NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. LAMAR TRUITT, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 473 EDA 2013

Appeal from the Judgment of Sentence September 28, 2012
in the Court of Common Pleas of Philadelphia County
Criminal Division at No.: CP-51-CR-0005449-2011

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. **FILED FEBRUARY 20, 2014**

Appellant, Lamar Truitt, appeals from the judgment of sentence imposed following his jury conviction of one count each of murder of the first degree, conspiracy to commit murder, and possessing an instrument of crime (PIC).[1] After careful review, we affirm.

The trial court set forth the following facts in its opinion of April 29, 2013:

> On July 21, 2009, Horace Cunningham and Darryl Pray were walking down Bancroft Street in South Philadelphia when they ran into [Appellant] and Nieem Thomas. All four men were competing drug dealers who sold drugs on either the 1400 or 1500 block of Hicks Street. Mr. Pray and Nieem Thomas got into

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 2502(a), 903, and 907(a), respectively.

an argument over drug territory, as Mr. Pray had been selling drugs on a street where Nieem Thomas usually sold drugs. As they argued, Nieem Thomas pulled a gun from his waist and shot Mr. Pray multiple times, killing him. Immediately after the murder, Mr. Cunningham called his girlfriend, Shardey Adkinson, and told her about the shooting. Mr. Cunningham also told at least five other people in the neighborhood that he had witnessed Mr. Pray's murder, and that Nieem Thomas had been the shooter.

Nieem Thomas was arrested for the murder of Darryl Pray.[a] On August 3, 2009, while awaiting trial in county prison, Nieem Thomas placed a call to his cousin, Jabar Thomas.[b] During this phone call, Jabar Thomas stated to Nieem Thomas, "[w]e see the bul, Pop Pop . . . . [h]e get a hammer glance, he'll do the hammer dance."[c] Nieem Thomas then laughed and asked to speak to "Ockie," which is [Appellant]'s nickname.[d] [Appellant] then got on the phone with Nieem Thomas and said that he had run into "the bul" and that he had run away from [Appellant]. On August 8, 2009, and August 18, 2009, Nieem Thomas placed phone calls from prison directly to [Appellant]. During the August 18 phone call, [Appellant] told Nieem Thomas that "[m]utherfuckas out there talking." Nieem Thomas asked, "[w]ho?" and [Appellant] responded, "I hear they got a uh . . . they got a uh . . . warrant for the boy that was . . . the bul Pop Pop."

[a] Nieem Thomas was tried and convicted of the first-degree murder of Darryl Pray at docket number CP-51-CR-0010184-2009.

[b] A recording of this phone call, along with recordings of two other prison phone calls between Nieem Thomas and [Appellant], was played for the jury. . . .

[c] In his statement to the police, Horace Cunningham stated that his nickname around the neighborhood was "Pop-Pop." Shardey Adkinson also testified at trial that "Pop-Pop" was Mr. Cunningham's nickname. Detective Williams testified at trial that a "hammer glance" is when someone displays a gun to or points a gun at another person.

[d] In his statement to the police, [Appellant] stated that one [of] his nicknames around the neighborhood was

"Ockie." Ramer Jones also testified at the preliminary hearing that this was [Appellant]'s nickname.

On August 28, 2009, Homicide Detectives interviewed Mr. Cunningham, who told them the details of Mr. Pray's murder, including that Nieem Thomas was the shooter. In the months following Mr. Pray's murder, [Appellant] repeatedly asked a friend, Nelson Jones, about Mr. Cunningham's whereabouts. [Appellant] told Nelson Jones that he thought that Mr. Cunningham might retaliate against [Appellant] for Mr. Pray's death, and [Appellant] said that he did not want to "take that chance."

On October 11, 2009, at 11:58 p.m., Ramer Jones, a friend of Mr. Cunningham, was listening to music in his aunt's apartment at the corner of 16th Street and Morris Street, when his cousin told him that someone was shooting outside. Ramer Jones went to the window and saw Horace Cunningham running north on Chadwick Street. He was being chased by [Appellant], whom Ramer Jones knew, and another man, both of whom were carrying guns. Ramer Jones heard gunshots and a few seconds later he saw [Appellant] and the second man run south down Chadwick Street. They then stopped running and Ramer Jones heard the second man say to [Appellant], "[a]ll right, Cuz, I'm out."

