NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. CHAPEL THOMPSON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1346 MDA 2013

Appeal from the Judgment of Sentence of April 2, 2013
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0001547-2012

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY OLSON, J.: **FILED MAY 07, 2014**

Appellant, Chapel Thompson, appeals from the judgment of sentence entered on April 2, 2013, as made final by the denial of Appellant's post-sentence motion on June 24, 2013. We affirm.

The trial court has provided us with a thorough and well-written summary of the underlying facts. As the trial court explained:

> On December 18, 2011, [the victim, L.F.,] went to the Lancaster City Bureau of Police to report that he had been forced at gunpoint on three separate occasions to give money to Appellant and [Appellant's] co-conspirators, Aaron Robinson and Lennell Preston. . . .
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> Specifically, on December 11, 2011, [Appellant and his co-conspirators] came into [L.F.'s] place of business . . . and demanded $5,000.00. [L.F.] was forced into the rear of the shop and handcuffed to a pipe. [Appellant and his co-conspirators then: took L.F.'s pocket money and identification, brandished a gun, and threatened L.F.'s life. L.F.] told the [three individuals] that he only had $1,500.00 in his bank account at that time.

[Appellant and his co-conspirators] eventually forced [L.F.] to travel to a[n automated teller machine ("ATM")] outside [of] the [c]ity, where the daily maximum withdrawal amount of $500.00 was removed from [L.F.'s] account and taken by Appellant and his co-conspirators. [Appellant and his co-conspirators] told [L.F. that] they would return the next day for the [rest of L.F.'s money], and Appellant [] told [L.F. that] if he did not come up with [the] money "it could get fatal."

On December 12, 2011, Appellant [] appeared at the victim's place of business [and] demand[ed] the remainder of the [victim's] money. [However, L.F.] had only been able to remove $500.00 from the ATM that day because he did not have his identification[, which Appellant had stolen the night before]. Appellant left and returned with [L.F.'s] identification and [Appellant] then forced [L.F.] to go with him to the bank to withdraw additional funds from [L.F.'s] account.

[At some point during the ensuing week, co-conspirator Aaron Robinson contacted L.F. and declared that L.F. would need "to get on this payment plan" to pay off the remainder of the $5,000.00. N.T. Trial, 1/17/13, at 154.]

[The] third [robbery] occurred on December 18, 2011[. On that date, co-conspirator Aaron Robinson returned to [L.F.'s] shop and again demanded that [L.F.] "come up with this money." N.T. Trial, 1/17/13, at 159-160. [L.F.] testified that Robinson then brandished a gun, pushed [L.F.] back towards the rear of the shop, and began striking [L.F.] [L.F.] testified:

> So I [] told him that, you know that I would get the rest of the money for him. And he gave me like a 15-minute window to get the rest of the money or when he gets back he's going to shoot me and he didn't care if we was in front of the shop or in front of customers or cameras. He didn't care about that. And he said he was going to shoot me.

Id. at 160.

> [L.F. then] got in his car and, instead of going to the bank, [L.F.] went to the police to report the robberies and kidnappings.

Trial Court Opinion, 8/26/13, at 3-4 (internal citations omitted).

Appellant and his co-conspirators were arrested. The Commonwealth charged both Appellant and Robinson with three counts of robbery, two counts of kidnapping to facilitate a felony, and one count each of criminal conspiracy, theft by extortion, and unlawful restraint.[1, 2]

On April 26, 2012, the Commonwealth served Appellant and his co-conspirators with notice that it intended to try the three defendants together. Notice of Intent to Consolidate, 4/26/12, at 1. However, co-conspirator Lennell Preston began cooperating with the police and his case was thus severed from that of Appellant and Robinson. ***See*** N.T. Trial, 1/18/13, at 269-274.

Prior to trial, Appellant orally joined Robinson's motion to sever the cases. N.T. Pre-Trial Motion Hearing, 1/14/13, at 62; N.T. Pre-Trial Motion Hearing, 1/15/13, at 30. The trial court denied this motion and, on January 16, 2013, jury selection began for Appellant's and Robinson's joint trial.

The jury panel contained three individuals who identified their ethnicity to be Hispanic. N.T. Voir Dire, 1/16/13, at 64. These jurors were Number

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[1] 18 Pa.C.S.A. §§ 3701(a)(1)(ii), 2901(a)(2), 903(a)(1), 3923(a)(1), and 2902(a)(1), respectively.

