

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JEROME ARMSTRONG,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1635 EDA 2011

Appeal from the Judgment of Sentence entered June 2, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0002824-2010

BEFORE: OLSON, WECHT AND COVILLE,* JJ.

MEMORANDUM BY OLSON, J.:

FILED MAY 23, 2013

Appellant, Jerome Armstrong, appeals from the judgment of sentence entered June 2, 2011, committing him to an aggregate term of five to 10 years' imprisonment, followed by five years' probation, for his convictions of possession with intent to deliver a controlled substance ("PWID"),¹ knowingly or intentionally possessing a controlled substance,² possessing drug paraphernalia,³ possessing a firearm when prohibited to do so,⁴

¹ 35 Pa.C.S.A. § 780-113(a)(30).

² 35 Pa.C.S.A. § 780-113(a)(16).

³ 35 Pa.C.S.A. § 780-113(a)(32).

⁴ 18 Pa.C.S.A. § 6105.

*Retired Senior Judge assigned to the Superior Court.

possessing a firearm with an altered manufacture's number,⁵ and possession of an instrument of crime ("PIC").⁶ We affirm.

The trial court set forth the relevant factual and procedural background of this matter as follows.

Prior to trial, Appellant litigated a [m]otion to [s]uppress [p]hysical [e]vidence before [the trial court], which testimony was incorporated and introduced at Appellant's trial. At the [s]uppression hearing, the Commonwealth called Philadelphia Police Officer Brad Mitchell to the stand. Officer Mitchell testified that, on February 5, 2008, he received information from a confidential informant ("CI") regarding sales of crack cocaine, to wit, that a black male nicknamed "Duck", sells "bullets" – capsules that contain crack cocaine – out of a property located [on] Marshall Street. Based on this information, Officer Mitchell and his partner, Officer McCutcheon, searched the CI for any drugs or money, which search was negative, and provided him with a pre-recorded \$20[.00] bill. That afternoon, Officer Mitchell transported the CI to [] Marshall Street, and from a distance of approximately seventy (70) feet, watched the CI walk to the front door of [] Marshall Street. Officer Mitchell testified that, as the CI was walking to the property, a female approached. Officer Mitchell then observed Appellant stick his head out the third floor window, and engage in a brief conversation with the CI and female. At that point, the CI and female went to a lot adjacent to the building. Officer Mitchell testified that Appellant then exited the building, approached the CI and female, and handed something to each of them. Officer Mitchell also observed the CI and female each hand Appellant money. Appellant then walked back to [] Marshall Street, met with two other males outside, and used a key to enter the premises. The CI walked back to where Officer McCutcheon was stationed, and turned over four (4) capsules containing crack

⁵ 18 Pa.C.S.A. § 6110.2.

⁶ 18 Pa.C.S.A. § 907.

cocaine.⁷ Officer Mitchell testified that he never lost sight of the CI at any point between the interaction with Appellant and his returning to Officer McCutcheon.

After making the above observations, Officer Mitchell returned to the police station and obtained a search and seizure warrant for the third floor of [] Marshall Street. On February 6, 2008, at approximately 1:40 p.m., he returned to that location to conduct surveillance prior to execution of the warrant. While doing this, Officer Mitchell observed two males, later identified as Darryl Brooks and Henry Armstrong, standing in front of [] Marshall Street and walking back and forth from the adjacent lot and the front of the premises. A few minutes later, Officer Mitchell observed a black male walk up to Darryl Brooks and hand him U.S. currency; Mr. Brooks retrieved a purple container from his jacket, took something out of the container, and handed it to the male. Henry Armstrong then approached Mr. Brooks, who handed him money, and Mr. Armstrong entered [] Marshall Street with a key. Henry Armstrong returned two minutes later and handed something to Mr. Brooks. At that point, Officer Mitchell relayed his observations to back-up officers and advised them to stop these two males. Officer Mitchell and back-up officers announced "police" and Henry Armstrong took off running.⁸