At the same time, Azim McKnight was at the corner of Chadwick Street and Morris Street when he heard the gunshots coming from the 1700 block of Chadwick Street. Mr. McKnight then heard a man scream and begin to pray. Mr. McKnight ran towards the sounds, and found Mr. Cunningham, who had been shot multiple times, lying facedown on the corner of 17th Street and Morris Street. Mr. Cunningham was still conscious, and he told Mr. McKnight that he could not move. Mr. McKnight pressed a towel to Mr. Cunningham's wounds and called the police. When police arrived, Mr. McKnight and the officers loaded Mr. Cunningham into a police car.

Mr. Cunningham was transported to the University of Pennsylvania Hospital, where he was pronounced dead. Mr. Cunningham had been shot four times, once each in the spinal cord, stomach, side, and thigh. Police recovered six fired ca[r]tridge casings, all from a .40 caliber handgun, from the scene of the murder.

> On December 27, 2009, the police executed a search warrant on [Appellant]'s home at 212 South Alden Street in West Philadelphia. From the house, police recovered two semi-automatic handguns, one of which was a loaded .40 caliber Glock. Police also recovered an empty magazine clip, a magazine clip loaded with .45 caliber bullets, a box of .45 caliber bullets, a single 9-millimeter bullet, 8.2 grams of crack cocaine, drug paraphernalia, and a cell phone. [Appellant] was arrested for Mr. Cunningham's murder. Homicide Detectives interviewed [Appellant], who gave a statement in which he admitted that all of the items police recovered from the house belonged to him.
>
> The police obtained [Appellant]'s cell phone records. Using these records, police were able to determine that on the night of the murder, [Appellant]'s cell phone was used first in West Philadelphia, where [Appellant] resided, then in South Philadelphia at the approximate time that the murder took place, then again in West Philadelphia. Police also obtained surveillance video from a convenience store on the corner of 17th Street and Bancroft Street near where the shooting took place. This video showed a light-colored minivan being driven south on Bancroft Street four minutes before the murder took place. The minivan was consistent with the size and shape of a minivan that was registered to [Appellant] and that [Appellant] had been seen driving on numerous occasions.
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> As [Appellant] was awaiting trial, he was housed at the State Correctional Institute in Camp Hill, Pennsylvania. In January 2011, [Appellant] told his cellmate, William Gabriel, that he had killed someone because that person witnessed [Appellant]'s friend shoot someone. [Appellant] also told Mr. Gabriel that he knew that there was a witness to Mr. Cunningham's murder, and that [Appellant] had people on the outside "trying to get at him."

(Trial Court Opinion, 4/29/13, at 2-6 (record citations omitted)).

On September 28, 2012, a jury convicted Appellant of one count each of murder in the first degree, conspiracy to commit murder, and PIC. The same day, the trial court sentenced Appellant to life in prison for the murder charge, plus a consecutive sentence of not less than twenty nor more than

forty years for conspiracy and not less than one nor more than two years for PIC. Appellant filed post-sentence motions which the trial court denied on January 15, 2013, and Appellant timely appealed.[2]

Appellant raises five questions for our review:

> I. Is [Appellant] entitled to an arrest of judgment on [m]urder in the [f]irst [d]egree and all charges where the evidence is insufficient to sustain the verdict?
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> II. Is [Appellant] entitled to a new trial on all charges where the verdict is not supported by the greater weight of the evidence?
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> III. [Whether Appellant] should be awarded a new trial as a result of [c]ourt error where the [t]rial [c]ourt permitted testimony in the form of rampant speculation that was not supported by any special expertise?
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> IV. Is [Appellant] entitled to a new trial as the result of [c]ourt error where the [c]ourt permitted certain audio tapes to be played to the jury without authenticating that it was [Appellant's] voice on the audio tapes?
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> V. Is [Appellant] entitled to a new trial as the result of [c]ourt error where the [c]ourt permitted prior testimony to be read to a jury from an alleged unavailable witness where the Commonwealth made less than the necessary efforts to locate the witness in time to present him at trial?

(Appellant's Brief, at 3).

