

**IN THE SUPERIOR COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

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No. 935 EDA 2021

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COMMONWEALTH OF PENNSYLVANIA,  
Appellee,

v.

JARVIS PAYTON,  
Appellant.

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APPEAL FROM THE JUDGMENT OF SENTENCE ENTERED APRIL 5, 2021,  
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,  
TRIAL DIVISION, CRIMINAL SECTION, AT CP-51-CR-0001864-2018

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**BRIEF FOR APPELLANT**

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By: Matthew Sullivan, Esq.  
PA Identification No. 313293  
1327 Spruce Street, 7D  
Philadelphia, PA 19107  
(215) 796-0263  
matthew.sullivan.esq@gmail.com

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## **I. STATEMENT OF JURISDICTION**

This Honorable Court has jurisdiction pursuant to 42 Pa.C.S. § 742 (exclusive appellate jurisdiction in the Superior Court of Pennsylvania from final orders of the Court of Common Pleas) and PA.R.A.P. 341(a) (appeals as of right from final orders of a lower court).

## **II. ORDER IN QUESTION**

The April 5, 2021 order of the Court of Common Pleas, First Judicial District of Pennsylvania, Trial Division, Criminal Section at Docket Number CP-51-CR-0001864-2018, is the subject of this appeal. Appendix A. The Honorable Kai N. Scott sentenced Mr. Payton as follows:

### **Count 1 - 18 § 2702 §§ A - Aggravated Assault (F1)**

To be confined for a minimum period of 10 Year(s) and a maximum period of 20 Year(s) at State Correctional Institution.

The following conditions are imposed:

Other: \* Defendant sentenced in Absentia.

\*Defendant sentenced to ten (10) years to twenty (2) years incarceration in State Custody on charge of “Aggravated Assault” (F1).

\*Defendant sentenced to three and a half (3 1/2) to seven (7) years incarceration, to run CONSECUTIVE to above stated incarceration sentence, in State Custody on charge of “Possession Of Firearm Prohibited” (F1).

\*Defendant sentenced to three (3) years reporting probation, to follow incarceration sentence, on charge of “Firearms Not To Be Carried W/O License” (F3).

\*Defendant sentenced to three (3) years reporting probation, to follow incarceration sentence, on charge of “Poss Instrument Of Crime W/Int” (M1).

\*The Defendant shall comply with any additional conditions of supervision, as directed by the Pennsylvania Board of Probation and Parole, in furtherance of the special conditions imposed by the Court.

\*Defendant is ordered to be evaluated for any Mental Health needs and comply with any treatment & therapy that is recommended.

\*Defendant is ordered to be evaluated for any Drug use and comply with any recommendations.

\*Mandatory Court Cost & Fines imposed. Stay Away Order to remain.

This sentence shall commence on 04/05/2021.

**Count 2 - 18 § 6105 §§ A1 - Possession Of Firearm Prohibited (F1)**

To be confined for a minimum period of 3 Year(s) 6 Month(s) and a maximum period of 7 Year(s) at State Correctional Institution.

**Count 3 - 18 § 6106 §§ A1 - Firearms Not To Be Carried W/O License (F3)**

To be placed on Probation State (PBPP) Regular Probation for a maximum period of 3 Year(s) to be supervised by State Supervision.

**Count 5 - 18 § 907 §§ A - Poss Instrument Of Crime W/Int (M1)**

To be placed on Probation State (PBPP) Regular Probation for a maximum period of 3 Year(s) to be supervised by State Supervision.

Appendix A.

Thus, the trial court imposed an aggregate sentence of thirteen-and-one-half to twenty-seven years of imprisonment, plus three years of probation. (Notes of Testimony (hereinafter “N.T.”), 4/5/21, at 35.)

### **III. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW**

A. & B. The trial court erred and abused its discretion when the court ruled on two motions *in limine*. This Court’s standard of review for challenges to a trial court’s evidentiary rulings is deferential:

The admission of evidence is solely within the discretion of the trial court, and a trial court’s evidentiary rulings will be reversed on appeal only upon an abuse of that discretion. An abuse of discretion will not be found based on a mere error of judgment, but rather occurs where the court has reached a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.

*Commonwealth v. Woodard*, 129 A.3d 480, 494 (Pa. 2015) (quotation marks and citations omitted).

C. Mr. Payton challenges the discretionary aspects of his sentence.

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons

of partiality, prejudice, bias[,] or ill will, or arrived at a manifestly unreasonable decision.

*Commonwealth v. Raven*, 97 A.3d 1244, 1253 (Pa. Super. Ct. 2014).

Furthermore, this Court defers to the trial court’s “pronouncement of sentence because the trial court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it.” *Commonwealth v. Ward*, 568 A.2d 1242, 1243 (Pa. 1990). Finally, “[a] trial court judge has wide discretion in sentencing and can, on the appropriate record and for the appropriate reasons, consider any legal factor in imposing a sentence[.]” *Commonwealth v. Stewart*, 867 A.2d 589, 593 (Pa. Super. Ct. 2005) (citation omitted).

D. The verdict was against the weight of the evidence. “An appellate court’s standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court. Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence.” *Commonwealth v. Windslowe*, 158 A.3d 698, 712 (Pa. Super. Ct. 2017). “An abuse of discretion will not be found based on a mere error of judgment, but rather occurs where the court has reached a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.” *Woodard*, 129 A.3d at 494.

#### IV. QUESTIONS PRESENTED FOR REVIEW

- A. Did the trial court err and abuse its discretion when the court granted the Commonwealth's motion *in limine* and permitted the prosecutor to question the complainant about an incident where someone offered him money not to testify?

(Answered in the negative by the trial court.)

- B. Did the trial court err and abuse its discretion when the court denied Mr. Payton's oral motion *in limine* and permitted the prosecutor to elicit evidence about another person's gun?

(Answered in the negative by the trial court.)

- C. Did the trial court abuse its discretion at sentencing when the court relied on impermissible factors and imposed a manifestly excessive sentence?

(Answered in the negative by the trial court.)

- D. Was the verdict against the weight of the evidence?

(Answered in the negative by the trial court.)

## **V. STATEMENT OF THE CASE**

### **A. Procedural History**

The Commonwealth charged Jarvis Payton with aggravated assault<sup>1</sup>, possession of a firearm by a prohibited person<sup>2</sup>, and related offenses<sup>3</sup> after a non-fatal shooting. A jury found him guilty of the charges.

On June 18, 2019, the trial court ruled that Mr. Payton was not competent. After numerous continuances, on April 5, 2021, the court sentenced Mr. Payton to an aggregate term of thirteen-and-one-half to twenty-seven years of incarceration, followed by three years of probation. Appendix A. Mr. Payton timely filed a post-sentence motion, Appendix B, which the court denied. He then timely filed a notice of appeal.

The trial court appointed the below-signed counsel, who timely filed a statement of errors. Appendix C. Two days later, counsel filed a supplemental statement of errors. Appendix D. The court filed its Opinion on August 4, 2021. Appendix E.

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<sup>1</sup> 18 Pa.C.S. § 2702.

<sup>2</sup> 18 Pa.C.S. § 6105.

<sup>3</sup> 18 Pa.C.S. §§ 6106, 907.

## **B. Factual History**

The complainant, James Robinson, testified that in February 2017, he and his brother began renting rooms from Syretta Coleman-Bey at a house located on 60 East Walnut Lane in Philadelphia. (*See* N.T., 2/11/19, at 53-54.) On October 15, 2017, Ms. Coleman-Bey said that she wanted them to move out. *See id.* at 57. The complainant stated that

[s]he started throwing our stuff down the stairs, like throwing my bags, my clothes, and everything else like that. So I wound up calling my family members over, you know, to try to calm everything down. And then she called who she called. So from then on there it was like we was arguing back and forth like, “Well, we’re not leaving.” So we called the cops. So the cops stated like they wasn’t allowed to legally evict us at the time. . . . And everything died down once the cops came, and then they wound up leaving. I wound up trying to go upstairs. She wound up grabbing me. I tried to brush her off of me so I could go upstairs and re-put my stuff back in order. And, you know, everybody left at the time. . . . And [Mr. Payton] came back saying like, “You put your hands on my child’s mother.” I was like, “No, I don’t put my hands on females.” So he wound up getting mad. I shut the door in his face, and he bust open the door and let off. He just fired his firearm . . . and shot [me in] my right leg above my knee. . . . [The bullet] went in through the top, on the right top of my knee, and it came out through my left calf.

*Id.* at 57-58, 69.

The complainant used his phone to video record his interactions that night with Ms. Coleman-Bey. *Id.* The prosecutor played the video for the jury at Mr. Payton’s trial. *Id.* at 60.

The prosecutor asked the complainant about the gun used to shoot him. He testified, “I knew it was a Glock because of how similar it was to mine.” *Id.* at 68. The prosecutor inquired if he remembered “distinctly.” *Id.* And the complainant answered, “That’s -- yeah. That’s what it is, yes.” *Id.*

After he was shot, the complainant climbed out a window onto the roof and then climbed down to a neighbor’s house, where he called the police. *Id.* at 71-74. The police arrived and took him to a hospital. *Id.* at 74-75. The complainant spoke with detectives from the Philadelphia Police Department at the hospital. *See id.* at 78.

Three days later, the complainant met with the detectives and identified Ms. Coleman-Bey as his landlord. *Id.* at 84-85. He told them that there was a photograph of Ms. Coleman-Bey and the perpetrator in the china cabinet in the house on 60 East Walnut Lane. *See id.* at 87.

On October 27, 2017, the complainant met with the detectives for the third time. *Id.* at 87-88. In a photo lineup, he identified Mr. Payton as the person who shot him. *Id.* at 88-90.

On October 26, 2017, Philadelphia Police Lieutenant Lyghts executed a search warrant at 60 East Walnut Lane. (*See* N.T., 2/12/19, at 26-28.) During the search, Lieutenant Lyghts recovered a photograph of Ms. Coleman-Bey and the alleged perpetrator from the top of a china cabinet. *Id.* at 32. Later, Detective Priadka

submitted the picture to the Delaware Valley Intelligence Center (DVIC) for facial recognition. *Id.* at 71. On October 27, 2017, the DVIC identified Jarvis Payton as the person in the photo. *Id.* at 71-72.

As they searched the house, Lieutenant Lyghts saw Detective O’Neill recover a projectile from a bedroom. *Id.* at 29. The bullet was on the floor next to a mattress. *Id.* at 31.

On cross-examination, the lieutenant testified that a shell casing would be discharged if the shooter had fired a semiautomatic gun, as the complainant had testified. *See id.* at 41. But the police did not recover any shell casings. *Id.*

Detective James Priadka participated in the search at 60 East Walnut Lane. *Id.* at 64. When he went inside the bedroom where someone shot the complainant, the detective kicked the mattress, and a bullet fell on the floor. *Id.* at 65-66. The detective photographed the projectile. *Id.* at 66. And Detective O’Neill then recovered it. *Id.* at 67.

Detective Priadka testified that he believed the bullet he found was the one that struck the complainant. *Id.* at 91. He based this theory on the fact that “[i]t was a fired bullet” and “had striations.” *Id.*

Police Officer Robert Stott testified as an expert in the field of firearms identification and examination. *Id.* at 131. The officer analyzed the bullet Detective

O'Neill recovered. *See id.* at 132. The officer stated to a reasonable degree of scientific certainty that it

fit[ ] into a .38/9 millimeter classification. And the reason we use .38/9 millimeter in this case is because 38 caliber bullets and 9[-]millimeter bullets are almost identical in dimensions and weight. So sometimes when a bullet is damaged, as this nose area is slightly damaged, or there's some weight off a little bit, we put it into the classification of both, because technically it could have been fired from . . . a .38 revolver or a 9 millimeter semiautomatic.

*See id.* at 139-43. Officer Stott confirmed that there was no blood on the bullet. *Id.* at 143.

