

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
GEORGE HENRY LUCAS,	:	
	:	
Appellant	:	No. 1345 WDA 2013

Appeal from the Judgment of Sentence June 26, 2013,
Court of Common Pleas, Erie County,
Criminal Division at No. CP-25-CR-0002873-2012

BEFORE: DONOHUE, OTT and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JULY 1, 2014

George Henry Lucas ("Lucas") appeals from the judgment of sentence of the Court of Common Pleas, Erie County, following a guilty verdict on the following charges: aggravated indecent assault, 18 Pa.C.S.A. § 3125, indecent assault, 18 Pa.C.S.A. § 3126, unlawful restraint/involuntary, 18 Pa.C.S.A. § 2902, theft by unlawful taking, 18 Pa.C.S.A. § 3921, receiving stolen property, 18 Pa.C.S.A. § 3925, and robbery, 18 Pa.C.S.A. § 3701. For the reasons that follow, we affirm.

The trial court summarized the facts of this case as follows:

[Lucas's] charges arose on July 30, 2012, when [] D.H., [(the "Victim"),] was riding his bicycle en route to visit a friend in the City of Erie. Trial Transcript, Day 1, March 13, 2013 ("T.T"), p.53. At an intersection, [Lucas] approached [the Victim] from behind, grabbed his shoulder, firmly held on to him and told [the Victim] he had to go with [Lucas]. T.T. at 54. [Lucas] related a fabricated story to [the

Victim] that [Lucas's] friends were looking for [the Victim]. [Lucas] told [the Victim] he wanted to help him by showing he was not the individual being sought. T.T. at 54, 55, 57. [The Victim] was in fear for his life that [Lucas] might have a gun, a knife or some other concealed weapon capable of inflicting serious bodily harm. T.T. 54. [The Victim] did not attempt to escape due to this fear and because [Lucas], smelling of alcohol, was gripping him. T.T. at 54, 55, 57.

[Lucas] held [the Victim] by his shoulder and/or his waist while directing [the Victim] toward West 14th and Plum Streets in the City of Erie, about four blocks from the initial encounter. T.T. at 54. [Lucas] walked [the Victim] and his bicycle to a secluded fenced-in lot behind the Erie Beer Company, holding on to [the Victim] the entire time. T.T. at 55. [Lucas] directed [the Victim] and the bicycle through an unsecured opening in the fence to an area behind the fence where they could not be seen while holding on to [the Victim]. T.T. at 55, 59. [Lucas] then said, "I'm looking to get off tonight, so I need you to do what I say." T.T. at 55.

[Lucas] asked [the Victim] if he had any money. T.T. at 64. [The Victim] gave [Lucas] ten dollars. [Lucas] told the [V]ictim he knew [the Victim] had more money. [The Victim] gave [Lucas] forty dollars and his cell phone. [Lucas] kept the money, wiped off the phone, shut the phone off and gave it back to [the Victim]. T.T. at 64. [Lucas] told [the Victim] to put the phone in his backpack. T.T. at 64.

[Lucas] then exposed his penis and told [the Victim] to fondle his penis and testicles. T.T. at 55. [Lucas] told the [V]ictim to take his pants off. T.T. at 55. [The Victim] dropped his outer pants to his ankles but left his boxer shorts on. T.T. at 92. [Lucas] touched [the Victim's] buttocks with his exposed hand under the [V]ictim's boxer shorts. [Lucas] told [the Victim] to touch his exposed penis and testicles. T.T. at 55, 60. [The Victim] complied. [Lucas]

penetrated [the Victim's] anus with his fingers and touched [the Victim's] testicles. T.T. at 56, 61. [Lucas] licked his fingers and again penetrated [the Victim's] anus three to four times. T.T. at 56, 61, 93. [Lucas] restrained [the Victim] by his shoulder or waist continually during the assault. T.T. at 55, 60. [The Victim] was scared and crying. T.T. at 62.

