

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
OMEGA PEOPLES,	:	
	:	
Appellant	:	No. 325 EDA 2013

Appeal from the Judgment of Sentence June 21, 2012,
Court of Common Pleas, Chester County,
Criminal Division at No. CP-15-CR-0004185-2011

BEFORE: GANTMAN, DONOHUE and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED DECEMBER 11, 2013

Appellant, Omega Peoples (“Peoples”), appeals from the judgment of sentence dated June 21, 2012, following his convictions of attempt to commit first-degree murder, 18 Pa.C.S.A. §§ 901, 2502(a); aggravated assault – serious bodily injury, 18 Pa.C.S.A. § 2702(a)(1); aggravated assault – use of a deadly weapon, 18 Pa.C.S.A. § 2702(a)(4); conspiracy to commit first degree murder, 18 Pa.C.S.A. § 903; conspiracy to commit aggravated assault, 18 Pa.C.S.A. § 903; and recklessly endangering another person, 18 Pa.C.S.A. § 2705. For the reasons that follow, we affirm.

In its written opinion pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure, the trial court summarized the evidence presented at trial:

The evidence showed that in these times of retribution, during the hours of darkness on May 22,

2006, the victim, Odell Cannon ['Cannon'], was approached by two assailants as he exited a house located at 712 East Chestnut Street in the City of Coatesville, Chester County, PA. The assailants approached from two directions, Teron Lewis ['Lewis'], [Peoples'] co-conspirator, from the front of that property, and [Peoples], from Diamond Alley, which abuts the rear of that property. The Commonwealth's evidence proved [Lewis] shot [Cannon] six times as Cannon walked through the side and backyard toward Diamond Alley. Lewis then fled the scene.

Within minutes after the shooting, [Peoples] was found nearby, wounded and hiding under a minivan parked next to Diamond Alley, the alley that bordered the back yard of the 712 East Chestnut Street property, where the shooting occurred in a side yard. The victim, [Cannon], a convicted felon, was wearing body armor, and was armed with a Sturm Ruger .357 Magnum revolver, from which the Commonwealth's evidence proved he fired six rounds at his assailants. From the evidence, the jury could properly infer that [Peoples], who was shot three times during the encounter by [Cannon], and unable to flee, was purposely trying to hide nearby from police, who had descended in force upon the shooting scene and the surrounding area.

Within arm's reach of [Peoples] in front of the minivan police found a loaded and fully operable Bryco Arms 9mm semi-automatic handgun, a glove, and a hunting mask, not typically found in one's possession on a May evening. Testing revealed [Peoples'] DNA was located on the mask, around the nose and mouth openings. Admittedly, the 9mm handgun belonged to [Peoples], but had not been discharged. On the night of the shooting, police also recovered from under the minivan one electric-blue, slip-on type sneaker, which they found lying next to [Peoples]. The matching sneaker was not under the van. However, the matching electric-blue sneaker was found by police that same night at the scene of

the shooting in the backyard of 712 East Chestnut Street.

From testimony supplied by an FBI agent involved on [Peoples'] federal prosecution, the matching pair of electric blue sneaker-shoes belonged to [Peoples]. [Lewis], [Peoples'] co-conspirator, was subsequently convicted following [a] separate trial of attempting to murder [Cannon] and conspiring with [Peoples] to do so, as [Cannon] walked through the backyard of 712 East Chestnut Street, accompanied by a female companion, Mona Perez, who ran from the scene, but was later that morning identified by police and testified at trial against both [Peoples] and Lewis. [Peoples'] matching blue sneaker was found in the yard in immediate proximity to where [Cannon] was found wounded, placing [Peoples] within feet of [Cannon] during the attempted murder.