[2] The Commonwealth also charged co-conspirator Lennell Preston with various crimes arising out of the three robberies.

10, Number 19, and Number 30. Juror Number 19 was struck for cause. ***Id.*** The Commonwealth then used two of its preemptory challenges to strike jurors Number 10 and Number 30. ***Id.*** After the Commonwealth struck jurors Number 10 and Number 30, Appellant objected and claimed that the Commonwealth improperly struck the two jurors because of their race or ethnicity, in violation of Appellant's right to equal protection under ***Batson v. Kentucky***, 476 U.S. 79 (1986). The assistant district attorney on behalf of the Commonwealth responded:

> [Appellant's counsel] mentioned that there were two Hispanics that were struck. I'm looking at totally different reasons, and I can state those for the record at the appropriate time. . . .
>
> Quite frankly, I understand [opposing counsel has] a job to do. I do find it a little bit personally offensive to me since my kids are both Hispanic and my wife is a hundred percent Hispanic. But I would state some reasons, if you want me to explain why I struck these individuals, Your Honor.
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> . . .
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> Your Honor, with regard to [Number] 10, as I look at my notes on my sheet here that I refer to as I do the strikes, the biggest concern that I had there was the sex crimes conviction that [one of his] family member[s] had. I understand that he said he can be fair and impartial, but that is something that concerns me . . . that was the main reason. It was that he has a brother that was convicted of a sex crime was my note here.
>
> . . .
>
> With regard to [Number 30], I have circled on my questionnaire here that he works in auto body. I don't mean to be discriminatory against people that work in auto body, but I have known many of them over the years. And

> although he indicated he has no prior record, that's something that concerned me as I saw that. . . . And that's the key reason why I struck [Number] 30.

N.T. Voir Dire, 1/16/13, at 64-68.

The trial court credited the prosecutor's race- and ethnicity-neutral explanation for striking jurors Number 10 and Number 30; the trial court thus denied Appellant's ***Batson*** challenge. ***Id.*** at 68-69.

Following jury selection, Appellant's and Robinson's jury trial commenced and, during this trial, the parties presented the above-summarized evidence. At the conclusion of trial, the jury found Appellant guilty of all of the charged crimes.[3] Specifically, the jury found Appellant guilty of the following numbered counts: 1) robbery (on December 11, 2011); 2) robbery (on December 12, 2011); 3) robbery (on December 18, 2011); 4) criminal conspiracy to commit robbery; 5) kidnapping (on December 11, 2011); 6) theft by extortion; 7) kidnapping (on December 12, 2011); and, 8) unlawful restraint. On April 2, 2013, the trial court sentenced Appellant to serve an aggregate term of 23 to 46 years in prison.[4]

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[3] The jury also found Robinson guilty of all charged crimes. N.T. Trial, 1/18/13, at 490.

[4] The trial court sentenced Appellant as follows:

> Count 1: Robbery – 5 ½ to 11 years' imprisonment
> Count 2: Robbery – 4 to 8 years' imprisonment
> Count 3: Robbery – 4 to 8 years' imprisonment
> Count 4: Conspiracy – 5 to 10 years' imprisonment
> Count 5: Kidnaping – 5 ½ to 11 years' imprisonment
> Count 6: Theft by Extortion – 1 to 2 years' imprisonment

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Appellant filed a timely post-sentence motion and claimed (amongst other things) that the trial court abused its discretion by imposing a "manifestly excessive" sentence. In particular, Appellant claimed that, at sentencing, the trial court failed to consider the fact that Appellant "was not the instigator of the offenses, but was rather simply a follower" and that Appellant did not visibly possess a gun during the robberies. Appellant's Post-Sentence Motion, 4/11/13, at 2. The trial court denied Appellant's post-sentence motion and Appellant filed a timely notice of appeal.

On appeal, Appellant raises the following four claims:[5]

> [1.] Was the evidence presented by the Commonwealth insufficient to prove beyond a reasonable doubt that [Appellant] was guilty of robbery for an incident that [Appellant] was not present for?
>
> [2.] Did the trial court err in denying [Appellant's] motion for severance?
>
> [3.] Did the trial court err in permitting the dismissal of two Hispanic jurors where the Commonwealth failed to provide

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> Count 7: Kidnaping – 4 to 8 years' imprisonment
> Count 8: Unlawful restraint – 1 to 2 years' imprisonment

The trial court ordered Counts 1, 2, 5, and 7 to run consecutively to one another; the trial court also ordered Counts 4, 6, and 8 to run concurrent to one another and concurrent to Count 1. N.T. Sentencing, 4/2/13, at 19-20.