[Lucas] removed his fingers and told [the Victim] to bend over. T.T. at 62. [The Victim] bent over to remove his shoes and told [Lucas] he was going to remove his pants all the way. T.T. at 62, 93. [Lucas] relaxed his grip on the [V]ictim. T.T. at 63. [The Victim] used the opportunity to escape. T.T. at 63. [The Victim] ran away in his boxer shorts, shirt and socks. T.T. at 63. [The Victim] ran toward Liberty Street and flagged down a motorist who allowed him to use a cell phone to call the police. T.T. at 64.

[The Victim] left behind his bicycle, pants, shoes, clothing, cell phone, backpack and electronics. T.T. at 64. When the police arrived, [the Victim] recounted the events of the assault. T.T. at 65. [The Victim] indicated [Lucas] was wearing a baggy, oversized white T-shirt with sports-brand lettering on the front, dark shorts and sneakers. T.T. at 97, 98, 144. [The Victim] indicated [Lucas] smelled of alcohol. Id.

When the police arrived, [the Victim] appeared "very shaken up, very upset." T.T. at 106. [The Victim] was wearing a T-shirt, boxers and socks; he had no shoes on. T.T. at 106. The police took [the Victim] to the vacant lot where his belongings were recovered. T.T. at 66. The police called [the Victim's] mother to come to the scene and pick him up. T.T. at 66. [The Victim] was still very upset and broke down crying when his mother arrived. T.T. at 113.

The assault took place behind the Erie Beer Company at 14th and Liberty Streets which had a surveillance camera mounted on the back of the building. T.T. at 109. The video from this camera shows two

individuals walking in the direction described by [the Victim]. One individual is wearing a white T-shirt, dark pants, and appears to be controlling the second person, who has a bike. A short time later, the video shows a scantily clad person running in the opposite direction. T.T. at 109, 110. The video generally corroborates the [V]ictim's testimony.

The police initiated a search of the neighborhood. T.T. at 110. [Lucas] was soon found hiding with his back against a garage in the neighborhood. T.T. at 111. [Lucas] was wearing a white T-shirt with the words "Just Do It", a sports-brand phrase, on the front when he was apprehended. T.T. at 127. [Lucas] appeared intoxicated with bloodshot eyes and slurred speech. T.T. at 125, 131.

The [V]ictim was driven to the area of 18th and Liberty Streets to identify [Lucas] who was seated in the police cruiser. T.T. at 87. [The Victim] was certain [Lucas] was the assailant. T.T. at 66. As [Lucas] was partially obscured in the police cruiser, the police took him out of the cruiser and shone a light on him. [The Victim] identified [Lucas]. T.T. at 87. The next day, [the Victim] was shown a photo lineup sheet of eight black males. T.T. at 68, 150. After looking at all eight photographs, [the Victim] quickly identified [Lucas] as the assailant. T.T. at 68, 88, 150.

At the time of these crimes, [Lucas] was on state parole. On July 31, 2012, a state parole detainer was lodged at Docket Numbers 836 — 839 of 2002. [Lucas] was confined at S.C.I Albion on July 31, 2012, as a parole violator.

A Criminal Complaint at this Docket was filed August 2, 2012. At [Lucas's] arraignment on August 9, 2012, bail was set at \$100,000. [Lucas] was returned to S.C.I. Albion pursuant to the detainer at Docket Numbers 836 — 839 of 2002.

A jury trial was held on March 13 and March 14, 2013. [Lucas] was convicted on March 14, 2013 of the following: Aggravated Indecent Assault, Indecent Assault, Unlawful Restraint, Theft by Unlawful Taking, Theft by Receiving Stolen Property and Robbery. A sexually violent predator hearing was held on June 26, 2013. [Lucas] was found to be a sexually violent predator and was sentenced the same date [...].

Trial Court Opinion, 9/24/13, at 1-4.