In his first issue, Appellant contends that he "must be awarded an arrest of judgment as the evidence is insufficient to sustain the verdict."

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[2] Pursuant to the trial court's order, Appellant filed a Rule 1925(b) statement on March 4, 2013. The trial court entered a Rule 1925(a) opinion on April 29, 2013. ***See*** Pa.R.A.P. 1925.

(***Id.*** at 10). Specifically, he argues that none of the witnesses could identify him "as a shooter nor could they provide any evidence which would have directly or circumstantially linked [him] to this crime and certainly could not provide evidence which would have proven, beyond a reasonable doubt that [he] had committed a crime." (***Id.*** at 12-13). Thus, he argues that the evidence is not legally sufficient to sustain his convictions for first degree murder and conspiracy, and that he is entitled to an arrest of judgment. (***Id.*** at 13-14). This issue is waived, and would not merit relief.

Appellant's concise statement raises a sufficiency of the evidence claim by stating that "there is insufficient evidence to sustain the verdict." (Rule 1925(b) Statement, 3/04/13, at 1 ¶ 1). We have previously held that such language is too vague to permit review. ***See Commonwealth v. McCree***, 857 A.2d 188, 192 (Pa. Super. 2004), *affirmed*, 924 A.2d 621 (Pa. 2007) (citing cases). Moreover, this claim would lack merit.

> [O]ur standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the [Commonwealth as] verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged was committed by the accused beyond a reasonable doubt. The Commonwealth need not establish guilt to a mathematical certainty. Finally, this Court may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld.

Commonwealth v. Collins, 70 A.3d 1245, 1249 (Pa. Super. 2013), *appeal denied*, 80 A.3d 774 (Pa. 2013) (citations and quotation marks omitted).

A homicide constitutes first-degree murder when it is an intentional killing, defined in relevant part as "willful, deliberate, and premeditated." 18 Pa.C.S.A. § 2502(a), (d).

Here, the Commonwealth presented evidence that Appellant had motive to kill the victim. In taped conversations, Appellant told Nieem Thomas that the victim was "out there talking" about witnessing the murder of Darryl Pray by Thomas, and Appellant repeatedly asked where the victim was. (N.T. Trial Vol. 4, 9/24/12, at 123-25). He told Nelson Jones, "I know you saying that he don't be around and that [the victim] wouldn't retaliate, but . . . I can't take that chance. I don't trust it." (***Id.*** at 18; ***see id.*** at 15, 17-18). Thus, as observed by the trial court, Appellant "had a motive to kill him, both to silence him as a witness to the killing of Mr. Pray and to prevent [the victim] from retaliating for Mr. Pray's murder." (Trial Ct. Op., at 8). "[M]otive may provide evidence of intent, [although] it is well settled that proof of motive is not necessary for a conviction of first-degree murder." ***Commonwealth v. Rolan***, 964 A.2d 398, 413 n.16 (Pa. Super. 2008) (citation omitted).

Furthermore, Ramer Jones' preliminary hearing testimony[3] established that Jones saw Appellant and another man run to Chadwick Street, heard gunshots, and saw them run back, a few seconds later. (***See*** N.T. Trial Vol. 5, 9/25/12, at 108, 114-15). He watched the two men run past him and "they briefly stopped and one said, All right, Cuz, I'm out." (***Id.*** at 109). Jones testified that he looked Appellant "straight in the face" and saw him tuck a gun under his hoodie. (***Id.*** at 110). At the same time, Azim McKnight testified that he heard several gunshots and a man screaming. (***See*** N.T. Trial Vol. 2, 9/20/12, at 90). He ran outside and found the victim, Horace Cunningham, on the corner of Chadwick and Morris Streets, lying facedown and praying, and McKnight could see that the victim had been shot several times. (***See id.*** at 91, 93-95).

In addition, the Commonwealth established via forensic evidence that Appellant's cell phone was used near the time and place of the shooting. (***See*** N.T. Trial Vol. 4, 9/24/12, at 202-04). Surveillance video from a convenience store on the corner of 17th and Bancroft Streets also showed a light-colored minivan, consistent with a minivan registered to and driven by Appellant, driving toward the scene of the murder a few minutes before the victim was killed. (***See*** N.T. Trial Vol. 3, 9/21/12, at 116-18, 151).