Officer Mitchell stopped Mr. Brooks outside [] Marshall Street, whereupon Mr. Brooks started yelling about drugs and screaming profanities, drawing a crowd. Officer Mitchell testified that Mr. Brooks was twenty (20) feet away from [] Marshall Street at the time, and he continued to yell for five (5) to six (6) minutes. Officer Mitchell recovered from Mr. Brooks the purple container, which contained four (4) capsules of crack cocaine. Police recovered from Henry Armstrong a set of keys and four (4) capsules of crack cocaine. At that time, Henry Armstrong

⁷ Officer Mitchell field-tested the capsules, which came up positive for cocaine base, and placed them on a property receipt.

⁸ Mr. Armstrong was apprehended nearby, at Girard and Marshall Streets.

also indicated that he lived in the second floor apartment at [] Marshall Street, with "his brother".⁹

Armed with the above information and "in fear of everything that was going on with [Mr. Brooks] yelling and screaming and everything", Officer Mitchell went to [] Marshall Street and knocked and announced, "police". Officer Mitchell testified that he used the key recovered from Henry Armstrong to access the front door of the property, and walked up to the third floor apartment. There, he knocked on the door to the apartment and announced "police". The door was already ajar when he knocked. Officer Mitchell was met by a male, who told him, "naw, them guys stay on the second floor". Officer Mitchell looked inside the apartment on the third floor but did not see any contraband; he testified, "It was basically spotless. There was nothing up there". Officer Mitchell descended to the second floor apartment, where he knocked and announced "police". Officer Mitchell testified that he waited approximately twenty (20) seconds before using the key recovered from Henry Armstrong, to enter the apartment. Once inside, Officer Mitchell encountered Appellant in the first bedroom off the hallway.¹⁰ Officer Mitchell testified that when he saw Appellant, he recognized him as the same person he observed interacting with the CI and female on the previous day. In plain view, on the window sill of the hall outside Appellant's bedroom, Officer observed two handguns sitting on top of a white plastic bag. Officer Mitchell summoned back-up officers to the apartment; when they arrived, he retreated to the police station to obtain a search and seizure warrant for the second floor apartment.

Officer Mitchell returned with a warrant approximately two hours later. Executing the warrant, Officer Mitchell recovered the two handguns from the windowsill – a .380 and a nine-millimeter – both of which were loaded with ten (10) live rounds in their magazines; the nine-millimeter contained an additional

⁹ The implication being Jerome Armstrong, Appellant herein.

¹⁰ Officer Mitchell testified that the apartment door opens up to [a] large room containing a kitchen and living space, connected to a hallway, which leads to a first bedroom, followed by a bathroom, and ends at a rear bedroom. Across the hall opposite the bathroom, there is a window.

live round in its chamber. Officer Mitchell also recovered the white plastic bag, which contained two clear baggies. The first baggie contained fifty-seven (57) capsules of crack cocaine. The second baggie contained eighty-nine (89) capsules of crack cocaine, in addition to several smaller baggies containing numerous new and unused capsules and clear pink packets. Officer Mitchell testified that the capsules of crack cocaine he recovered were the exact same type of capsules that the CI had purchased from Appellant on the previous day. Officer Mitchell also recovered \$186[.00] in U.S. currency from Appellant's pants pocket¹¹ along with a set of keys that opened the front door to the building as well as the door to the second floor apartment. Additionally, from the bedroom Appellant was in, Officer Mitchell recovered three pieces of identification containing Appellant's name, and a lease agreement in Appellant's name for the second floor apartment at [] Marshall Street.

Based on the above evidence, [the trial court] denied Appellant's motion to suppress the physical evidence. At the ensuing trial, in addition to testimony from the suppression hearing, the Commonwealth introduced the physical evidence recovered from Appellant, the CI, Messrs. Armstrong & Brooks, and the evidence recovered from Appellant's apartment. Additionally, the Commonwealth introduced stipulated ballistics evidence establishing that the two loaded firearms recovered from Appellant's apartment were operable, and one of them – the nine-millimeter – had an obliterated serial number. Finally, the Commonwealth introduced by stipulation, Court of Common Pleas Docket No. 0905191-1997, reflecting a prior enumerated conviction under the Uniform Firearms Act, which rendered Appellant ineligible to possess a firearm.