Lucas was advised on the record that as a sexually violent predator, he was subject to lifetime registration requirements with the Pennsylvania State Police. N.T., 6/26/13, at 25-28. Furthermore, after review of the presentence investigation report ("PSI"), the trial court sentenced Lucas to 10 to 20 years of incarceration on the robbery charge, and 60 to 120 months (five to ten years) of incarceration on the aggravated indecent assault charge.¹ **Id.** at 44-45. The trial court ordered the aggravated indecent assault sentence to run consecutively to the robbery sentence, for an aggregate sentence of 15 to 30 years of incarceration. **Id.**

On July 8, 2013, Lucas timely filed post-sentence motions, which included a motion for judgment of acquittal, motion for new trial, motion to amend or modify sentence and sex offender status, and motion to challenge

¹ The trial court merged the indecent assault charge with the aggravated indecent assault charge, and merged the unlawful restraint, theft by unlawful taking, and receiving stolen property charges with the robbery charge. N.T., 6/26/13, at 45.

subject matter jurisdiction. On July 10, 2013, the sentencing court denied Lucas's post-sentence motions.

Lucas timely filed a notice of appeal and a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). On appeal, Lucas raises the following issues for our review:

1. Whether the jury's verdict goes against the weight of the evidence because the Commonwealth's primary witness, the [V]ictim, contradicted himself at least ten (10) different times on the witness stand and that the Commonwealth does not have any other first hand witnesses and/or evidence?
2. Whether the jury's verdict goes against the sufficiency of the evidence because the Commonwealth's primary witness, the [V]ictim, contradicted himself at least ten (10) different times on the witness stand and that the Commonwealth does not have any other first hand witnesses and/or evidence?
3. Whether the trial court and/or the court of common pleas and/or the magistrate district judge erred when one and/or all of the aforementioned entities violated the following rights:
 - a) Speedy Trial Rights under the Federal Constitution (i.e., Sixth Amendment); b) Speedy Trial Rights under the Pennsylvania Constitution (i.e., Rule 600 of Pennsylvania's Rules of Criminal Procedure); and c) Subject Matter Jurisdiction of the courts and by association Convincing Evidence and/or a Nexus of Liability standards of the Law of the Case.
4. Whether the identification of [Lucas] at time of trial was tainted because the [V]ictim could not identify [Lucas] as the perpetrator on the night in question and as a result law enforcement failed to investigate any other suspects.

5. Whether the identification of [Lucas] at time of trial was tainted because the [V]ictim could not identify [Lucas] as the perpetrator on the night in question and as a result law enforcement failed to perform a rape kit on the [Victim].
6. Whether the trial court imposed an excessive and/or unreasonable sentence because [Lucas's] sentence comprised of consecutive terms of incarceration.
7. Whether the trial court erred when it denied any and/or all relief sought by [Lucas] at time of trial, at the sentencing phase and/or within a post-sentencing motion that may not have been included in any of the aforementioned issues but was placed on the record at one of the aforementioned dates and/or times.

Lucas's Brief at 3-4.

Lucas's first issue on appeal is whether the jury's verdict was against the weight of the evidence. *Id.* at 5, 15. As this Court has held:

A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. Rather, "the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." It has often been stated that "a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail."

* * *

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.*** 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.

This does not mean that the exercise of discretion by the trial court in granting or denying a motion for a new trial based on a challenge to the weight of the evidence is unfettered. In describing the limits of a trial court's discretion, we have explained[,] [t]he term 'discretion' imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused where the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.

Commonwealth v. Clay, 64 A.3d 1049, 1054-55 (Pa. 2013) (emphasis in the original) (internal citations omitted).

Here, the Victim testified regarding the events that occurred on July 30, 2012. The Victim's testimony was corroborated by surveillance video, testimony by police officers, and physical evidence left at the scene of the

crime. Based on the testimony and evidence presented at trial, the jury determined that the evidence was sufficient to convict Lucas on all charges.

In its opinion pursuant to Pa.R.A.P. 1925(a) ("1925(a) Opinion"), the trial court concluded that the jury's verdict was "not so contrary to the evidence as to shock one's sense of justice with regard to each charge," and found "no reason to disturb the jury's verdict." Trial Court Opinion, 9/25/13, at 7. After our review of the record, we conclude that the trial court's conclusion was not manifestly unreasonable or a misapplication of the law. As a result, the trial court did not abuse its discretion and we find Lucas's weight of the evidence claim to be meritless.

