

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RAMON AZIZ LEONARD,	:	
	:	
Appellant	:	No. 1735 EDA 2013

Appeal from the Judgment Entered April 30, 2013  
In the Court of Common Pleas of Monroe County  
Criminal Division No(s): CP-45-CR-0002722-2011

BEFORE: BENDER, P.J., SHOGAN, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.:

**FILED JUNE 17, 2014**

Appellant, Ramon Aziz Leonard, appeals from the judgment of sentence<sup>1</sup> entered in the Monroe County Court of Common Pleas. He contends he was entitled to a mistrial due to prejudicial remarks by the prosecutor and that the verdict was against the weight of the evidence. We affirm.

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> Appellant purported to appeal from the February 7, 2013 order of the trial court directing him to appear for sentencing. "However, when timely post-sentence motions are filed, an appeal properly lies from the judgment of sentence made final by the denial of post-sentence motions." **Commonwealth v. Kuykendall**, 2 A.3d 559, 560 n.1. (Pa. Super. 2010) (citation omitted). Accordingly, we have amended the caption.

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

The Commonwealth called Brian Roberts, an admitted heroin addict. Mr. Roberts testified that he knows [Appellant] as "Ghost." He was introduced to [Appellant] through a dealer. . . . [Appellant] asked him to drive to New Jersey to get some "dope." Roberts agreed to drive [Appellant] because he was "half sick that morning and I knew I was going to get paid in drugs so I took him." Roberts drove to [Appellant's] house and picked him up. [Appellant] told Roberts where to go. They drove to East Orange, New Jersey. When they got there, Roberts parked his car and [Appellant] called someone who picked them up in a vehicle. They drove "around in someone else's car trying to find the best dope." Roberts was "testing the dope out all day long to see what was the best dope out there." [Appellant] did not "test" the heroin. . . . After [Appellant] received a telephone call they "were just supposed to go back to Wilkes Barre." They picked up "Terrill" who got in Roberts' car in New Jersey and returned to Pennsylvania with them. Before they left for Pennsylvania, they stopped at a White Castle restaurant. [Appellant] and Terrill went to the trunk of the vehicle. The trunk lid was open and both men were next to it. Roberts did not see what they did there. After they left the White Castle, Roberts drove back to Pennsylvania where they were eventually pulled over by Trooper Conrad on I-80.

Trooper Mark Conrad testified that on October 30, 2011 he was using radar on I-80 near the Tannersville exit. He was facing westbound traffic in a marked vehicle. He saw a vehicle coming toward him at a high rate of speed. He clocked the vehicle on his radar equipment as traveling at 75 mph. He followed the vehicle and stopped it. There were three people in the car, the driver, Brian Roberts, [Appellant] in the front passenger seat and Maddox in the back seat. As he addressed the driver, the trooper noticed that he exhibited signs of heroin use. His pupils were constricted, his eyes were glassy. He had trouble focusing on the trooper when he got out of the car. The trooper smelled marijuana coming from the vehicle. He asked Roberts to exit the vehicle and step to the rear. . . . The trooper determined that the vehicle was registered to

Roberts. After he spoke to Roberts, he approached the vehicle to obtain ID from the passengers. Neither one gave him a photo ID but they gave him their names and dates of birth. [Appellant] said his name was Tony Abdul Green and gave him a birth date, but hesitated in doing so which led the trooper to suspect that he was making the birthday up. He could not obtain verification of [Appellant's] name and date of birth when he checked his computer.

Roberts gave the trooper permission to search the vehicle. Trooper Conrad removed the occupants. He found two hypodermic needles in the center console. In the rear seat he found a small bag of marijuana tucked into the seat near where Maddox had been. He went to the trunk, and found three bricks of packaged heroin inside a bag that contained medication with Maddox's name on it. On the other side of the trunk was another bag that contained three more bricks of heroin. A brick of heroin contains 50 individual packets of heroin. There were a total of 298 individually wrapped packets of heroin in the trunk.

He placed all three individuals under arrest. At the barracks, a fingerprint check was done on [Appellant] and the trooper learned [Appellant's] true identity.