Police Officer Nikolas Romito testified that he stopped a car on October 28, 2017. *Id.* at 118. Mr. Payton was driving the vehicle, which had a license plate of KMG9527 and was registered to Kim Myers, who rode in the front passenger's seat. *Id.* 119-22. When Ms. Myers opened the vehicle's glove compartment, Officer Romito saw a gun. *Id.* at 120. The officer investigated further and determined that Ms. Myers possessed a valid permit for the .38-caliber black revolver. *See id.* at 120-22.

On February 19, 2018, Police Officer George Soto and his partner were on Fifth Street in Philadelphia when they stopped a vehicle with two men inside. *Id.* at 149-50. The officer testified that when he asked the front-seat passenger's name, the individual "got very belligerent and started cursing at us . . . ." *Id.* at 154. Officers fingerprinted the passenger and subsequently identified him as Jarvis Payton. *See id.*

at 155-56. The vehicle's license plate was KMG9527 and was registered to Kim Myers. *Id.* at 161.

Kim Myers, who is Mr. Payton's fiancée, testified that on October 15, 2017, she drove Mr. Payton to 60 East Walnut Lane. (*See* N.T., 2/13/19, at 8, 20.) They remained there for approximately twenty-five minutes before returning to her house. *Id.* at 9. Ms. Myers stated that Mr. Payton could not have shot anyone that night because he was at home with her. *Id.* at 7.

On cross-examination, the prosecutor played a recorded conversation between Mr. Payton and Ms. Myers. *Id.* at 34. Mr. Payton asked Ms. Myers to tell the police that she was not his girlfriend. *Id.* Ms. Meyers testified that when she spoke to the police, however, she did not lie. *Id.*

## **VI. SUMMARY OF THE ARGUMENT**

A. The trial court erred when it granted the Commonwealth's motion *in limine* and permitted the prosecutor to question the complainant about an incident where someone offered him money not to testify. After ruling that this other acts evidence was admissible, the trial court did not balance the need demonstrated by the Commonwealth for the evidence against its potential prejudice. Moreover, the trial court did not consider any other factors such as the strength of the other acts evidence, the efficacy of alternative proof of the charged crime, and the degree to

which the evidence would prejudice the jury. Thus, the court erred when it granted the Commonwealth's motion.

B. The trial court erred when it denied Mr. Payton's oral motion *in limine*. He sought to prohibit the Commonwealth from eliciting evidence about another person's revolver in the glove compartment of a vehicle that he was driving. The evidence was not relevant because there was no foundation to justify the inference of the likelihood that the weapon was used in the commission of the crime for which he was charged. Furthermore, the trial court erred and abused its discretion because it did not balance this evidence's prejudicial impact with its relevance.

C. In imposing a statutory maximum sentence for aggravated assault, the trial court erred and abused its discretion by considering an impermissible sentencing factor. The court relied on uncharged conduct to increase Mr. Payton's sentence beyond the guidelines. Accordingly, this Court should vacate the sentence.

D. This Court should grant a new trial because the trial court abused its discretion when the court denied Mr. Payton's challenge to the weight of the evidence. The verdict should shock the Court's conscience because the evidence adduced at trial was contradictory and tenuous. Specifically, the testimony about the weapon used, a bullet recovered at the scene, and the sequence of events before the crime was in contravention to the physical facts as well as the laws of nature.

## **VII. CONCISE STATEMENT OF THE REASONS RELIED ON FOR ALLOWANCE OF APPEAL PURSUANT TO PA.R.A.P. 2119(f)**

Mr. Payton's sentence for aggravated assault was manifestly excessive because it exceeded the aggravated range recommended in the sentencing guidelines, and the trial court improperly relied upon an impermissible factor in imposing a statutory maximum sentence.

## **VIII. ARGUMENT**

### **A. & B. The trial court erred and abused its discretion when the court admitted other acts evidence.**

The trial court erred in admitting evidence about alleged other acts. Appellate courts examine a trial court's decision concerning the admissibility of evidence for an abuse of discretion. *See Commonwealth v. Dengler*, 890 A.2d 372, 379 (Pa. 2005). “[A]n abuse of discretion is not merely an error of judgment. Rather, discretion is abused when 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 . . . .” *Commonwealth v. Prysock*, 972 A.2d 539, 541 (Pa. Super. Ct. 2009). All relevant evidence is admissible, subject to the prejudice/probative balancing, which attends all decisions upon admissibility. *See* PA.R.EVID. 401; PA.R.EVID. 402.

An exception to this rule of admissibility states, “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” PA.R.EVID. 404(b)(1). Evidence of separate or unrelated “crimes, wrongs, or acts” has been deemed inadmissible as character evidence against a defendant as a matter of policy, i.e., because of a fear that such evidence is so powerful that the jury might misuse the evidence and convict based solely upon criminal propensity. *Commonwealth v. Ulatoski*, 371 A.2d 186, 191 n. 11 (Pa. 1977).

However, Rule 404(b)(2) of the Pennsylvania Rules of Evidence permits the admission into evidence of “other crimes, wrongs, or acts” when relevant for a purpose other than criminal character/propensity, including proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake. *See, e.g., Commonwealth v. Chmiel*, 889 A.2d 501, 534 (Pa. 2005). This list is not exhaustive. PA.R.EVID. 404(b) cmt.

Under the “*res gestae*” exception, a trial court may admit a prior act as part of the “history or natural development of the case.” *Commonwealth v. Brown*, 52 A.3d 320, 326 (Pa. Super. 2012). The exception is limited to acts “which are so clearly and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances, and so could not be excluded on the presentation of the case before the jury without the evidence being rendered thereby

unintelligible.” *Id.* at 330. In other words, the *res gestae* exception applies to acts “which are so clearly and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances, and so could not be excluded on the presentation of the case before the jury without the evidence being rendered thereby unintelligible.” *Id.* at 330–31.

**A. The trial court erred and manifestly abused its discretion when the court granted the Commonwealth’s motion *in limine*.**

The trial court erred when it granted the Commonwealth’s motion *in limine* and permitted the prosecutor to question the complainant about an incident where someone offered him money not to testify. The court did not conduct a probative value/prejudice balancing test and consider factors such as: the strength of the other acts evidence, the need for the evidence, the efficacy of alternative proof of the charged crime, and “the degree to which the evidence probably will rouse the jury to overmastering hostility.” McCormick, Evidence § 190 at 811 (4th ed. 1992); *see Commonwealth v. Frank*, 577 A.2d 609 (Pa. Super. 1990) (enumerating balancing test factors, including the ability for limiting instruction to reduce prejudice).

Before Mr. Payton’s trial, the parties litigated the Commonwealth’s motion *in limine*, which sought to introduce other acts evidence. First, the Commonwealth wanted to admit recorded prison call. (N.T., 2/11/19, at 8.) Second, the Commonwealth requested permission to elicit testimony about an alleged incident

in which someone offered money to the complainant in exchange for his agreement not to testify. *Id.* Mr. Payton objected to the Commonwealth’s motion. *Id.* at 8-9.

The trial court denied the motion in part and granted it in part. *See id.* at 15.

The court ruled,

After reviewing the transcript from the prison calls, I think the transcript reflects that the calls themselves are really tenuous. I think, frankly, with the coding that’s used by the individuals who are making telephone calls or are participants in telephone calls, it would be confusing to the jury. And I don’t -- frankly, I think the information and the wording is too tenuous to suggest that this is some sort of party admission. I’m going to preclude the[m].

*Id.* at 14-15. The court then ruled that the evidence regarding “the complainant being approached by individuals about not showing up to court” was relevant. *Id.* at 15.

Subsequently, the complainant testified that he was in a corner store with his cousin when someone asked, “Which one of you all got shot in the leg?” *Id.* at 151. The unknown individual then spoke to the complainant and said, “You might as well not even go to court. We’ve got [\$5,000] for you.” *Id.*

This evidence was not relevant because the testimony did not show that Mr. Payton was involved—directly or collaterally. There was no testimony that Mr. Payton told the unknown individual to approach the complainant and offer him money. Furthermore, the unidentified person did not even mention Mr. Payton’s name while speaking to the complainant. Without any testimony that connected Mr. Payton to the incident, the other acts evidence did not have “a tendency to make a

fact more or less probable than it would be without the evidence.” PA.R.EVID. 401.

Thus, the evidence was irrelevant.

Even if the other acts evidence was admissible on a legal basis, i.e., the evidence was relevant, this Court should rule that the trial court abused its discretion.

The court did not

balance on the one side the actual need for the evidence . . . in light of the issues and the other evidence available to the prosecution, the convincingness of the evidence that the other [acts] were committed by the accused, the strength or weakness of the other [acts] evidence in supporting the issue, and on the other side, the degree to which the jury will probably be prejudiced by the evidence.

*Commonwealth v. Mitchell*, 460 A.2d 1182, 1184 (Pa. Super. 1983).

Other acts evidence is only admissible “if the probative value of the evidence outweighs its potential for unfair prejudice.” PA.R.EVID. 404(b)(2). “‘Unfair prejudice’ supporting the exclusion of relevant evidence means a tendency to suggest a decision on an improper basis or divert the jury’s attention away from its duty of weighing the evidence impartially.” *Commonwealth v. Wright*, 961 A.2d 119, 151 (Pa. Super. Ct. 2008) (citing PA.R.EVID. 403).

In conducting the test under Rule 403,

courts must consider factors such as the strength of the other crimes evidence, the similarities between the crimes, the time lapse between crimes, the need for the other crimes evidence, the efficacy of alternative proof of the

charged crime, and the degree to which the evidence probably will rouse the jury to overmastering hostility.

*Commonwealth v. Weakley*, 972 A.2d 1182, 1191 (Pa. Super. Ct. 2009) (quotation marks and citations omitted). Furthermore, when the court balances the need for the evidence against the possible prejudice, “the court is to look to the actual need for evidence of prior bad acts in light of the issues, the other evidence available to the prosecution and the strength or weakness of the prior bad acts evidence in supporting the issue.” *Commonwealth v. Schwartz*, 615 A.2d 350, 356 (Pa. Super. 1992) (citation omitted). In determining whether the probative value of the other acts evidence is substantially outweighed by its prejudicial effect, this Court has noted that “[there is] no fixed standard on which to rely, but [that the trial court] must instead consider the nature of the crime, the evidence being offered, and all attendant circumstances.” *Commonwealth v. Smith*, 808 A.2d 215, 225 (Pa. Super. Ct. 2002) (citation omitted).

Here, after ruling that the other acts evidence was admissible, the trial court explained, “You certainly are able to cross-examine those witnesses or that witness about the fact that it wasn’t [Mr. Payton], as [he] wasn’t able to do it, and that as far as he knows, [Mr. Payton]’s name was never mentioned . . . .” (N.T., 2/11/19, at 15.) But the court did not balance “the actual need” demonstrated by the Commonwealth for this evidence against its potential prejudice. *Schwartz*, 615 A.2d at 356.

Moreover, the trial court did not consider any other factors, such as the strength of the other crimes evidence, “the efficacy of alternative proof of the charged crime, and the degree to which the evidence probably will rouse the jury to overmastering hostility.” *Weakley*, 972 A.2d at 1191. Thus, the court erred when it granted the Commonwealth’s motion *in limine*.

This Court should remand for a new trial because the trial court’s error was not harmless. Harmless error

exists where: (1) the error did not prejudice the defendant or the prejudice was *de minimis*; (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.

*Commonwealth v. Hutchinson*, 811 A.2d 556, 561 (Pa. 2002) (citation omitted).

In Mr. Payton’s case, the trial court permitted the jury to hear evidence that someone offered the complainant \$5,000 not to testify. (*See* N.T., 2/11/19, at 151.) The Commonwealth sought admission of the evidence to unfairly prejudice Mr. Payton by showing that he attempted to intimidate the victim by having him “contacted or eliminated.” *Id.* at 8. And the Commonwealth accomplished its primary objective in eliciting the testimony—to “rouse the jury to overmastering hostility” towards Mr. Payton, unfairly prejudicing him. *Weakley*, 972 A.2d at 1191.

**B. The trial court erred and manifestly abused its discretion when the court denied Mr. Payton’s oral motion *in limine*.**

The trial court erred when it denied Mr. Payton’s motion *in limine* and allowed a police officer to testify about a gun, which another person legally possessed. The admission of the other acts evidence unfairly prejudiced Mr. Payton.