Adding to this evidence were several proven facts: (1) that [Cannon], wearing body armor and armed with a Sturm Ruger .357 Magnum revolver, engaged in gunfire with his assailants, discharging all six rounds in his weapon; (2) the victim, [Cannon], was shot six times, resulting in severe injuries, including the complete fracture of his left femur immediately proximate to the pelvic socket, which required mechanical repair, another bullet narrowly missed Cannon's left femoral artery, another bullet was lodged just above Cannon's bladder, and he suffered several bullet wounds to his thighs. Cannon was flown to the University of Pennsylvania for immediate surgery following the shooting; (3) when [Peoples] was found by police hiding under the minivan, police observed he had just been shot three times in the upper chest, sustaining three linear wounds that extended from his left nipple to his right shoulder, the angle of the wounds suggesting they were fired from Mr. Cannon's .357 Magnum revolver as Cannon lay wounded on the ground; (4) an hour before the shooting, [Peoples] and Lewis, his co-conspirator, allegedly his 'young boy' (a street name for a protégé) spoke by phone when Lewis, having

just encountered Cannon at the 712 East Chestnut Street residence, called [Peoples] to inform him that Cannon was there. The shooting took place about an hour later; (5) the Commonwealth presented evidence as to the motive for the shooting, which was retaliation for an attempt made on [Peoples'] life a few days earlier by an associate of Mr. Cannon, identified by the prosecuting attorney as Mr. Cannon's 'young boy', street lingo for a protégé, stemming from a continuing feud among two rival Coatesville factions.

Trial Court Opinion, 3/27/2013, at 7-10.

On May 10, 2012, a jury convicted Peoples of the above-referenced crimes. The trial court sentenced Peoples to a term of incarceration of 18 to 36 years for conspiracy to commit first-degree murder, a concurrent term of 6 to 12 years of incarceration for aggravated assault (18 Pa.C.S.A. § 2702(a)(1)), and no further penalty for the reckless endangerment and other crimes. The trial court declined the Commonwealth's request for consecutive rather than concurrent sentences, noting that Peoples was already serving a seven-year sentence in federal prison following his conviction by a jury on February 2, 2007 of possession of a firearm (in the same shooting transaction at issue here).

This appeal followed, in which Peoples raises five issues for our consideration and determination:

1. Whether the evidence presented by the Commonwealth of Pennsylvania was sufficient to convict [Peoples].

2. Whether the Commonwealth through their attorney committed prosecutorial misconduct by using perjured testimony and by withholding impeaching evidence.
3. Whether the Commonwealth was barred from prosecuting [Peoples] due to Double Jeopardy from a federal prosecution of [Peoples] that arose out of the same events that [Peoples] was prosecuted for in the matter before this Court.
4. Whether [Peoples] was denied due process and a fair trial due to having ineffective trial counsel.
5. Whether the trial court committed an error by denying [Peoples'] request for a directed verdict at the close of the Commonwealth's case.

Peoples' Brief at 4.

With respect to Peoples' first issue on appeal, we are constrained to agree with the Commonwealth that Peoples waived his challenge to the sufficiency of the evidence through omissions in his Pa.R.A.P. 1925(b) concise statement of issues to be raised on appeal. In his Rule 1925(b) statement filed on February 25, 2013, and again in a supplemental statement filed on March 8, 2013, Peoples asserted only general statements that the evidence presented was insufficient to support his convictions, without any specification of the particular elements of the specific crimes he was contesting. This Court has repeatedly emphasized that such a failure requires a finding of waiver:

In ... ***Commonwealth v. Williams***, 959 A.2d 1252 (Pa. Super. 2008), this Court reiterated that when challenging the sufficiency of the evidence on appeal,

the Appellant's 1925 statement must 'specify the element or elements upon which the evidence was insufficient' in order to preserve the issue for appeal. **Williams**, 959 A.2d at 1257 (quoting **Commonwealth v. Flores**, 921 A.2d 517, 522-23 (Pa. Super. 2007)). Such specificity is of particular importance in cases where, as here, the Appellant was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt. **Id.** at 1258 n. 9. Here, Appellant not only failed to specify which elements he was challenging in his 1925 statement, he also failed to specify which convictions he was challenging. While the trial court did address the topic of sufficiency in its opinion, we have held that this is 'of no moment to our analysis because we apply Pa.R.A.P. 1925(b) in a predictable, uniform fashion, not in a selective manner dependent on an appellee's argument or a trial court's choice to address an unpreserved claim.' **Id.** at 1257 (quoting **Flores** at 522-23).