For his second issue on appeal, Lucas claims that the evidence was insufficient to prove the elements of the crimes with which he was charged, beyond a reasonable doubt, because the Victim's testimony was contradictory and inconsistent. Lucas's Brief at 12-14. Our standard of review in assessing the sufficiency of evidence presented is well-settled:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all of the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that

as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Helsel, 53 A.3d 906, 917-18 (Pa. Super. 2012) (citing ***Commonwealth v. Bricker***, 41 A.3d 872, 877 (Pa. Super. 2012)).

Lucas argues that the Victim's testimony at trial consisted of contradictions and fabricated fears, and therefore, there was insufficient evidence to convict him of the crimes. Lucas's Brief at 12-15. However, as recently reaffirmed in ***Commonwealth v. Palo***, 24 A.3d 1050 (Pa. Super. 2011), a sufficiency argument "directed entirely to the credibility of the Commonwealth's chief witness" is not a challenge to the sufficiency of the evidence, but is a challenge to the weight of the evidence. ***Id.*** at 1055. Lucas presented this claim as a challenge to the sufficiency of the evidence, not its weight. As our standard of review for sufficiency claims provides, the trier of fact (here the jury) is free to believe all, part, or none of the evidence. ***Bricker***, 882 A.2d at 1014. With its verdict, the jury apparently found the Victim to be credible. This Court will not disturb such a finding.

Lucas's third issue on appeal contains several claims. First, Lucas claims that the trial court violated his speedy trial rights provided by the

United States Constitution and the Pennsylvania Constitution. “The Pennsylvania Supreme Court adopted our speedy trial rules as an administrative means of protecting the constitutional rights embodied in the Sixth Amendment to the United States Constitution and Article 1, Section 9 of the Pennsylvania Constitution.” **Commonwealth v. Preston**, 904 A.2d 1, 10 (Pa. Super. 2006) (citing **Commonwealth v. Shaffer**, 712 A.2d 749, 751 (Pa. 1998)). Rule 600 of the Pennsylvania Rules of Criminal Procedure requires the Commonwealth to commence trial within 365 days from the date on which the complaint is filed. Pa.R.C.P. 600(A)(2)(a). In this case, the Commonwealth complied with Rule 600(A)(2)(a). Charges were filed by the Commonwealth on August 2, 2012 and trial commenced on March 13, 2013. Trial Court Opinion, 9/25/13, at 4. Thus, Lucas was brought to trial within the 365 day limit provided by Rule 600.

Rule 600 also provides that “[e]xcept in cases in which the defendant is not entitled to release on bail as provided by law, no defendant shall be held in pretrial incarceration in excess of 180 days from the date on which the complaint is filed.” Pa.R.C.P. 600(B)(1). In this case, Lucas was confined at S.C.I. Albion on July 31, 2012. **Id.** At his arraignment on August 9, 2012, bail was set for \$100,000 and Lucas returned to S.C.I. Albion. **Id.** Lucas argues that because he was incarcerated for more than six months without being given a nominal bond, that his charges should be dismissed. N.T., 3/13/13, at 3-4.

Rule 600(D) provides the remedies available to defendants when the Commonwealth violates the prescribed rules. Under Rule 600(D)(2), a defendant who “is held in pretrial incarceration beyond the time set forth in paragraph (B) ... may file a written motion requesting that the defendant be released immediately on nominal bail subject to any nonmonetary conditions of bail imposed by the court as permitted by law.” In this case, Lucas did not apply for release on nominal bail, but rather, only requested the trial court to dismiss the charges.

In ***Commonwealth v. Murray***, 879 A.2d 309 (Pa. Super. 2005), this Court held that “Rule 600 provides for dismissal of charges only in cases in which the defendant has not been brought to trial within the term of the adjusted run date, after subtracting all excludable and excusable time.” ***Id.*** at 314 (citing ***Commonwealth v. Montgomery***, 861 A.2d 304, 309 (Pa. Super. 2004)). This Court further held that “[o]ther than release on nominal bail, no other remedy is prescribed for defendants incarcerated for less than three hundred sixty-five days, even if they were not, in fact released on nominal bail.” ***Id.*** Thus, because Lucas did not apply for release on nominal bail, there is no substantive relief available.

