NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
	:	
WILLIAM VILLINES,	:	No. 2044 EDA 2011
	:	
Appellant	:	

Appeal from the Judgment of Sentence, January 24, 2011,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0015464

BEFORE: FORD ELLIOTT, P.J.E., MUNDY AND FITZGERALD,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED MAY 24, 2013**

Following a joint jury trial, William Villines ("appellant") was convicted of first-degree murder, criminal conspiracy, and various firearms charges[1]. He now appeals from the judgment of sentence entered on January 24, 2011. We affirm[2].

At trial, the evidence presented connecting appellant to the crimes was as follows. On September 17, 2009, appellant arrived at the 4000 block of North Broad Street to visit his friend Charles Mason ("Mason"). The men

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* Retired Justice specially assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 2502(a), 903, 6106(a)(1), 6108, and 907(a), respectively.

[2] Appellant was tried together with his co-defendant and cousin, Jermaine Villines, who filed an appeal at No. 2045 EDA 2011. Jermaine Villines' appeal has been assigned to this same panel but involves different issues.

were celebrating the birth of Mason's baby by drinking beer on the porch. Jermaine Villines ("Jermaine") and Mason were joined at the house by appellant, Jermaine's cousin. Anwar Conyers ("the victim"), and Khadij Davis ("Davis") were also present. Shortly thereafter, Mason had to go to the pharmacy to get medicine for his girlfriend, who had just given birth. As Mason and the victim walked together to get into the car, the victim exchanged words with appellant. The victim commented to Jermaine, "What's up killer," to which Jermaine replied, "You the killer." (Notes of testimony, 1/19/11 at 80.)

Mason and the victim returned from the pharmacy ten to fifteen minutes later. The victim approached Jermaine and a verbal argument about money Jermaine owed the victim ensued. (***Id.*** at 83-87.) Appellant remained calm throughout the argument. Mason urged the victim to leave and then headed toward his porch believing that the victim and Davis were following him. (***Id.*** at 87.)

Instead, the victim walked toward his car. Upon seeing appellant holding a gun, the victim put his hands up and stated "whoa, whoa, hold on." (Notes of testimony, 1/20/11 at 56-57.) Jermaine stated to appellant, in a conversational tone, "Green light, hit him." (***Id.*** at 54-55; notes of testimony, 1/19/11 at 87-88.) Within seconds of Jermaine's words, appellant shot the victim five times, with three of the shots hitting the victim in the head before the victim reached the car. (***Id.*** at 89-90.) After

shooting the victim, appellant fled the scene; a passerby saw him shove something through a fence. The police arrived and transported the victim to the hospital where he died on September 18, 2009.

Appellant and Jermaine met up at 4041 North Broad Street, where Jermaine lived with his girlfriend Melissa Askew. The men changed clothes and fled. Askew testified that she had seen Jermaine before she left for work at 11:30 p.m. on September 17, 2009. (Notes of testimony, 1/20/11 at 90-91.) He was gone when she returned. Neither appellant nor Jermaine returned to the apartment for their belongings. (***Id.*** at 92.)

After speaking to Mason on September 19, 2009, the police searched for Davis. Based on the information Davis provided to the police on October 8, 2009, a warrant was issued for appellant's arrest. On October 14, 2009, Officer Joseph Moore stopped a vehicle with heavily tinted windows for investigation. Appellant was a passenger in the car and gave the officer false identification in the name of Dondi Ringgold. When a records check established that Ringgold had an outstanding arrest warrant, appellant was taken into custody. Thereafter, his real identity was determined and he was arrested for murder.

