NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
JABU ROBINSON	:	
Appellant	:	No. 222 WDA 2021

Appeal from the Judgment of Sentence Entered March 3, 2021
In the Court of Common Pleas of Blair County
Criminal Division at No(s): CP-07-CR-0001976-2017

BEFORE: KUNSELMAN, J., KING, J., and COLINS, J.*

MEMORANDUM BY KING, J.: **FILED: APRIL 08, 2022**

Appellant, Jabu Robinson, appeals *nunc pro tunc* from the judgment of sentence entered in the Blair County Court of Common Pleas, following his jury trial convictions for eight (8) counts of possession of a controlled substance with intent to deliver ("PWID"), two (2) counts of criminal conspiracy, and one (1) count each of corrupt organizations, dealing in proceeds of unlawful activities, criminal use of communication facility, and recklessly endangering another person ("REAP").[1] We affirm.

On August 15, 2016, Pennsylvania State Trooper Eric Spillane was on patrol near the intersection of Broad Street and U.S. Route 1 in Philadelphia.

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* Retired Senior Judge assigned to the Superior Court.

[1] 35 P.S. § 780-113(a)(30), 18 Pa.C.S.A. §§ 903, 911, 5111, 7512, and 2705, respectively.

Trooper Spillane observed a BMW speeding in the southbound lane of U.S. Route 1. The trooper "clocked" the BMW for more than one-half of a mile as it travelled above the posted speed limit. (N.T. Trial, 12/2/19, at 134). After the BMW and the trooper's vehicle merged into the westbound lanes of Interstate 76, Trooper Spillane activated his emergency lights and siren to effectuate a traffic stop.

The BMW "appeared to slow," but "suddenly changed its speed and accelerated at a high rate of speed quickly in excess of 100 miles per hour." (***Id.*** at 136). With Trooper Spillane in pursuit, the BMW exited Interstate 76 at the Belmont Avenue offramp in Montgomery County. At the base of the offramp, there were two lanes: a left-turn-only lane and a right-turn-only lane. Vehicles occupied each of these lanes, as a "traffic light at that juncture displayed a steady red signal." (***Id.*** at 138). Rather than stopping, the BMW attempted "to split the columns of stopped vehicles." (***Id.***) In doing so, the BMW struck several vehicles in the turn lanes.

As the BMW barreled through the red light, it was "T-boned" by another vehicle that had the right-of-way. (***Id.*** at 139). "The force of the impact was so great that the [BMW] … spun 180 degrees and … hopped a pretty tall curb and came to a position of final rest on the side of the road" facing Trooper Spillane's patrol car. (***Id.***) Trooper Spillane approached the BMW and observed Appellant in the driver's seat and co-defendant Damon Devine in the passenger's seat. State police took Appellant and Mr. Devine into custody.

A search of the BMW's passenger cabin revealed a partially burnt marijuana cigarette and multiple cell phones. A search of the trunk yielded 3,750 baggies of heroin, which were inside an Air Jordan shoebox. A separate, Fila shoebox contained approximately 127 grams of crack cocaine. The Montgomery County District Attorney's office subsequently filed a criminal complaint charging Appellant with multiple offenses related to the high-speed chase and his possession of controlled substances.

During the period while Appellant's charges were pending in Montgomery County, law enforcement was conducting a separate investigation related to the drug-dealing activities of Mr. Devine and his cohorts in and around Blair County. Ultimately, a grand jury received evidence of twenty-two (22) controlled purchases executed by the Pennsylvania Office of the Attorney General ("OAG") and Blair County Drug Task Force. The grand jury's investigation revealed that Mr. Devine was a high-volume distributor of heroin and cocaine in Altoona and Johnstown in 2016 and 2017. Mr. Devine worked with several associates to sell these drugs, including his girlfriend, Jasmine McGowan, Appellant, and co-defendant James Everett-Bey. On July 14, 2017, the grand jury issued its presentment finding reasonable grounds to believe that various violations of criminal laws had occurred.

On July 27, 2017, the OAG filed a criminal complaint in Blair County charging Appellant with offenses related to his role in Mr. Devine's criminal organization. As a result of the Blair County prosecution, the Montgomery

County District Attorney's office withdrew its charges against Appellant on September 11, 2017. Thereafter, the OAG proceeded with the charges against Appellant and his co-defendants in Blair County.[2] On October 20, 2017, the Commonwealth filed notice of its intent to consolidate Appellant and his co-defendants' cases for trial.