Our Supreme Court has explained:

A weapon not specifically linked to the crime is generally inadmissible; however, the fact the accused had a weapon or implement suitable to the commission of the crime charged is always a proper ingredient of the case for the prosecution. Any uncertainty that the weapon is the actual weapon used in the crime goes to the weight of such evidence. The only burden on the prosecution is to lay a foundation that would justify an inference by the finder of fact of the likelihood that the weapon was used in the commission of the crime.

*Commonwealth v. Christine*, 125 A.3d 394, 400 (Pa. 2015) (cleaned up & quotation marks and citations omitted). In Mr. Payton’s case, the Commonwealth did not meet its burden “to lay a foundation that would justify an inference by the finder of fact of the likelihood that the weapon was used in the commission of the crime.” *Id.*

During the trial, Mr. Payton moved *in limine* to preclude the Commonwealth from introducing testimony that officers stopped him as he drove with his fiancée. (N.T., 2/12/19, at 113-14.) During the stop, an officer saw a revolver, which Mr. Payton’s fiancée legally owned, in the glove compartment. *Id.* He argued that the

evidence was not relevant because the complainant testified that he was shot with an automatic weapon. *Id.* at 114. The trial court ruled,

Well, that's for the jury to decide, whether that is or is not the weapon. There's also other testimony that would be consistent with perhaps the fact that the weapon that was used was a revolver because there's no shell casings found. And so since there's conflicting testimony, the jury will determine whether or not that evidence is something that they should consider in their final deliberations. But certainly I believe that it's relevant.

*Id.* The court erred and abused its discretion because the Commonwealth did not establish the evidence was relevant. Furthermore, again, the court did not conduct a probative value/prejudice balancing test.

When the Commonwealth sought to admit the evidence about Ms. Myers's revolver, the complainant was the only witness to testify about the gun used to shoot him. He stated that he "knew it was a Glock." (N.T., 2/11/19, at 68.) On cross-examination, the complainant confirmed that the shooter used a semiautomatic weapon. *See id.* at 105-06. There was no evidence that the perpetrator used, or might have used, a revolver. Therefore, when the Commonwealth elicited the evidence about Ms. Myers's gun, there was no foundation to justify the inference "of the likelihood that [Ms. Myers's] weapon was used in the commission of the crime." *Christine*, 125 A.3d at 400. Thus, the other acts evidence was not relevant.

Furthermore, the trial court erred and abused its discretion because the court did not balance the prejudicial impact of the evidence with its relevance. A trial court

“may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

PA.R.EVID. 403.

Here, the evidence’s prejudicial impact substantially outweighed its scant relevance. Admission of the evidence about Ms. Myers’s revolver confused the trier of fact and caused it to speculate about the gun used to shoot the complainant, who testified that he was not shot with a revolver. (*See* N.T., 2/11/19, at 105-06.) The testimony about Ms. Myers’s gun was nothing more than the Commonwealth’s attempt to impugn Mr. Payton’s and Ms. Myers’s character.

This Court should remand for a new trial because the admission of the other acts evidence was erroneous, and the trial court’s error was not harmless. The testimony about Ms. Myers’s revolver incited “the jury to overmastering hostility” towards Mr. Payton and his witness, thereby unfairly prejudicing him. *Weakley*, 972 A.2d at 1191.

**C. The trial court abused its discretion at sentencing when the court relied on an impermissible factor and imposed a manifestly excessive sentence.**

In imposing a statutory maximum sentence for aggravated assault, the trial court erred and abused its discretion by considering an impermissible sentencing factor, specifically, uncharged conduct.

This claim challenges the discretionary aspects of Mr. Payton’s sentence. The allegation does not, however, entitle him to review as a matter of right. *Commonwealth v. Swope*, 123 A.3d 333, 337 (Pa. Super. Ct. 2015). Before this Court can address such a challenge, Mr. Payton must invoke the Court’s jurisdiction by: (1) filing a timely notice of appeal, *see* PA.R.A.P. 902 and 903; (2) properly preserving the issue at sentencing or in a motion to reconsider and modify the sentence, *see* PA.R.CRIM.P. 720; (3) including in his brief a concise statement of reasons relied upon for allowance of appeal under PA.R.A.P. 2119(f); and (4) raising a substantial question that the sentence appealed from is not appropriate under the Sentencing Code. *Id.*

Here, Mr. Payton filed a post-sentence motion to reconsider the sentence and a timely notice of appeal to this Court. Also, this brief includes a concise statement of reasons relied upon for allowance of appeal concerning the discretionary aspects of his sentence pursuant to Rule 2119(f).

In the Rule 2119(f) statement, Mr. Payton asserts that the trial court imposed a manifestly excessive sentence based on an impermissible factor. This Court has held that a claim a sentence is excessive because the trial court relied on impermissible factors raises a substantial question. *See, e.g., Commonwealth v. Allen*, 24 A.3d 1058, 1064-65 (Pa. Super. Ct. 2011) (“[A] claim that a sentence is excessive because the trial court relied on an impermissible factor raises a substantial

question.”). Accordingly, the Court should address the merits of Mr. Payton’s assertion.

This Court has held,

A sentence is invalid if the record discloses that the sentencing court may have relied in whole or in part upon an impermissible consideration. This is so because the court violates the defendant’s right to due process if, in deciding upon the sentence, it considers unreliable information, or information affecting the court’s impartiality, or information that it is otherwise unfair to hold against the defendant.

Simply put, the evidence upon which a sentencing court relies must be accurate, and there must be evidentiary proof of the factor[ ] upon which the court relied.

*Commonwealth v. Downing*, 990 A.2d 788, 793 (Pa. Super. Ct. 2010) (quotations and citations omitted).

At Mr. Payton’s sentencing hearing, the trial court stated that

while he was at various juvenile placements he did not want to follow orders, he was disrespectful to staff, he threatened staff while he’s been in prison, he has been disrespectful to the correctional officers, he’s threatened correctional officers while he’s in custody, and the same behavior that he demonstrated or acted out on the street he’s continuing to do the same while in custody. You are in custody and still acting as if you can do what you want to do. Those things include coordinating attacks on other inmates, stabbing other inmates, beating up other inmates, forcing other inmates to engage in sexual activity with you. He has done it all. It runs the gamut. . . . Mr. Payton has demonstrated his danger. He’s demonstrated his ability to manipulate other people, to manipulate situations.

(N.T., 4/5/21, at 31-32.)

The trial court fashioned Mr. Payton's sentence based on uncharged criminal conduct, which lacked sufficient evidence. Uncharged conduct can be used as a sentencing factor only under tightly-prescribed circumstances when there is evidentiary proof linking the defendant to the conduct. *Commonwealth v. P.L.S.*, 894 A.2d 120, 130 (Pa. Super. Ct. 2006). Here, there was no such evidentiary proof.

Mr. Payton's case is analogous to *Commonwealth v. Sypin*, 491 A.2d 1371 (Pa. Super. 1985). There, at the defendant's sentencing, the trial court referred to the disappearance and death of other children. *Id.* at 508. This Court vacated the sentence and held that since the defendant had not been charged with the disappearance or death of any child, the trial court's consideration of such incidents was improper. *Id.*

In Mr. Payton's case, as in *Sypin*, the trial court improperly considered uncharged conduct. *See id.* There was no evidence that Mr. Payton was charged in connection with "attacks on other inmates, stabbing other inmates, beating up other inmates, [or] forcing other inmates to engage in sexual activity." (N.T., 4/5/21, at 31.) Thus, the court abused its discretion when relying on this conduct to increase Mr. Payton's sentence beyond the guidelines. Accordingly, this Court should vacate the sentence.

**D. The verdict was against the weight of the evidence.**

This Court should grant a new trial because the trial court abused its discretion when the court denied Mr. Payton's challenge to the weight of the evidence.

When considering weight claims, this Court applies the following tenets. "The weight of the evidence is exclusively for the finder of fact, who is free to believe all, none[,] or some of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Talbert*, 129 A.3d 536, 545 (Pa. Super. Ct. 2015) (quotation marks and quotation omitted). Resolving contradictory testimony and questions of credibility are matters for the finder of fact. *Commonwealth v. Hopkins*, 747 A.2d 910, 917 (Pa. Super. Ct. 2000).

The Court cannot substitute its judgment for that of the trier of fact. *Talbert*, 129 A.3d at 545. Moreover, appellate review of a weight claim examines the trial court's exercise of discretion in denying the weight challenge raised in the post-sentence motion; the Court does not review the underlying question of whether the verdict is against the weight of the evidence. *See id.*

Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. 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 and that a new trial should be granted in the interest of justice.

*Id.* at 546 (quotation omitted).

Finally, “[i]n order for a defendant to prevail on a challenge to the weight of the evidence, the evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court.” *Id.* (internal quotation marks and citation omitted). As our Supreme Court has made clear, reversal is only appropriate “where the facts and inferences disclose a palpable abuse of discretion[.]” *Commonwealth v. Morales*, 91 A.3d 80, 91 (Pa. 2014) (citations and emphasis omitted).

In Mr. Payton’s case, the verdict should shock this Court’s conscience because the evidence adduced at trial was contradictory and tenuous. Specifically, the testimony about the handgun used, a bullet recovered at the scene, and the sequence of events before the shooting was in contravention to the physical facts as well as the laws of nature.

The Commonwealth’s theory of the case ignored the complainant’s statements to the police and testimony at the trial. When he spoke with police officers, the complainant stated that someone shot him with a gun that looked like a Glock 40. (See N.T., 2/13/19, at 61.) And at Mr. Payton’s trial, the complainant consistently testified the perpetrator shot him with a Glock 40. (N.T., 2/11/19, at 68, 105, 106.) But the Commonwealth disregarded the complainant’s assertions and elicited

evidence to prove that Mr. Payton used his fiancée's .38-caliber revolver to commit the crime.

In furtherance of its theory, the Commonwealth introduced evidence about the gun a police officer saw in the glove compartment of Ms. Myers's car. But this evidence merited no weight because there was no testimony that the shooter used a revolver.

After the Commonwealth introduced the evidence about Ms. Myers's gun, the Commonwealth elicited questionable testimony about a bullet recovered at the crime scene. Officer Priadka claimed that he found a projectile after he "kicked the mattress" in the room where the complainant was shot. (N.T., 2/12/19, at 65.) The testimony was dubious. No fair and rational trier of fact would believe that the officer happened to find a critical piece of evidence when, for some unknown reason, he kicked a mattress.

The verdict should shock this Court's conscience in light of the evidence supporting the Commonwealth's theory that the bullet recovered was the one that wounded the complainant. The recovered bullet, which allegedly traveled through the complainant's leg, did not have blood on it. (*See* N.T., 2/12/19, at 143.) Moreover, there was no testimony about the trajectory, which might explain how a bullet that entered the area above the complainant's knee and traveled downward

before it exited his calf (*See* N.T., 2/11/19, at 69-70) could have landed on a nearby mattress.

Finally, the complainant offered implausible testimony about the sequence of events before he was shot. He said his bedroom door was locked, and Mr. Payton broke it open. (N.T., 2/11/19, at 104.) But two Commonwealth witnesses repudiated the complainant's assertion. First, Lieutenant Kulb testified that the bedroom door was intact when he looked at it after the incident. *See id.* at 45. Then, Detective Pacell confirmed the lieutenant's observation, thereby further damaging the complainant's credibility. (*See* N.T., 2/12/19, at 21.)

Based on the above, the contradictory and tenuous evidence did not support the jury's verdict. Accordingly, the trial court abused its discretion when the court denied Mr. Payton's challenge to the weight of the evidence.

## **IX. CONCLUSION**

For the preceding reasons, Jarvis Payton respectfully requests this Honorable Court vacate the sentences imposed and remand the case.

Respectfully Submitted,

*/s/Matt Sullivan*  
Matthew Sullivan, Esq.  
Counsel for Appellant

Date: November 22, 2021

**X. CERTIFICATION OF WORD COUNT**

Pursuant to PA.R.A.P. 2135, I certify that the accompanying brief, which I prepared using Times New Roman 14-point font, contains 7,053 words, excluding the parts of the document exempted by the Rule.

