NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JEROME LOACH, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2775 EDA 2011

Appeal from the Judgment of Sentence September 15, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0006738-2010

BEFORE: STEVENS, P.J., BOWES, J., and PLATT, J.*

MEMORANDUM BY STEVENS, P.J. Filed: March 8, 2013

Appellant, Jerome Loach, files this appeal from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury-trial conviction of criminal conspiracy.[1] On appeal, Appellant argues: (1) the trial court erred in imposing a mandatory-minimum sentence pursuant to 42 Pa.C.S. § 9714 ("three-strikes statute"); (2) the Commonwealth unconstitutionally struck a juror in violation of ***Batson v. Kentucky***, 476 U.S. 79 (1986); (3) the prosecutor improperly vouched for a witness's credibility; (4) a statement by the Commonwealth's primary witness was too unreliable to admit as evidence; and (5) his

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. § 903.

conspiracy conviction violated due process of law because none of the co-conspirators were charged with the underlying crime. Appellant also files a motion suggesting correction of the certified record to include documents in support of his first argument. We deny Appellant's motion and affirm.

Appellant's conviction stems from a debt that a co-conspirator, Sopheat Phat, owed to Appellant and another co-conspirator, Jesse James Higgins. Appellant told Phat that he would forgive the debt in exchange for Phat's assistance in a home invasion. Phat and Higgins, both brandishing firearms, invaded the occupied house while Appellant followed. Appellant exited the house first, and when Higgins and Phat did not find what they were looking for, they also left the house.

Police arrived on the scene, and Phat and Higgins ran in one direction while Appellant ran in the other direction. The police eventually apprehended Phat and Higgins. Phat initially told police that the person who evaded police was a person with the nickname of "Rome." Several months later, Phat entered into a plea agreement with the Commonwealth and identified Appellant as Rome.

Following Appellant's arrest, a jury trial commenced. During *voir dire*, Appellant raised a ***Batson*** challenge to the Commonwealth's sixth peremptory strike, which it used against Prospective Juror Number 13, an African-American male. After finding a *prima facie* case of discrimination, the trial court entertained the Commonwealth's reasons for striking

Prospective Juror Number 13, then concluded that the Commonwealth satisfactorily offered non-discriminatory reasons for using the peremptory strike.

At the jury trial, Phat testified that Appellant was not involved in the crime. The Commonwealth responded by questioning him about his prior statements to police. After a six-day trial, the jury convicted Appellant of criminal conspiracy. The Commonwealth sought a mandatory-minimum sentence pursuant to the three-strikes statute. The trial court agreed and sentenced Appellant to twenty-five to fifty years' incarceration. This timely appeal followed. Appellant filed a court-ordered, Pa.R.A.P. 1925(b) statement and a supplemental Rule 1925(b) statement, and the trial court filed responsive opinions.

Appellant raises the following claims on appeal:

> I. Did the [trial] court err when it sentenced Appellant under Pennsylvania's Third[-]Strike Law without adequate proof of one of the strikes? Did this enhanced sentence, in the face of insufficient evidence, violate due process of law and Appellant's right to be free of cruel and unusual punishments?
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> II. Did the trial prosecutor violate the equal protection clause of the state and federal constitutions when he struck a potential juror based on race?
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> III. Did the trial prosecutor improperly vouch for his primary witness, Sopheat Phat, when he told the jury in closing argument[] that "the District Attorney's Office, myself as a representative, we're not looking to just sign up criminals to give statements. Okay. We are looking for the truth," and when he challenged the truth of Phat's affidavit,

> exonerating Appellant, with arguments about threats that were not in the record?
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> IV. Was Phat's October[] 2009 statement, made in connection with his plea agreement, so unreliable as to prohibit its admission as substantive evidence?
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> V. Did Appellant's conviction for conspiracy[] violate due process of law, when one of the objects of the conspiracy was robbery, and neither alleged co-conspirator was charged with robbery[?]

