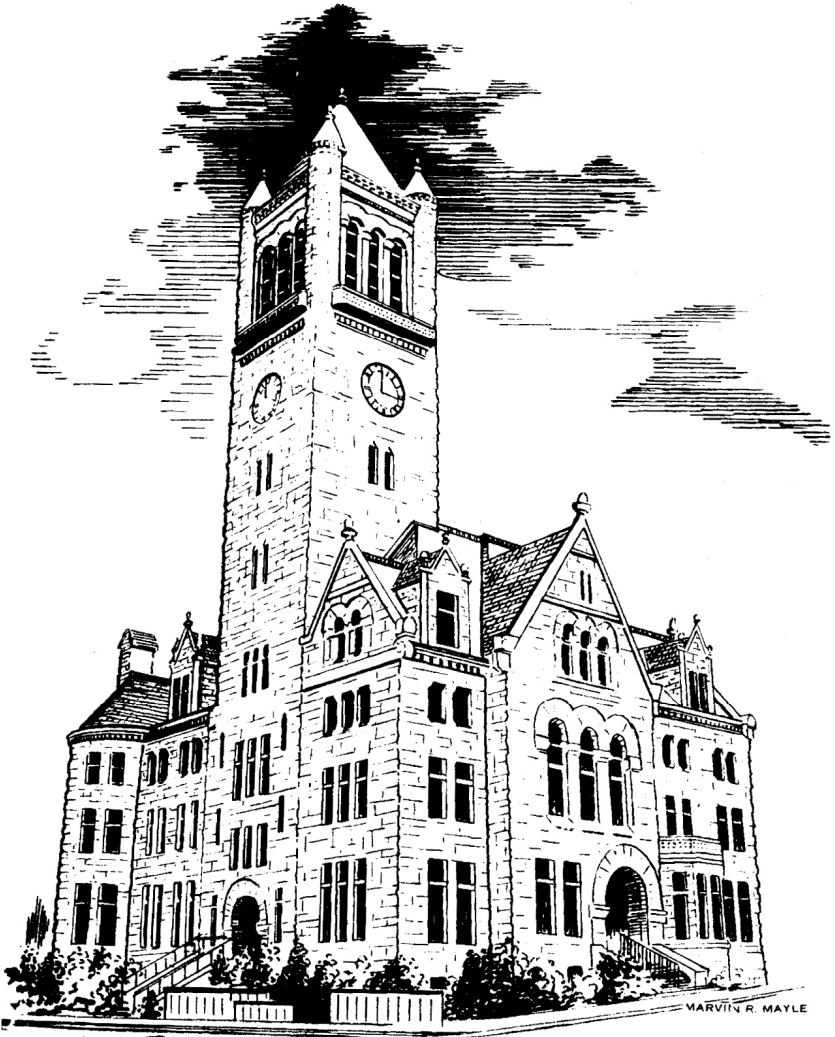


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

KATHERINE T. BEAL, a/k/a KATHERINE TERESA BEAL, late of Springfield Township, Fayette County, PA (3)

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Second Publication

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c/o Proden and O'Brien
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Uniontown, PA 15401
Attorney: Wendy L. O'Brien

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Uniontown, Pa 15401
Attorney: Vincent J. Roskovensky, II

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
ORPHANS ' COURT DIVISION
NO.73 ADOPT 2019

IN RE: ADOPTION OF
MA' RYKAH CRAMER

NOTICE

TO: Piappa Cramer and Unknown Father

A petition has been filed asking the Court to put an end to all rights you have to your child, Ma'Rykah Cramer. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 4 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on Thursday, March 26, 2020 at 1:30 p.m. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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(800) 932-0313

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
 CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA, :
 :
 :
 V. :
 :
 ANTONIO LANKO, : No. 1289 of 2016
 Appellant. : Judge Joseph M. George, Jr.