*/s/Matt Sullivan*  
Matthew Sullivan, Esq.  
1327 Spruce Street, 7D  
Philadelphia, PA 19107  
(215) 796-0263

**XI. VERIFICATION**

I, Matthew Sullivan, Esq., verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: November 22, 2021

By: */s/ Matt Sullivan*  
Matthew Sullivan, Esq.

## **XII. CERTIFICATE OF SERVICE**

I, Matthew Sullivan, Esq., certify that on this day, I served a true and correct copy of the foregoing upon the following via electronic filing:

Pennsylvania Superior Court  
530 Walnut Street, Suite 315  
Philadelphia, PA 19106

Office of the District Attorney  
Philadelphia County  
Three South Penn Square  
Philadelphia, Pennsylvania 19107-3499

The Honorable Kai N. Scott  
Stout Justice Center, Room 1213  
Philadelphia, PA 19107

Date: November 22, 2021

By: /s/ *Matt Sullivan*  
Matthew Sullivan, Esq.  
Counsel for Appellant

## APPENDIX A

Commonwealth of Pennsylvania  
v.  
Jarvis Payton

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

DOCKET NO: CP-51-CR-0001864-2018  
DATE OF ARREST: 02/19/2018  
OTN: U 113463-0  
SID: 239-67-54-5  
DOB: 10/02/1979  
PID: 0785580

**ORDER OF SENTENCE**

AND NOW, this 5th day of April, 2021, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows:

**Count 1 - 18 § 2702 §§ A - Aggravated Assault (F1)**

To be confined for a minimum period of 10 Year(s) and a maximum period of 20 Year(s) at State Correctional Institution

The following conditions are imposed:

Other: \* Defendant sentenced in Absentia.

\* Defendant sentenced to ten (10) years to twenty (2) years incarceration in State Custody on charge of "Aggravated Assault" (F1).

\* Defendant sentenced to three and a half (3 1/2) to seven (7) years incarceration, to run CONSECUTIVE to above stated incarceration sentence, in State Custody on charge of "Possession Of Firearm Prohibited" (F1).

\* Defendant sentenced to three (3) years reporting probation, to follow incarceration sentence, on charge of "Firearms Not To Be Carried W/O License" (F3).

\* Defendant sentenced to three (3) years reporting probation, to follow incarceration sentence, on charge of "Poss Instrument Of Crime W/Int" (M1).

\* The Defendant shall comply with any additional conditions of supervision, as directed by the Pennsylvania Board of Probation and Parole, in furtherance of the special conditions imposed by the Court.

\* Defendant is ordered to be evaluated for any Mental Health needs and comply with any treatment & therapy that is recommended.

\* Defendant is ordered to be evaluated for any Drug use and comply with any recommendations.

\* Mandatory Court Cost & Fines imposed.

\* Stay Away Order to remain.

This sentence shall commence on 04/05/2021.

**Count 2 - 18 § 6105 §§ A1 - Possession Of Firearm Prohibited (F1)**

To be confined for a minimum period of 3 Year(s) 6 Month(s) and a maximum period of 7 Year(s) at State Correctional Institution.

**Count 3 - 18 § 6106 §§ A1 - Firearms Not To Be Carried W/O License (F3)**

To be placed on Probation - State (PBPP) Regular Probation - for a maximum period of 3 Year(s) to be supervised by State Supervision.

**Count 5 - 18 § 907 §§ A - Poss Instrument Of Crime W/Int (M1)**

To be placed on Probation - State (PBPP) Regular Probation - for a maximum period of 3 Year(s) to be supervised by State Supervision.

CP-51-CR-0001864-2018 Comm. v. Payton, Jarvis  
Order - Sentence/Penalty Imposed



8610100091

Commonwealth of Pennsylvania

Order of Sentence

v.  
Jarvis Payton

Docket No: CP-51-CR-0001864-2018

**LINKED SENTENCES:**

**Link 3**

- Link 2 is Consecutive to
- Link 1

**Link 1**

- CP-51-CR-0001864-2018 - Seq. No. 2 (18 § 6105 §§ A1) - Confinement is Consecutive to
- CP-51-CR-0001864-2018 - Seq. No. 1 (18 § 2702 §§ A) - Confinement

**Link 2**

- CP-51-CR-0001864-2018 - Seq. No. 3 (18 § 6106 §§ A1) - Probation is Concurrent with
- CP-51-CR-0001864-2018 - Seq. No. 5 (18 § 907 §§ A) - Probation

The defendant shall pay the following:

	Fines	Costs	Restitution	Crime Victim's Compensation Fund -	Total Due
Amount:	\$0.00	\$758.75	\$0.00	\$60.00	\$818.75
Balance Due:	\$0.00	\$696.25	\$0.00	\$60.00	\$756.25

Hon. Kai Scott.

ADA: Alyssa Amoroso / Atty: Tobias Hamal Brown / Steno: Kelly Keys / CtClerk: JFigueiredo.

BY THE COURT:

  
 \_\_\_\_\_  
 Judge Kai Scott

DC-300B (PART I) Rev. 12/05  <p style="text-align: center;"><b>COURT COMMITMENT</b>          STATE OR COUNTY CORRECTIONAL INSTITUTION          Commonwealth of Pennsylvania</p> <p style="text-align: center;">v.  <b>Jarvis Payton</b></p>	Type or Print Legibly  COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records <input checked="" type="checkbox"/> DC-300B (PART II) Attached
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COMMITMENT NAME: Payton, Jarvis				COURT OF INITIAL JURISDICTION <input type="checkbox"/>	COMMON PLEAS <input checked="" type="checkbox"/>	
SEX	DATE OF BIRTH	SID	OTN	COMMITTING COUNTY: Philadelphia		
<input type="checkbox"/> F <input checked="" type="checkbox"/> M	10/02/1979	239-67-54-5	U 113463-0	COURT NUMBER AND TERM: 0001864-2018 Ct. 1		
MANDATORY SENTENCE		BOOT CAMP		COUNTY REFERENCE #: 0785580		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Ineligible		SEX OFFENDER CLASS:		
The above defendant after		<input type="checkbox"/> Pleading Guilty	<input type="checkbox"/> Nolo Contendere	<input type="checkbox"/> Alford Plea	<input checked="" type="checkbox"/> Being Found Guilty	<input type="checkbox"/> GBMI

was on **04/05/2021**, sentenced by **The Honorable Kai Scott** to **Confinement** for a term of A minimum period of 10 Year(s) and a maximum period of 20 Year(s), or Other for the offense of Aggravated Assault (Section 18 § 2702 §§ A of the Crimes and Offenses Code). It is further ordered that the said defendant be delivered by the proper authority to and treated as the law directs at the State Correctional Institution facility located at \_\_\_\_\_.

RRRI:			<input type="checkbox"/> STATE DRUG TREATMENT PROGRAM INELIGIBLE		
Fine:	Cost:	Restitution:	Crime Victim's Compensation Fund - Victim/Witness Services Fund:		
Amount \$0.00 Balance \$0.00	Amount \$758.75 Balance \$696.25	Amount \$0.00 Balance \$0.00	Amount \$60.00 Balance \$60.00		

CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT COMPUTATION ON PAGE TWO) 0 Days	EFFECTIVE DATE OF SENTENCE 04/05/2021
--	--

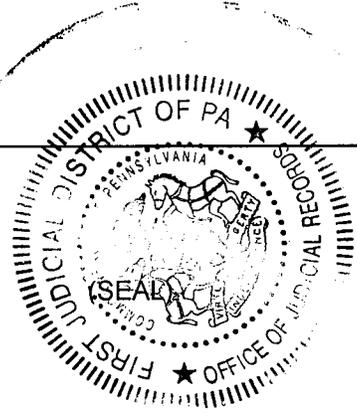
THIS SENTENCE IS CONCURRENT WITH:

THIS SENTENCE IS CONSECUTIVE TO: <-- See Supplemental Page -->

PROSECUTING ATTORNEY: Philadelphia County District Attorney's Office	DEFENSE ATTORNEY: Tobias Hamal Brown
---	---

DISPOSITION ON NON-INCARCERATION OFFENSE(S): (THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)

Ct. 3 - Firearms Not To Be Carried W/O License - Probation - Guilty  
 Ct. 4 - Carry Firearms Public In Phila - Not Guilty  
 Ct. 5 - Poss Instrument Of Crime W/Int - Probation - Guilty  
 Ct. 6 - Terroristic Threats W/ Int To Terrorize Another - Judgment of Acquittal (Prior to Disposition)  
 Ct. 7 - Simple Assault - Nolle Prossed  
 Ct. 8 - Recklessly Endangering Another Person - Nolle Prossed



In witness, whereof I have hereunto set my hand and seal of said court, this 5th day of April, 2021.

*[Handwritten Signature]*  
 AUTHORIZED SIGNATURE



*J. Figueroa*  
*cc/908*

The sentence for Payton, Jarvis was computed as follows:

Date of Sentence	County or Magisterial District	Court Number and Term	Type Sentence	Minimum			Maximum			Judge or Magisterial District Judge	OTN (Include Alpha Suffix)
				Yrs.	Mos.	Days	Yrs.	Mos.	Days		
04/05/2021	Philadelphia	0001864-2018	Ct 1 Conf.	10	0	0	20	0	0	The Honorable Kai	U 113463-0
04/05/2021	Philadelphia	0001864-2018	Ct 2 Conf.	3	6	0	7	0	0	The Honorable Kai	U 113463-0
Total Sentence											

Credit for Time Served

Locked Up (Location)	Dates		No. of Days
	From	To	
Total			

All Detainers Must Be Attached To This Form

Total Number Of Detainers Attached

Dated	Indict - Warrant Nos.	Remarks

Recommendations of the Court

Ct. 1      Confinement Conditions:      Other: \* Defendant sentenced in Absentia.  
 \* Defendant sentenced to ten (10) years to twenty (2) years incarceration in State Custody on charge of "Aggravated Assault" (F1).  
 \* Defendant sentenced to three and a half (3 1/2) to seven (7) years incarceration, to run CONSECUTIVE to above stated incarceration sentence, in State Custody on charge of "Possession Of Firearm Prohibited" (F1).  
 \* Defendant sentenced to three (3) years reporting probation, to follow incarceration sentence, on charge of "Firearms Not To Be Carried W/O License" (F3).  
 \* Defendant sentenced to three (3) years reporting probation, to follow incarceration sentence, on charge of "Poss Instrument Of Crime W/Int" (M1).  
 \* The Defendant shall comply with any additional conditions of supervision, as directed by the Pennsylvania Board of Probation and Parole, in furtherance of the special conditions imposed by the Court.  
 \* Defendant is ordered to be evaluated for any Mental Health needs and comply with any treatment & therapy that is recommended.  
 \* Defendant is ordered to be evaluated for any Drug use and comply with any recommendations.  
 \* Mandatory Court Cost & Fines imposed.  
 \* Stay Away Order to remain.

<p style="text-align: center;">The Following Additional Reports are Attached</p> <input checked="" type="checkbox"/> Continuation Sheet (DC-300B, Part II) <input type="checkbox"/> Arrest Report <input type="checkbox"/> FBI <input type="checkbox"/> Pre / Postsentence Investigation <input type="checkbox"/> Behavior Clinic <input type="checkbox"/> PSP <input type="checkbox"/> Sentencing Sheet <input type="checkbox"/> Sentencing Guidelines <input type="checkbox"/> Statement of Costs <input type="checkbox"/> Sentence Order <input type="checkbox"/> Criminal Complaint	<p style="text-align: center;">The Following Additional Reports will be Forthcoming</p> <input type="checkbox"/> Arrest Report <input type="checkbox"/> Presentence or Postsentence Investigation
--	---

DC-300B (PART II)  
Rev. 12/05

COURT COMMITMENT  
CONTINUATION SHEET  
STATE OR COUNTY CORRECTIONAL INSTITUTION  
Commonwealth of Pennsylvania  
v.  
Jarvis Payton

Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
BOX 8837 CAMP HILL, PA 17001-0598  
Attn: Central Office Records

COMMITTING COUNTY: Philadelphia

COURT NUMBER AND TERM: 0001864-2018 Ct. 2

OTN: U 113463-0

The above defendant after

Pleading Guilty

Nolo Contendere

Alford Plea

Being Found Guilty

GBMI

was on **04/05/2021**, sentenced by **The Honorable Kai Scott** to **Confinement** for a term of A minimum period of 3 Year(s) 6 Month(s) and a maximum period of 7 Year(s), or 3 1/2 to 7 years for the offense of Possession Of Firearm Prohibited (Section 18 § 6105 §§ A1 of the Crimes and Offenses Code).