On April 13, 2018, Appellant filed an omnibus pretrial motion. In it, Appellant argued that the Commonwealth had failed to establish a *prima facie* case for any of the offenses at issue. Appellant also included a motion to sever asserting that he and his co-defendants "did not participate in the same act or transaction or the same series of acts or transactions," and Appellant "will be prejudiced in the event that the offenses in the information … are tried together with the offenses" of his co-defendants. (Omnibus Pretrial Motion, filed 4/13/18, at 3).

Further, Appellant's omnibus pretrial motion contained a request to dismiss the charges pursuant to Pa.R.Crim.P. 600. Appellant's Rule 600 argument emphasized the total amount of time that had elapsed since the filing of the criminal complaint in Montgomery County:

> [Appellant] has been continuously incarcerated on criminal charges he now faces in Blair County owing to an incident on August 15, 2016, in Montgomery County, a total of 590 days, during which a criminal case proceeded through the Montgomery County Court of Common Pleas for approximately 390 days. (Again, that Montgomery County

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[2] The OAG's criminal information included one count of REAP related to Appellant's conduct during the August 2016 incident in Montgomery County.

> case was ultimately dismissed on September 11, 2017, but those charges were either merged or added to the Blair County criminal charges during the Preliminary Hearing [in Blair County] in September 2017.

(***Id.*** at 6). Based upon the foregoing, Appellant concluded that his case should be dismissed with prejudice.

The court conducted a hearing on Appellant and his co-defendants' various pretrial motions on August 2, 2018. By opinion and order entered January 7, 2019, the court denied Appellant's omnibus pretrial motion. Appellant and his co-defendants proceeded to a joint trial, and a jury found Appellant guilty of all charges. On March 3, 2020, the court sentenced Appellant to an aggregate term of five (5) to ten (10) years' imprisonment. At the conclusion of the sentencing hearing, Appellant's private counsel made an oral motion to withdraw representation. (***See*** N.T. Sentencing, 3/3/20, at 20). The court permitted counsel to withdraw and allowed Appellant to proceed *in forma pauperis*.

Appellant did not file post-sentence motions. On June 19, 2020, Appellant filed an untimely, *pro se* notice of appeal. The court appointed current counsel to represent Appellant on June 29, 2020. Appellant later discontinued the untimely appeal. On January 7, 2021, Appellant timely filed a counseled petition pursuant to the Post Conviction Relief Act, at 42 Pa.C.S.A. § 9541-9546. By order entered January 13, 2021, the court reinstated

Appellant's direct appeal rights *nunc pro tunc*.[3]

Appellant timely filed a notice of appeal *nunc pro tunc* on February 5, 2021. On March 11, 2021, the court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant timely filed his Rule 1925(b) statement on March 29, 2021.

Appellant now raises five issues for our review:

> Whether the trial court erred in denying Appellant's pretrial motion for relief with respect to a *habeas corpus* petition for relief when the instant charges were not supported by a *prima facie* case?
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> Whether the trial court erred in denying Appellant's pretrial motion for relief with respect to a motion to sever when Appellant and the alleged co-defendants and co-conspirators did not participate in the same act or transaction or the same series of acts or transactions constituting the offense, nor did the allegations suffice for any such participation which prejudiced Appellant at the time of trial?
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> Whether the trial court erred in denying Appellant's pretrial motion for relief with respect to Appellant's motion to dismiss pursuant to Pa.R.Crim.P. 600 when Appellant has been continuously incarcerated on criminal charges in Montgomery County … which were then merged with the instant Blair County charges since August 15, 2016?
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> Whether the trial court erred in finding sufficient evidence to support the verdict with respect to all charges when the evidence presented at trial taken in the light most favorable to the Commonwealth failed to prove Appellant guilty beyond a reasonable doubt with respect to the charges?

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[3] Appellant's PCRA petition did not include a separate request for the reinstatement of his right to file a post-sentence motion *nunc pro tunc*, and the court did not grant such relief.

> Whether the trial court erred in upholding the verdict of the jury with respect to all counts, when said verdict was [against] the weight of the evidence provided at the time of trial?

(Appellant's Brief at 4-5) (unnumbered).