Jermaine was not arrested until January 7, 2010, after appellant gave a statement to the police implicating him in the crime. Upon his arrest, appellant gave a statement to Detective Carl Watkins. Detective Watkins read the statement at trial. Essentially, appellant told the detective that he

had discussed the matter with his family and wanted to accept responsibility for what he had done. (Notes of testimony 1/20/11 at 169.) Appellant explained that he had been upstairs at his cousin's apartment drinking vodka and Pepsi when he heard Jermaine arguing with the victim and David. (***Id.*** at 171.) Appellant went downstairs and grabbed his revolver, and went outside. As the victim walked toward his car, Jermaine ordered something to the effect, "go," and appellant ran up to the victim and "let off five rounds at him. Then it was empty. I saw the last two hit him. One in the head." (***Id.***) Appellant explained that he and co-defendant had bought the revolver on the street for $400. (***Id.*** at 173.) He told the officer that he thought the victim was going to his car to retrieve a gun. (Id. at 182.) On January 7, 2010, police received information that Jermaine was in Allentown and he was arrested there. (***Id.*** at 178.)

Appellant testified that he shot the victim because he thought the victim was going to his car to get a gun. (Notes of testimony, 1/21/11 at 55-57.) At trial, appellant stated that he had seen the victim in possession of a gun hours before the murder. (***Id.*** at 47.) He overheard Jermaine, the victim and Davis arguing outside and came out onto the porch to stand behind Jermaine. (***Id.*** at 51-52.) Appellant claimed the victim "started going off" and stating "that we bitches, that we better hurry up and get the mother fucking money or certain things is going to happen to us." (***Id.*** at 54.) The men continued arguing and the victim stated to appellant and

Jermaine, "fuck you too, dog. You done with it? I'm gonna be done with this situation, too. You know what, I got something for both of you niggers. I'm about to go to my car. . ." (***Id.*** at 55.) The victim turned and started walking to his car with the keys in his hand. (***Id.*** at 56.) Appellant claimed that he had to stop the victim before the victim reached his car as the victim was going to retrieve a gun. The trial court refused to charge the jury regarding voluntary manslaughter as it found that the evidence did not support a self-defense claim. (***Id.*** at 128-129.)

Following a joint jury trial, appellant was convicted of the aforementioned crimes.[3] Thereafter, appellant was sentenced to a mandatory sentence of life in prison for first degree murder and a sentence of 15 to 40 years for conspiracy to run consecutive to the murder charge. He was also sentenced to concurrent sentences of not less than 2 nor more than 7 years for carrying a firearm without a license, 1 to 5 years for carrying a firearm on the public streets of Philadelphia, and 1 to 5 years for possession of an instrument of crime. Appellant filed a timely post-sentence motion which was denied on May 31, 2011. Appellant complied with the trial court's order to file a concise statement of errors complained of on appeal within 21 days pursuant to Pa.R.A.P., Rule 1925(b), 42 Pa.C.S.A., and the trial court has filed an opinion.

The following issues have been presented for our review:

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[3] Jermaine was convicted of third degree murder and criminal conspiracy.

> 1. Were the verdicts of one count of murder in the first degree, criminal conspiracy, [PIC] and carrying a firearm without a license not supported by sufficient evidence?
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> 2. Were the verdicts of one count of murder of the first degree, criminal conspiracy, [PIC], and carrying a firearm without a license against the weight of the evidence?
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> 3. Did Judge Sarmina err in failing to instruct the jury of the defenses of self defense or the defense of mistaken belief in self defense?
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> 4. Did the Assistant District Attorney err by improperly bringing out through the witness Mr. Mason, that he was scared and intimidated, suggesting [appellant] had threatened him, thereby tainting the jury against [appellant]? Further, did the Assistant District Attorney in her closing speech commit error by suggesting the jury should send a message to the victim's family and the verdict should be based on sympathy to [the victim's] family?

Appellant's brief at 5.

Appellant first claims the evidence against him was insufficient to support his convictions. We begin with our standard of review:

> Our standard of review in assessing whether sufficient evidence was presented to sustain Appellant's conviction is well-settled. The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the 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 [this] 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 witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Walsh, 36 A.3d 613, 618–619 (Pa.Super. 2012), quoting ***Commonwealth v. Brumbaugh***, 932 A.2d 108, 109–110 (Pa.Super. 2007).