Appellant's Brief at 2-3 (some caps removed).[2]

We begin by addressing Appellant's motion suggesting that this Court correct the certified record. In this motion, prompted by the Commonwealth's argument that Appellant's sentencing issue is waived, Appellant admits that the certified record does not contain the Commonwealth's sentencing exhibits, which both parties agree are vital to Appellant's argument. Appellant notes that he included the exhibits in the reproduced record, and neither the Commonwealth nor the trial court suggests that the representations in the reproduced record are inaccurate or not authentic. Appellant therefore asks us to accept the exhibits from the reproduced record in order to avoid waiver of his sentencing claim.

Pennsylvania Rule of Appellate Procedure 1931(d) provides: "The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel

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[2] We have re-ordered Appellant's issues for ease of disposition.

of record. . . ." Pa.R.A.P. 1931(d). The Explanatory Comment from 2004 clarifies:

> The rule change is intended to assist counsel in his or her responsibility under the Rules of Appellate Procedure to provide a full and complete record for effective appellate review. In order to facilitate counsel's ability to monitor the contents of the original record which is transmitted from the trial court to the appellate court, new subdivision (d) requires that a copy of the list of record documents be mailed to all counsel of record. . . . Thereafter, in the event that counsel discovers that anything material to either party has been omitted from the certified record, such omission can be corrected pursuant to Pa.R.A.P. 1926.

Pa.R.A.P. 1931, Explanatory Comment—2004. Relevantly, Rule 1926 provides in pertinent part:

> If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court either before or after the record is transmitted to the appellate court, or the appellate court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the appellate court.

Pa.R.A.P. 1926.

Furthermore, an *en banc* panel of this Court has held:

> The fundamental tool for appellate review is the official record of the events that occurred in the trial court. To ensure that an appellate court has the necessary records, the Pennsylvania Rules of Appellate Procedure provide for the transmission of a certified record from the trial court to the appellate court. The law of Pennsylvania is well settled that matters which are not of record cannot be considered on appeal. Thus, an appellate court is limited to

considering only the materials in the certified record when resolving an issue. In this regard, our law is the same in both the civil and criminal context because, under the Pennsylvania Rules of Appellate Procedure, any document which is not part of the officially certified record is deemed non-existent—a deficiency which cannot be remedied merely by including copies of the missing documents in a brief or in the reproduced record. The emphasis on the certified record is necessary because, unless the trial court certifies a document as part of the official record, the appellate judiciary has no way of knowing whether that piece of evidence was duly presented to the trial court or whether it was produced for the first time on appeal and improperly inserted into the reproduced record. Simply put, if a document is not in the certified record, the Superior Court may not consider it.

This Court cannot meaningfully review claims raised on appeal unless we are provided with a full and complete certified record. This requirement is not a mere "technicality" nor is this a question of whether we are empowered to complain *sua sponte* of *lacunae* in the record. In the absence of an adequate certified record, there is no support for an appellant's arguments and, thus, there is no basis on which relief could be granted.

The certified record consists of the "original papers and exhibits filed in the lower court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court." Pa.R.A.P. 1921. **Our law is unequivocal that the responsibility rests upon the appellant to ensure that the record certified on appeal is complete in the sense that it contains all of the materials necessary for the reviewing court to perform its duty**. . . . As the explanatory comment to Rule 1931 indicates, if counsel (or a party) discovers that anything material has been omitted from the certified record, the omission can be corrected pursuant to the provisions of Rule of Appellate Procedure 1926. Under Rule 1926, an appellate court may direct that an omission or misstatement shall be corrected through the filing of a supplemental certified record. **However, this does not alter the fact that the ultimate responsibility of ensuring that the**

> **transmitted record is complete rests squarely upon the appellant and not upon the appellate courts.**

Commonwealth v. Preston, 904 A.2d 1, 6-7 (Pa. Super. 2006) (*en banc*) (citations omitted) (emphases added).

With these tenets in mind, we initially reject Appellant's suggestions that correction of the record is warranted because the missing exhibits were from the Commonwealth. ***See*** Appellant's Motion, filed 10/3/12, at 6. As ***Preston*** makes abundantly clear, the burden rests solely on the appellant to ensure that the certified record contains all documents necessary for resolution of his issues. Moreover, we emphasize that Appellant's inclusion in the reproduced record of the omitted documents does not save his claim from waiver, ***see Preston***, 904 A.2d at 6, nor do the Commonwealth's subsequent citations to the reproduced record have a material effect, as the Commonwealth relied on these uncertified exhibits only in the event that this Court does not find the claims waived.