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[3] Mr. Jones was unavailable at trial, as discussed in Appellant's fifth issue, ***infra***.

It is within the province of the jury, as the finder of fact, to decide whether a witness' testimony lacks credibility. ***See Commonwealth v. Fisher***, 769 A.2d 1116, 1123 (Pa. 2001), *cert. denied*, 535 U.S. 906 (2002). The jury, finding the testimony credible, could reasonably infer from the evidence presented that Appellant shot the victim, and that he acted with the requisite intent. Viewing the evidence in the light most favorable to the Commonwealth, the elements for first-degree murder were met. ***See Collins***, ***supra*** at 1249.

Conspiracy is defined in relevant part as:

> **§ 903. Criminal conspiracy**
>
> **(a) Definition of conspiracy.** A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
>
> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.
>
> * * *
>
> **(e) Overt act.** No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

18 Pa.C.S.A. § 903.

Our Supreme Court has explained:

> In most cases of conspiracy, it is difficult to prove an explicit or formal agreement; hence, the agreement is generally established via circumstantial evidence, such as by the relations, conduct, or circumstances of the parties or overt acts on the part of co-conspirators. In the case of a conspiracy to commit homicide, each member of the conspiracy can be convicted of first-degree murder regardless of who inflicted the fatal wound.

Commonwealth v. Johnson, 985 A.2d 915, 920 (Pa. 2009), *cert. denied*, 131 S. Ct. 250 (2010) (internal citations and quotation marks omitted). Finally, it is longstanding law in Pennsylvania that the "crime of criminal conspiracy does not merge with the completed offense which was the object of the conspiracy." ***Commonwealth v. Miller***, 364 A.2d 886, 886 (Pa. 1976).

In the instant case, the evidence discussed above also supports a conspiracy conviction. Given that Appellant and a second man were seen approaching and fleeing the scene together, there are reasonable grounds from which the jury could infer an agreement. (***See*** N.T. Trial Vol. 5, 9/25/12, at 108-10, 114-15). Because the object of the conspiracy was successfully carried out, the victim's murder itself was the overt act for purposes of the conspiracy statute. ***See*** 18 Pa.C.S.A. § 903. Therefore, the Commonwealth has proven all elements of conspiracy, and the trial court correctly determined that there was sufficient evidence to establish Appellant's convictions for first-degree murder and conspiracy. ***See Collins***, ***supra*** 1249. Appellant's first issue would not merit relief.

Second, Appellant argues that he "must be awarded a new trial as the verdict is not supported by the greater weight of the evidence." (Appellant's

Brief, at 14). Specifically, he claims that "the greater weight of the evidence does not come close to establishing that [he] was a shooter in this case. The greater weight cannot possibly establish a criminal conspiracy as there is no evidence that anyone else who may or may not have been at the scene had agreed with [Appellant] to do anything." (***Id.*** at 15). We disagree.

> Our standard of review of a weight of the evidence claim is for an abuse of discretion. [A]ppellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. Indeed, it is oft-stated that the trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings.

Commonwealth v. Ratushny, 17 A.3d 1269, 1272 (Pa. Super. 2011) (citations and quotation marks omitted).

> Furthermore, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Boyd, 73 A.3d 1269, 1275 (Pa. Super. 2013) (citation omitted).

Here, the trial court ruled on Appellant's weight claim, holding that the evidence "plainly established that [Appellant] committed the crimes of which he was convicted." (Trial Ct. Op., at 12).

> Trial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to

> ignore them or to give them equal weight with all the facts is to deny justice.

Commonwealth v. Harvard, 64 A.3d 690, 700 (Pa. Super. 2013), *appeal denied*, 77 A.3d 636 (Pa. 2013) (citation omitted).

Appellant concedes that the evidence put him "in the vicinity of the crime at the same time that it happened and [that he] may have had a gun." (Appellant's Brief, at 14-15). He fails to direct our attention to any facts that the trial court ignored or improperly weighed. (***Id.*** at 14-16). Furthermore, Appellant misapprehends our standard of review and claims that "the Court . . . may evaluate the credibility of witnesses by itself[.]" (***Id.*** at 14). Instead, as previously discussed, it is within the province of the jury, as the finder of fact, to decide whether a witness' testimony lacks credibility. ***See Fisher***, ***supra*** at 1123. Accordingly, we discern no palpable abuse of discretion by the trial court in denying Appellant's claim that he was entitled to a new trial because the verdict was against the greater weight of the evidence. ***See Boyd***, ***supra*** at 1275. Appellant's second issue does not merit relief.