Furthermore, we note that at the time the crimes were committed, Lucas was on state parole. ***Id.*** As a parole violator, Lucas was confined at S.C.I. Albion on a state parole detainer, lodged at Docket Numbers 836 – 839 of 2002. ***Id.*** “Incarceration for a parole violation arising out of an

unrelated prior conviction does not implicate the mandatory timing requirements of the Pennsylvania speedy trial rule.” **Murray**, 879 A.2d at 314 (citing **Commonwealth v. Warnes**, 496 A.2d 830, 861 (Pa. Super. 1985)). Thus, even if Lucas applied for release on nominal bail, it is likely that the state parole detainer would have prevented his release from incarceration. **See Id.** Therefore, we hold that the trial court did not violate Lucas’s speedy trial rights.

Lucas also filed a writ of *habeas corpus* and a “form of affidavit” challenging the trial court’s subject matter jurisdiction, contending that the Crimes Code is unconstitutional.² The trial court easily disposed of this claim, citing to the following enabling legislation:

For 18 Pa.C.S.A. § 3125(a)(3), Acts 2002-162 and 2002-226 legislation.

For 18 Pa.C.S.A. § 3126 (a)(3), Act 2005-76 legislation.

For 18 Pa.C.S.A. § 2902 (a)(2), Act 2011-111 legislation.

For 18 Pa.C.S.A. § 3921(a), Dec. 6, 1972, P.L. 1482, No. 334, § 1.

For 18 Pa.C.S.A. § 3925(a), Dec. 6 1972, P.L. 306, § 1.

For 18 Pa.C.S.A. § 3701(a)(1)(ii), March 16, 2010, P.L. 143, No. 11 § 1.

² The trial court’s 1925(a) opinion notes that Lucas’s filings were made *pro se* while represented by counsel, and that pursuant to Pa.R.C.P. 576(A)(4), no judicial response was required. Trial Court Opinion, 9/25/13, at 13. Nevertheless, the record reflects that the trial court decided the merits of the filings and preserved Lucas’s challenge for appeal. N.T., 3/13/13, at 5. Thus, Lucas’s claim was properly presented on appeal under Pa.R.A.P. 302.

Id. We agree that Lucas's challenge to the trial court's subject matter jurisdiction is meritless.

For his fourth issue on appeal, Lucas argues that the Victim's identification of him as the perpetrator was tainted, which "led to an incomplete law enforcement investigation and the failure to look for other suspects and/or other evidence." Lucas's Brief at 17-18. In **Commonwealth v. Brown**, 23 A.3d 544 (Pa. Super. 2011), this Court discussed identification evidence and the factors to be considered in assessing the reliability of an identification.

"In reviewing the propriety of identification evidence, the central inquiry is whether, under the totality of the circumstances, the identification was reliable." The purpose of a "one on one" identification is to enhance reliability by reducing the time elapsed after the commission of the crime. "Suggestiveness in the identification process is but one factor to be considered in determining the admissibility of such evidence and will not warrant exclusion absent other factors."

As this Court has explained, the following factors are to be considered in determining the propriety of admitting identification evidence: "the opportunity of the witness' to view the perpetrator at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the perpetrator, the level of certainty demonstrated at the confrontation, and the time between the crime and confrontation." The corrupting effect of the suggestive identification, if any, must be weighed against these factors. Absent some special element of unfairness, a prompt "one on one" identification is not so suggestive as to give rise to an irreparable likelihood of misidentification.

Brown, 23 A.3d at 558 (internal citations omitted).

In its 1925(a) Opinion, the trial court provided a thorough analysis of the Victim's identification of Lucas:

In this case, the [V]ictim was face-to-face with [Lucas]. Even though the assault occurred at 11:00 – 11:45 p.m., there was enough street lighting on 14th, 16th, Liberty and Plum Streets for [the Victim] to clearly see [Lucas's] physical features and clothing. The first factor is met.

