ***Commonwealth v. Sierra***, 752 A.2d 910, 912 (Pa.Super. 2000). An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:
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> > We conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, *see* Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, *see* Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Commonwealth v. Prisk, 13 A.3d 526, 532-33 (Pa.Super. 2011) (quoting ***Commonwealth v. Evans***, 901 A.2d 528, 533 (Pa.Super. 2006)).

In this case, the notice of appeal was timely filed from the denial of a post-sentence motion, and Appellant preserved his sentencing challenge in that motion. Additionally, Appellant included in his brief a separate statement of the reasons for allowance of appeal from the discretionary aspects of his sentence, as required by Pa.R.A.P. 2119(f). Appellant's brief

at 5. We proceed to consider whether the statement raises a substantial question.

Appellant posits that there is a substantial question on two bases. First, he "maintains that the consecutive nature of the sentences, resulting in 32 to 65 years confinement raises a substantial question because, when considered in the aggregate, [the sentence] is clearly unreasonable and excessive under the circumstances[.]" Appellant's brief at 19. Second, he contends that the sentencing court "placed undue emphasis upon the police officer victims in this matter while failing to adequately weigh other personal characteristics of the Defendant." ***Id***. Neither question raises a substantial question. It is axiomatic that "an allegation that a sentencing court failed to consider or did not adequately consider certain factors does not raise a substantial question that the sentence was inappropriate." ***Commonwealth v. Johnson***, 961 A.2d 877 (Pa.Super. 2008).

Furthermore, Appellant's challenge to the consecutive nature of the sentences imposed does not, under the circumstances of this case, present a substantial question. Appellant invokes ***Commonwealth v. Dodge***, 957 A.2d 1198, 1202 (Pa.Super. 2008), in support of his proposition that reversal is required due to the fact that all his standard range sentences, with one exception, were imposed consecutively. In ***Dodge***, the defendant was given consecutive sentences on each crime that he committed. The offenses were all non-violent property crimes, and the resulting aggregate sentence was 58½ to 124 years incarceration. In ***Dodge***, this Court

reversed the sentence. Our reason for vacating the significant term of imprisonment imposed in the ***Dodge*** case is instructive herein:

> [T]he court did not acknowledge that its sentence essentially guarantees life imprisonment for Appellant. Likewise, the court did not acknowledge that the life sentence is comprised largely of consecutive sentences for receiving stolen costume jewelry. We acknowledge that many of the stolen items, though of little monetary value, were of significant sentimental value to the victims. The sentimental value of these items is an appropriate consideration in imposing a sentence. Nonetheless, we conclude that, based on the record before us, the trial court abused its discretion in imposing a life sentence for non-violent offenses with limited financial impact.

Thus, our ruling was premised upon two findings: 1) the sentence was tantamount to life imprisonment for the defendant therein; and 2) the life sentence was imposed for non-violent property crimes that had limited impact on the victims.

In light of the facts of the crimes at issue herein, Appellant's attempt to analogize this case to that of ***Dodge*** cannot be sustained. First, Appellant's sentence is nearly one-half of the sentence imposed on Dodge. Second, Appellant did not commit non-violent property crimes with little impact on his victims. He tried to kill two police officers and was a felon in possession of a gun with an altered manufacturer's number. As we have recently noted, "[T]he key to resolving the preliminary substantial question inquiry [regarding a challenge to the imposition of consecutive sentences] is whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of

the criminal conduct at issue in the case." ***Commonwealth v. Gonzalez-DeJusus***, 994 A.2d 595, 598-99 (Pa.Super. 2010) (footnote omitted); ***see also Commonwealth v. Mastromarino***, 2 A.3d 581 (Pa.Super. 2010).

In light of the above discussion, we conclude that the sentence does not, on its face, appear to be excessive given the serious nature of the criminal conduct in question. ***Accord Johnson***, ***supra*** at 880 ("Long standing precedent of this Court recognizes that 42 Pa.C.S.A. § 9721 affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. A challenge to the imposition of consecutive rather than concurrent sentences does not present a substantial question regarding the discretionary aspects of sentence.") (citation omitted).

Even if Appellant's challenge facially raises the existence of a substantial question, we would affirm the sentence imposed due to the alarming nature of the crimes in question. ***Prisk***, ***supra*** at 533 (sentence that far exceeded amount necessary to imprison defendant for life was affirmed; we refused to "deem the aggregate sentence as excessive in light of the violent criminal conduct at issue."). Thus, Appellant's sentencing challenges afford him no relief.

Judgment of sentence affirmed.