Appellant's arguments might carry more weight, however, if we were assured that he mitigated the concerns noted in ***Preston***, namely that this Court often has "no way of knowing whether that piece of evidence was duly presented to the trial court or whether it was produced for the first time on appeal and improperly inserted into the reproduced record." ***Id.*** at 7. Such mitigation might have occurred if the sentencing transcript revealed clear reference to the contents of the omitted documents, in conjunction with the Commonwealth's substantive arguments.

Appellant, however, also failed to ensure that the certified record included the sentencing transcript. Instead, the certified record contains only the notes of testimony from *voir dire*, the trial, and the verdict. Appellant provides no explanation for this omission. Although, as he did with the exhibits, Appellant includes the sentencing transcript in the reproduced record, we cannot overlook the omission from the certified record of both of these necessary documents for Appellant's claim, particularly when Appellant was alerted, and he responded, to one of the omissions. Without a certified copy of either the sentencing transcript or the exhibits in question, we cannot review Appellant's sentencing claim. ***See id.*** at 6-7. Accordingly, we are constrained to deny Appellant's motion, and Appellant's sentencing claim is waived.[3]

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[3] Moreover, we would not find any merit to Appellant's argument that the Commonwealth failed to prove his 1981 robbery conviction was a qualified crime of violence. Appellant insists that the Commonwealth had to prove the specific subsection of robbery of which he was convicted. ***See*** 42 Pa.C.S. § 9714(g) (2011) (defining crime of violence as, *inter alia*, a conviction under 18 Pa.C.S. § 3701(a)(1)(i), (ii), or (iii)). As the Commonwealth noted at both the sentencing hearing and in its appellate brief, Appellant pleaded guilty in 1981 to robbery as a first-degree felony. There was not, and cannot be, any dispute that Section 3701(a) subsections (i), (ii), and (iii) constituted felonies of the first degree, while subsection (iv) constituted a felony of the second degree and subsection (v) constituted a felony of the third degree. ***See*** 18 Pa.C.S. § 3701(b) (1981). Thus, Appellant could not have pleaded guilty to either subsection (iv) or (v), and the trial court had ample reason to conclude that the 1981 conviction qualified as a crime of violence. It is of no moment that Appellant also pleaded guilty to conspiracy as a second-degree felony, as he was charged with other underlying crimes that may have constituted a second-degree

(Footnote Continued Next Page)

Appellant next claims that the trial court erred in denying his ***Batson*** motion. He avers the prosecutor's first justification, that an African-American juror had already been selected, was insufficient, and the second justification, that the prospective juror was looking down and not paying attention, was rejected by the trial court. He asserts the remaining reasons proffered by the Commonwealth, that the prospective juror indicated he's less likely to believe a police officer, he had friends who had been charged with similar crimes, and the court's rehabilitation of the juror was

(Footnote Continued) ––––––––––––––––––––

felony, and the evidence is clear that he was convicted of robbery as a first-degree felony. There is no ambiguity in regard to the robbery conviction, contrary to Appellant's argument, and his reliance on ***Commonwealth v. Gunn***, 803 A.2d 751 (Pa. Super. 2002), is inapt. ***Compare with id.*** (vacating sentence imposed under Section 9714 when the Commonwealth failed to provide any evidence of the relevant subsection of the underlying crime for a prior conspiracy conviction, but making no mention of possible evidence of felony grade).

Appellant also complains the Commonwealth failed to give him adequate notice that it would rely on the 1981 robbery conviction as a predicate offense, as the Commonwealth originally indicated it would rely on the attempted-murder charge. This argument is without merit. Section 9714(d) requires the Commonwealth to give notice only of its "intention to proceed under this section." 42 Pa.C.S. § 9714(d). Appellant received the files of the convictions ultimately relied upon by the Commonwealth, and was thoroughly prepared to argue against the robbery conviction as a predicate offense.