In his first issue, Appellant contends that the trial court erred in denying his pretrial petition for writ of *habeas corpus* because the Commonwealth failed to establish a *prima facie* case for any of the offenses at issue. Nevertheless, "[i]t is well-settled that any purported defect or error at the preliminary hearing stage is immaterial if the defendant has been found guilty at trial." ***Commonwealth v. Lites***, 234 A.3d 806, 811 (Pa.Super. 2020) (citing ***Commonwealth v. Sanchez***, 623 Pa. 253, 322, 82 A.3d 943, 984 (2013)). Here, a jury properly convicted Appellant of the crimes charged following a trial on the merits. Thus, Appellant is not entitled to relief on his claim regarding errors in conjunction with the petition for writ of *habeas corpus*. ***See id.***

In his second issue, Appellant maintains that he did not participate in the same acts or transactions as his co-defendants. Appellant insists that the Commonwealth's evidence against him was limited to the trooper's testimony regarding their August 2016 encounter. Appellant emphasizes there was no other evidence that he was involved in the Blair County drug transactions facilitated by Mr. Devine's criminal organization. Absent more, Appellant concludes that the trial court erred in denying his pretrial motion to sever. We disagree.

"Whether cases against different defendants should be consolidated for trial 'is within the sole discretion of the trial court and such discretion will be reversed only for a manifest abuse of discretion or prejudice and clear injustice to the defendant.'" ***Commonwealth v. Melvin***, 103 A.3d 1, 28 (Pa.Super. 2014) (quoting ***Commonwealth v. Boyle***, 733 A.2d 633, 635 (Pa.Super. 1999)).

> Offenses charged in separate informations may be tried together if they are based on the same act or transaction or if the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion. [Pa.R.Crim.P.] 582(A)(1). The court has discretion to order separate trials if it appears that any party may be prejudiced by consolidating the charges. [Pa.R.Crim.P.] 583.
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> Our Supreme Court has established a three-part test, incorporating these two rules, for deciding the issue of joinder versus severance of offenses from different informations. The court must determine
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> > whether the evidence of each of the offenses would be admissible in a separate trial for the other; whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and, if the answers to these inquiries are in the affirmative, whether the defendant will be unduly prejudiced by the consolidation of offenses.

Commonwealth v. Thomas, 879 A.2d 246, 260 (Pa.Super. 2005), *appeal denied*, 605 Pa. 685, 989 A.2d 917 (2010) (some internal citations and quotation marks omitted). Moreover, "[a] joint trial of co-defendants in an alleged conspiracy is preferred not only in this Commonwealth, but throughout the United States." ***Commonwealth v. Serrano***, 61 A.3d 279, 285 (Pa.Super. 2013) (quoting ***Commonwealth v. Colon***, 846 A.2d 747, 753

(Pa.Super. 2004)).

Instantly, the court denied Appellant's pretrial motion to sever. The court accepted the Commonwealth's argument that the case against Appellant and his co-defendants required the same witnesses and evidence. "To prove its case against any and all of these three defendants, the Commonwealth would, if the cases were severed, be trying the exact same case three times." (Opinion and Order Denying Omnibus Pretrial Motion, filed January 7, 2019, at 15). Further, the court determined that Appellant failed to establish that he would suffer undue prejudice by proceeding to a joint trial. "Simply stating that [Appellant] will be prejudiced by a joint trial due to conflicting defenses and interests … is insufficient to warrant severance in this matter." (***Id.*** at 16). Based upon our review of the record, we cannot say that the court abused its discretion in reaching these conclusions. ***See Melvin, supra***; ***Thomas, supra***. ***See also Commonwealth v. Santos***, 176 A.3d 877, 882 (Pa.Super. 2017), *appeal denied*, 647 Pa. 469, 189 A.3d 986 (2018) (reiterating that abuse of discretion "is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record"). Therefore, Appellant is not entitled to relief on his second issue.

In his third issue, Appellant asserts that the Commonwealth filed its criminal complaint in Montgomery County on August 15, 2016. Appellant

contends that he remained incarcerated in Montgomery County throughout 2016 and 2017. Appellant emphasizes that Montgomery County transferred his custody to Blair County in July 2017, after the OAG filed a new criminal complaint against him in Blair County based upon the grand jury's presentment. Although the Commonwealth withdrew the Montgomery County charges, Appellant emphasizes that he was continuously incarcerated for almost 600 days at the time he filed his Rule 600 motion. Appellant alleges that all pretrial delays were attributable to the Commonwealth's lack of due diligence, especially where the grand jury's presentment did not yield any new information regarding Appellant's involvement in the crimes at issue. Appellant concludes that the Commonwealth violated his Rule 600 rights by failing to bring him to trial within 365 days of the filing of the Montgomery County criminal complaint.