Following a review of appellant's sufficiency argument, we agree with the Commonwealth that appellant has ignored our standard of review by examining the evidence in the light most favorable to him. A sufficiency of the evidence review does not include an assessment of the credibility of the testimony offered by the Commonwealth. ***Commonwealth v. Brown***, 538 Pa. 410, 438, 648 A.2d 1177, 1191 (1994). "Such a claim is more properly characterized as a weight of the evidence challenge." ***Commonwealth v. Wilson***, 825 A.2d 710, 713-714 (Pa.Super. 2003), citing ***Commonwealth v. Bourgeon***, 654 A.2d 555 (Pa.Super. 1994).

Nevertheless, we find no merit to appellant challenge that the Commonwealth did not disprove his theory of self-defense[4] or imperfect self-defense[5].

To convict a defendant of first degree murder, the Commonwealth must prove: a human being was unlawfully killed; the defendant was responsible for the killing; and the defendant acted with malice and a specific intent to kill. ***See*** 18 Pa.C.S. § 2502(a); ***Commonwealth v. Brown***, 605 Pa. 103, 113-114, 987 A.2d 699, 705 (2009); ***Commonwealth v. Sherwood***, 603 Pa. 92, 106, 982 A.2d 483, 491–492 (2009) (citations omitted). The Commonwealth may use solely circumstantial evidence to prove a killing was intentional, and the fact-finder "may infer that the defendant had the specific intent to kill the victim based on the defendant's use of a deadly weapon upon a vital part of the victim's body." ***Brown***, ***supra***, quoting ***Commonwealth v. Blakeney***, 596 Pa. 510, ___, 946 A.2d 645, 651 (2008). Malice, as well, may be inferred from the use of a deadly

[4] Generally, the use of force "is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force" by another. 18 Pa.C.S.A. § 505(a). However, deadly force is not justified when the defendant provoked the use of force against himself. ***Id.***, § 505(b)(2)(i).

[5] Imperfect self-defense occurs when the defendant unreasonably believes he was justified in using deadly force and all other elements for self-defense are satisfied. ***Commonwealth v. Tilley***, 528 Pa. 125, __, 595 A.2d 575, 582 (1991).

weapon upon a vital part of the victim's body. ***Commonwealth v. Gardner***, 490 Pa. 421, 424, 416 A.2d 1007, 1008 (1980).

Our courts have held that "[w]hen a defendant raises the issue of self-defense, the Commonwealth bears the burden to disprove such a defense beyond a reasonable doubt." ***Commonwealth v. Bullock***, 948 A.2d 818, 824 (Pa.Super. 2008), ***appeal denied***, 600 Pa. 773, 968 A.2d 1280 (2009). The Commonwealth sustains its burden if it establishes at least one of the following:

> (1) The accused did not reasonably believe that he was in danger of death or serious bodily injury; (2) the accused provoked or continued the use of force; or (3) the accused had a duty to retreat and the retreat was possible with complete safety.

Commonwealth v. McClendon, 874 A.2d 1223, 1230 (Pa.Super. 2005).

We find the Commonwealth provided sufficient evidence to prove each element of first degree murder. Viewing the facts in the light most favorable to the Commonwealth, we find the Commonwealth disproved appellant's claim of self-defense beyond a reasonable doubt. Appellant opened fire on the unarmed victim. In fact, when the victim saw appellant had a gun he raised his arms and stated "Whoa, whoa. Hold on." Appellant shot the victim five times, with two of the shots penetrating the victim's head, a vital part of the body. ***See Commonwealth v. Chine***, 40 A.3d 1239, 1242 (Pa.Super. 2012) (specific intent may be inferred from the use of deadly force upon a vital part of the victim's body).

Appellant focuses on his own statement and his trial testimony wherein he claimed the victim was going to his car to get a gun. However, no one other than appellant heard the victim announce this and there was no evidence of a gun in the victim's car. Certainly, appellant could have retreated to the apartment if he believed the victim was leaving to go out to his car to retrieve a weapon. Instead, he pursued the victim, who had his back to appellant, and repeatedly fired at him. The first shot caused the victim to collapse on the pavement, which would have certainly stopped him so appellant could escape. Even if, as appellant claimed, he had seen the victim in possession of a gun at 7:00 p.m., some five hours before the murder, such hardly makes the victim the aggressor.