\* \* \*

After [Appellant] was convicted [by a jury of conspiracy to possess heroin<sup>2</sup>] on February 7, 2013, sentencing was scheduled for April 15, 2013. [Appellant] failed to appear for sentencing and a bench warrant was issued. [Appellant] was apprehended by a bounty hunter and incarcerated. [Appellant] was sentenced following a bench warrant hearing held on April 30, 2013.

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<sup>2</sup> 18 Pa.C.S. § 903. The jury found Appellant not guilty of criminal conspiracy to possess heroin with intent to deliver and false identification to a law enforcement officer.

J. S04042/14

Trial Ct. Op., 7/22/13, at 2-4. Appellant was sentenced to six to twelve months' imprisonment. Order, 4/30/13. Appellant filed a motion for reconsideration of sentence on May 10, 2013, which did not challenge the weight of the evidence.<sup>3</sup> The trial court denied the motion on May 13, 2013. Appellant filed a notice of appeal on June 11, 2013. He filed a court-ordered Pa.R.A.P. 1925(b) statement of errors complained of on appeal and the trial court filed a responsive opinion.

Appellant raises the following issues for our review:

A. Is a criminal defendant prejudiced by a prosecutor when that prosecutor states in opening remarks that the defendant has had prior dealings with a co-defendant involving controlled substances?

B. Is a jury verdict for conspiracy to possess a controlled substance against the weight of the evidence when a defendant is found guilty of conspiracy to possess heroin located in the trunk of an automobile when there were multiple persons in that automobile and the Commonwealth has failed to demonstrate a nexus between the defendant and the heroin?

Appellant's Brief at 4.

First, Appellant contends he is entitled to a new trial due to the prosecutor's prejudicial opening remarks. His argument in support of this claim consists, verbatim, of the following: "The prosecutor stated in opening remarks that Appellant and Brian Roberts had past drug dealings. No evidence of these alleged dealings was presented by the Commonwealth at

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<sup>3</sup> We note the trial court indicated that the appeal appeared to be untimely because no post-sentence motion was filed. Trial Ct. Op. at 5.

trial. These remarks were highly prejudicial to Appellant, and the trial court should have granted a mistrial.” Appellant’s Brief at 9.

Appellant’s argument is devoid of any citation to legal authority. “When an appellant fails to develop his issue in an argument and fails to cite any legal authority, the issue is waived.” **Commonwealth v. B.D.G.**, 959 A.2d 362, 371-72 (Pa. Super. 2008) (*en banc*); **see also** Pa.R.A.P. 2119(a)-(b). Therefore, this issue is waived. **See B.D.G.**, 959 A.2d at 371-72.

Lastly, Appellant contends the verdict for conspiracy to possess a controlled substance was against the weight of the evidence.<sup>4</sup> The trial court found this issue waived. We agree.

The Pennsylvania Rules of Criminal Procedure provide

(A) A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial:

- (1) orally, on the record, at any time before sentencing;
- (2) by written motion at any time before sentencing; or
- (3) in a post-sentence motion.

Pa.R.Crim.P. 607(A)(1)-(3).

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<sup>4</sup> Appellant raises the weight of the evidence in his statement of the questions involved, however, in the argument section of his brief he contends “the evidence presented at trial was insufficient to prove Appellant guilty beyond a reasonable doubt.” Appellant’s Brief at 9. Appellant did not raise this issue in his Rule 1925(b) statement. “[W]e observe generally that issues not raised in a Rule 1925(b) statement will be deemed waived for review.” **Commonwealth v. Hansley**, 24 A.3d 410, 415 (Pa. Super. 2011); **see also** Pa.R.A.P. 1925(b)(4)(vii).

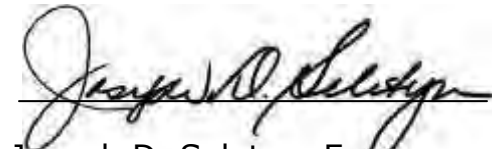
Moreover, the comment to the rule clearly establishes that “[t]he purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the trial judge or it will be waived.” Failure to challenge the weight of the evidence presented at trial in an oral or written motion prior to sentencing or in a post-sentence motion will result in waiver of the claim.

***Commonwealth v. Bryant***, 57 A.3d 191, 197 (Pa. Super. 2012) (citations omitted).

Instantly, Appellant did not challenge the weight of the evidence before the trial court. Therefore, this issue is waived. ***See id.***

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: 6/17/2014