Third, Appellant asserts that he "must be awarded a new trial as the result of court error when it permitted Detective Lucke to give an opinion as to whether a person depicted in the video shown to the jury was carrying a weapon." (Appellant's Brief, at 16). This issue is waived.

It is well-settled that "[i]ssues not raised in the [trial] court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). "Issues not included in the [Rule 1925(b)] Statement and/or not raised in

accordance with the provisions of this paragraph (b)(4) are waived." Pa.R.A.P. 1925(b)(4)(vii); ***see also Commonwealth v. Johnson***, 51 A.3d 237, 246-47 (Pa. Super. 2012) (*en banc*), *appeal denied*, 63 A.3d 1245 (Pa. 2013) (waiving issues not specifically raised in Rule 1925(b) statement).

Here, Appellant has failed to preserve any challenge to Detective Lucke's testimony in his Rule 1925(b) statement. (***See*** Rule 1925(b) Statement, 3/04/13, at 1-3). Thus, he has waived this claim. ***See Johnson***, ***supra*** at 246-47.

In his fourth issue, Appellant argues that he "must be awarded a new trial as the result of court error when the court permitted the Commonwealth to use an audio tape recording and to have a certain voice identified as [his] voice when the said voice was not authenticated." (Appellant's Brief, at 18). We disagree.

> With regard to evidentiary challenges, it is well established that [t]he admissibility of evidence is at the discretion of the trial court and only a showing of an abuse of that discretion, and resulting prejudice, constitutes reversible error. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record. Furthermore, if in reaching a conclusion the trial court overrides or misapplies the law, discretion is then abused and it is the duty of the appellate court to correct the error.

Commonwealth v. Serrano, 61 A.3d 279, 290 (Pa. Super. 2013) (citations and internal quotation marks omitted).

Pennsylvania Rule of Evidence 901 provides, in pertinent part:

> **Rule 901. Authenticating or Identifying Evidence**

> **(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
>
> **(b) Examples.** The following are examples only—not a complete list—of evidence that satisfies the requirement:
>
> **(1) Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.
>
> * * *
>
> **(5) Opinion About a Voice.** An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

Pa.R.E. 901(a), (b)(1), (5).

Here, Appellant objects to the admission of recordings of telephone calls placed by Nieem Thomas from prison while awaiting his trial for the murder of Darryl Pray. Detective Nathan Williams testified with regard to the audio recordings of Appellant's voice as follows:

> The Court: . . . . Is there any other basis upon which you conclude that the person saying that they were Ockie is the defendant in this case, [Appellant]?
>
> [A]: Yeah, other than the name, the voice that I began to hear on the tape was the same voice that I heard when he was in the Homicide Unit a couple months prior.
>
> The Court: Okay.
>
> [The Commonwealth]: And how many times have you listened to [Appellant]'s voice on tape?
>
> A. You know what, hours, hours and hours. But at one point I had the calculation how many days it came out to.

(N.T. Trial Vol. 4, 9/24/12, at 122).

We find no abuse of discretion in the trial court's decision to admit evidence of the audio recordings. The parties stipulated that the recordings were calls placed by Nieem Thomas while in prison. (***Id.*** at 117). Detective Williams testified that he had personally spoken with Appellant, and recognized the voice on the audio recording as belonging to Appellant. ***See Commonwealth v. Starks***, 450 A.2d 1363, 1364-65 (Pa. Super. 1982) (finding adequate foundation for admission of tape recordings where the interviewing detective identified the tape in its original physical form, and identified the voices and the opening contents of the recording). Thus, the audio recordings were properly admitted. ***See Serrano***, ***supra*** at 290. Appellant's claim that he is entitled to a new trial on this basis lacks merit.

Fifth, Appellant argues that he "must be awarded a new trial as the trial court erred when it admitted certain 'testimony' from prior testimony, having found that the witness in question was unavailable when no such demonstration was made." (Appellant's Brief, at 20). We disagree.