[5] The trial court ordered Appellant to file and serve a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant complied and preserved the issues he currently raises on appeal.

> legitimate, race-neutral reasons for exercising its preemptory challenges to remove them from the jury?
>
> [4.] Was an aggregate sentence of [23 to 46 years'] incarceration manifestly excessive and contrary to the fundamental norms underlying the sentencing process where [Appellant] was not the instigator of the offenses?

Appellant's Brief at 10.[6]

Appellant first claims that the evidence was insufficient to support his conviction for the December 18, 2011 robbery. This claim fails.

As we have held:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for [that of] 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.

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[6] For ease of discussion, we have re-numbered Appellant's claims on appeal.

Commonwealth v. Brown, 23 A.3d 544, 559-560 (Pa. Super. 2011) (*en banc*), *quoting* ***Commonwealth v. Hutchinson***, 947 A.2d 800, 805-806 (Pa. Super. 2008).

On appeal, Appellant claims that the evidence was insufficient to support his conviction for the December 18, 2011 robbery. Specifically, Appellant claims that his conviction for robbing L.F. on December 18, 2011 must be vacated because Appellant "was not present for that robbery . . . [and t]here is simply no evidence to suggest [that Appellant] was even aware of [co-conspirator Aaron] Robinson's intentions or actions that day." Appellant's Brief at 22.

Our Supreme Court has declared:

> it is hornbook law that a conspirator is criminally responsible for the acts of his co-conspirators which are committed in furtherance of the common design[, e]ven though he was not present when the acts were committed. . . .
>
> Where the existence of a conspiracy is established, the law imposes upon a conspirator full responsibility for the natural and probable consequences of acts committed by his fellow conspirator or conspirators if such acts are done in pursuance of the common design or purpose of the conspiracy. Such responsibility attaches even though such conspirator was not physically present when the acts were committed by his fellow conspirator or conspirators and extends even to a homicide which is a contingency of the natural and probable execution of the conspiracy, even though such homicide is not specifically contemplated by the parties.

Commonwealth v. Roux, 350 A.2d 867, 871 (Pa. 1976) (internal citations, quotations, and corrections omitted); ***Commonwealth v. Wayne***, 720 A.2d

456, 463-464 (Pa. 1998) ("[t]he co-conspirator rule assigns legal culpability equally to all members of the conspiracy. All co-conspirators are responsible for actions undertaken in furtherance of the conspiracy regardless of their individual knowledge of such actions and regardless of which member of the conspiracy undertook the action. The premise of the rule is that the conspirators have formed together for an unlawful purpose, and thus, they share the intent to commit any acts undertaken in order to achieve that purpose, regardless of whether they actually intended any distinct act undertaken in furtherance of the object of the conspiracy").

In the case at bar, L.F. testified that, during the December 18, 2011 robbery, L.F. only saw Aaron Robinson in his store. Nevertheless – and in consideration of the above-summarized principles of law – if Appellant conspired with Robinson to commit the December 18, 2011 robbery, Appellant is criminally liable for the December 18, 2011 robbery.

To prove that Appellant conspired to commit the December 18, 2011 robbery, the Commonwealth was required to prove that Appellant: "1) entered into an agreement to commit or aid in an unlawful act with [Robinson]; 2) with a shared criminal intent; and 3) an overt act was done in furtherance of the conspiracy." ***Commonwealth v. Feliciano***, 67 A.3d 19, 25-26 (Pa. Super. 2013) (internal quotations and citations omitted). Further, as we have stated:

> The conduct of the parties and the circumstances surrounding such conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a

> reasonable doubt. The conspiratorial agreement can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode.

Id. at 26 (internal quotations and citations omitted).