RRRI:

STATE DRUG TREATMENT PROGRAM INELIGIBLE

Fine:

Cost:

Restitution:

Crime Victim's Compensation Fund -

Victim/Witness Services Fund:

Amount \$0.00

Amount \$0.00

Amount \$0.00

Amount \$0.00

Balance \$0.00

Balance \$0.00

Balance \$0.00

Balance \$0.00

CREDIT FOR TIME SERVED: 0 Days

EFFECTIVE DATE OF SENTENCE:

THIS SENTENCE IS CONCURRENT WITH:

THIS SENTENCE IS CONSECUTIVE TO: <-- See Supplemental Page -->

DC-300B (PART II)  
Rev. 12/05

COURT COMMITMENT  
CONTINUATION SHEET  
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Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
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Attn: Central Office Records

**LINKED SENTENCES:**

**Link 3**

- Link 2 is Consecutive to
- Link 1

**Link 1**

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- CP-51-CR-0001864-2018 - Seq. No. 1 (18 § 2702 §§ A) - Confinement

**Link 2**

- CP-51-CR-0001864-2018 - Seq. No. 3 (18 § 6106 §§ A1) - Probation is Concurrent with
- CP-51-CR-0001864-2018 - Seq. No. 5 (18 § 907 §§ A) - Probation

DC-300B (PART II)  
Rev. 12/05

COURT COMMITMENT  
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Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
BOX 8837 CAMP HILL, PA 17001-0598  
Attn: Central Office Records

**Case Assessment Summary**

<u>Offense No</u>	<u>Statute Description</u>	<u>Fines</u>	<u>Costs</u>	<u>Restitution</u>	<u>CVC</u>
1	Aggravated Assault	\$0.00	\$696.25	\$0.00	\$60.00
	Non-offense related	\$0.00	\$62.50	\$0.00	\$0.00
<b>Total Ordered:</b>		<b>\$0.00</b>	<b>\$758.75</b>	<b>\$0.00</b>	<b>\$60.00</b>
<b>Amount Paid:</b>		<b>\$0.00</b>	<b>-\$62.50</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Total Due:</b>		<b>\$0.00</b>	<b>\$696.25</b>	<b>\$0.00</b>	<b>\$60.00</b>

Commonwealth of Pennsylvania  
 Court of Common Pleas  
 County of Philadelphia  
 1st Judicial District



**Itemized Account of Fines, Costs, Fees,  
 and Restitution**

Commonwealth of Pennsylvania  
 v.  
 Jarvis Payton

Jarvis Payton  
 2070 E Orleans St  
 Philadelphia, PA 19134

Docket No: CP-51-CR-0001864-2018

**Assessments to be paid by Jarvis Payton**

**Costs/Fees**

- CQS Fee Felony (Philadelphia)
- Firearm Education and Training Fund
- Filing Fee (Philadelphia)
- Victim Witness Service (Act 111 of 1998)
- CJES
- Crime Victims Compensation (Act 96 of 1984)
- ATJ
- Judicial Computer Project
- Commonwealth Cost - HB627 (Act 167 of 1992)
- OAG - JCP
- Filing Fee (Philadelphia)
- DNA Detection Fund (Act 185-2004)
- Filing Fee (Philadelphia)
- JCPS
- Costs of Prosecution - CJEA
- Filing Fee (Philadelphia)
- Booking Center Fee (Philadelphia)
- State Court Costs (Act 204 of 1976)
- County Court Cost (Act 204 of 1976)
- Domestic Violence Compensation (Act 44 of 1988)
- Filing Fee (Philadelphia)

Distribution Account	Assessment Balance
CTY - 51	\$100.00
COMM - FETA	\$5.00
CTY - 51	\$0.00
COMM - VWS	\$25.00
COMM - CJES	\$2.50
COMM - CVC	\$35.00
COMM - ATJ	\$6.00
COMM - JCP	\$8.00
COMM - CST1	\$21.10
COMM - OAG	\$2.50
CTY - 51	\$0.00
COMM - DNA	\$250.00
CTY - 51	\$0.00
COMM - JCPS	\$21.25
COMM - CJEA	\$50.00
CTY - 51	\$0.00
CTY - 51	\$175.00
COMM - COST	\$14.10
CTY	\$30.80
COMM - DVC	\$10.00
CTY - 51	\$0.00
<b>\$756.25</b>	

**Balance Due: \$756.25**

First Judicial District of Pennsylvania  
 Attention Accounting Unit  
 714 Market Street  
 Philadelphia, PA 19106

You can now make case payments online through Pennsylvania's Unified Judicial System web portal. Visit the portal at <https://ujportal.pacourts.us/epay> to make a payment and learn more.

Docket No: CP-51-CR-0001864-2018

I hereby certify that as of the date indicated below Jarvis Payton is indebted to the County of Philadelphia for the sum of \$756.25 which is the total of all fines, costs, fees, and restitution that have accrued as of this date in the above-captioned case.

**Civil Judgment**

A Civil Judgment will be recorded 60 days from the sentencing date on all non-exempt cases.  
The Civil Judgment Fee of \$100.69 will be added to the above assessments.

**Supervision Fee**

A Supervision Fee (OSP) in the amount of \$25.00 per month may be added to the above assessments unless waived by the Court.

Original Case Balance: **\$818.75**

\_\_\_\_\_ Date

\_\_\_\_\_ (Signature of Issuing Authority)

Mail payments to:  
Court of Common Pleas  
Office of Judicial Records  
P.O. Box 786251  
Philadelphia, PA 19178-6251

Hand Deliver payments to:  
Payment Center  
Stout Center For Criminal Justice  
1301 Filbert Street, B-02  
Philadelphia, PA 19107  
Or  
Payment Center  
Office of Judicial Records  
714 Market Street  
Philadelphia, PA 19102

Payment by: cash, money order, check, credit card, debit card

First Judicial District of Pennsylvania  
Attention Accounting Unit  
714 Market Street  
Philadelphia, PA 19106

You can now make case payments online through Pennsylvania's Unified Judicial System web portal. Visit the portal at <https://ujportal.pacourts.us/epay> to make a payment and learn more.



## **APPENDIX B**

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
V. PHILADELPHIA COUNTY  
CRIMINAL TRIAL DIVISION

JARVIS PAYTON : CP-51-CR-0001864-2018

**ORDER FOR HEARING**

And now, this \_\_\_\_\_ day of \_\_\_\_\_ 2021, upon application of Tobias Brown,  
Attorney for Petitioner, a hearing was ordered on the within motion for the \_\_\_\_\_ day of  
\_\_\_\_\_ 2021, in room 808, Criminal Justice Center at 9:00 a.m.

BY THE COURT:

\_\_\_\_\_  
HON. KAI N. SCOTT

By: Tobias Brown, Esq.  
Identification No: 315119  
1650 Market Street, 36<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215)709-1111

Attorney for Petitioner

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
V. CRIMINAL TRIAL DIVISION

JARVIS PAYTON : CP-51-CR-0001864-2018

**CONSOLIDATED POST-SENTENCE MOTION**

TO THE HONORABLE JUDGE KAI SCOTT:

Jarvis Payton, by his attorney, Tobias Brown, Esq., respectfully submits this Consolidated Post-Sentence Motion pursuant to Rule 720 of the Pennsylvania Rules of Criminal Procedure, specifically requesting that this Court grant petitioner's Motion for Judgment of Acquittal, Motion Challenging Validity of Sentencing in Abstentia, and Motion for Reconsideration of Sentence.

Petitioner offers the following in support thereof:

1. On February 19, 2018, Defendant was arrested and charged with Possession with Aggravated Assault, Possession of a Firearm Prohibited Person, Firearms Not To Be Carried W/O License, and Possession of an Instrument of Crime.
2. On February 14, 2019, a jury found Petitioner guilty of all the above charges after trial.
3. On April 5, 2021, Petitioner was sentenced in abstentia to 13 ½ to 27 years of incarceration followed by three years reporting probation.

**MOTION FOR JUDGEMENT OF ACQUITTAL**

4. Petitioner now bring his motion for Judgment of Acquittal, based on the jury's verdict being against the weight of evidence.
5. Defendant specifically argues that the Commonwealth failed to present evidence

sufficient to support a finding of guilty for each of the aforementioned criminal charges.

6. Petitioner was convicted based on inconsistent and uncredible identification by the complaining witness.

7. There was no physical evidence, such as fingerprints or DNA, a recovered weapon, video or any documentation to support the complainant's accusation against petitioner.

8. Petitioner presented a credible alibi witness at trial, ruling out the possibility that he was guilty of the charged crimes.

WHEREFORE, for the above stated reasons, defendant, by counsel, respectfully requests that the Court grant this Motion for Judgment of Acquittal. Petitioner requests a hearing on this motion.

**MOTION CHALLENGING VALIDITY OF SENTENCING IN-ABSTENTIA**

9. On April 5, 2021, Petitioner was sentenced in abstentia to 13 ½ to 27 years of incarceration followed by three years reporting probation.

10. Petitioner denies this Court's reasoning that sentencing in abstentia was warranted due to petitioner's willful failure to appear at sentencing.

11. Petitioner's sentencing was delayed due to genuine mental and physical health issues suffered by petitioner, and not caused by willful failures to appear at sentencing.

12. Furthermore, petitioner has remained in the custody of the Commonwealth since his arrest in this matter, and cannot have willfully failed to appear while incarcerated in Commonwealth custody.

WHEREFORE, for the above stated reasons, defendant, by counsel, respectfully requests that the Court grant this Motion Challenging Validity of Sentencing In-Abstentia. Petitioner requests a hearing on this motion.

**MOTION FOR RECONSIDERATION OF SENTENCE**

13. On April 5, 2021, Petitioner was sentenced in absentia to 13 ½ to 27 years of incarceration followed by three years reporting probation.

14. Petitioner now requests this Honorable Court to reconsider the sentence.

15. Petitioner was not present and was not given an opportunity to allocute.

16. Petitioner was not able to present evidence or witnesses at sentencing.

WHEREFORE, for the above stated reasons, defendant, by counsel, respectfully requests that the Court grant this Motion for Reconsideration of Sentence. Petitioner requests a hearing on this motion.

Respectfully submitted,

Tobias Brown, Esq.

TOBIAS BROWN, ESQUIRE      315119

VERIFICATION

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief and are verified subject to the penalties for unsworn falsification to authorities under Title 18, § 4904 of the Pennsylvania Crimes Code.

Tobias Brown, Esq.  
TOBIAS BROWN, ESQUIRE      315119

April 15, 2021

## APPENDIX C

MATTHEW F. SULLIVAN, ESQ.  
Identification No. 313293  
1327 Spruce Street, 7D  
Phila., PA 19107  
(215) 796-0263  
matthew.sullivan.esq@gmail.com

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COMMONWEALTH OF PENNSYLVANIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	CRIMINAL TRIAL DIVISION
v.	:	
	:	
JARVIS PAYTON	:	CP-51-CR-0001864-2018

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**STATEMENT OF MATTERS COMPLAINED OF ON APPEAL  
PURSUANT TO Pa.R.A.P. 1925(b)**

TO THE HONORABLE KAI N. SCOTT, JUDGE OF THE SAID COURT:

Jarvis Payton by and through below-signed counsel hereby raises the following issues on appeal pursuant to Pa.R.A.P. 1925(b). In the below allegations of error, this Honorable Court erred, unfairly prejudiced, and violated rights of due process guaranteed by both the United States Constitution and the Pennsylvania Constitution:

1. The Court erred and manifestly abused its discretion when the Court granted the Commonwealth's motion *in limine* and permitted the prosecutor to question the victim about an incident in a corner store when the victim was offered \$5,000. There was no independent corroboration that the incident occurred and no objective evidence to connect the incident to Mr. Payton. Thus, the prejudicial impact of the evidence heavily outweighed the minimal probative value. Accordingly, the evidence should have been excluded under Pa.R.E. 403. *See*

Pa.R.E. 403 (“The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice . . .”).