Appellant thereafter took the stand. He testified that on February 5, 2008, at approximately 11:30 a.m., he was lying in his bed recovering from a gunshot wound to his stomach, which he had suffered a few months earlier, in mid-November 2007. Appellant testified that "it was, like, sort of a bedrest that I was on". Despite moving into the second floor apartment one month earlier, in January 2008, Appellant maintained, "[I]t was no way

¹¹ The cash was comprised of three (3) \$20[.00] bills; four (4) \$10[.00] bills; eleven (11) \$5[.00] bills; and thirty-one (31) \$1[.00] bills.

that officer seen me because I was in my room. But, also, I know I couldn't move around outside, what he said that I supposed to had done, because I was on a cane at the time." Appellant also declined ownership of the guns, crack cocaine, and packaging materials recovered from his apartment.

On rebuttal, the Commonwealth introduced stipulated evidence concerning Appellant's prior conviction for robbery, for *crimen falsi* purposes.

Upon consideration of the above evidence, [the trial court] found Appellant guilty of [the aforementioned crimes].

Trial Court Opinion, 10/20/2011, at 2-6 (footnotes in original).

The trial court sentenced Appellant on June 2, 2011. On June 16, 2011, Appellant filed a timely notice of appeal. Thereafter, on August 9, 2011, the trial court ordered Appellant to submit a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant submitted a timely concise statement, and on October 20, 2011, the trial court issued its Rule 1925(a) opinion. Therefore, this appeal is ripe for our consideration.

Appellant presents three issues on appeal:

Whether Appellant's [m]otion in [l]imine should have been granted in the nature of a discharge of the case insofar as the Commonwealth failed to disclose and provide the first search warrant in its entirety which was material to the Appellant's defense.

Whether the Appellant's [m]otion to [s]uppress was improperly denied as the police's actions violated the knock and announce rule.

Whether the Appellant should have been convicted of PWID, PIC, [and] [p]ossession of a [f]irearm as the Commonwealth failed to present evidence that the Appellant possessed or constructively possessed drugs, firearms and drug paraphernalia.

Appellant's Brief at 2.

Appellant's first issue on appeal challenges the trial court's denial of his motion *in limine*. Appellant's Brief at 9-10. In its Rule 1925 opinion, the trial court explains that Appellant's concise statement filed pursuant to Rule 1925 was so vague, the trial court was unable to identify what issue Appellant referred to with regard to his motion *in limine*. Trial Court Opinion, 10/20/2011, at 10-11. Consequently, the trial court suggests that Appellant has waived appellate review of his first issue for failure to comply with the requirements of Rule 1925. We agree.

Specifically, our Court has held that,

[a]n appellant's concise statement must properly specify the error to be addressed on appeal. ***Commonwealth v. Dowling***, 778 A.2d 683 (Pa. Super. 2001). In other words, the Rule 1925(b) statement must be "specific enough for the trial court to identify and address the issue [an appellant] wishe[s] to raise on appeal." ***Commonwealth v. Reeves***, 907 A.2d 1, 2 (Pa. Super. 2006), *appeal denied*, 919 A.2d 956 (Pa. 2007). "[A] [c]oncise [s]tatement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no [c]oncise [s]tatement at all." ***Id.*** The court's review and legal analysis can be fatally impaired when the court has to guess at the issues raised. ***Id.*** Thus, if a concise statement is too vague, the court may find waiver. ***Id.***

Commonwealth v. Hansley, 24 A.3d 410, 415 (Pa. Super. 2011) (parallel citation omitted).