Finally, Appellant contends that he was entitled to an evidentiary hearing, relying on Section 9714(d)'s provision that "[i]f the offender . . . contests the accuracy of the record, the court shall schedule a hearing. . . ." ***Id.*** There is no issue regarding the accuracy of the record, however. The trial court was in possession of a file that clearly stated Appellant pleaded guilty to robbery as a felony of the first degree. No clarification was necessary for the trial court to determine the accuracy of the record.

unsatisfactory, were contradicted by the record or pretextual. He concludes the evidence was clear that a ***Batson*** violation occurred. We disagree.

> To establish any merit to a ***Batson*** claim, Appellant must establish a *prima facie* case of improper use of peremptory challenges. To do so, a defendant must establish that:
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> > (1) the defendant is a member of a cognizable racial group and the prosecutor exercised peremptory challenges to remove members of the defendant's race from the venire; (2) the defendant can rely on the fact that the use of peremptory challenges permits "those to discriminate who are [of] a mind to discriminate"; and, (3) the defendant, through facts and circumstances, must raise an inference that the prosecutor excluded members of the venire on account of their race. The third prong requires defendant to make a record specifically identifying the race of all the venirepersons removed by the prosecution, the race of the jurors who served and the race of the jurors acceptable to the Commonwealth who were stricken by the defense. After such a record is established, the trial court must consider the totality of the circumstances to determine whether challenges were used to exclude venirepersons on account of their race. If the trial court finds in the affirmative, it may then require the prosecutor to explain his or her reasons for the challenge. Once the defendant makes a *prima facie* showing, the burden shifts to the Commonwealth to come forward with a neutral explanation for challenging [African-American] jurors.

Commonwealth v. Saunders, 946 A.2d 776, 783 (Pa. Super. 2008) (quoting ***Commonwealth v. Washington***, 592 Pa. 698, 738, 927 A.2d 586, 609-10 (2007)).

In the case *sub judice*, there is no dispute Appellant initially established a *prima facie* case that the Commonwealth improperly used its

peremptory challenges. Thus, the trial court was required to consider the totality of the circumstances and determine whether the Commonwealth offered a sufficient, neutral explanation for excluding the venirepersons at issue. ***See id.*** In response to Appellant's ***Batson*** challenge, the following exchange took place:

> **[APPELLANT]:** Judge, at this point, I feel compelled to raise a ***Batson*** challenge. Every one of the Commonwealth strikes has been either a black male or a black female, some of which, frankly, if you read them, were absolutely jurors who were qualified.
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> **THE COURT:** I don't know the composition here, but he is exactly correct, Mister --
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> **[COMMONWEALTH]:** The stats, Your Honor, don't favor what he's saying. If you look at what we have, we have a black male, Number -- Juror No. 3.
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> **THE COURT:** But he's saying the way -- the manner in which you're exercising your challenges are against a particular ethnic group?
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> **[COMMONWEALTH]:** Okay. Well, my -- if you're asking for a reason --
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> **THE COURT:** You've got to give a reason.
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> **[COMMONWEALTH]:** He was not paying -- was looking down. He wasn't looking during the voir dire. He wasn't looking at you. He didn't seem interested. And I didn't get the sense that -- that was the impression I got.
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> **THE COURT:** Any other reasons?
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> **[COMMONWEALTH]:** Well, also, given that he indicated he's less likely to believe a police officer. Your Honor rehabilitated him. He did say he has friends that's been charged with robbery. This is a robbery case. And I didn't find the rehabilitation was -- didn't satisfy me.
>
> **THE COURT:** All right.

Well, the Batson motion is denied for now.

N.T. Voir Dire, 5/19/11, at 79-81.

In considering the relevant standard, we disagree with Appellant's argument that the trial court rejected the Commonwealth's first proffered reason for using its sixth peremptory strike against an African-American juror. Although Appellant correctly notes that the court responded, "Any other reasons," after the Commonwealth averred that the venireman in question was disinterested, we disagree with Appellant that the court's response constituted a rejection of the Commonwealth's response. The trial court gave no indication that it either agreed or disagreed with the Commonwealth; instead, the court sought to consider the totality of the circumstances, as it was required to do. ***See Saunders***, 946 A.2d at 783. The trial court subsequently, in its Rule 1925(a) opinion, cited this justification and ultimately found that "the prosecutor provided non-racially discriminatory reasons for the use of his strikes against African-American prospective jurors." Trial Ct. Op., filed 1/20/12, at 13. We do not consider the court's statement to constitute a rejection of the Commonwealth's proffer, and we will consider it in the context of the totality of the circumstances, as the trial court did.