Appellant contends the verdicts cannot stand since inconsistent and conflicting statements of Commonwealth witnesses, Mason and Davis, were presented. The jury heard the inconsistencies between Mason's two statements and was able to evaluate them in deliberation. As stated previously, such an argument does not go to the sufficiency, but rather the weight of the evidence.

In regard to the conspiracy conviction, appellant claims that the testimony of the witnesses was conflicting and there was nothing to suggest an agreement between appellant and his co-defendant. (Appellant's brief at 36.) No relief is due.

A person is guilty of conspiracy with another person or persons if, with the intent of promoting or facilitating the commission of a crime, he:

> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S.A. § 903(a).

At the outset, as stated previously, it is exclusively for the jury to resolve conflicts in the evidence and to determine the weight to be accorded to each witness's testimony. ***Walsh***, ***supra***. We agree with the trial court that "an agreement between appellant and his co-defendant can be inferred from the coordination of their activity." (Trial court opinion, 4/23/12 at 10.)

> The jury was free to decide the interpretation of the words uttered by the co-defendant and could reasonably conclude that the shots fired by the defendant that began immediately after the co-defendant said, "Green light, hit him" showed that the two men were acting in concert. Furthermore, the defendant and the co-defendant's actions after the shooting further support that the men were acting in concert. Following the shooting, the defendant never attempted to contact the police or call for help, but instead ran into co-defendant's home the back way.

Id. Thus, we find the Commonwealth presented sufficient evidence to support the conspiracy conviction.

Appellant also argues that the charge of carrying a firearm without a license under 18 Pa.C.S.A. § 6106 was not supported by sufficient evidence. Appellant claims there is no evidence that the gun was concealed as he brought the gun outside. This specific issue was not presented in appellant's Rule 1925(b) statement and is therefore waived for purposes of appeal. Generally, any issues not raised in a Rule 1925(b) statement are deemed waived on appeal, whether or not they are raised in appellant's brief. ***Commonwealth v. Lord***, 553 Pa. 415, 420, 719 A.2d 306, 309 (1998).

We now turn to appellant's contention that the verdicts were contrary to the weight of the evidence.

> A verdict is against the weight of the evidence "only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice." ***Commonwealth v. Cousar,*** 593 Pa. 204, 928 A.2d 1025, 1036 (2007). . . . [A] weight of the evidence claim is addressed to the discretion of the trial judge. It is the province of the jury to assess the credibility of witnesses, and a trial judge will not grant a new trial merely because of a conflict in the testimony or because he would have reached a different conclusion on the same facts, if he had been the trier of fact. . . . This Court's function on review is to determine whether, based upon a review of the record, the trial court abused its discretion rather than to consider the underlying question of weight of the evidence.

Commonwealth v. Vandivner, 599 Pa. 617, 630, 962 A.2d 1170, 1177-1178 (2009). "In criminal proceedings, the credibility of witnesses and weight of the evidence are determinations that lie solely with the trier of fact." ***Commonwealth v. King***, 959 A.2d 405, 411 (Pa.Super. 2008);

accord Commonwealth v. Jackson, 955 A.2d 441, 444 (Pa.Super. 2008) ("It is within the province of the fact-finder to determine the weight to be accorded each witness's testimony and to believe all, part, or none of the evidence introduced at trial."), ***appeal denied***, 600 Pa. 760, 967 A.2d 958 (2009).

Appellant essentially asks this court to view the evidence in his favor; such an argument is not pertinent to the weight of the evidence. Appellant claims that the victim was the aggressor. He also points to the fact that two witnesses did not immediately tell the police all they knew about the killing and did not initially tell police that appellant shot the victim after his co-conspirator stated "green light, hit him". (Appellant's brief at 40.) As stated in the aforementioned argument, the evidence presented demonstrated that his co-defendant's words were, in essence, a direction to shoot the victim, who was walking away from a verbal argument over a debt. The witnesses at trial were subject to extensive cross-examination, which exposed appellant's interpretation of the evidence. The jury resolved those credibility determinations in favor of the Commonwealth and convicted appellant. The trial court concluded that the verdict was not against the weight of the evidence, and we must agree. Accordingly, we find the trial court did not abuse its discretion in rejecting appellant's weight of the evidence claim.