In this matter, Appellant's concise statement claims that, "Appellant's [m]otion in [l]imine should have been granted." Concise Statement, 8/29/2011. However, review of the certified record reveals that, within this

case Appellant did not file a written motion *in limine*, and Appellant did not orally raise or argue any motion that he introduced or titled as a “motion *in limine*.” Therefore, we understand the trial court’s inability to express its opinion on the issue, as the trial court was unaware of what motion it allegedly decided in error. Under such circumstances, we agree with the trial court that Appellant waived review of the issue. **See Hansley**, 24 A.3d at 415.

Furthermore, we note that even if it had not been waived, Appellant’s appeal with regard to his “motion *in limine*” lacks merit. Specifically, within his brief Appellant refers to the evidentiary motion argued immediately prior to the commencement of his trial as his “motion *in limine*.” Appellant’s Brief at 9-10. Within that motion, Appellant requested the discharge of his case based upon an alleged **Brady** violation.¹² The trial court denied that motion, and, on appeal, Appellant argues that the denial was an error of law. We disagree.

Under **Brady** and the Pennsylvania Rules of Criminal Procedure, the Commonwealth “shall disclose to the defendant’s attorney all...evidence favorable to the accused that is material either to guilt or punishment, and is within the possession or control of the attorney for the Commonwealth.”

¹² Referring to **Brady v. Maryland**, 373 U.S. 83 (1963).

Pa.R.Crim.P. 573(B)(1)(a); **see *Brady***, 373 U.S. at 87. As our Supreme Court has explained:

[u]nder ***Brady*** and the decisional law it has spawned, a prosecutor has an obligation to disclose all exculpatory information material to the guilt or punishment of an accused, including evidence of an impeachment nature. Thus, to establish a ***Brady*** violation, an accused must prove three elements:

- [1] the evidence at issue was favorable to the accused, either because it is exculpatory or because it impeaches;
- [2] the evidence was suppressed by the prosecution, either willfully or inadvertently; and
- [3] prejudice ensued.

The evidence allegedly withheld must have been material evidence that deprived the defendant of a fair trial. Favorable evidence is material, and constitutional error results from its suppression by the government if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. . . . A reasonable probability of a different result is shown when the government's suppression of evidence undermines confidence in the outcome of the trial. . . . [However], the mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish materiality in the constitutional sense.

Commonwealth v. Hutchinson, 25 A.3d 277, 310 (Pa. 2011) (internal quotations, citations, corrections, and emphasis omitted).

Appellant argues that the Commonwealth committed a ***Brady*** violation when it failed to tender to the defense an affidavit of probable cause attached to the first search warrant secured by Officer Mitchell. Appellant's Brief at 9-10. That affidavit of probable cause allegedly detailed the transaction that Officer Mitchell observed on February 5, 2008 between Appellant and the CI. ***Id.*** The search warrant, however, was never executed. Appellant claims that the affidavit of probable cause attached to

the unexecuted warrant was material because the affidavit described someone markedly different from him. *Id.* Therefore, Appellant believes that the affidavit would have bolstered his claim that he was not the individual observed in the February 5, 2008 transaction with the CI. *Id.*

The Commonwealth admits to having lost and therefore not producing the affidavit. Commonwealth's Brief at 8-9. The Commonwealth argues, however, that despite the loss, its failure to produce the affidavit does not result in a **Brady** violation, and particularly not one warranting discharge of the case. *Id.* The Commonwealth explains that the warrant attached to the February 5, 2008 affidavit was never executed because, the next day Officer Mitchell applied for and secured a second warrant, this time for the second floor apartment. *Id.* at 8-9. The second warrant was both executed and produced to Appellant as part of discovery. *Id.* at 9. Significantly, Officer Mitchell testified that the information set forth in the affidavit attached to the second warrant was identical to the original affidavit, but for some additional detail not involving the description of those observed on February 5, 2008. N.T., 1/18/2011, at 1-23 & 47-48. Consequently, the Commonwealth argues that, regardless of its failure to produce the first affidavit of probable cause, Appellant had Officer Mitchell's description of the individuals involved in the transaction with the CI on February 5, 2008 through production of the second affidavit of probable cause. Commonwealth's Brief at 9. Therefore, the Commonwealth argues that the absence of the first affidavit of probable

cause was not “material” to Appellant’s case and consequently did not result in a **Brady** violation. **Id.** at 9-10.