2. The Court erred and abused its discretion by not declaring a mistrial. Mr. Payton was denied a fair trial because the Commonwealth committed a discovery violation. Whether it was willful or unintentional, the Commonwealth did not provide Mr. Payton with the photographs and any discoverable detectives’ notes from the array in which the victim did not identify anyone. That evidence was favorable to Mr. Payton because it could have been used for impeachment. The evidence was material in that its omission prejudiced Mr. Payton. He could have utilized the evidence to investigate why the detectives placed those individuals in a photo array. Furthermore, Mr. Payton would have used the evidence about these individuals during the detectives’ impeachment.
3. When the Court sentenced Mr. Payton in absentia, it violated his right to be present in the courtroom at every stage of a criminal trial. As our High Court reaffirmed in *Commonwealth v. Tharp*, 101 A.3d 736, 762 (Pa. 2014), that right, while not absolute, is guaranteed by Article I, § 9 of the Pennsylvania Constitution and Pa.R.Crim.P. 602. The Commonwealth did not prove by a preponderance of the evidence that Mr. Payton willfully failed to attend the sentencing. Furthermore, any perceived need to move forward with Mr. Payton’s sentencing was substantially outweighed by his constitutional right to be present, especially considering that he was in local custody when the Court sentenced him in absentia.

4. The Court erred and abused its discretion when the Court denied Mr. Payton's post-sentence motion because the verdict was against the weight of the evidence. In this case, "certain facts [were] so clearly of greater weight that to ignore them or to give them equal weight with all the facts [was] to deny justice." *Commonwealth v. Lyons*, 833 A.2d 245, 258 (Pa. Super. Ct. 2003) (citation omitted). Specifically, the inconsistent and equivocal testimonies of the victim and the police officers rendered the Commonwealth's evidence unreliable.
5. The Court abused its discretion in sentencing Mr. Payton. The Court relied on impermissible factors when it imposed a statutory maximum sentence for aggravated assault.

Respectfully Submitted,

/s/ Matt Sullivan  
Matthew Sullivan, Esq.  
Attorney for Defendant

Date: June 11, 2021

**CERTIFICATE OF SERVICE**

I, Matthew Sullivan, Esq., hereby certify that I am this day serving a true and correct copy of the foregoing upon the parties indicated below via electronic filing.

Honorable Kai N. Scott  
Stout Justice Center, Room 1213  
Philadelphia, PA 19107

District Attorney of Philadelphia  
3 Penn Square Plaza  
Philadelphia, PA 19102

Date: June 11, 2021

*/s/ Matt Sullivan*  
Matthew Sullivan, Esq.

## APPENDIX D

MATTHEW F. SULLIVAN, ESQ.  
Identification No. 313293  
1327 Spruce Street, 7D  
Phila., PA 19107  
(215) 796-0263  
matthew.sullivan.esq@gmail.com

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COMMONWEALTH OF PENNSYLVANIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	CRIMINAL TRIAL DIVISION
v.	:	
	:	
JARVIS PAYTON	:	CP-51-CR-0001864-2018

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**SUPPLEMENTAL STATEMENT OF MATTERS COMPLAINED OF ON APPEAL  
PURSUANT TO Pa.R.A.P. 1925(b)**

TO THE HONORABLE KAI N. SCOTT, JUDGE OF THE SAID COURT:

Jarvis Payton by and through below-signed counsel hereby raises the following issues on appeal pursuant to Pa.R.A.P. 1925(b). In the below allegations of error, this Honorable Court erred, unfairly prejudiced, and violated rights of due process guaranteed by both the United States Constitution and the Pennsylvania Constitution:

1. The Court erred and manifestly abused its discretion when the Court denied Mr. Payton's oral motion *in limine* and permitted the Commonwealth to elicit evidence about a traffic stop. (*See* Notes of Testimony, 2/12/2019, at 113.) The potential for unfair prejudice outweighed the evidence's scant relevance. Therefore, the Court should have precluded the evidence under Pa.R.E. 403.

Respectfully Submitted,

*/s/ Matt Sullivan*  
Matthew Sullivan, Esq.  
Attorney for Defendant

Date: June 13, 2021

**CERTIFICATE OF SERVICE**

I, Matthew Sullivan, Esq., hereby certify that I am this day serving a true and correct copy of the foregoing upon the parties indicated below via electronic filing.

Honorable Kai N. Scott  
Stout Justice Center, Room 1213  
Philadelphia, PA 19107

District Attorney of Philadelphia  
3 Penn Square Plaza  
Philadelphia, PA 19102

Date: June 13, 2021

/s/ *Matt Sullivan*  
Matthew Sullivan, Esq.

## **APPENDIX E**

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

FILED  
2021 AUG -6 PM 12:22

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0001864-2018  
: :  
v. : 935 EDA 2021  
: :  
JARVIS PAYTON :

OFFICE OF JUDICIAL RECORDS  
CRIMINAL DIVISION  
FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA

OPINION

Following a jury trial lasting from February 11, 2019 until February 14, 2019, Defendant Jarvis Payton was convicted of Aggravated Assault,<sup>1</sup> Possession of Firearm Prohibited (“VUFA 6105”),<sup>2</sup> Firearms Not to be Carried Without a License (“VUFA 6106”),<sup>3</sup> and Possession of an Instrument of a Crime (“PIC”).<sup>4</sup> Defendant was found not guilty of Carrying Firearms in Public in Philadelphia (“VUFA 6108”),<sup>5</sup> a judgment of acquittal was granted on Terroristic Threats with Intent to Terrorize Another,<sup>6</sup> and the charges of Simple Assault<sup>7</sup> and Recklessly Endangering Another Person (“REAP”)<sup>8</sup> were nolle prossed. Defendant filed a timely appeal and supplemental statement of matters complained of on appeal in which he argues the trial court erred and abused its discretion: (1) when the trial court granted the Commonwealth’s motion *in limine* and permitted the prosecutor to question the victim about an incident in a corner store when the victim was offered \$5,000 US currency; (2) by not declaring a mistrial when the Commonwealth committed a discovery violation; (3) when the trial court violated the Defendant’s right to be present in the courtroom at every stage of a criminal trial when it

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<sup>1</sup> 18 Pa.C.S.A. §2702 §A

<sup>2</sup> 18 Pa.C.S.A. §6105 §A1

<sup>3</sup> 18 Pa.C.S.A. §6106 §A1

<sup>4</sup> 18 Pa.C.S.A. §907A

<sup>5</sup> 18 Pa.C.S.A. §6108

<sup>6</sup> 18 Pa.C.S.A. §2706 §A1

<sup>7</sup> 18 Pa.C.S.A. §2701 §A

<sup>8</sup> 18 Pa.C.S.A. §2705

sentenced him in absentia; (4) when the trial court denied the Defendant's post-sentence motion because the verdict was against the weight of the evidence; (5) when the trial court sentenced the Defendant, it relied on impermissible factors when it imposed a statutory maximum sentence for aggravated assault; and (6) the trial court erred and manifestly abused its discretion when the trial court denied Defendant's oral motion *in limine* and permitted the Commonwealth to elicit evidence about a traffic stop. For the reasons stated below, the Superior Court should affirm the judgment of sentence.

### FACTUAL BACKGROUND

On October 15, 2017, at around 11:00 PM, James Robinson, the Complainant, got into an argument with Syretta Coleman-Bey, his landlord at 60 East Walnut Lane, the residence at which he was renting a room on the third floor. When the Complainant arrived at the residence on October 15, 2017, he was met with Ms. Coleman-Bey throwing his belongings down the stairs while insisting that the Complainant leave the house. During this argument, the Complainant was recording the incident with his phone. N.T. 02/11/19 at 53-59.

The Complainant refused to leave the house because he had just paid his rent for the month. The Complainant then called his family members over to the home. Ms. Coleman-Bey called Jarvis Payton, the Defendant and the father of her child, and another man to the home, and the police were called. When the police officers arrived around 1:42 AM, they informed Ms. Coleman-Bey that she could not evict the Complainant as he had paid his rent for the month. *Id.* at 57-62.

Once the police officers left, Ms. Coleman-Bey grabbed the Complainant and his testicles when he tried to return to his room. The Complainant pushed Ms. Coleman-Bey off of him and continued to his room. After this scuffle, the Complainant's family, as well as the Defendant and

the other man Ms. Coleman-Bey had called, left the residence, leaving only Ms. Coleman-Bey and the Complainant. *Id.* at 64.

The Complainant was fixing his room and returning his belongings to their proper places when he heard a knock on the front door. The Defendant had returned to the residence. He went to the Complainant's room and asked if the Complainant had his firearm on him, as the Complainant was licensed to carry a firearm under PA Act 235. PA Act 235 permits some individuals to carry a firearm while working in certain capacities. The Complainant informed the Defendant that he did not have his firearm. The Defendant proceeded to accuse the Complainant of harming Ms. Coleman-Bey, stating, "You scratched my baby mama." The Complainant insisted that he did not harm Ms. Coleman-Bey, as he does not "put his hands on females," and slammed the door in the Defendant's face. *Id.* at 64-65.

The Complainant heard Ms. Coleman-Bey and the Defendant speaking to one another outside of his door and heard the Defendant say, "No, no, no. Let me go." At that point, the Defendant opened the Complainant's bedroom door, and while approximately three feet away from the Complainant, pulled a black Glock firearm from his side, and shot the Complainant in the right leg, above his knee. The bullet entered the top right area of the Complainant's knee and came out through the left side of his right calf. *Id.* at 65-70.

After the Complainant was shot, he observed Ms. Coleman-Bey and the Defendant run down the stairs of the residence. The Complainant then climbed out the window, from the third floor, because he did not want to go through the front door. The Complainant hopped off the roof, down to a neighbor's house, and waited there until police officers arrived at around 3:40 AM. *Id.* at 71-75.

On October 18, 2017, Detective Priadka interviewed the Complainant and was shown video of the landlord-tenant dispute of October 15, 2017 that the Complainant had managed to record. Detective Priadka asked Complainant if he knew the person in the video, to which the Complainant responded, "No." However, the Complainant also stated that he had seen a picture, in the china closet at 60 East Walnut Lane, of the individual that was depicted in the video of the landlord-tenant dispute. The photograph depicted Defendant with Ms. Coleman-Bey and a child. N.T. 02/12/19 at 60-61.

On October 26, 2017, Detective James Priadka went to 60 East Walnut Lane to take photographs of the crime scene and to recover evidence pursuant to a search warrant. Upon further inspection, he discovered a bullet projectile. *Id.* at 65-66. Police Officer Robert Stott, an expert in the field of firearms identification and examination, analyzed the projectile Detective Priadka recovered and determined that the projectile was from a .38 revolver or a 9mm semiautomatic firearm. *Id.* at 139-40.

Detective Priadka looked inside of the china closet and the drawers for the photograph that Complainant had mentioned. While Detective Priadka was looking inside of the drawers of the china closet, Lietenant Clifton Lyghts retrieved a Polaroid photograph from on top of the china cabinet. The photograph depicted Ms. Coleman-Bey, a child, and the Defendant, just like the Complainant had described to Detective Priadka. *Id.* at 32, 69. The Complainant later identified the individual in the photograph, Jarvis Payton, the Defendant, as the person who shot him. *Id.* at 73.

## DISCUSSION

### 1. The Trial Court Did Not Err When It Granted the Commonwealth's Motion *in limine* and Denied the Defendant's Motion *in limine*

The Pennsylvania Rules of Evidence, Rule 403 states, "The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." The comment to Rule 403 defines "unfair prejudice" as "a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially."

The admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion. Whether evidence is admissible depends on relevance and probative value. Relevance is defined as evidence that logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or if it supports a reasonable inference or presumption in regards to a material fact. However, evidence, even if relevant, may be excluded if its probative value is outweighed by the potential prejudice. *Smith v. Morrison*, 47 A.3d 131, 137 (Pa. Super. Ct. 2012).

#### a. The Trial Court Did Not Err When It Granted the Commonwealth's Motion *in limine* and Permitted the Prosecutor to Question the Victim About an Incident in a Corner Store

The Defendant claims that the trial court erred and manifestly abused its discretion when it granted the Commonwealth's motion *in limine* and permitted the prosecutor to question the victim about an incident in a corner store when the victim was offered \$5,000 US currency. The Defendant states there was no independent corroboration that the incident occurred and no objective evidence to connect the incident to the Defendant. The Defendant concludes that the

prejudicial impact of the evidence heavily outweighed the minimal probative value and therefore, the evidence should have been excluded under Pa.R.E. 403.

At trial, on February 11, 2019, the trial court granted the Commonwealth's motion *in limine* to permit the prosecutor to elicit testimony from the Complainant about being approached and offered \$5,000 US currency not to testify in this case. N.T. 02/11/19 at 8-9. The Complainant testified that sometime in December 2018, he was in a store on the corner of East Tulpehocken, in the Germantown section of Philadelphia, with his cousin and son. A few men approached the Complainant's cousin and asked, "Which one of you all got shot in the leg?" To which the Complainant's cousin pointed at the Complainant and one of the men spoke to the Complainant and stated, "You might as well not even go to court. We've got some bread for you." The men specified the amount they were offering the Complainant was \$5,000 US currency, but never mentioned Defendant by name. The Complainant declined the money and he, his cousin, and his son, left the store. *Id.* at 149-52.

In the present matter, the trial court permitted this testimony because it considered the testimony to be relevant and the Defendant would have the opportunity to cross-examine the Complainant about the fact that it wasn't the Defendant who approached him, the Defendant's name wasn't mentioned, and the Defendant wasn't able to approach the Complainant because he was in custody at the time. *Id.* at 15. The trial court determined the evidence was relevant to the matter as it potentially corroborated the Defendant's consciousness of guilt and it was not unfairly prejudicial as it did not tend to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially.

b. The Trial Court Did Not Err When It Denied Defendant's Oral Motion *in limine* and Permitted the Commonwealth to Elicit Evidence About a Traffic Stop

On February 12, 2019, during trial, the trial court denied Defendant's motion *in limine* to preclude the Commonwealth from introducing evidence that Defendant was involved in a traffic stop subsequent to the shooting incident, where a revolver was found in the vehicle. N.T.

02/12/19 at 113-14. Police Officer Nikolas Romito testified that on October 28, 2017, about two weeks after the shooting incident, he observed a vehicle driven by Defendant make a left turn in front of oncoming traffic, almost causing an accident. Officer Romito pulled the vehicle over and noted there were two females and one male, the Defendant, driving the vehicle. When Officer Romito and his partner requested the driver's license, insurance, and registration from the vehicle's occupants, the woman seated in the front passenger seat, Kim Myers, opened the glove box of the vehicle. When Ms. Myers opened the glove box, Officer Romito observed a firearm, a .38 revolver, and demanded the occupants exit the vehicle. Defendant informed Officer Romito that Ms. Myers had a valid permit to carry and Officer Romito ran the serial number of the firearm, but it didn't come back as registered to anyone. *Id.* at 118-21.

Defendant argues the trial court erred and manifestly abused its discretion when the trial court denied Defendant's oral motion *in limine* and permitted the Commonwealth to elicit evidence about this traffic stop. Defendant further asserts that the potential for unfair prejudice outweighed the evidence's scant relevance and therefore the trial court should have precluded the evidence under Pa.R.E. 403.

In the instant matter, the trial court permitted this testimony to be elicited because it determined that it was relevant evidence and up to the jury to decide whether the firearm found in the subsequent traffic stop on October 15, 2017, was the firearm used to injure the

Complainant. The trial court believed that since there was conflicting testimony about whether the firearm used was an automatic weapon or a revolver, that the evidence about the revolver found in the traffic stop could assist the jury in determining what evidence to consider in their final deliberations. N.T. 02/12/19 at 113-14. The evidence was not unfairly prejudicial as it did not tend to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially; the evidence here merely assisted the jury in determining what weight to give this in relation to all other evidence they had heard. The jury also heard testimony from Ms. Myers on February 13, 2019 regarding the traffic stop and was able to make a credibility determination regarding her testimony.

2. The Trial Court Did Not Err and Abuse Its Discretion by Not Declaring a Mistrial

The trial court is granted broad discretion in fashioning a remedy for discovery violations, "with a mistrial warranted only when the violation is of such a nature as to deprive the defendant of a fair trial." *Commonwealth v. Ligons*, 773 A.2d 1231, 1237 (Pa. 2001). A defendant must demonstrate prejudice. *Id.* According to the Pennsylvania Rules of Criminal Procedure, Rule 573:

- (1) *Mandatory*. In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items...
  - (d) the circumstance and results of any identification of the defendant by voice, photograph, or in-person identification.

Rule 573 identifies the remedy for failure to comply with this rule as, "...the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such

party from introducing evidence not disclosed, other than testimony of the defendant, or it may enter such other order as it deems just under the circumstances.” Pa.R.Crim.P. Rule 573.

On February 12, 2019, during trial, Detective James Priadka testified that he obtained the names and photos of men associated with Ms. Coleman-Bey and put the photographs into two photo arrays. Detective Priadka placed the photo arrays into a blank envelope and had Detective Sloan and Detective Brown show the Complainant on October 18, 2017, the two separate photo arrays. The Defendant’s photograph was not in either of these two photo arrays. N.T. 02/12/19 at 55.

The Complainant was shown both photo arrays and did not identify anyone in either photo array since Defendant was not among the photos shown to him. On October 27, 2017, Complainant was shown a third photo array by Police Officer Kevin Cahill. Complainant positively identified Defendant in this photo array. *Id.* at 59, 73. Defendant’s trial counsel objected to Detective Priadka’s testimony that he did a search of Ms. Coleman-Bey’s associates as Defendant’s trial counsel argued that this information should have been discoverable prior to trial. *Id.* at 54. Defendant’s trial counsel did not request a mistrial.

The Defendant asserts that the trial court erred and abused its discretion by not declaring a mistrial. The Defendant asserts that he was denied a fair trial because the Commonwealth committed a discovery violation when the Commonwealth did not provide the Defendant with the photographs and any discoverable detectives’ notes from the array in which the victim did not identify anyone. The Defendant claims that this evidence was favorable to him because it could have been used for impeachment and the evidence was material in that its omission prejudiced the Defendant. The Defendant argues that he could have utilized the evidence to

investigate why the detectives placed those individuals in a photo array and that the Defendant would have used the evidence about these individuals during the detectives' impeachment.

Defendant's trial counsel did not request a mistrial based on Detective Priadka's testimony about the prior two non-identifications of individuals in the photo arrays presented to the Complainant. As the Pennsylvania Rules of Appellate Procedure, Rule 302 states, "Issues not raised in the trial court are waived and cannot be raised for the first time on appeal." Pa.R.A.P., Rule 302. As such, Defendant has waived the issue of mistrial in this appeal and that issue may be better utilized in a Post Conviction Relief Act petition.

Even if the issue had not been waived, Defendant had an opportunity to cross-examine Detective Priadka about the two photo arrays in which the Complainant did not identify anyone. Detective Priadka explained that the photo arrays had been in the case file, but he didn't see any relevance to the case since Defendant was not featured among any of the photos in the first two photo arrays shown to Complainant. The Commonwealth did not request Detective Priadka's file until 2019, which was very close in time to the date of the trial. None of the police documents mentioned the Complainant being shown the first two photo arrays as Detective Priadka deemed them as "nothing of any significant value" and did not include them in his investigation because both were negative photo arrays. *Id.* at 82-84. Defendant had the opportunity to cross-examine Detective Priadka about the first two photo arrays and was able to use the omission as a chance to impeach Detective Priadka. Detective Priadka also explained how he had selected individuals for the original two photo arrays from Ms. Coleman-Bey's associates and thus did not warrant further investigation as to the photo selection for the first two photo arrays. A mistrial was not warranted because the violation did not deprive Defendant of a fair trial and Defendant has not demonstrated prejudice.

3. The Trial Court Did Not Violate the Defendant's Right to be Present in the Courtroom at Every Stage of a Criminal Trial When It Sentenced the Defendant in Absentia

Generally, nothing shall be done in the absence of the defendant. However, under certain circumstances, a defendant may waive his or her right to be present by his or her words or actions. *Commonwealth v. Hillburn*, 746 A.2d 1146, 1148 (Pa. Super. Ct. 2000). Before exercising the right to proceed in absentia, a trial court must weigh the specific circumstances of the case such as the probability that the defendant will return and the difficulty of rescheduling. *Id.* at 1149.

The Pennsylvania Rules of Criminal Procedure, Rule 602 states, "The defendant shall be present at every stage of the trial including...the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause at the time scheduled for the start of trial or during trial shall not preclude proceeding with the trial, including...the imposition of sentence." Pa.R.Crim.P. Rule 602. The Comment to Rule 602 states, "A defendant's presence may be deemed waived by the defendant intentionally failing to appear at any stage of the trial after proper notice."

Defendant was found guilty of aggravated assault, VUFA 6105, VUFA 6106, and PIC on February 14, 2019. The trial court ordered a mental health evaluation and pre-sentence investigation report for Defendant's sentencing, which was originally scheduled for May 9, 2019. The sentencing was continued to June 13, 2019 and then continued to June 18, 2019. On June 18, 2019, the trial court was informed via the mental health evaluation that Defendant was not competent to participate in sentencing. The trial court ordered that mental health treatment be received by Defendant at Norristown State Hospital pursuant to Section 304 via 405 of the Mental Health Procedures Act of 1976 ("304 via 405"). On July 17, 2019, August 16, 2019,

September 16, 2019, October 25, 2019, and December 2, 2019, Defendant was still incompetent for sentencing and Defendant was recommitted pursuant to 304 via 405. N.T. 04/05/21 at 6-8.

On January 13, 2020, the trial court received a mental health evaluation report from Norristown State Hospital in which the report determined Defendant was competent. The doctor who evaluated Defendant did not see any mental health features related to Defendant and Defendant was unable to identify any effects of his mental health issues. The doctor ultimately concluded Defendant was malingering his mental health symptoms and what he was telling the doctors and that they did not find him to be credible based on some of Defendant's actions taken while in custody and at Norristown State Hospital. These actions included the planning and execution of various things such as the passing of contraband and coordination of attacks on other inmates and staff. On January 17, 2020, Defendant was deemed competent to proceed to sentencing. On February 24, 2020, the trial court vacated Defendant's commitment at Norristown State Hospital and scheduled sentencing for March 19, 2020. The sentencing had to be rescheduled because the COVID-19 pandemic shut down the courthouse in March 2020. *Id.* at 7-10, 24.

After the courthouse reopened, the sentencing was scheduled for July 28, 2020. Defense counsel requested a continuance for further preparation and to speak to Defendant. Sentencing was further continued until August 11, 2020. On August 11, 2020, Defendant was not brought down from custody because of a medical hold at the local prison and the sentencing hearing was continued until September 16, 2020. Again, Defendant was not brought down from custody due to a medical hold on September 16, 2020 and the sentencing hearing was further continued until October 8, 2020. On October 8, 2020, Defendant was not brought in from the local prison as he was in the hospital because he purposely swallowed batteries. The trial court ordered another

mental health competency evaluation for Defendant and rescheduled him for sentencing on December 10, 2020. On December 10, 2020, Defendant was not brought in from the local prison and the mental health competency evaluation had not been completed, therefore necessitating a further continuance of sentencing until February 18, 2021. On February 18, 2021, the courthouse was closed due to a snow day and the sentencing was continued, again, until March 16, 2021. On March 16, 2021, Defendant was again not brought down from the local prison due to a medical hold; Defendant had purposely swallowed batteries for the second time. Defendant's sentencing was continued until April 5, 2021. *Id.* at 8-9.