This was a traumatic sexual assault by an older man upon an eighteen-year[-old] boy whose attention was solely focused upon [Lucas]. The [V]ictim feared [Lucas], smelling of alcohol, had a gun or a knife and would cause him serious bodily injury if he did not comply with [Lucas's] directives. The [V]ictim was in subjective fear for his life. His attention remained solely focused on [Lucas] and his actions. The second factor is met.

[The Victim] gave a description of [Lucas's] physical characteristics and his clothing. [The Victim] described [Lucas] as a six-foot, older black male, possibly in his forties, with a normal build. [The Victim] described [Lucas's] clothing as a large, white T-shirt with sports-brand lettering upon it. [Lucas] had a low, husky voice and smelled of alcohol. [Lucas] is a thirty-six year old, black male with an adult male voice. Upon apprehension, [Lucas] was wearing a large white T-shirt with sports-brand lettering. [Lucas] was visibly intoxicated. [The Victim] accurately described [Lucas] prior to confrontation. The third factor is met.

[The Victim] testified to his certainty the person in the police cruiser was [Lucas]. When [Lucas] entered the police station, a booking photograph was taken. The photograph was then made a part of a photo array later shown to [the Victim]. [The Victim]

positively identified [Lucas] from the photo lineup. The fourth factor is met.

The length of time between the crimes and the identification of [Lucas] in the police cruiser was within an hour and a half after the assault. The photo lineup identification by [the Victim] was the next day. The fifth factor is met.

Trial Court Opinion, 9/25/13, at 16-17.

After our review of the record, we conclude that under the totality of the circumstances, the Victim's identification of Lucas was sufficiently reliable for presentation to the jury. There is no evidence of record establishing that the identification was tainted, therefore, Lucas's claim fails.

For his fifth issue on appeal, Lucas argues that the tainted identification of Lucas by the Victim "led to a failure of performing a rape kit and subsequent DNA analysis on [Lucas] and/or other individuals." Lucas's Brief at 18. Lucas asserts that law enforcement erred by not subjecting the Victim to "a physical exam for purposes of a rape kit to see if DNA from [Lucas] matched [the] samples taken from the [Victim] and/or if the DNA collected matched another suspect." ³ **Id.** However, Lucas fails to cite to any authority imposing an obligation on law enforcement to subject the Victim to a rape kit or an obligation to introduce evidence from a rape kit at

³ At trial, Lucas's counsel suggested that Lucas and the Victim engaged in consensual sexual encounter in exchange for a negotiated fee. N.T., 3/14/13, at 15-19. The trial court found, "a rape kit or DNA test would only confirm what Lucas was contending." Trial Court Opinion, 9/25/13, at 17.

trial to prove the elements of the crimes with which Lucas was charged. As such, we hold that Lucas's claim is meritless on its face.

For his sixth issue on appeal, Lucas contends that the sentencing court abused its discretion in sentencing him. As this Court held, "[w]here an appellant challenges the discretionary aspects of a sentence, there is no automatic right to appeal and an appellant's appeal should be considered a petition for allowance of appeal." ***Commonwealth v. Crork***, 966 A.2d 585, 590 (Pa. Super. 2009).

Before we reach the merits of this [issue], we must engage in a four part analysis to determine: (1) whether the appeal is timely; (2) whether Appellant preserved his issue; (3) whether Appellant's brief includes a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of sentence; and (4) whether the concise statement raises a substantial question that the sentence is appropriate under the sentencing code.

Commonwealth v. Clarke, 70 A.3d 1281, 1286 (Pa. Super. 2013) (citing ***Commonwealth v. Malovich***, 903 A.2d 1247, 1250 (Pa. Super. 2006)).

In this case, Lucas timely filed an appeal, satisfying the first part of the analysis. With regard to the second part of the analysis,

'[I]ssues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion or by presenting the claim to the trial court during sentencing proceedings. Absent such efforts, an objection to a discretionary aspect of a sentence is waived.' Furthermore, a defendant is required to preserve the issue in a court-ordered Pa.R.A.P.