Commonwealth v. Garang, 9 A.3d 237, 244 (Pa. Super. 2010).

The jury convicted Peoples of six offenses, each with multiple elements, but his Rule 1925(b) statements did not specify which element(s) of the particular convictions the Commonwealth failed to prove beyond a reasonable doubt. Accordingly, we must conclude that Peoples' sufficiency challenge is waived on this basis. **See** Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived."); **Garang**, 9 A.3d at 244.

Even if Peoples had properly preserved his sufficiency claim, however, we would nevertheless conclude that this issue is meritless. In

Commonwealth v. Troy, 832 A.2d 1089 (Pa. Super. 2003), we explained our standard of review for a sufficiency claim as follows:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of the witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Id. at 1092 (citations omitted).

In the present case, in his appellate brief Peoples correctly asserts that because he did not fire any of the shots that hit Cannon, the sufficiency of the evidence depends upon whether the Commonwealth presented evidence to support his convictions for conspiracy for, *inter alia*, first-degree murder and aggravated assault. Peoples' Brief at 11. Peoples argues that the Commonwealth's evidence of his conspiracy with Lewis was principally from

two witnesses, Rahlik Gore ("Gore") and Mona Perez ("Perez"). According to Peoples, Gore offered "non-credible testimony" that was impeached during cross-examination, and Perez was a "biased witness" because she was a friend of Cannon and thus had a motive to "alter the truth of what really happened." *Id.* at 12-14. These arguments go to the credibility of the witnesses, which, pursuant to our standard of review, may play no role in our consideration of the sufficiency of the evidence. As the above-quoted excerpt from *Troy* makes clear, the credibility of witnesses is for the trier of fact (in this case, the jury) to determine, and the trier of fact is free to believe all, part or none of the evidence. *Troy*, 832 A.2d at 1092. Through its verdict, the jury in this case obviously found Gore's and/or Perez's testimony to be credible, and this Court may not, and will not, disturb those findings.

Peoples also argues that the evidence is equally consistent with the explanation that it was Cannon, and not Peoples, who was the aggressor in their confrontation – citing to Cannon's body armor and multiple shots hitting Peoples. Peoples' Brief at 14-15. Again, however, our standard of review requires that we may not re-weigh the evidence and substitute our judgment for the fact-finder. The Commonwealth need not preclude every possibility of innocence and all of the evidence must be viewed in the light most favorable to the Commonwealth as the verdict winner. *Troy*, 832 A.2d at 1092. For these reasons, Peoples' sufficiency arguments are meritless.

For his second issue on appeal, Peoples argues that the Commonwealth committed prosecutorial misconduct by presenting perjured testimony and by failing to notify Peoples' counsel that Gore had been arrested for kidnapping prior to the commencement of trial. Peoples' Brief at 15-16. With respect to the first contention, Peoples claims that Gore testified at his (Peoples') federal prosecution that he observed Lewis speaking to Peoples on the telephone after the shooting, rather than before the shooting as he testified in the current trial. *Id.* at 15.¹ According to Peoples, the Commonwealth decided to allow Gore to present this testimony in this case, despite its knowledge that it conflicted with his prior testimony.

As a general matter, the use of knowingly perjured testimony violates the due process rights of a criminal defendant. U.S. CONST. amend. 14.; ***Napue v. Illinois***, 360 U.S. 264, 269 (1959). In the present case, however, Peoples offers no evidence of record to support claims that Gore's testimony was perjured or that the Commonwealth knew it was perjured. While Peoples claims that the Commonwealth admitted that Gore's testimony was perjured during argument on post-trial motions, our review of

¹ In his appellate brief, Peoples also mentions that Perez and two other witnesses (Chris Curran and Officer Jaworski) also offered knowingly perjured testimony, but provides no argument or explanation in support of these claims. Accordingly, these claims have not been preserved for appeal. ***See, e.g., Commonwealth v. Brewington***, 740 A.2d 247, 252 n.2 (Pa. Super. 1999), *appeal denied*, 561 Pa. 667, 749 A.2d 465 (2000).

the transcript indicates that the prosecutor made only the following representations to the trial court:

I would merely state, Your Honor, that we put [Gore] on the stand, he testified under oath, he was cross-examined with material that was made known to defense counsel by the Commonwealth, and [Peoples' trial counsel] cross-examined him on the prior statements. The jury made an assessment, whether they attached any particular significance to that particular point is unknown, but it was all put out there and so [Peoples'] point is misplaced.