In the case at bar, the evidence was sufficient to prove that Appellant and Robinson conspired to commit the December 18, 2011 robbery. Indeed, L.F. testified that, on December 11, 2011, Appellant, Robinson, and Preston came to his place of business and demanded that L.F. give them $5,000.00. L.F. testified that, on that date, he only had $1,500.00 in his bank account and that he was only able to give the individuals (approximately) $700.00. N.T. Trial, 1/17/13, at 145-149. Thus, Appellant and his co-conspirators told L.F. that they would return the next day and that L.F. "needed to come up with the rest of that money or . . . there's going to be problems." ***Id.*** at 151.

Appellant returned the next day and took the remainder of L.F.'s money from L.F.'s bank account. However, the amount stolen did not satisfy the thieves' $5,000.00 demand. Thus, on December 18, 2011, Robinson returned to L.F.'s place of business, brandished a gun, and demanded that L.F. "get the rest of the money for him." ***Id.*** at 159-160. L.F. testified that, instead of driving to the bank, he drove to the police station and reported the robberies to the police.

The above evidence is sufficient to prove that Appellant, Robinson, and Preston entered into an agreement to steal $5,000.00 from L.F. – and that

the three robberies were an attempt by Appellant, Robinson, and Preston to collect a total amount of $5,000.00 from L.F. Therefore, viewing the evidence in the light most favorable to the Commonwealth, the evidence is sufficient to prove that Appellant, Robinson, and Preston conspired to commit the December 18, 2011 robbery. Certainly, the December 18, 2011 robbery was simply the culmination of the thieves' attempt to collect the entire $5,000.00 from L.F.

Further, since the evidence was sufficient to prove that Appellant, Robinson, and Preston conspired to commit the December 18, 2011 robbery, the evidence is sufficient to support Appellant's December 18, 2011 robbery conviction – even though Appellant was not physically present for the December 18, 2011 robbery. ***Roux***, 350 A.2d at 871 ("the law imposes upon a conspirator full responsibility for the natural and probable consequences of acts committed by his fellow conspirator or conspirators if such acts are done in pursuance of the common design or purpose of the conspiracy. Such responsibility attaches even though such conspirator was not physically present when the acts were committed by his fellow conspirator or conspirators") (internal citations, quotations, and corrections omitted). Appellant's first claim on appeal fails.

Next, Appellant claims that the trial court erred in denying his motion to sever his case from Robinson's case. Appellant's claim is meritless.

In relevant part, Pennsylvania Rule of Criminal Procedure 582 provides:

> Defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

Pa.R.Crim.P. 582(A)(2).

With respect to the severance of defendants, Rule 583 states: "[t]he court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tried together." Pa.R.Crim.P. 583.

As our Supreme Court has held:

> A motion for severance rests within the sound discretion of the trial court and will only be reversed on appeal for a manifest abuse of discretion. As a general policy, joint trials are encouraged when judicial economy will be promoted by avoiding the expensive and time-consuming duplication of evidence. Where, as here, defendants have been charged with conspiracy, joint rather than separate trials are preferred.

Commonwealth v. Jones, 668 A.2d 491, 501 (Pa. 1995) (internal citations omitted).

Moreover, we note that

> [a] joint trial of co-defendants in an alleged conspiracy is preferred not only in this Commonwealth, but throughout the United States.
>
> It would impair both the efficiency and the fairness of the criminal justice system to require . . . that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last tried defendants who have the advantage of knowing the prosecution's case beforehand.

> Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability.
>
> A defendant requesting a separate trial must show real potential for prejudice rather than mere speculation. The defendant bears the burden of proof, and we will only reverse a decision not to sever if we find a manifest abuse of discretion by the trial court.

Commonwealth v. Serrano, 61 A.3d 279, 285 (Pa. Super. 2013), *quoting* ***Commonwealth v. Colon***, 846 A.2d 747, 753-754 (Pa. Super. 2004).

On appeal, Appellant claims that the trial court erred in refusing to sever his case from Robinson's case because: a) Appellant did not physically participate in the December 18, 2011 robbery; b) a handgun (recovered from Robinson) would not have been admissible in Appellant's separate trial; and, 3) evidence that Robinson and Preston attempted to intimidate the victim would not have been admissible in Appellant's separate trial. N.T. Pre-Trial Motion Hearing, 1/15/13, at 30-33.

All three of Appellant's sub-issues fail. As has already been explained, the evidence demonstrates that Appellant, Robinson, and Preston conspired to rob the victim of $5,000.00 and that all three robberies were done in pursuance of this common plan and design. Thus, evidence relating to the December 18, 2011 robbery (including the evidence of Robinson's handgun)

would have been admissible in Appellant's separate trial.[7] Appellant's first two sub-issues thus immediately fail.