ATTORNEYS AND LAW FIRMS
 Mr. Sean Lementowski, Assistant District Attorney, For the Commonwealth
 Mr. Shane M. Gannon, Assistant Public Defender, For the Appellant

OPINION

GEORGE, J. January 28, 2020

Following a trial by jury, Appellant, Antonio Trevelle Lanko, was found guilty of Third-Degree Murder {1}, Receiving Stolen Property{2}, Possession of a Firearm Prohibited {3}, Firearms Not to be Carried Without a License {4}, and Tampering with Physical Evidence {5}. On September 26, 2019 this Court sentenced Appellant to a term of imprisonment of not less than thirty-one (31) years nor more than sixty-two (62) years. Appellant filed a timely post-sentence motion and the Court denied same. He filed a direct appeal to the Superior Court of Pennsylvania. This Opinion is in support of the verdict of the jury.

CONCISE ISSUES

Appellant filed the following Statement of Errors Complained of on Appeal:

1. Did the Trial Court err in denying Appellant's Motion for a Mistrial when a Juror expressed to the other Jurors that she believed Appellant was Guilty prior to the beginning of trial?
2. Did the Trial Court err in denying Appellant's Motion in Limine to Exclude Statements made by the investigating officers during the interrogation of Appellant when the recording of the interrogation was played for the jury?

{1} 18 Pa. C.S.A. § 2502 §§(C)
 {2} 18 Pa. C.S.A. § 3925 §§(A)
 {3} 18 Pa. C.S.A. § 6105 §§(A)(l)
 {4} 18 Pa. C.S.A. § 6106 §§(A)(l)
 {5} 18 Pa. C.S.A. § 4910 §§(1)

3. Did the Trial Court err in denying Appellant's Motion in Limine to Exclude Statements made by a third party during multiple recorded telephone conversations with appellant that were played for the jury?
4. Did the sentencing court impose a harsh, severe, and manifestly unreasonable and excessive sentence in light of the circumstances surrounding the alleged incident?

FACTS

On November 3, 2017, at approximately 12:57 p.m., the Uniontown branch of the Pennsylvania State Police received a call in reference to shots being fired in the area of the Bierer Wood Acres, specifically in the area known as MacArthur Terr ace. (T.T. Pg. 22-23). Trooper Joshua Wiskeman and his partner, Trooper Daniel Biddle, were the responding officers. (T.T. P g. 23). Upon arrival at the scene, it was determined that a female victim was lying in the doorway of 86 Macarthur Terrace and was unresponsive. (T.T. pg. 25-26). Three individuals were standing around the victim. One of these individuals was Appellant. (T.T. pg. 26). Troopers on the scene were informed the Victim was suffering from a panic attack. (T.T. pg. 27). The Pennsylvania State Police began conducting CPR on the victim. At the time, no gun shot wounds were immediately visible and there was no blood. (T.T. pg. 27-28). Shortly thereafter, Emergency Medical Services arrived at the scene. Trooper Wiskeman and Trooper Biddle went upstairs where they located a Mr. Harris exiting from the shower. (T.T. pg. 28-29). The Troopers instructed Mr. Harris to come downstairs and he complied. The Troopers then learned from the EMS personnel that there was a gunshot wound to the Victim 's back. (T.T. pg. 29). Trooper Wiskeman contacted his supervisor to have additional patrol units dispatched to the scene to aid in the investigation. The crime unit was also dispatched to the scene. (T.T. pg. 29).

Trooper Wiskeman began to question Mr. Harris and inquired as to why Mr. Harris had gone upstairs to take a shower, Mr. Harris responded that "she [Victim] was all sweaty when we carried her in, and I had to take a shower". (T.T. pg. 30-31). Trooper Wiskeman subsequently exited the apartment and began to secure the scene by roping off approximately a hundred yards of the crime scene which included the vehicle. The Troopers then began to question other individuals located in the same housing complex in which the incident took place. (T.T. pg. 31).

Trooper Wiskeman testified that he observed Appellant acting in an emotional and confused state. When the Troopers questioned Appellant about what happened to the Victim, he would give a delayed response and then an excited reply, as though he had to think about his response. (T.T. pg. 31-32). Appellant never informed Trooper Wiskeman that the victim had been shot. (T.T. pg. 32). Trooper Wiskeman also testified that Uniontown Hospital is located next to the crime scene and is visible in some crime scene photographs. (T.T. pg. 32-33). Appellant told Trooper Wiskeman that the victim was suffering a panic attack. (T.T. pg. 34). Trooper Wiskeman did not learn that the victim had been shot until EMS had arrived and examined her sometime later. (T.T. pg. 37).