N.T., 10/11/2012, at 29.

Our review of the trial transcripts supports the Commonwealth's representations. Peoples' trial counsel cross-examined Gore extensively regarding the timing of the alleged telephone call between Peoples and Lewis, during which trial counsel read Gore's testimony in the federal case back to him twice in efforts to refresh his recollection. N.T., 5/8/2012, at 458-64. Gore disagreed that his federal testimony differed substantially. ***Id.*** Our Supreme Court has instructed that when considering claims of prosecutorial misconduct, "[t]he touchstone is the fairness of the trial, not the culpability of the prosecutor." ***In re Lokuta***, 608 Pa. 223, 260, 11 A.3d 427, 448-49 (2011). In this case, Peoples offers no convincing argument that his trial was unfair. As a result of trial counsel's extensive cross-examination using the federal trial transcript, the jury was well aware of the alleged discrepancies in Gore's accounts of the alleged telephone call. As the trier of fact, the jury then made the necessary credibility determinations

with respect to Gore's testimony. We observe no unfairness here sufficient to support a claim of prosecutorial misconduct.

With respect to the allegation that the Commonwealth failed to notify Peoples' counsel that Gore had been arrested prior to the commencement of trial, the Commonwealth claims that while it knew that Gore was under investigation, it had no knowledge of his arrest. Commonwealth's Brief at 21. The certified record on appeal contains no information that contradicts or disputes this claim by the Commonwealth, and thus we must find that this issue is meritless on appeal.

For his third issue on appeal, Peoples argues that the Commonwealth should have been barred from prosecuting him in this case because he had already been convicted in a federal court for a firearm-related crime arising from this same transaction (*i.e.*, the ambush of Cannon). As a result, Peoples contends that his rights against Double Jeopardy, as incorporated in 18 Pa.C.S.A. §§ 110(1)(ii) and 111(1),² barred his prosecution in this case. Peoples' Brief at 16-17.

The Commonwealth argues that Peoples waived his constitutional right against Double Jeopardy by failing to raise the issue until post-trial motions. Commonwealth's Brief at 23. The Commonwealth cites to ***Commonwealth***

² Peoples' claims on appeal are limited to his claims under sections 110(1)(ii) and 111(1), both of which are based upon constitutional Double Jeopardy principles. He does not assert claims under the Fifth and Fourteenth Amendments to the United States Constitution and/or Article 1, Section 10 of the Pennsylvania Constitution. **See** Peoples' Brief at 16-17.

v. Splain, 364 A.2d 384 (Pa. Super. 1976), in which this Court held that a defendant must normally assert a section 110(1)(ii) claim in a timely manner, and may not wait until after the Commonwealth has presented its evidence before doing so. **Id.** at 387.

Out of an abundance of caution, however, we decline to find waiver here. The waiver of constitutional rights must be made knowingly and intelligently, while the waiver of statutory rights need only be voluntary. **Commonwealth v. Johnson**, 466 A.2d 636, 640 (Pa. Super. 1983). While section 110(1)(i) confers only a statutory right, the certified record in this case provides no basis upon which we may conclude that Peoples voluntarily waived his right to assert a section 110(1)(ii) claim. To the contrary, at the argument on post-trial motions, Peoples explained to the trial court at some length his efforts to get his appointed counsel to make a series of arguments on his behalf, and his frustration that counsel refused to do so. N.T., 10/11/2012, at 11-25. Among the specific points raised by Peoples was his belief that his Chester County prosecution was barred by section 110(1)(ii) because it arose from the same criminal transaction as the federal prosecution. **Id.** at 15-17 (“And I would like to argue 18 Pa.C.S.A. Subsection 110, Section (1)(ii), the compulsory joinder rule ... I mean, I meet all the criteria for it. I don’t understand what is separating me from that relief.”). For this reason, we will address the arguments raised in connection with People’s third issue on appeal on their merits.