Appellant's final sub-issue also fails. With respect to this issue, Appellant notes that, at trial, the Commonwealth introduced evidence of written letters and telephone calls between Robinson and Preston, wherein the two discussed a plan to intimidate the victim into not testifying at trial. According to Appellant, since he was not implicated in this intimidation scheme, the evidence was prejudicial to his case and mandated that his case be severed from Robinson's case. Appellant's Brief at 28.

Appellant's claim fails because Appellant was, in fact, implicated in the scheme to intimidate the victim. At trial, Preston testified as follows:

> Q: Once you guys confirmed that these charges had been filed by the police, were there discussions among [] the three of you?
>
> A: Yes. . . . The discussion was that we need to contact [the victim]. We need to find him and make him go back to the police and make this shit go away. Excuse my language, but that was the tone. . . . We need to make this go away. I mean, by any means, we need to make this go away. These are serious charges.

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[7] Within Appellant's brief to this Court, Appellant suggests that the trial court erred in not severing the case because, **at trial**, Robinson's attorney accidentally asked a question that "opened the door" to the admissibility of the firearm. Even if such a claim were cognizable, Appellant did not raise this claim in his pre-trial motion and Appellant did not move to sever his case after the firearm was admitted at trial. Therefore, the claim is waived. Pa.R.A.P. 302(a) ("[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal").

> Q: Was there a discussion of what would occur if the victim did not go to the police and make these charges go away?
>
> A: Yes. It was said that if he's not willing to go down and make them go away, [Appellant] said, shit, we got to do it, we got to do it, we got to murk him. We got to murk him.
>
> Q: What does murk mean on the street?
>
> A: Kill.
>
> Q: Were there attempts made to try to locate [] the victim?
>
> A: Yes. . . . We would look through Facebook, try to check any update on his status, on [the victim's] status, on his son's status. . . . We attempted to Google the school district of Lancaster website and try to find where [the victim's] son is enrolled at. We figured if we can find where the son is enrolled, then we can probably catch him picking his son up or dropping him off for school.

N.T. Trial, 1/18/13, at 258-259.

Therefore, since Appellant was implicated in the scheme to intimidate the victim, the admission of the written letters and telephone calls between Robinson and Preston could not have caused Appellant unfair prejudice. The trial court thus did not abuse its discretion when it denied Appellant's motion to sever.[8]

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[8] Moreover, even if Appellant were not implicated in the scheme to intimidate the witness, Appellant's claim on appeal would still fail, as the trial court's refusal to sever the cases did not cause Appellant undue prejudice. ***See Commonwealth v. Patterson***, 546 A.2d 596 (Pa. 1988) (in ***Patterson***, evidence of witness intimidation was only admissible against the co-defendant; nevertheless, the Pennsylvania Supreme Court held that the trial court did not abuse its discretion when it denied the defendant's motion to sever because "**[w]e cannot say that the possible prejudicial effect of the testimony on intimidation is more harmful than the prejudicial**

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For Appellant's third claim on appeal, Appellant contends that the trial court erred in overruling his ***Batson*** challenge. This claim fails.

Our Supreme Court has explained:

> In ***Batson***[,] the United States Supreme Court held that the federal Constitution's Equal Protection Clause prohibits a prosecutor from challenging potential jurors solely on the basis of race[9, 10]. . . . As we have previously explained, the framework for analyzing a ***Batson*** claim involves the following three steps.
>
> First, the defendant must make a *prima facie* showing that the circumstances give rise to an inference that the prosecutor struck one or more prospective jurors on account of race; second, if the *prima facie* showing is made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the juror(s) at issue; and third, the trial court must then make the ultimate determination of whether the defense has carried its burden of proving purposeful discrimination.
>
> The second prong of the ***Batson*** test, involving the prosecution's obligation to come forward with a race-neutral explanation of the challenges once a *prima facie* case is

(Footnote Continued) ———————————

effect that we habitually tolerate in joint trials where evidence is introduced against only one of the defendants") (emphasis added).