Trooper Ed Burnworth arrived on scene after Troopers Wiskeman and Biddle. (T.T. pg. 43). Trooper Burnworth spoke with Appellant. Appellant informed Trooper Burnworth that he and the victim had arrived at the scene together in the Jeep. Appellant also

told Trooper Burnworth that as he and the victim were turning into the area of Bierer Wood Acres, they heard an audible "pop" sound.

Mr. Keith Lewis, a resident of Bierer Wood Acres, testified that he heard a gunshot on the afternoon of November 3, 2017 outside of his home. He immediately opened his window to look out. (T.T. pg. 56). Mr. Lewis observed Appellant hand a gun to Mr. Robert Harris, who subsequently ran into his apartment with the same. (T.T. pg. 58-59). Appellant then begins to drag the victim toward the Apartment. Appellant then hit the victim in her face four times. (T.T. pg. 62-63). Appellant then, assisted by Mr. Harris and Ms. Jazmin Robinson, carry victim to the Apartment belonging to Mr. Harris. (T.T. pg. 65-66).

Appellant testified that he and the victim had driven to Bierer Wood Acres together on November 3, 2017 after consuming alcohol. Upon entering the complex, Appellant observed a man who had previously shot Appellant. (T.T. pg. 317-318). Appellant became angry and proceeded to tell the victim to stop the vehicle. Appellant then testified he grabbed a gun from the victim's purse. (T.T. pg. 318). After being persuaded by the victim not to shoot the man, Appellant testified that he was attempting to remove the bullet from the gun and the gun discharged. (T.T. pg. 319-320). Appellant testified that the victim then slumped over and that he did not know if she was having a panic attack or if she had been shot. (T.T. pg. 321). Appellant testified that he did not call 911, nor did he take the victim to the nearby hospital because he was panicking. (T.T. pg. 321-322). Appellant also testified that his panicked state led him to give a false statement to the police. (T.T. pg. 322-323).

DISCUSSION

I. The first issue raised by Appellant concerns a situation which arose wherein a Juror expressed an opinion to other Jurors that she believed Appellant to be guilty prior to the start of the trial.

The refusal of a new trial on the grounds of alleged misconduct of a juror is largely within the discretion of the Trial Judge. When the facts surrounding the possible misconduct are in dispute, the Trial Judge should examine the various witnesses on the question, and his findings of fact will be sustained unless there is an abuse of discretion. *Commonwealth v. Russell*, 665 A.2d 1239 (Pa. Super 1995).

During a break and as the jurors were sequestered in the jury deliberation room, Juror #113 made a statement that she had formed an opinion as to the guilt of the defendant prior to hearing any testimony. Juror #337 approached the tipstaff and law clerk of this Court and informed them of the comments of Juror #113. This information was then relayed by the staff to the Court.

Subsequently, each Juror was brought out, one at a time, to the witness stand and questioned. (T.T. pg. 118-151). Each Juror was questioned by the Court, the Assistant District Attorney, and the Defense Attorney. Jurors were asked whether they heard the statement and whether or not it would have any influence over their respective abilities to sit as Jurors and be impartial in weighing the facts presented at trial. Each juror indicated that they either did not hear the statement, or that they heard it and were con-

cerned over the ability of Juror #113 to be impartial. All Jurors who heard the statement indicated that it would not influence their deliberations and they could remain fair and impartial.

Juror #113 was also questioned about the statements. She admitted to making the statement and also expressed remorse. Juror #113 indicated that the statement was made out of frustration for being selected as a Juror and not out of any actual bias or malice against Appellant. Juror #113 was removed from the Jury panel and was replaced by an alternate.

Through this Court's questioning of each Juror regarding the incident, and the indications from the Jury panel that these statements would not influence or color their ability to sit as objective Jurors in this case, this Court denied the request for a mistrial. While the Court was initially concerned that the jury panel may have been exposed to extraneous information from Juror #113, it became clear as we questioned each juror individually that the only information the panel received from this juror was her opinion which was a result of her frustration in being selected. Her opinion in no way related to a central issue in the case, did not provide the jury with any information they did not have before them at trial and was not emotional or inflammatory in nature. The Court found the testimony of the individual jurors to be credible and determine that an objective typical juror would not be affected by her comments. The burden of proving whether this extraneous influence was prejudicial is on the moving party and the Court finds that Appellant has failed to sustain this burden. (See *Commonwealth v. Pope*, 3229 EDA 2009 wherein the Superior Court found that an unauthorized visit by a juror to a crime scene did not warrant a mistrial.)

