

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

PATRICK REED MORAN

Appellant

No. 442 WDA 2013

Appeal from the Judgment of Sentence February 8, 2013  
In the Court of Common Pleas of Potter County  
Criminal Division at No(s): CP-53-CR-0000148-2012

BEFORE: BENDER, P.J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.: FILED: December 2, 2013

Appellant, Patrick Reed Moran, appeals from the judgment of sentence entered in the Potter County Court of Common Pleas, following his conviction for possession of a firearm prohibited.<sup>1</sup> We affirm.

The relevant facts and procedural history of this appeal are as follows. On December 10, 2012, a jury convicted Appellant of possession of a firearm prohibited. The conviction stemmed from Appellant's possession of a shotgun while on parole. On February 8, 2013, the trial court sentenced Appellant to forty-eight (48) to one-hundred-twenty (120) months' imprisonment. Appellant timely filed a notice of appeal on February 25, 2013. The court ordered Appellant, on February 26, 2013, to file a concise

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<sup>1</sup> 18 Pa.C.S.A. § 6105(a)(1).

statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied.

Appellant raises the following issue for our review:

WHERE A PROSECUTOR INTERJECTS PREJUDICIAL STATEMENTS OF THE POTENTIAL DEATH BY FIREARM OF [APPELLANT'S] SEPARATED WIFE AND [APPELLANT'S] DRUG USAGE, ALTHOUGH NO CHARGES WERE FILED CONCERNING THESE ALLEGED INCIDENTS, DO SUCH INFLAMMATORY STATEMENTS DENY [APPELLANT] A FAIR TRIAL AND DUE PROCESS OF LAW?

(Appellant's Brief at 1).

Appellant argues the Commonwealth improperly elicited prejudicial testimony concerning Appellant's possession of a firearm, his threats to injure and/or kill his estranged wife, and his drug use. Specifically, Appellant contends the Commonwealth elicited testimony from two witnesses, Stacey Imler, Appellant's friend and neighbor, and Rebecca Carr, Appellant's estranged wife, that unduly prejudiced Appellant at trial. On direct examination, Ms. Carr testified that she asked Appellant why he had purchased a shotgun; Appellant responded, "You know why." (N.T., 12/10/12, at 58). Ms. Carr further testified on direct examination that Appellant told her she would get a bullet in the head before she could leave him. *Id.* Additionally, Mr. Imler testified on direct examination that, when Mr. Imler asked Appellant why he had purchased the shotgun, Appellant informed Mr. Imler that Appellant took his marriage vows very seriously and "to death do us part." *Id.* at 33. Mr. Imler also testified on direct

examination that Appellant had taken drugs while he was at a party with Mr. Imler. **Id.** at 31. Appellant claims the testimony from Ms. Carr and Mr. Imler was particularly prejudicial because Appellant was not charged with either threatening his estranged wife or using drugs. Appellant concludes these instances of “prosecutorial misconduct” caused Appellant unfair prejudice that warrants a new trial. We disagree.

“Our standard of review for a claim of prosecutorial misconduct is limited to whether the trial court abused its discretion.” **Commonwealth v. Harris**, 884 A.2d 920, 927 (Pa.Super. 2005), *appeal denied*, 593 Pa. 726, 928 A.2d 1289 (2007).

As a prefatory matter, to preserve a claim of error for appellate review, a party must make a specific objection to the alleged error before the trial court in a timely fashion and at the appropriate state of the proceedings; failure to raise such objection results in waiver of the underlying issue on appeal. **Commonwealth v. May**, 584 Pa. 640, 887 A.2d 750 (2005), *cert. denied*, 549 U.S. 832, 127 S.Ct. 58, 166 L.Ed.2d 54 (2006) (reiterating absence of specific and contemporaneous objection waives issue on appeal); **Commonwealth v. Charleston**, 16 A.3d 505 (Pa.Super. 2011), *appeal denied*, 612 Pa. 696, 30 A.3d 486 (2011) (stating issues cannot be raised for first time on appeal); **Commonwealth v. Shamsud-Din**, 995 A.2d 1224 (Pa.Super. 2010); Pa.R.A.P. 302(a). **See also Commonwealth v. Arroyo**, 555 Pa. 125, 142, 723 A.2d 162, 170

(1999) (explaining if ground upon which objection is based is specifically stated, all other reasons for its exclusion are waived). Additionally, our Supreme Court has stated:

The requirement of a timely specific objection...insures that: First, appellate courts will not be required to expend time and energy receiving points on which no trial ruling has been made. Second, the trial court may promptly correct the asserted error. With the issue properly presented, the trial court is more likely to reach a satisfactory result thus obviating the need for appellate review on this issue. Or if a new trial is necessary, it may be granted by the trial court without subjecting both the litigants and the courts to the expense and delay inherent in appellate review. Third, appellate courts will be free to more expeditiously dispose of the issues properly preserved for appeal. ...