In 1972, the Pennsylvania legislature codified and expanded the Double Jeopardy rights in this Commonwealth in sections 109-111 of the Pennsylvania Crimes Code. Section 109 bars a subsequent prosecution for a violation of the same statutory provision and based upon the same facts as were the subject of a former prosecution. 18 Pa.C.S.A. § 109. Section 110 bars a second prosecution based upon the same conduct or arising from the same criminal episode as a prior prosecution, but under a different statute. 18 Pa.C.S.A. § 110. Section 111 prevents a second prosecution for the same occurrence or conduct that formed the basis for a prior prosecution in another jurisdiction. 18 Pa.C.S.A. § 111.

In this case, Peoples contends that sections 110(1)(ii) and 111(1) barred his prosecution in Chester County. We begin with section 110(1)(ii), which provides as follows:

Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when prosecution barred by former prosecution for same offense) and the subsequent prosecution is for:

* * *

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was

known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense.

18 Pa.C.S.A. § 110(1)(ii).

Section 110(1)(ii), sometimes referred to as the “compulsory joinder rule,” requires that all known charges based upon the same conduct or arising from the same criminal episode be consolidated for trial unless the court orders separate trials. ***Commonwealth v. Fithian***, 599 Pa. 180, 190, 961 A.2d 66, 71 (2008); ***Commonwealth v. Failor***, 564 Pa. 642, 647, 770 A.2d 310, 313 (2001). The compulsory joinder rule “is designed to protect a defendant's double-jeopardy interests where the Commonwealth initially declines to prosecute him for the present offense, electing to proceed on different charges stemming from the same criminal episode.” ***Commonwealth v. Laird***, 605 Pa. 137, 154, 988 A.2d 618, 628 (2010) (citing ***Commonwealth v. Bracalielly***, 540 Pa. 460, 470, 658 A.2d 755, 760 (1995) and ***Commonwealth v. Hude***, 500 Pa. 482, 488-89, 458 A.2d 177, 180 (1983)); ***Commonwealth v. Campana***, 455 Pa. 622, 314 A.2d 854 (1974).

Although the language of section 110(1)(ii) is hardly the model of clarity, we conclude that it does not apply to situations like the one at issue here, namely a state court prosecution following a federal court prosecution.

By its terms, the offense at issue in the second prosecution (1) had to be known to the appropriate prosecuting officer at the time of the commencement of the first trial, and (2) had to occur *within the same judicial district as the former prosecution*. 18 Pa.C.S.A. § 110(1)(ii). The term “judicial district” clearly refers to the 60 Pennsylvania judicial districts created by statute under Chapter 9 (Organization and Jurisdiction of Courts of Common Pleas) of Title 42 of Purdon’s Pennsylvania Consolidated Statutes. **See** 42 Pa.C.S.A. § 901 (“The Commonwealth is divided into 60 judicial districts, numbered and composed as follows ...”). Based upon the use of the term “judicial district,” the Pennsylvania legislature intended for section 110(1)(ii) to apply only to multiple prosecutions *in Pennsylvania state courts*, and not to separate prosecutions in courts in other jurisdictions. Thus, the compulsory joinder rule in section 110(1)(ii) has no application here.

Instead, separate prosecutions in courts in different jurisdictions (including federal courts) are governed by, *inter alia*, section 111, which provides as follows:

When conduct constitutes an offense within the concurrent jurisdiction of this Commonwealth and of the United States or another state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this Commonwealth under the following circumstances:

- (1) The first prosecution resulted in an acquittal or in a conviction as defined in section 109 of

this title (relating to when prosecution barred by former prosecution for same offense) and the subsequent prosecution is based on the same conduct unless:

(i) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or

(ii) the second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

18 Pa.C.S.A. § 111.

Section 111(1) provides no relief for Peoples here. In applying section 111(1), Pennsylvania appellate courts have focused on three relevant inquiries. ***Commonwealth v. Calloway***, 675 A.2d 743, 747 (Pa. Super. 1996). The first inquiry is whether the prosecution that the Commonwealth proposes to undertake involves the same conduct for which the individual was prosecuted in the other jurisdiction. ***Commonwealth v. Traitz***, 528

Pa. 305, 312, 597 A.2d 1129, 1132-33 (1991). If the answer to this question is yes, then we must determine whether each prosecution requires proof of a fact not required by the other, and whether the law defining the Commonwealth offense is designed to prevent a substantially different harm or evil from the law defining the other jurisdiction's offense. ***Commonwealth v. Scarfo***, 611 A.2d 242, 257 (Pa. Super. 1992), *appeal denied*, 535 Pa. 633, 631 A.2d 1006 (1993).