The grounds for a mistrial must be so severe and uncorrectable that a party is denied a fair and impartial trial. *Commonwealth v. Travaglia*, 611 Pa. 481, 28 A.3d 868 (2011). This Court determined that the grounds sought for a mistrial were correct ed by removing the juror in question and questioning the remaining jurors who all indicated that they could proceed in a fair and impartial manner. As such, we believe that a mistrial would have been an improper remedy and Appellant's first issue lacks merit.

II. and III. The second and third issues raised by Appellant relate to relate to the admission of evidence at trial. Thus, both issues will be discussed simultaneously. The standard of review is as follows:

The admissibility 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 abuse of discretion. An abuse of discretion will not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous. Moreover, an erroneous ruling by a trial court on an evidentiary issue does not necessitate relief where the error was harmless beyond a reasonable doubt.

Commonwealth v. Travaglia, 611 Pa. 481, 28 A.3d 868 (2011) (citation omitted).

Appellant made two Motions in Limine to Exclude Statements. The first motion made was a Motion to Exclude statements by the investigating officers during the taped

interrogation of Appellant which was played for the jury. The second statements were those made by a third party during multiple recorded telephone conversations with Appellant.

Evidence is relevant if: a) It has any tendency to make a fact more or less probable than it would be without the evidence; and b) the fact is of consequence in determining the action. Pa. R.E. 401.

This Court reviewed the Statements which were raised by Appellant. Initially we note that the Superior Court affirmed the longstanding rule that prison tapes and recorded prison visits may be used against a defendant at trial. *Commonwealth v. Byrd*, No. 18 W.D.A. 2016 (decided April 30th, 2018). Through this review, we found nothing to indicate that these statements were irrelevant or that they pertained to any other potential prior bad act of Appellant which would be unfairly prejudicial. Rather, we found the statements to be relevant. We also believe that attempting to extract the questions and just play the answer for the Jury would lead to confusion since the jurors would have no context for the answer without a preceding question. As such statements are relevant to the case at bar, are not unfairly prejudicial to Appellant, and the omission of the same could lead to confusion and misleading of the jurors, it was proper to play the tapes in their entirety for the jury and Appellant's second and third issues are without merit.

IV. Appellant last claims that his sentence was harsh, severe and manifestly unreasonable and excessive.

This claim is based on Appellant receiving the maximum sentence for each offense and this Court running each offense consecutively. A Sentencing Court's discretion to impose consecutive as opposed to concurrent sentences generally does not present a substantial question. The mere fact that the multiple crimes committed by Appellant arose out of the same incident does not mean he is entitled to receive concurrent sentences. *Commonwealth v. Bonner*, 135 A.3d 592 (Pa. Super 2016), *Commonwealth v. Zirkle*, 107 A.3d 127 (Pa. Super 2014).

Imposition of a sentence is vested in the discretion of the Sentencing Court and will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Vasquez*, 560 Pa. 381, 384-85, 744 A.2d 1280, 1282 (2000). 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. Mastromarino*, 2 A.3d 581, 589 (Pa. Super. 2010). A sentence imposed is not excessive if it does not exceed statutory limits and the sentence proceedings clearly demonstrate that this Court carefully considered all evidence relevant to the determination of a proper sentence. *Commonwealth v. Burtner*, 453 A.2d 10, 12 (Pa. Super. 1982). Finally, in considering whether a sentence is excessive and harsh, the appellate court must give great weight to the discretion of the trial court judge, as he or she is in the best position to measure various factors. *Commonwealth v. Ellis*, 700 A.2d 948, 958 (Pa. Super. 1997).

Appellant was sentenced to the legal maximum sentence for each offense: (1) twenty to forty years for third degree murder; (2) five to ten years for Receiving Stolen

Property {7}, (3) five to ten years for Possession of Firearms Prohibited Conviction; {8}, {9} and (4) one to two years for Tampering with Evidence {10}. Additionally, this Court imposed the sentences consecutive to one another. {11} As a result, Appellant's aggregate sentence was a term of imprisonment of thirty-one (31) years to sixty-two (62) years.