In response, the Commonwealth disputes Appellant's contention that the grand jury's presentment did not yield new information. The Commonwealth insists that the Montgomery County charges were limited to offenses stemming from Appellant's high-speed chase with the state police. In contrast, the Blair County complaint "involved [Appellant's] criminal actions related to a widespread drug trafficking organization that operated in multiple counties that involved numerous individuals." (Commonwealth's Brief at 16). Further, the Commonwealth argues that the crimes charged in Blair County predated Appellant's Montgomery County arrest, and the Montgomery County

District Attorney's office would not have known about the Blair County offenses prior to the grand jury's involvement in the case. The Commonwealth concludes that it proceeded with due diligence in all phases of Appellant's prosecution, and the court properly denied Appellant's Rule 600 motion. Under the unique circumstances of this case, we agree with the Commonwealth that no relief is due.

The following principles apply to our review of a speedy trial claim:

> Our standard of review in a Rule 600 issue is whether the trial court abused its discretion. Our scope of review when determining the propriety of the trial court is limited to the evidence in the record, the trial court's Rule 600 evidentiary hearing, and the trial court's findings. We must also view the facts in the light most favorable to the prevailing party[.]

Commonwealth v. Risoldi, 238 A.3d 434, 449 n.14 (Pa.Super. 2020), *appeal denied*, ___ Pa. ___, 244 A.3d 1230 (2021).

> Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind Rule 600. Rule 600 serves two equally important functions: (1) the protection of the accused's speedy trial rights, and (2) the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. However, the administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.
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> So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 600 must be construed in a manner consistent with society's right to punish and deter crime. In considering these matters …, courts must carefully factor into the ultimate equation not

> only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well.

Commonwealth v. Martz, 232 A.3d 801, 809-10 (Pa.Super. 2020) (quoting ***Commonwealth v. Peterson***, 19 A.3d 1131, 1134-35 (Pa.Super. 2011)).

Rule 600 sets forth the speedy trial requirements and provides in pertinent part:

> **Rule 600. Prompt Trial**
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> **(A) Commencement of Trial; Time for Trial**
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> * * *
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> (2) Trial shall commence within the following time periods.
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> (a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.
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> * * *
>
> **(C) Computation of Time**
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> (1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.
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> * * *
>
> In cases in which the Commonwealth files a criminal complaint, withdraws that complaint, and files a second complaint, the Commonwealth will be afforded the benefit of the date of the filing of the second complaint for purposes of calculating the time for trial when the withdrawal and re-

> filing of charges are necessitated by factors beyond its control, the Commonwealth has exercised due diligence, and the refiling is not an attempt to circumvent the time limitation of Rule 600. ***See Commonwealth v. Meadius***, 582 Pa. 174, 870 A.2d 802 (2005).

Pa.R.Crim.P. 600(A)(2)(a), (C)(1), and *Comment*.

To obtain relief, a defendant must have a valid Rule 600 claim at the time he files the motion to dismiss. ***Commonwealth v. Hunt***, 858 A.2d 1234, 1243 (Pa.Super. 2004) (*en banc*).

> [A] defendant is not automatically entitled to discharge under Rule 600 where trial starts more than 365 days after the filing of the complaint. Rather, 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 … time.
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> * * *
>
> Due diligence is a fact-specific concept that must be determined on a case-by-case basis. Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth. Due diligence includes, *inter alia*, listing a case for trial prior to the run date, preparedness for trial within the run date, and keeping adequate records to ensure compliance with Rule 600. Periods of delay caused by the Commonwealth's failure to exercise due diligence must be included in the computation of time within which trial must commence.

Martz, supra at 810-11 (quoting ***Commonwealth v. Moore***, 214 A.3d 244, 248-49 (Pa.Super. 2019), *appeal denied*, ___ Pa. ___, 224 A.3d 360 (2020)) (internal citations and quotation marks omitted).