Prior to sentencing the Defendant, the trial court received a transcript of some of Defendant's prison phone calls dated March 15, 2021, March 16, 2021, and March 19, 2021. In the March 15, 2021 phone call, Defendant indicates that he was talking to various people, including defense counsel, attempting to have defense counsel put off his sentencing hearing as Defendant wasn't ready to be sentenced. In the prison call dated March 19, 2021, an individual identified as "Rock" states Defendant didn't go to court yesterday because he swallowed batteries, to which another man on the three-way call, says Defendant "pulled a move." On April 5, 2021, the trial court sentenced Defendant in absentia. Defendant was sentenced in absentia because again Defendant was not brought into the courthouse from the local prison because he refused to be tested for COVID, a requirement of all inmates to be transported from the prison to the courthouse. *Id.* at 5-6.

The Defendant argues that when the trial court sentenced him in absentia, it violated his right to be present in the courtroom at every stage of a criminal trial. The Defendant claims that the Commonwealth did not prove by a preponderance of the evidence that the Defendant willfully failed to attend the sentencing. The Defendant further asserts that any perceived need

to move forward with his sentencing was substantially outweighed by his constitutional right to be present, especially considering that he was in local custody when the trial court sentenced him in absentia.

Here, the trial court weighed the specific circumstances in this case, including the probability that Defendant would appear and the continued rescheduling of Defendant's sentencing. Defendant's case went to verdict at the beginning of 2019 and he was not sentenced until 2021, over two years after verdict. Defendant was given plenty of opportunities to appear for his sentencing, but he chose not to. Defendant purposely swallowed batteries twice in the time period right before his sentencing hearing in order to be hospitalized and to avoid sentencing; he was determined to be malingering while in Norristown State Hospital to avoid being sentenced; he manipulated things and acted in a way to appear to be mentally incompetent to avoid appearing in court; and finally, he refused to take a COVID test on the date of his last sentencing hearing so he could not be brought into the courthouse for sentencing. Defendant knowingly and voluntarily made himself unavailable to appear for sentencing without good cause. There is clearly evidence indicating that Defendant had no intention of appearing for his sentencing proceedings, as indicated in his prison phone calls where he tries to put off his sentencing and "pulls a move" by swallowing batteries to avoid being brought down for sentencing and the fact that he refused his COVID test and couldn't be brought in for sentencing on the date he was sentenced in absentia. All of this proves by a preponderance of the evidence that Defendant had no desire to be sentenced and was willfully making himself unavailable to the trial court for this purpose. Therefore, the trial court did not abuse its discretion when it sentenced Defendant in absentia and should be affirmed.

#### 4. The Verdict was Not Against the Weight of the Evidence

The standard in reviewing a weight of the evidence claim has been well established. The standard of review for evaluating the weight of the evidence has been determined as follows:

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, [the Superior Court] may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, 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. Champney*, 832 A.2d 403, 408 (Pa. Super. Ct. 2003). The Court has explained that “resolving contradictory testimony and questions of credibility are matters for the [finder of fact].” *Commonwealth v. Hopkins*, 747 A.2d 910, 917 (Pa. Super. Ct. 2000). The Court has further explained that “[i]n order for a defendant to prevail on a challenge to the weight of the evidence, the evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court,” and that the Court cannot substitute its judgment for that of the trier of fact. *Commonwealth v. Talbert*, 129 A.3d 536, 545-46 (Pa. Super. Ct. 2015).

The Court has taken a step further by defining what would shock one's sense of justice. “When the figure of Justice totters on her pedestal, or when the jury's verdict, at the time of its rendition, causes the trial judge to lose [her] breath, temporarily, and causes [her] to almost fall from the bench, then it is truly shocking to the judicial conscience.” *Commonwealth v. Davidson*, 860 A.2d 575, 581 (Pa. Super. 2004) (internal quotations and citations omitted).

The Defendant claims that the trial court erred and abused its discretion when it denied his post-sentence motion because the verdict was against the weight of the evidence. Defendant

asserts that in this case, “certain facts [were] so clearly of greater weight that to ignore them or to give them equal weight with all the facts [was] to deny justice.” *Commonwealth v. Lyons*, 833 A.2d 245, 258 (Pa. Super. Ct. 2003) (citation omitted). Defendant argues that the inconsistent and equivocal testimonies of the victim and the police officers rendered the Commonwealth’s evidence unreliable.

In this case, it was the sole province of the jury, as the fact-finder, to assess the credibility of James Robinson, the complaining witness, the police officers, detectives, and lieutenant and determine the weight to be given to their testimony and resolve any conflicts in their testimony. Here, the jury weighed the evidence presented, evaluated Mr. Robinson, the police officers, detectives, and lieutenant’s testimony, and found them to be credible, as it was entitled to do.

The jury’s credibility determinations based on the evidence presented and the demeanor of the witnesses at trial should stand, particularly when there is corroboration of the identification based on Mr. Robinson’s testimony, his identification of Defendant as the shooter being the same individual he had previously argued with on the video related to his eviction; the photograph recovered from Ms. Coleman-Bey’s house; and the corroborating testimony of police officers and detectives. In light of the evidence discussed above, the jury’s verdict of guilty is not so contrary to the evidence as to shock the conscience, therefore, the verdict was not against the weight of the evidence.

5. The Trial Court Did Not Rely on Impermissible Factors When Imposing a Statutory Maximum Sentence for Aggravated Assault

A trial court is vested with the sound discretion to determine a sentence since it is in the best position to consider a defendant’s character, display of remorse, defiance, or indifference, and the overall effect and nature of the crimes of which he was convicted. *Commonwealth v. Begley*, 780 A.2d 605, 643 (Pa. 2001). The standard of review for an appellate court determining

whether to affirm the trial court's determination is whether there was an abuse of discretion. *Commonwealth v. Walls*, 926 A.2d 957, 962 (Pa. 2007). An abuse of discretion is "more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless 'the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.'" *Id.* (quoting *Grady v. Frito-Lay, Inc.*, 839 A.2d 1038, 1046 (Pa. 2003)).

When sentencing a defendant, the sentencing court "shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. §9721. The sentencing court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing. *Id.* In order to determine the standard guideline sentence, the sentencing court calculates the Offense Gravity Score and the Defendant's Prior Record Score. The sentencing court then considers any aggravating or mitigating factors. 204 Pa. Code §§303.2(a)(1)(2), (a)(1)(3). Courts that consider the presentence reports for sentencing purposes are presumed to have properly considered all aggravating and mitigating factors. *Commonwealth v. Zeigler*, 112 A.3d 656, 662 (Pa. Super. Ct. 2015) (citing *Commonwealth v. Fowler*, 893 A.2d 758, 766 (Pa. Super. Ct. 2006)).

Where the sentence falls outside the Sentencing Guidelines, the sentence should be affirmed on appeal unless it is "unreasonable." 42 Pa.C.S.A. §978(c)(3); see *Commonwealth v. P.L.S.*, 894 A.2d 120, 130 (Pa. Super. Ct. 2006). "The sentencing court may deviate from the guidelines, if necessary, to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offenses as it

relates to the impact on the life of the victim and the community. *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. Ct. 2002). The factual basis for the departure must be stated on the record. *Id.*

Finally, a defendant does not have an automatic right to an appeal in regards to the discretionary aspects of sentencing. *Commonwealth v. Mastromarino*, 2 A.3d 581, 585 (Pa. Super. Ct. 2010). When challenging a discretionary aspect of sentencing, a defendant must present a substantial question that forms the basis for grounds to appeal. *Commonwealth v. Malovich*, 903 A.2d 1247, 1250 (Pa. Super. Ct. 2006). A substantial question “exists only when the appellant advances a colorable argument that the sentencing judge’s actions were either: (1) inconsistent with a specific provision of the sentencing code; or (2) contrary to the fundamental norms which underlie the sentencing process.” *Commonwealth v. Austin*, 66 A.3d 798 (Pa. Super. Ct. 2013). A claim that the sentencing court relied on impermissible factors raises a substantial question. *Commonwealth v. Downing*, 990 A.2d 788, 793 (Pa. Super. Ct. 2010).

Defendant asserts that the trial court abused its discretion in sentencing him when it relied on impermissible factors to impose a statutory maximum sentence for aggravated assault. In the present matter, the trial court imposed a sentence of 10 to 20 years for the F1 aggravated assault charge, 3 ½ to 7 years on the F1 VUFA 6105 charge to run consecutive to the aggravated assault sentence, 3 years of probation on the F3 VUFA 6106 charge to run consecutive to the incarceration sentences, and 3 years of probation on the M1 PIC charge to run concurrent with the probation sentence on VUFA 6106. Thus, the result is an aggregate sentence of 13 ½ to 27 years, plus 3 years of probation. The Commonwealth and Defendant agreed that the Offense Gravity Score for the highest graded offense, aggravated assault, was an 11 and the Defendant’s Prior Record Score was a REFEL, therefore the advisory sentencing guidelines recommend a

sentence of 84 to 102 months of incarceration, plus or minus 12 months. N.T. 04/05/18 at 13, 34-35.

In imposing the sentence, the trial court considered: (1) a mental health evaluation report; (2) a pre-sentence investigation report, including the sentencing guidelines; (3) the sentencing memorandum from the Commonwealth; (4) the arguments of counsel; (5) the need to protect the public; (6) the gravity of the offense as it relates to the community and as it relates to Defendant; (7) the rehabilitative needs of Defendant; (8) Defendant's support from the community; and (9) the history and characteristics of Defendant. *Id.* at 32-34.

The trial court noted Defendant has a long, violent record, and a history of committing violence and sexual abuse of others, even while in custody. The trial court stated that Defendant has the ability to manipulate other people and situations, he is a danger to the community, a danger to the people he's in custody with, and even noted that Defendant is one of the most dangerous individuals its seen. *Id.* at 31-32.

Defendant presents a substantial question when he argues that the trial court relied on impermissible factors when it imposed a statutory maximum sentence for aggravated assault and, as a result, has an automatic right to appeal. However, Defendant does not cite any specific impermissible factors that the trial court allegedly relied upon in its sentencing.

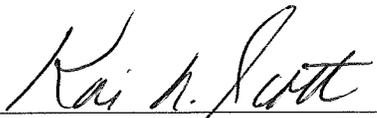
Assuming that the trial court relied on impermissible factors when it imposed a statutory maximum sentence for aggravated assault, it is well-settled that as long as the impermissible factor or factors relied on do not implicate constitutional rights (e.g., defendant's decision to exercise his constitutional right to a trial rather than plead guilty), the sentence must still be affirmed as long as the departure sentence was also justified by independently valid reasons. Here, the trial court set forth a multitude of independently valid reasons to support its sentence,

as noted above. As such, there is no reversible error as the trial court did not abuse its discretion in sentencing Defendant as it relied on several permissible factors when it imposed a statutory maximum sentence for aggravated assault.

CONCLUSION

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

BY THE COURT:

A handwritten signature in cursive script that reads "Kai N. Scott". The signature is written in black ink and is positioned above a horizontal line.

KAI N. SCOTT, JUDGE

Dated: August 4, 2021

Commonwealth v. Jarvis Payton  
CP-51-CR-0001864-2018  
935 EDA 2021

**PROOF OF SERVICE**

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

Attorney for the Commonwealth:

Lawrence Goode, Esquire  
Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107

Type of Service:      ( ) Personal (X) First class mail ( ) CJC mailbox ( ) Email

Attorney for Defendant:

Matthew F. Sullivan, Esquire  
1327 Spruce Street, 7D  
Philadelphia, PA 19107

Type of Service:      ( ) Personal (X) First class mail ( ) CJC mailbox ( ) Email

DATED: 8/4/21



Mary Kathleen Allison, Esquire  
Law Clerk to Hon. Kai N. Scott