The answer to the first inquiry in this case would appear to be in the affirmative. In federal court, Peoples was convicted of a single count of Felon in Possession of a Firearm, 18 U.S.C. § 922(g)(1),³ and in this case he was convicted of aggravated assault with a deadly weapon, 18 Pa.C.S.A. § 2702(a)(4). Both of these crimes involved the possession and/or use of a firearm, and thus both involved the same general conduct.

³ 18 U.S.C. § 922(g)(1) provides as follows:

(g) It shall be unlawful for any person --

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(1).

The two crimes clearly do not satisfy the second inquiry, however, since each required proof of a fact not required by the other. To be convicted under section 922(g)(1), the federal government must prove that the firearm used by the convicted felon “must have affected interstate commerce” and had “minimal nexus” to interstate commerce. **See, e.g., *U.S. v. Knight***, 562 F.3d 1314, 1328 (11th Cir. 2009). No such element must be proven for an aggravated assault conviction under section 2702(a)(4). Conversely, a conviction under section 2702(a)(4) requires that the defendant attempt to cause, or intentionally or knowingly cause, bodily injury to another person, 18 Pa.C.S.A. § 2702(a)(4), while no similar proof is required under section 922(g)(1). Moreover, the “harm or evil” sought to be prevented by the federal statute (*e.g.*, to prohibit convicted felons from possessing firearms or ammunition) is not a specific goal of the Pennsylvania statute.

For these reasons, we conclude that Peoples’ third issue on appeal is meritless.

For his fourth issue on appeal, Peoples argues that his constitutional right to due process was violated due to having ineffective assistance of counsel. In a recent decision, our Supreme Court announced that claims of ineffective assistance of counsel must wait until collateral (PCRA) review, with two exceptions: (1) if there is good cause shown, or (2) review is preceded by the defendant’s knowing and express waiver of his entitlement

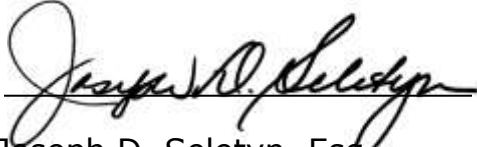
to seek PCRA review from his conviction and sentence, including an express recognition that the waiver subjects further collateral review to the time and serial petition restrictions of the PCRA. **Commonwealth v. Holmes**, ___ Pa. ___, ___ A.3d ___, 2013 WL 5827027, at *1 (October 30, 2013); **see also Commonwealth v. Barnett**, 25 A.3d 371 (Pa. Super. 2011) (*en banc*). Neither of these exceptions applies in the current case, and therefore consideration of Peoples' claims of ineffective assistance of counsel must await collateral review. We will not entertain them at this time.

For his fifth issue on appeal, Peoples claims that the trial court erred in refusing to grant his motion for a directed verdict at the close of the Commonwealth's case-in-chief at trial. "Our test for a challenge to a denial of a motion for a directed verdict is whether the jury, in considering all the evidence in the light most favorable to the Commonwealth, could have found the defendant guilty." **Commonwealth v. Burns**, 568 A.2d 974, 977 (Pa. Super. 1990) (citing **Commonwealth v. Boone**, 467 Pa. 168, 354 A.2d 898 (1975)). For the reasons set forth in connection with Peoples' first issue on appeal, we conclude that the trial court did not err in this regard, as the evidence presented by the Commonwealth was sufficient for the jury to find Peoples guilty of the crimes for which he was convicted.

Judgment of sentence affirmed.

J-S64017-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/11/2013