> The admissibility of evidence is a matter addressed to the discretion of the trial court and the trial court's ruling may be reversed only upon a showing that the court abused its discretion. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Pa.R.E. 801(c). Hearsay evidence is not admissible except as provided by the Pennsylvania Rules of Evidence, th[e Supreme] Court, or by statute. Pa.R.E. 802. The former testimony exception to the hearsay rule provides that the testimony of a witness at another hearing of the same or a different proceeding may be introduced into evidence if the witness is unavailable and the party against whom the evidence is to be introduced had an adequate opportunity and similar motive to develop the testimony by

> direct, cross, or a redirect examination. Pa.R.E. 804(b)(1). ***See also*** 42 Pa.C.S. § 5917 ("Whenever any person has been examined as a witness, either for the Commonwealth or for the defense, in any criminal proceeding conducted in or before a court of record, and the defendant has been present and has had an opportunity to examine or cross-examine, if such witness afterwards dies, or is out of the jurisdiction so that he cannot be effectively served with a subpoena, or if he cannot be found, or if he becomes incompetent to testify for any legally sufficient reason properly proven, notes of his examination shall be competent evidence upon a subsequent trial of the same criminal issue.").

Commonwealth v. McCrae, 832 A.2d 1026, 1034-35 (Pa. 2003), *cert. denied*, 543 U.S. 822 (2004) (case citation omitted).

> A witness cannot be found within the meaning of the above-quoted Act, however, only if a good-faith effort to locate the witness and compel his attendance at trial has failed. The burden of demonstrating such a good-faith effort is on the party seeking to introduce the prior testimony, and [t]he question of the sufficiency of the preliminary proof as to the absence of a witness is largely within the discretion of the trial judge. Thus, the question here is whether the trial court abused its discretion in ruling that [the Commonwealth] had [presented] sufficient evidence to prove that [the witness] was unavailable to testify.

Commonwealth v. Connors, 458 A.2d 190, 194 (Pa. Super. 1983) (citations and quotation marks omitted).

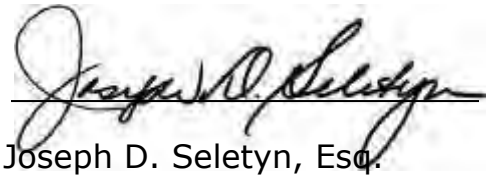
Here, Appellant concedes that the Commonwealth presented evidence regarding the efforts made to procure the attendance of Ramer Jones as a witness. (***See*** Appellant's Brief, at 20). Detective Kevin Judge checked local hospitals, morgues, and the Medical Examiner's office to confirm that Ramer Jones was not dead or incapacitated. (***See*** N.T. Trial Vol. 4, 9/25/12, at 11-13). Detective Centeno checked with state, local, and federal resources to determine that he was not in custody; visited five different addresses

associated with Jones through the Bureau of Motor Vehicles, voter registration records, and police records; and circulated flyers with Jones' photograph at the 17th District police station. (***Id.*** at 14-18).

Appellant argues that the Commonwealth's efforts to procure Ramer Jones were inadequate because it "started searching for its very important witness just three days prior to trial." (Appellant's Brief, at 21). However, when challenged as to why the Commonwealth did not subpoena Jones by mail in advance of trial, Detective Centeno explained: "Witnesses usually run, they don't want to be found, Your Honor, especially in homicides. I've had them run out the back door on me in the past, it's crazy." (N.T. Trial Vol. 4, 9/25/12, at 26). The trial court found that "the Commonwealth made reasonable efforts to locate Ramer Jones for trial." (Trial Ct. Op., at 18). In light of the Commonwealth's explanation for waiting until three days before trial to obtain Ramer Jones, and the thorough search nonetheless conducted by Detectives Judge and Centeno, the trial court did not abuse its discretion in finding Ramer Jones unavailable to testify. ***See Connors***, ***supra*** at 194. Accordingly, the trial court did not err in admitting his preliminary hearing testimony under an exception to the hearsay rule. ***See*** Pa.R.E. 804(b)(1); 42 Pa.C.S.A. § 5917; ***McCrae***, ***supra*** at 1034-35. This issue does not merit relief.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/20/2014