1925(b) concise statement and a Pa.R.A.P. 2119(f) statement.

Commonwealth v. Cartrette, 83 A.3d 1030, 1042 (Pa. Super. 2013) (internal citations omitted). After a review of the record, we hold that Lucas failed to preserve his challenge for appeal.

In his post-sentence motion, Lucas requested the sentencing court to amend and/or modify his term of sentence “by running all terms of incarceration concurrently and/or consider modifying his status as a sexually violent predator.” Post Sentencing Motion(s), 7/8/13, at 5-6. After the motion was denied, Lucas filed a notice of appeal to this Court, along with a 1925(b) statement of matters complained of on appeal.

In his 1925(b) statement, Lucas failed to preserve the issue, choosing instead to raise a new claim that his “aggregate sentence comprised of consecutive sentences” was manifestly illegal and violates Section 9721(b) of the Sentencing Code. Appellant’s 1925(b) Statement [of] Matters Complained of on Appeal, 9/3/13, at 3. Lucas again chose to raise a new claim in his statement pursuant to Pa.R.A.P. 2119(f), which requires an appellant to “set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence,” by claiming that his sentence was excessive, violated the Sentencing Code, and “compromise[ed] the sentencing scheme as a whole.” Lucas’s Brief at 10. As a result, Lucas failed to preserve the issue on appeal

and therefore waived his claim that the sentencing court abused its discretion in sentencing him. Accordingly, this Court may not examine the merits of the claim.⁴

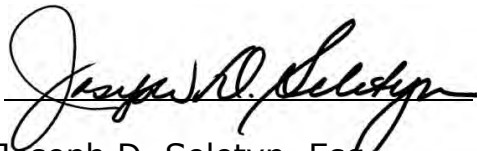
For his final issue on appeal, Lucas claims that the trial court erred by denying relief “in the pre-trial, jury trial, post-trial, sentencing and post-sentencing phases.” Lucas’s Brief at 22. However, as the trial court provided in its 1925(a) Opinion, “[this] claim violates the mandates of Pa.R.A.P. 1925(b)(4)(ii).” Trial Court Opinion, 9/24/13, at 21. Rule 1925(b)(4)(ii) requires the appellant to provide a statement that “concisely identif[ies] each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge.” Pa.R.A.P. 1925(b)(4)(ii). The Rule further provides that “[i]ssues not included in the Statement and/or not raised in accordance with the provisions of this [Rule] are waived.” Pa.R.A.P. 1925(b)(4)(vii).

⁴ Nevertheless, even if we could consider the merits of the claim, Lucas’s challenge fails under the third part of the analysis, for failing to raise a substantial question. First, Lucas’s sentence fell within the sentencing guidelines. “When the sentence is within the range prescribed by statute, a challenge to the maximum sentence imposed does not set forth a substantial question as to the appropriateness of the sentence under the guidelines.” **Commonwealth v. Yeomans**, 24 A.3d 1044, 1049 (Pa. Super. 2011). Furthermore, “Pennsylvania law affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. Any challenge to the exercise of this discretion ordinarily does not raise a substantial question.” **Commonwealth v. Austin**, 66 A.3d 798, 808 (Pa. Super. 2013).

In this case, Lucas failed to concisely identify the rulings or errors to be addressed on appeal. Instead, Lucas presented a vague blanket assertion that the trial court committed error. As this Court held, “[A] [c]oncise [s]tatement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no [c]oncise [s]tatement at all.’ ... Thus, if a concise statement is too vague, the court may find waiver.” **Commonwealth v. Hansley**, 24 A.3d 410, 415 (Pa. Super. 2011) (citing **Commonwealth v. Reeves**, 907 A.2d 1, 2 (Pa. Super. 2006), *appeal denied*, 919 A.2d 956 (Pa. 2007)). Accordingly, we find that Lucas waived this issue for appeal.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/1/2014