Appellant also disputes the second justification proffered by the Commonwealth, that the venireman indicated he was less likely to believe a police officer and required rehabilitation by the court. Appellant argues

there is no support in the record for these contentions, primarily because the trial court did not order the preservation of the juror questionnaires. Appellant correctly observes that Pennsylvania Rule of Criminal Procedure 632(F) mandates destruction of the jury questionnaires after trial, unless the court directs otherwise. ***See*** Pa.R.Crim.P. 632(F). However, we find no apparent effort by Appellant in the record to request preservation of the questionnaires. Although such inaction may not result in waiver, as the rules do not require a party to file such a request, we cannot conclude that it benefits Appellant, either. We consider it more prudent and reasonable for the losing side of a ***Batson*** challenge to seek preservation in the record of any evidence that may support his claim. ***See Preston***, 904 A.2d at 6-7 (placing the burden on appellants to preserve necessary evidence in the certified record).

It is evident that the court questioned the venireman extensively, though Appellant disputes whether such possible rehabilitation was due to any statement by the venireman that he would be less likely to believe a police officer. ***See*** Appellant's Reply Brief, at 3-4. In light of the extensive inquiry and the court's subsequent acceptance of the Commonwealth's recollection of the questionnaire, we find no reason from the record to reverse the court's findings.

Finally, Appellant claims the Commonwealth's final proffer, that the venireman indicated he had friends who had been charged with robbery and

that the rehabilitation was unsatisfactory, was pretextual because it was the fourth and final proffer. Appellant's argument, however, is based on his contention that the other three reasons are unbelievable and unsupported by the record. ***See*** Appellant's Brief, at 23 ("When reasons offered by the prosecution—or three quarters of the reasons—are simply not supported by the record, the 'reasons' are deemed pretextual and discrimination is established.") (citing ***Snyder v. Louisiana***, 552 U.S. 473, 485 (2008)). We have found no reason to dismiss the other three proffers by the Commonwealth, and in a totality-of-the-circumstances analysis, we consider the Commonwealth's final proffer relevant and without pretext.

In reviewing the four reasons proffered by the Commonwealth, we find support for the trial court's decision to deny Appellant's ***Batson*** challenge. When considering all of the proffers together, the trial court had reason to conclude that the Commonwealth's use of a peremptory challenge was on a non-discriminatory basis. Accordingly, we affirm the court's rejection of Appellant's ***Batson*** challenge.

Next, Appellant argues that the Commonwealth improperly bolstered a witness, Sopheat Phat. At issue is the following statement by the Commonwealth during closing arguments: "The District Attorney's Office, myself as a representative, we're not looking to just sign up criminals to give statements. Okay. We are looking for the truth." N.T. Trial, 5/25/11, at 172. Appellant also claims that the Commonwealth improperly attempted to

discredit Phat's recantation affidavit by citing evidence not introduced at trial. Appellant concludes that the Commonwealth violated his right to due process and fair trial by making these remarks. We disagree.

"[I]mproper bolstering or vouching for witnesses by the Commonwealth occurs in two situations: '(1) When the prosecution places the prestige of the government behind the witness by personal assurances of the witness's veracity; and (2) when the prosecution indicates that information which is not before the jury supports the witnesses' testimony." ***Commonwealth v. Stokes***, 38 A.3d 846, 867 (Pa. Super. 2011) (quoting ***Commonwealth v. Hartey***, 621 A.2d 1023, 1026 (Pa. Super. 1993)). "[A]s long as a prosecutor does not assert his personal opinions, he or she may, within reasonable limits, comment on the credibility of a Commonwealth witness. This is especially true when the credibility of a witness has been previously attacked by the defense." ***Commonwealth v. Tedford***, 598 Pa. 639, 691, 960 A.2d 1, 31-32 (2008) (quoting ***Commonwealth v. Simmons***, 541 Pa. 211, 662 A.2d 621, 639 (1995)). "A new trial should only be granted where the remark was prejudicial to the jury such that it was incapable of rendering a true verdict." ***Commonwealth v. Carson***, 590 Pa. 501, 540, 913 A.2d 220, 242 (2006).