Upon sentencing Appellant, this Court took into consideration the number of offenses to which the Appellant was convicted of, the pre-sentence report, the extensive prior record of the Appellant, the sentencing guidelines, the rehabilitative needs of the Appellant and the gravity of the offenses and felt any lesser sentence would depreciate from the seriousness of the crimes committed.

The jury found that Appellant murdered victim and committed the other crimes as charged. The Court listened to several victim impact statements and through these statements, it was made clear to the Court what a tragic effect the loss presented to the loved ones of the victim.

In order to challenge the discretionary aspects of a sentence, an appellant must show actions by the sentencing court that were either: (1) inconsistent with a specific provision of the sentencing code; or (2) contrary to the fundamental norms underlying the sentencing process. *Commonwealth v. Hornoman*, 920 A.2d 1282, 1284 (Pa. Super. 2007). After reviewing the pre-sentence investigation report and considering the facts and circumstances of the case, Appellant's sentence was neither inconsistent with the sentencing code provisions nor contrary to the fundamental norms underlying the sentencing process. This Court considered that a hospital with an emergency department was a very short distance from the scene of the crime, but that Appellant made no attempt to procure medical care for the victim. Rather, he sought to protect himself from punishment by trying to conceal the firearm and her body in a nearby residence in a cold and callous fashion.

Therefore, the Court finds no rea son why Appellant should be entitled to any lesser sentence due to a "volume discount" {12}. Accordingly, Appellant's last concise issue is without merit.

BY THE COURT:
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:
Clerk of Courts

{6} 18 Pa. C.S.A. § 2502 §§(C)
{7} 18 Pa. C.S.A. § 3925 §§(A)
{8} 18 Pa. C.S.A. § 6105 §§(A)(l)
{9} No Further Penalty was imposed for the conviction for Firearms Not To Be Carried Without a License.
{10} 18 Pa. C.S.A. § 4910 §§(1)
{11} The imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment." *Commonwealth v. Moury*, 992 A.2d 162, 171-72 (Pa. Super. 2010).
{12} It is well established that defendant's convicted of multiple offenses are not entitled to a volume discount on their aggregate sentence. *Commonwealth v. Foust*, 180 A.3d 416 (Pa. Super 2018)



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| March 4 | Civil Litigation Update
9:00 a.m. to 4:15 p.m.
5 substantive/1 ethics |
| March 24 | Handling the Workers' Comp Case
9:00 a.m. to 4:15 p.m.
5 substantive/1 ethics |
| March 26 | Elder Law Update 2019
9:00 a.m. to 12:00 p.m.
3 substantive |
| March 31 | The Binders on Pennsylvania Evidence 2020
1:00 p.m. to 4:15 p.m.
3 substantive |
| April 3 | Litigation Blunders, Bloopers and Boons
9:00 a.m. to 4:30 p.m.
4 substantive/2 ethics |
| April 7 | Securing Electronic Communications, Email Etiquette and Ethics
9:00 a.m. to 12:15 p.m.
2 substantive/1 ethics |
| April 14 | Sheriff's Sales in Pennsylvania 2020
9:00 a.m. to 1:15 p.m.
3 substantive/1 ethics |
| April 23 | Personal Injury Law Conference 2019
9:00 a.m. to 3:30 p.m.
5 substantive/1 ethics |
| April 27 | A Day on Ethics 2020
9:00 a.m. to 4:20 p.m.
6 ethics |
| April 29 | Legal Issues in an Age of Aging 2020
9:00 a.m. to 4:00 p.m.
5 substantive/1 ethics |





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BAR BANQUET

Friday, April 17th
Nemacolin Woodlands
Grand Ballroom

LUNCH & LEARN SERIES

FCBA LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, March 18th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **Issues in Bank Fraud and Safeguarding your IOLTA Account, Online Wire Transfers for Closings & Electronic Notifications**
- Presenters: Daniel Flynn, Fraud Investigations Manager, Karla Strosnider, Operational Risk Manager, and Jacquie Stanley, Senior Vice President and Regional Manager of Commercial Services, all of United Bank.

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- \$10 fee for attendance with CLE Credit

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**** All fees to be paid at the door ****

A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbbar.org on or before Monday, March 16th.

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