Instantly, the court received evidence related to Appellant's Rule 600 motion at the pretrial hearing on August 2, 2018. The Commonwealth

presented testimony from Agent Thomas Brandt, a member of the OAG's Bureau of Narcotics Investigation. Agent Brandt testified that he was part of the team investigating the drug dealing activities of Appellant, Mr. Devine, and Mr. Everett-Bey. The investigation commenced in 2016, when the OAG and Blair County Drug Task Force sought to determine the supplier of "Dragon" brand heroin. This brand featured a dragon "stamp that was printed on the individual baggies of heroin." (N.T. Rule 600 Hearing, 8/2/18, at 29).

Law enforcement utilized confidential informants to conduct over twenty (20) controlled purchases of heroin and crack cocaine in late 2016 and early 2017. (***See id.*** at 31). These purchases led to the traffic stop of a drug dealer, Richard Govier, on February 11, 2017. During the stop, law enforcement recovered "quantities of heroin and other drugs." (***Id.*** at 32). Mr. Govier told police that "he was buying heroin from a male in Johnstown by the name of Fat Cat or Cat." (***Id.*** at 33). Law enforcement subsequently used Mr. Govier to make a controlled purchase from his supplier on February 13, 2017. The individuals who met with Mr. Govier during the controlled purchase included Mr. Devine and Ms. McGowan. Following this controlled purchase, law enforcement arrested Mr. Devine and Ms. McGowan.

After these arrests, Agent Brandt learned that Mr. Devine's organization was "transporting large quantities of drugs from the New Jersey/Philadelphia area to Johnstown to be resold in Johnstown and Altoona or Blair County." (***Id.*** at 38). At that point, however, Agent Brandt did not know about the

high-speed chase in Montgomery County. (***Id.*** at 40). On or about February 14, 2017, Agent Brandt first spoke with Trooper Spillane and learned about Appellant's Montgomery County charges. (***See id.*** at 44). Thereafter, Agent Brandt and Montgomery County officials reached an agreement regarding how best to proceed with the case against Appellant:

> [PROSECUTOR]: Was there an agreement of some nature in terms of either transferring that case or putting that information in front of the grand jury?
>
> [AGENT BRANDT]: Yes, [the Montgomery County District Attorney's office] agreed to let the case go to grand jury and if there was a presentment for that particular case it would be their case and Montgomery County would be withdrawn and it would be adopted into the grand jury presentment.

(***Id.*** at 45). The matter went to the Fortieth Statewide Investigating Grand Jury in March 2017. (***Id.***) On July 14, 2017, the grand jury issued its presentment to the supervising judge. On July 27, 2017, the Commonwealth filed its criminal complaint against Appellant in Blair County.

In evaluating this evidence, the court accepted the Commonwealth's argument that it did not file a second criminal complaint against Appellant as an attempt to circumvent the timeliness requirements of Rule 600. (***See*** Opinion and Order Denying Omnibus Pretrial Motion at 20). Rather, the delays in bringing Appellant to trial occurred despite the Commonwealth's due diligence. Specifically, these delays occurred due to

> the ongoing investigation [into Mr. Devine's criminal enterprise], the subsequent grand jury presentment which encompassed all evidence previously gathered, and [the] eventual inclusion of a great deal more evidence than what

was in the local complaints[.]

(***Id.***) (internal quotation marks omitted). The court also noted that Appellant's "extensive" omnibus pretrial motion created additional, excludable delay that could not be attributed to the Commonwealth. (***Id.*** at 21). ***See also Commonwealth v. Hyland***, 875 A.2d 1175, 1190 (Pa.Super. 2005), *appeal denied*, 586 Pa. 723, 890 A.2d 1057 (2005) (explaining defendant is unavailable for trial if delay in commencement of trial is caused by filing of pretrial motion).

Here, the Commonwealth filed the Blair County complaint on July 27, 2017. Appellant filed his Rule 600 motion on April 13, 2018, which is before the mechanical run date for the Blair County charges. ***See Hunt, supra***. Although Appellant insists all Rule 600 calculations should be based upon the date when Montgomery County filed its complaint against Appellant, we cannot say that the court abused its discretion by utilizing the date of the filing of the Blair County complaint for Rule 600 purposes. ***See Risoldi, supra***.