The third issue suggests trial court error in failing to issue instructions on self-defense or imperfect self-defense. (Appellant's brief at 41.) At trial,

defense counsel requested the trial court provide instructions on voluntary manslaughter and heat of passion voluntary manslaughter. The trial court ruled that self-defense was not an issue in the trial and refused to instruct on appellant's claim of self-defense as justification for the killing or imperfect self-defense voluntary manslaughter which provides that a person who commits an intentional or knowing killing under an unreasonable belief that the killing was necessary to protect himself is guilty of voluntary manslaughter. (Notes of testimony, 1/21/11 at 128-129.) Before the jury was excused to deliberate, counsel objected only to the omission of the voluntary manslaughter charge. (Notes of testimony, 1/24/11 at 41-42.)

The standard of review used by appellate courts in reviewing a judge's decision as to jury instructions is well established. A court's charge to the jury will be upheld if it adequately and accurately reflects the law and was sufficient to guide the jury properly in its deliberations. "It has long been the rule in this Commonwealth that a trial court should not instruct the jury on legal principles which have no application to the facts presented at trial." ***Commonwealth v. Kendricks***, 30 A.3d 499, 507 (Pa.Super. 2011). ***See*** also ***Commonwealth v. Washington***, 547 Pa. 563, 692 A.2d 1024, 1029 (1997) (imperfect self-defense voluntary manslaughter charge warranted only when the evidence would support such a verdict).

In its opinion, the trial court finds appellant's complaint regarding self-defense waived. (Trial court opinion, 4/23/12 at 14.). In his brief,

appellant disputes the trial court's conclusion and suggests, without citation to authority, that his objection to the absence of a voluntary manslaughter charge necessarily preserves a claim that a self-defense charge should have be provided. (Appellant's brief at 45.)

In addressing this contention, we first note that, pursuant to the Rules of Criminal Procedure, "[n]o portions of the [jury] charge[,] nor omissions therefrom[,] may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate." Pa.R.Crim.P., Rule 647(B), 42 Pa.C.S.A. Appellant did not request a self-defense instruction at trial. This claim is waived. Pa.R.A.P. 302(a), 42 Pa.C.S.A. (issues not raised in the lower court are waived and cannot be raised for the first time on appeal).[6] Thus, we agree with the trial court that appellant has waived his challenge as he did not lodge specific objections at trial to the lack of a self-defense charge.

Additionally, we find no error in the trial court's refusal to instruct the jury on imperfect self-defense. Unreasonable belief voluntary manslaughter, or imperfect self-defense, exists where the defendant actually, but unreasonably, believed that deadly force was necessary. 18 Pa.C.S.A. § 2503(b); ***Commonwealth v. Marks***, 704 A.2d 1095, 1100 (Pa.Super. 1997), ***appeal denied***, 555 Pa. 687, 722 A.2d 1056 (1998). However, all

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[6] Further, as explained infra, as the evidence did not support imperfect self-defense, it did not support perfect self-defense.

other principles of self-defense must still be met in order to establish this defense. ***Commonwealth v. Broaster***, 863 A.2d 588, 596 (Pa.Super. 2004). The requirements of self-defense are statutory: "The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." 18 Pa.C.S.A. § 505(a). If "the defender did not reasonably believe deadly force was necessary [,] he provoked the incident, or he could retreat with safety, then his use of deadly force in self-defense was not justifiable." ***Commonwealth v. Fowlin***, 551 Pa. 414, 421, 710 A.2d 1130, 1134 (1998). A successful claim of imperfect self-defense reduces murder to voluntary manslaughter. ***Tilley***, 528 Pa. at 141–142, 595 A.2d at 582.