We agree. Indeed, we remind Appellant that for information to be material within the terms of **Brady**, the withheld information must have a reasonable probability that it would have changed the result of Appellant’s trial. **Hutchinson**, 25 A.3d at 310. Simply helping the defense is not enough. **Id.** In this matter, Appellant did not have the first affidavit of probable cause, but he did have the second one, which included everything that was on the first. Reliant upon that second affidavit of probable cause, Appellant had the opportunity to, and indeed did, argue that he was not the individual observed in the transaction with the CI. Having found him guilty, the trial court obviously did not believe Appellant’s testimony. On appeal, Appellant fails to explain how production of the first affidavit of probable cause would have significantly changed his defense, such that the trial court would have found him credible. Therefore, even if it had not been waived, Appellant’s first issue on appeal lacks merit.

Appellant’s second issue on appeal argues that the trial court erred in denying his motion to suppress because the police violated the “knock and announce rule” set forth at Pa.R.Crim.P. 207. Appellant’s Brief at 11-12.

In reviewing the denial of a motion to suppress, our responsibility is to determine whether the record supports the suppression court's factual findings and the legitimacy of the inferences and legal conclusions drawn from those findings. If the suppression court held for the prosecution, we consider only the evidence of the prosecution's witnesses and so much of the

evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted. When the factual findings of the suppression court are supported by the evidence, the appellate court may reverse if there is an error in the legal conclusions drawn from those factual findings.

Commonwealth v. Lopez, 609 A.2d 177, 178-179 (Pa. Super. 1992)

(citation omitted).

With regard to the knock and announce rule, Pennsylvania Rule of Criminal Procedure 207 provides:

(A) A law enforcement officer **executing a search warrant** shall, before entry, give, or make reasonable effort to give notice of his identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require his immediate forcible entry.

(B) Such officer shall await a response for a reasonable period of time after his announcement of identity, authority and purpose, unless exigent circumstances require his immediate forcible entry.

(C) If the officer is not admitted after such reasonable period, he may forcibly enter the premises and may use as much physical force to effect entry therein as is necessary to execute the search.

Pa.R.A.P. 207 (emphasis added). Significantly, as expressly set forth by the emphasized language above, our Court has held that the knock and announce rule only applies when police are executing a search warrant. **See *Commonwealth v. Richter***, 791 A.2d 1181, 1186 (Pa. Super. 2002) (*en banc*) (“The [knock and announce] rule has no application to the within case in which there was no search warrant and in which the police entered the residence at issue without a warrant under exigent circumstances.”)

In this matter, Officer Mitchell entered the premises and proceeded to the third floor apartment for which he had a search warrant. Once at that apartment, its occupant informed Officer Mitchell that he had the wrong floor, and that the officer was looking for the people in the second floor apartment. Accordingly, Officer Mitchell proceeded to the second floor apartment, this time without a warrant. Once at that apartment, Officer Mitchell knocked on the door, announced "police", waited 20 seconds, and then entered the apartment using a key recovered from Henry Armstrong, one of the previously arrested individuals.

On appeal, Appellant argues that Officer Mitchell violated the knock and announce rule when entering the second floor apartment because, according to Appellant, Officer Mitchell did not give sufficient information about his purpose at the apartment, and did not wait long enough before entering the apartment, especially considering Appellant's medical condition and his inability to swiftly get to the door. Appellant's Brief at 11-12. Appellant's argument, however, is misplaced because, at that time of entry into the second floor apartment, Officer Mitchell was not attempting to execute a search warrant. Rather, Officer Mitchell entered the second floor apartment under exigent circumstances, not with the intention of executing

a warrant.¹³ Indeed, after entering the second floor apartment, Officer Mitchell left the premises and returned, two hours later, with an appropriate warrant. Consequently, Appellant's reliance on Rule 207 is misplaced and his appeal of the trial court's denial of his motion to suppress lacks merit.