We find no reversible error by the trial court in permitting the Commonwealth's statements. The Commonwealth prefaced the first statement at issue by explaining the procedures by which it obtains witness

statements.[4] When heard in that context, it was evident that the Commonwealth was detailing for the jury how and why it obtained Phat's statement. This summation followed Appellant's lengthy attack on Phat's credibility. ***See Tedford***, ***supra***. The Commonwealth did not directly vouch for Phat's credibility, and even if we were to consider the statement a vague and indirect bolstering of Phat's credibility, it clearly did not rise to a level of prejudice that would necessitate a new trial. ***See Carson***, ***supra***.

Appellant also avers that the Commonwealth improperly attempted to discredit Phat's recantation affidavit. In so arguing, the Commonwealth claimed that the recantation was a result of threats made against Phat. Appellant claims that the record is devoid of these threats.

Improper bolstering or vouching occurs when the prosecutor relies on information not contained in the record. ***Commonwealth v. Chmiel***, 612 Pa. 333, 450, 30 A.3d 1111, 1180 (2011) (quoting ***Commonwealth v. Cousar***, 593 Pa. 204, 928 A.2d 1025, 1041 (2007)). As the Commonwealth observes, however, when Phat was questioned about the affidavit, he was also questioned about the prison culture:

> Q: If they knew that you were a snitch, you'd be under a lot of pressure, wouldn't you?

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[4] "And you heard that [Phat] agreed to testify in this case and give additional information about Rome. And when we took that statement from him, when we made that agreement, it made sense to do that. . . . I want to talk to you about the agreement and how that -- the process of how that's done." N.T., 5/25/11, at 171-72.

A: Probably so.

N.T. Trial, 5/23/11, at 69. Before and after this exchange, the clear line of questioning involved whether Phat was pressured to recant while incarcerated. It was well within the Commonwealth's discretion to refer to potential threats while commenting on Phat's affidavit.

Fourth, Appellant argues that the statement Phat made in connection with his plea agreement was so unreliable that it was inadmissible as evidence, as Phat was in the midst of negotiating a plea agreement that would potentially reduce his sentence of incarceration substantially. This claim is waived. The Commonwealth observes that Appellant did not object to the statement at trial, and we find no evidence of an objection.[5] "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). Accordingly, we cannot address this issue.

Finally, Appellant contends that his conspiracy conviction cannot stand because neither co-conspirator was charged with or convicted of robbery. This claim is also waived. "Any issues not raised in a Pa.R.A.P. 1925(b) statement will be waived." ***Commonwealth v. McBride***, 957 A.2d 752, 755 (Pa. Super. 2008) (quoting ***Commonwealth v. Castillo***, 585 Pa. 395, 888 A.2d 775, 780 (2005)). In his brief, Appellant contends that he

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[5] In his reply brief, Appellant does not respond to the Commonwealth's waiver argument.

preserved this argument by raising it in paragraph 7 of his original Rule 1925(b) statement, and paragraph 9 of his supplemental Rule 1925(b) statement. Those paragraphs state, however:

> 7. The verdict of guilt of criminal conspiracy violated due process of law because the evidence was insufficient with regard to the goal of the conspiracy; and because [Appellant] was acquitted of the underlying "overt acts" of the conspiracy.
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> * * *
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> 9. The evidence was insufficient to establish that the object of the conspiracy was to rob any of the witnesses who testified at trial, and therefore [Appellant]'s conspiracy conviction violates due process of law.

Appellant's Pa.R.A.P. 1925(b) Statement, filed 11/23/11, at 6; Appellant's Supplemental Pa.R.A.P. 1925(b) Statement, filed 1/27/12, at 6. Neither statement provided the trial court with any indication that Appellant intended to challenge his conspiracy conviction based on the charges against his co-conspirators or their eventual convictions. Accordingly, Appellant has waived this argument. ***See McBride***, ***supra***. Finding no merit to any of Appellant's arguments raised on appeal, we therefore affirm the judgment of sentence.

Appellant's Motion Suggesting Correction of the Certified Record denied. Judgment of sentence affirmed.

BOWES, J. CONCURS IN THE RESULT.