Herein, there was no evidence to support an instruction for imperfect self-defense. Appellant testified that he heard Jermaine engaged in an argument with the victim outside. Appellant retrieved his .38 caliber revolver and went outside. While appellant claims that he believed the victim was going to get his gun, the victim had not yet reached his vehicle, which was some 30 feet away, or even physically opened the car door. Appellant admitted that the victim was unarmed when he was shot. Appellant could have returned inside the house but instead he chased the unarmed victim toward his car; appellant failed in his duty to retreat. Further, appellant incapacitated the victim with his first shot and then shot

him four more times all without the victim drawing a weapon. Appellant could have safely retreated to the house even after the first shot. Thus, any assertion that a physical attack was immediately forthcoming was negated. Nor does appellant's contention that he had seen the victim in possession of a gun hours before the murder constitute a threat of force on the victim's part. Accordingly, we would agree with the trial court that the facts are inconsistent with the conclusion that appellant possessed a real, but mistaken belief that his life was in imminent danger.

The final issue presented is a claim of prosecutorial misconduct. Appellant contends that the prosecutor committed misconduct by eliciting from Mason the reason why he waited until the next day, September 19, 2009, to tell the police everything he knew. We agree with the Commonwealth that this claim is waived as appellant did not object to the prosecutor's questions. Rather, only counsel for his co-defendant objected and appellant did not join the objection. Accordingly, this motion by a co-defendant did not preserve the claim for defendant. ***See Commonwealth v. Cannady***, 590 A.2d 356, 362 (Pa.Super. 1991) ("The defendant did not object to this remark by the prosecutor, nor did he join in co-defendant DiTullio's objection. Thus, this issue is waived for purposes of appeal"); ***Commonwealth v. Woods***, 418 A.2d 1346, 1352 (Pa.Super. 1980) ("the attorney who objected to the testimony and moved to strike was counsel for co-defendant, James Miller. Counsel for the other co-defendant,

Bernard Miller, joined in the objection and motion. Counsel for appellant never joined in these objections and therefore waived the argument").

Appellant also argues that the prosecutor erred in her closing speech when she asked the jury to consider sympathy for the victims and to send a message to the victim's family.

> I wanted to just end with a few words. It's interesting sitting on a jury. I am sure it is. I never actually got to do it. But one of the unique things that you guys actually have the power to do and unique position to do it … it is a unique position. I am sure many of you have not talked to people or know people that have sat on juries. You have the ability to go back there and to do for the decedent's family, for really. . . the reason you are here is you have to go back and to do justice to find the truth in it. You don't . . . and that's something that no one else has the power to do because no matter how many interviews or words Detective Watkins can, you know, undertake and write down, how many words the witnesses come in here and say and how many words I speak or her Honor speaks or either of the defense lawyers speak, you guys with one word, one word can bring justice to this case.

Notes of testimony, 1/21/11 at 222-223. Appellant's attorney objected and following a brief sidebar, the trial court provided a curative instruction. (***Id.*** at 224-226.)

> Members of the jury, before I excuse you, which I'm about to do, I will tell you that to the extent that it was at all implored of you or requested of you that you make a decision based on sympathy for or consideration for the victim's family, that is not the law, nor the basis on which you will be reaching your decision. You will make your decision based on the evidence as it was presented to you and which you accept to the extent that it meets the

> Commonwealth’s burden of proof beyond a reasonable doubt and on the law as I give it to you.

Id. at 225-226.

Appellant now argues that the instruction was inadequate to cure the alleged damage from the prosecutor’s comments. However, this issue is waived because appellant did not raise a prompt objection to the curative instruction. Pa.R.A.P., Rule 302(a) (issues not raised in the lower court are waived and cannot be raised for the first time on appeal). Counsel for the defendant did not object to this curative instruction, nor did she request the court give any further curative instruction. ***Commonwealth v. Jones***, 542 Pa. 464, __, 668 A.2d 491, 508 (1995) (when an objection is sustained and a cautionary instruction is given, and the defendant fails to object to the cautionary instruction or to request any further instruction, counsel is presumed to be satisfied with the cautionary instruction and any prejudice is cured, because we further presume that the jury follows the court's instructions), ***cert. denied***, 519 U.S. 826 (1996).

Judgment of sentence affirmed.

Judgment Entered.

Prothonotary

Date: 5/24/2013

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[7] To the extent that our rationale differs from that of the trial court is of no moment because we may affirm the ruling of the court below for any reason consistent with established statutory and/or case law.