Appellant's final issue challenges the sufficiency of the evidence supporting his convictions for PWID, PIC, and possession of a firearm. Appellant's Brief at 12-13. We consider challenges to the sufficiency of the evidence under a well-accepted standard of review.

The standard we apply in reviewing the sufficiency of 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 factfinder 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 that of 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 a 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

¹³ Officer Mitchell testified, and the trial court concluded, that entry into the second floor apartment was made under exigent circumstances. Although Appellant baldly asserts that such exigent circumstances did not exist in this matter, he has not independently challenged this determination and his assertion is undeveloped. **See** Appellant's Brief at 12. Therefore, we need not consider the circumstances under which Officer Mitchell entered the second floor apartment.

the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Muniz, 5 A.3d 345, 348 (Pa. Super. 2010) (internal citations and quotations omitted), *appeal denied*, 19 A.3d 1050 (Pa. 2011).

Appellant's sufficiency challenge emphasizes that each of Appellant's challenged convictions requires the Commonwealth to present evidence that Appellant actually or constructively possessed some item of contraband: PWID requires possession of a certain amount of a controlled substance; PIC requires possession of an instrument of crime; and possession of a firearm requires just that, the unauthorized possession of a firearm.¹⁴ Appellant's challenge to the sufficiency of the evidence claims that the Commonwealth failed to adequately prove that Appellant constructively possessed the contraband necessary to support his convictions.

Under Pennsylvania law,

[c]onstructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as "conscious dominion." We subsequently defined "conscious dominion" as the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Commonwealth v. Thompson, 779 A.2d 1195, 1199 (Pa. Super. 2001) (internal citations and quotations omitted).

¹⁴ **See** 35 Pa.C.S.A. § 780-113(a)(30); 18 Pa.C.S.A. § 907; and 18 Pa.C.S.A. § 6105.

Appellant challenges the sufficiency of the evidence presented by the Commonwealth to establish his constructive possession of the contraband, arguing that the drugs, firearm, and paraphernalia found in this matter were not found on his person, but were found in the bedroom of another occupant of the apartment. Appellant's Brief at 12-13. Considering Appellant's medical condition, and his alleged inability to ambulate easily, Appellant claims that it was implausible for the trial court to conclude that he had the ability to exercise control over the illegal materials. ***Id.*** Consequently, Appellant claims that the evidence was insufficient to establish that Appellant constructively possessed any of the contraband necessary to support his convictions for PWID, PIC, and possession of a firearm.

The record, however, belies Appellant's argument. Specifically, according to police testimony, which the trial court found to be credible, the day prior to his arrest, police observed Appellant outside the apartment building, engaging in a drug transaction with a CI. In that transaction, Appellant sold the CI four capsules of cocaine. The next day, police searched Appellant's apartment, wherein dozens of matching capsules of cocaine, drug paraphernalia, and firearms were recovered from a windowsill outside of Appellant's bedroom. Police also recovered a lease agreement for the apartment, as well as multiple pieces of identification, all of which bore Appellant's name. Considering the evidence and all reasonable inferences in the light most favorable to the Commonwealth, we agree with the trial court

that there was more than sufficient evidence to support Appellant's constructive possession of the aforementioned items of contraband.¹⁵ Appellant's third issue on appeal lacks merit.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Karen Gambetta", written over a horizontal line.

Prothonotary

Date: 5/23/2013

¹⁵ Furthermore, we note that Appellant's contention asserting that he was too ill or frail to possess or constructively possess the contraband addresses the weight of the evidence, not its sufficiency. **See e.g. Commonwealth v. Murray**, 597 A.2d 111 (Pa. Super. 1991) (distinguishing challenges to the sufficiency of the evidence from challenges to the weight of the evidence). Any appeal of the weight of the evidence, however, was waived for failure to preserve the challenge within the requirements of Pennsylvania Rule of Criminal Procedure 607. **See** Pa.R.Crim.P. 607.