***Commonwealth v. Ford-Bey***, 504 Pa. 284, 287, 472 A.2d 1062, 1063

(1984) (internal quotation marks omitted).

Instantly, at trial, the Commonwealth questioned Mr. Imler on direct examination as follows:

COMMONWEALTH:                   And was [Appellant] ever at your camp before?

THE WITNESS:                    Yes.

COMMONWEALTH:                   And was he at your camp in late May, early June of this year?

THE WITNESS:                    I believe so, yes.

COMMONWEALTH:                   If you can recall what was he doing there at that time?

THE WITNESS:                    We were up having a good time, had a bonfire, we were drinking, partying that was about it.

COMMONWEALTH: And was [Appellant] drinking and partying with you guys?

THE WITNESS: He's not a big drinker I believe he partook in the party.

COMMONWEALTH: Any drugs?

THE WITNESS: Yes.

COMMONWEALTH: And when you were partying at your place, did you see any firearms?

THE WITNESS: Yes.

COMMONWEALTH: And how many firearms did you see?

THE WITNESS: I saw one.

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COMMONWEALTH: On that date [of the party] did you ever see [Appellant] hold a firearm?

THE WITNESS: I did see him hold a gun.

\* \* \*

COMMONWEALTH: Can you tell us what kind of gun he held?

THE WITNESS: All I know it was a shotgun.

\* \* \*

COMMONWEALTH: Later that day [of the party] did you ask [Appellant] anything about the gun?

THE WITNESS: I asked why he purchased the gun.

COMMONWEALTH: What did he tell you?

THE WITNESS: He says he takes his marriage vows very seriously and to death do us part. You know what? Actually that wasn't that day that was at my apartment. That day he kind of implied the same thing, didn't say, but he had said it before at my apartment weeks before.

(N.T., 12/10/12, at 30-31, 32-33).

Additionally, the Commonwealth questioned Ms. Carr on direct examination as follows:

COMMONWEALTH: And after that point did you have occasion to speak to your husband in regards to a firearm?

THE WITNESS: Yes, because he called me several times and tried to contact me and I would not answer the phone and I asked him why he had gotten it. He told me just mainly said you know why.

COMMONWEALTH: So you asked him why he got it and he answered you know why?

THE WITNESS: Hm-hmm.

COMMONWEALTH: Did he say what he got?

THE WITNESS: I asked him why he bought a shotgun.

COMMONWEALTH: Okay so you asked him why did you buy a shotgun and he said what?

THE WITNESS: You know why.

COMMONWEALTH: You know why. And how did that make you feel?

THE WITNESS: Scared still.

COMMONWEALTH: Do you know what he meant by, you know why?

THE WITNESS: From conversations from before I left him, yeah, he said before that I would get a bullet in the head before I would leave him and death, until death do us part.

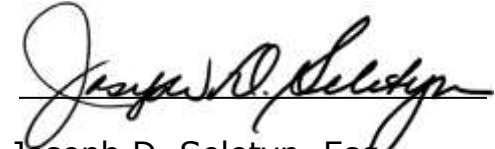
**Id.** at 58. After a thorough examination of these exchanges, we conclude the testimony regarding Appellant's drug use and threats to his estranged wife established context for Appellant's possession of the shotgun.

Importantly, defense counsel failed to register objections at trial specific to this testimony. Instead, on cross-examination, defense counsel attempted to discredit Mr. Imler through his own drug use and Ms. Carr through her relationship with Appellant's co-worker. During the cross-examination of Mr. Imler, defense counsel also used the same testimony Appellant now claims was prejudicial to discredit Mr. Imler's memory regarding the drug use that occurred at the party. Therefore, the lack of specific and contemporaneous objection during trial constitutes waiver of Appellant's underlying issue. **See May, supra.** As issues cannot be raised for the first time on appeal, Appellant's claim is deemed waived. **See Charleston, supra.** Thus, we affirm the judgment of sentence.

Judgment of sentence affirmed.

\*JUDGE OLSON CONCURS IN THE RESULT.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/02/2013