[9] In ***Commonwealth v. Uderra***, 862 A.2d 74 (Pa. 2004), the Pennsylvania Supreme Court specifically held that a defendant may base his ***Batson*** challenge upon a claim that the prosecutor intentionally discriminated against venirepersons who are of Latin American ethnicity. ***Uderra***, 862 A.2d at 82-88, *citing* ***Hernandez v. New York***, 500 U.S. 352 (1991) (plurality).

[10] We recognize that Appellant grounded his ***Batson*** challenge upon a claim that the prosecutor intentionally discriminated against venirepersons who were of Hispanic ethnicity. However, for ease of explanation, we will refer to Appellant's challenge as one grounded in racial discrimination.

> proven, does not demand an explanation that is persuasive or even plausible. Rather, the issue at that stage is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reasons offered will be deemed race neutral.
>
> If a race-neutral explanation is tendered, the trial court must then proceed to the third prong of the test, *i.e.*, the ultimate determination of whether the opponent of the strike has carried his burden of proving purposeful discrimination. It is at this stage that the **persuasiveness** of the facially neutral explanation proffered by the Commonwealth is relevant.

Commonwealth v. Roney, 79 A.3d 595, 619 (Pa. 2013) (internal citations, quotations, and corrections omitted) (emphasis in original).

"[A] trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal and will not be overturned unless clearly erroneous." ***Id.*** (internal quotations and citations omitted). "Such great deference is appropriate and warranted because the trial court, having viewed the demeanor and heard the tone of voice of the attorney exercising the challenge, is uniquely positioned to make credibility determinations." ***Id.***

On appeal, Appellant claims that the prosecutor improperly used his preemptory strikes to eliminate jurors Number 10 and Number 30 – the only two Hispanic members of the jury. Assuming, *arguendo*, that Appellant has made a *prima facie* showing of racial or ethnic discrimination, Appellant's claim on appeal fails. As the trial court explained:

> In the instant case, based upon my assessment of the credibility and demeanor of the prosecutor, I found that the

> race-neutral explanations proffered for the removal of Juror Nos. 10 and 30 were persuasive. Specifically, the Commonwealth stated that Juror No. 10 [] was removed because his brother had been convicted of a sex crime. The Commonwealth explained that Juror No. 30 [] was struck because he was employed in the auto body business, which anecdotally has a reputation for not always operating within the law.
>
> Both reasons offered by the prosecutor for exercising his preemptory challenges were found by the [trial] court to be race-neutral and without pretext. This exercise of the [trial] court's discretion was clearly not erroneous, as nothing in the jury selection process indicated any purposeful discrimination by the Commonwealth based on race or ethnicity.

Trial Court Opinion, 8/26/13, at 7-8 (internal footnote and citations omitted).

The trial court's factual findings are not clearly erroneous. Therefore, Appellant's claim on appeal fails.

Finally, Appellant claims that the trial court abused its discretion by imposing a manifestly excessive sentence. Again, this claim fails.

Since Appellant challenges the discretionary aspects of his sentence, we note that "sentencing is a matter vested in the sound discretion of the sentencing judge, whose judgment will not be disturbed absent an abuse of discretion." ***Commonwealth v. Ritchey***, 779 A.2d 1183, 1185 (Pa. Super. 2001). Moreover, pursuant to statute, Appellant does not have an automatic right to appeal the discretionary aspects of his sentence. ***See*** 42 Pa.C.S.A. § 9781(b). Instead, Appellant must petition this Court for permission to appeal the discretionary aspects of his sentence. ***Id.***

As this Court has explained:

> [t]o reach the merits of a discretionary sentencing issue, we conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, Pa.R.A.P. 902, 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, [42 Pa.C.S.A.] § 9781(b).

Commonwealth v. Cook, 941 A.2d 7, 11 (Pa. Super. 2007).

In the case at bar, Appellant satisfied the first three requirements, as he filed a timely notice of appeal, properly preserved his discretionary challenge in a post-sentence motion, and facially complied with Pennsylvania Rule of Appellate Procedure 2119(f). We must now determine whether Appellant has presented a "substantial question that the sentence appealed from is not appropriate under the Sentencing Code." ***Cook***, 941 A.2d at 11.