The record demonstrates that the OAG did not know about Appellant's Montgomery County charges until February 2017. At that point, the OAG was already mired in a months-long investigation into Mr. Devine's criminal activities in and around Blair County. These separate investigations into criminal conduct occurring at opposite ends of the state ultimately resulted in the filing of one set of charges to cover all of Appellant's related criminal activities. Such factors were beyond the Commonwealth's control, and they

occurred despite the exercise of due diligence. ***See Martz, supra***; Pa.R.Crim.P. 600 *Comment*. Consequently, Appellant is not entitled to relief on his Rule 600 issue.

In his fourth issue, Appellant complains that the only evidence supporting his convictions was the presence of controlled substances in the vehicle involved in the 2016 state police pursuit. Although Ms. McGowan testified at trial and identified Appellant as a driver for Mr. Devine's criminal enterprise, Appellant emphasizes that Ms. McGowan never saw Appellant buy, sell, transport, or deliver any controlled substances. Appellant concludes that the Commonwealth presented insufficient evidence to support any of the convictions at issue. Appellant's claim is waived.

"In order to preserve a challenge to the sufficiency of the evidence on appeal, an appellant's Rule 1925(b) statement must state with specificity the element or elements upon which the appellant alleges that the evidence was insufficient." ***Commonwealth v. Stiles***, 143 A.3d 968, 982 (Pa.Super. 2016), *appeal denied*, 640 Pa. 386, 163 A.3d 403 (2016) (quoting ***Commonwealth v. Garland***, 63 A.3d 339, 344 (Pa.Super. 2013)). "Such specificity is of particular importance in cases where, as here, [Appellant] was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt." ***Commonwealth v. Ellison***, 213 A.3d 312, 321 (Pa.Super. 2019), *appeal denied*, 656 Pa. 205, 220 A.3d 531 (2019) (quoting ***Stiles, supra*** at 982).

"Therefore, when an appellant's [Rule] 1925(b) statement fails to specify the element or elements upon which the evidence was insufficient[,] ... the sufficiency issue is waived on appeal." ***Id.*** (internal quotation marks omitted).

Instantly, Appellant's Rule 1925(b) statement presented his sufficiency challenge as follows:

> The trial court erred in finding sufficient evidence to support the verdict with respect to all charges when the evidence presented at trial taken in the light most favorable to the Commonwealth failed to prove [Appellant] guilty beyond a reasonable doubt with respect to the charges.

(Rule 1925(b) Statement, filed 3/29/21, at ¶4). In response to this boilerplate challenge, the trial court was left to guess the elements upon which Appellant based his claim:

> The [c]ourt notes this was a lengthy [OAG] prosecuted case against multiple [d]efendants with numerous witnesses and evidence.
>
> The [c]ourt will rely on the record for [Appellant's sufficiency] allegations.

(Rule 1925(a) Opinion, filed April 20, 2021, at 2-3) (unnumbered). Because Appellant's Rule 1925(b) statement failed to specify the element or elements upon which the evidence was insufficient, the claim is waived. ***See Ellison, supra***; ***Stiles, supra***.

In his fifth issue, Appellant argues that his convictions were against the weight of the evidence. Appellant, however, failed to raise any objection to the weight of the evidence in the trial court. Therefore, Appellant's claim is waived. ***See*** Pa.R.Crim.P. 607(A) (stating that defendant must raise weight

claim with trial judge in first instance). ***See also Commonwealth v. Cox***, 231 A.3d 1011, 1018 (Pa.Super. 2020) (stating weight challenge must be preserved either in post-sentence motion, written motion before sentencing, or orally prior to sentencing; appellant's failure to avail himself of any of prescribed methods for presenting weight issue to trial court constitutes waiver of that claim).[4] Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 04/08/2022

[4] Further, Appellant's Rule 1925(b) statement presented his weight claim as follows: "The trial court erred in upholding the verdict of the jury with respect to all counts, when said verdict was [against] the weight of the evidence provided at the time of trial." (Rule 1925(b) Statement at ¶5). Significantly, the Commonwealth presented nineteen (19) witnesses during the four-day trial. Appellant, however, failed to identify the specific evidence now at issue, and the court was left to guess what evidence Appellant sought to challenge on appeal. (***See*** Rule 1925(a) Opinion at 2-3). Thus, Appellant's vague Rule 1925(b) statement provides another basis for waiver. ***See Commonwealth v. Freeman***, 128 A.3d 1231, 1248-49 (Pa.Super. 2015) (holding appellant waived his challenge to weight of evidence where his Rule 1925(b) statement failed to offer specific reasons why verdicts were against weight of evidence).