Generally, to raise a substantial question, an appellant must "advance a colorable argument that the trial judge's actions were: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Commonwealth v. McKiel***, 629 A.2d 1012, 1013 (Pa. Super. 1993); ***Commonwealth v. Goggins***, 748 A.2d 721, 726 (Pa. Super. 2000) (*en banc*), *appeal denied*, 759 A.2d 920 (Pa. 2000). Moreover, in determining whether an appellant has raised a substantial question, we must limit our review to Appellant's Rule 2119(f) statement. ***Goggins***, 748 A.2d at 726.

This limitation ensures that our inquiry remains "focus[ed] on the reasons for which the appeal is sought, in contrast to the facts underlying the appeal, which are necessary only to decide the appeal on the merits." ***Id.*** at 727 (internal emphasis omitted).

In his Rule 2119(f) statement, Appellant claims that, at sentencing, the trial court abused its discretion by "focus[ing] solely on the nature of the offense and exclud[ing] any consideration of [Appellant's] history, background, character[,] and level of involvement in the crimes." Appellant's Brief at 17. Since this claim alleges that the trial court failed to consider certain requisite, statutory factors under the Sentencing Code, the claim does raise a substantial question under the Code. ***See Commonwealth v. Downing***, 990 A.2d 788, 793 (Pa. Super. 2010); ***Commonwealth v. Ventura***, 975 A.2d 1128, 1135 (Pa. Super. 2009); 42 Pa.C.S.A. § 9721(b).

Appellant's claim, however, fails on its merits because, at sentencing, the trial court considered Appellant's "history, background, character[,] and level of involvement in the crimes." Indeed, at sentencing, the trial court specifically declared:

> [Appellant,] two things that really struck me in reviewing this matter with regard to the pre-sentence investigation report and having read all of these documents.
>
> There is no doubt that you had a horrendous childhood and that you had little or no support. In fact, what support you should have had was counterproductive to your well-being and to you learning how to act appropriately.

With that said, however, my review of all of these documents indicates that you were sent to Alternative Rehabilitative Communities, that's called ARC, in [a number of places]. So it simply can't be said that you didn't have the opportunity to learn appropriate behavior.

Now, some or all of those may not have been places where you got help or you chose to take advantage of the help that was offered. But you had the opportunity, as many juveniles have, to learn and to be treated for whatever issues existed.

The documents that I have or that have been provided to me and that I have reviewed indicate in many instances that you chose not to take advantage of those situations. That's one of the reasons, perhaps, why you are here today.

What also struck me was the fact that I received 16 letters from people who obviously care a great deal about you. You have the ability to develop relationships with people who care about you. You have the ability to care for people who care about you.

Unfortunately, it appears as though you have taken the position that you treat the people who care about you, you treat them well. You care about them. But everybody else is fair game.

You choose to surround yourself with other people who choose to victimize other members of this community, people who are predators. And as a result, you become a predator of other people.

That type of behavior simply is not acceptable. And that type of behavior in a community with people you care about does nothing for the community except victimize people in the community, terrorize people in the community, and diminish the entire community, including the community in which people you care about live.

. . .

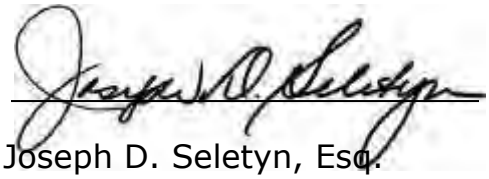
> [Appellant] is 28 years of age, which shows sufficient maturity to understand the significance of his acts.
>
> [Appellant] certainly is intelligent enough to understand the significance of his acts. He completed his GED.
>
> . . .
>
> According to the pre-sentence investigation report, [Appellant] has been employed, as indicated in the PSI, as a co-owner of a business since 2008 through 2012, which certainly indicates that he can either serve in a supervisory capacity or at the very least follow directions.
>
> . . .
>
> [The trial c]ourt has considered the pre-sentence investigation report in detail. [The trial court] has read all of the documents, including all of the letters that have been provided to me.
>
> The [trial c]ourt has considered the guidelines of the Sentencing Code. . . . The [trial c]ourt has considered the character of [Appellant]. [The trial court] has considered arguments of counsel. The [trial c]ourt has considered the penalties authorized by the legislature.

N.T. Sentencing, 4/2/13, at 14-19.

From the above, it is clear that, in sentencing Appellant, the trial court expressly considered Appellant's "history, background, character[,] and level of involvement in the crimes." Therefore, since Appellant's claim has no basis in fact, Appellant's discretionary aspect of sentencing claim fails.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/7/2014