

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

RICARDO HAIRSTON

Appellant

No. 1811 EDA 2013

Appeal from the Judgment of Sentence January 25, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0010427-2010

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY OTT, J.:

FILED JULY 23, 2014

Ricardo Hairston appeals from the judgment of sentence imposed on January 25, 2013, in the Court of Common Pleas of Philadelphia County, made final by the denial of post-sentence motions on May 21, 2013. On December 10, 2012, a jury convicted Hairston of one count of carrying a firearm without a license, two counts of possession with intent to deliver a controlled substance (heroin) ("PWID"), one count of knowingly and intentionally possessing a controlled substance (heroin), and one count of criminal conspiracy.¹ The court imposed an aggregate sentence of 18½ to

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 6106(a)(1), 35 P.S. § 780-113(a)(30), 35 P.S. § 780-113(a)(16), and 18 Pa.C.S. § 903, respectively.

37 years' incarceration. On appeal, he raises the follow issues: (1) the trial court erred in consolidating the present case with Hairston's homicide case; (2) the court erred in not granting a mistrial after the Commonwealth elicited hearsay testimony from a witness; and (3) the court abused its discretion at sentencing. Based upon the following, we affirm.

The trial court set forth the factual background as follows:

At trial, the Commonwealth presented the testimony of Richard Carr, Mercedes Dade, Melissa Thomas, Marcus Smith, Dr. Edwin Lieberman, Philadelphia Police Officers William Hill, Jr., William Trenwith, Jacqueline Davis, Charles Waters, John Krewer, Torin Saunders, Edward Eric Nelson, and George Burgess, Philadelphia Police Detectives Linda Carter and Francis Kane, and, by stipulation, the testimony of Kandis Gilliard and Patrick Raytik. Viewed in the light most favorable to the Commonwealth as the verdict winner, their testimony established the following.

On January 1, 2010, at approximately 10:20 p.m., Philadelphia Police Officer William Hill and Officer Kimmel were patrolling the area of Southwest Philadelphia when they received a radio call that shots had been fired near the intersection of 64th Street and Garman Street. When they arrived at the location, Officers Hill and Kimmel discovered a white Cadillac that had crashed into another vehicle. They noticed that there were bullet holes in the windows of the Cadillac and discovered Ronald Dade, who had been shot, slumped over in the driver's seat of the car. Officers Hill and Kimmel transported Mr. Dade to the University of Pennsylvania Hospital in their patrol car. Mr. Dade had been shot seven times, and was pronounced dead at 10:53 p.m. From Mr. Dade's body, the police recovered two clear glass vials containing marijuana and \$327 in cash.

Richard Carr was visiting his fiancée and his children at her home on Dicks Avenue between 63rd Street and 64th Street at the time the shooting occurred. As he was walking into his fiancée's house, Mr. Carr observed a black male standing in the middle of Dicks Avenue. He then saw a white Cadillac pull up on Dicks Avenue near 63rd Street. The black male leaned into the

passenger side window and began talking to the driver of the Cadillac. Mr. Carr then went into his fiancée's house and heard gunshots coming from outside. After a few minutes, he looked out a window and saw that the police had arrived and were gathered down the block where the white Cadillac had crashed into another vehicle. Mr. Carr approached the police officers and told them where he had seen the Cadillac parked prior to the crash. The police searched that area and recovered five fired cartridge casings. Two fired cartridge casings were also recovered from the interior of the Cadillac.

Homicide detectives began investigating Mr. Dade's murder. They learned that Marcus Smith, who was serving a federal sentence for robbery, had told federal authorities that he had information regarding the murder. On February 17, 2010, Mr. Smith met with Homicide Detectives Francis Kane and Joseph Marano. Mr. Smith told Detective Kane and Detective Marano that a couple of weeks after Mr. Dade's death, Mr. Smith had run into [Hairston] on the street. Mr. Smith told the detectives that [Hairston] had said to him, "you know the Old Head that got killed on the corner, that's my work." [Hairston], who had dealt heroin and cocaine for Mr. Dade, told Mr. Smith that Mr. Dade had given [Hairston] a bad batch of drugs and that he would not take the bad batch back. [Hairston] told Mr. Smith that he shot Mr. Dade, took money and jewelry off of Mr. Dade's body, and then fled the scene. Mr. Smith told Detective Kane and Detective Marano that he had seen [Hairston] carry three different guns on prior occasions, including a .9 millimeter handgun. Homicide Detectives examined Mr. Dade's phone records and discovered that immediately prior to his murder at 10:20 p.m. on January 1, 2010, Mr. Dade had received six incoming phone calls from a cell phone registered to [Hairston]'s mother, Kim Corbett. All six calls were placed between 9:36 p.m. and 10:09 p.m.

On March 31, 2010, at approximately 1:20 p.m., Philadelphia Police Officers Charles Waters and Officer Baker were patrolling the Southwest Philadelphia area when they observed a black Buick with three black male occupants make a right turn onto 55th Street without signaling. The officers activated their lights and sirens, and the driver of the Buick pulled over. As Officer Waters and Officer Baker approached the vehicle on foot, the driver of the Buick drove away at a high rate of speed. Officers Waters and Baker returned to their vehicle

and began pursuing the Buick, radioing the Buick's license plate number and description over the police radio. They then lost sight of the vehicle.

Philadelphia Police Officers John Krewer and Torin Saunders were at the corner of 58th Street and Elmwood Street when they heard the description of the Buick over the police radio. Officers Krewer and Saunders then spotted the Buick travelling at an extremely high rate of speed down 58th Street, and began pursuing the car. Officers Krewer and Saunders caught up to the Buick, which had stopped in the middle of the 2500 block of Robinson Street. At that time, the passengers that Officers Waters and Baker had observed in the Buick were gone, and only the driver remained inside the vehicle. The driver then sped off, and Officers Krewer and Saunders lost sight of the vehicle.

Officer Krewer and Officer Saunders exited their patrol car and began searching for the passengers of the car. Officer Krewer observed several people looking in the direction of an alleyway, and he and Officer Saunders entered the alleyway. At that time, both Officer Krewer and Officer Saunders heard a "banging" noise. Officer Krewer then encountered a man, later identified as Darnell Jenkins, walking away from an abandoned house adjacent to the alleyway, and [Hairston], who was standing approximately five to seven feet away from Mr. Jenkins. Laying on the ground next to [Hairston]'s feet was a silver handgun. Officer Krewer told both men to get on the ground, which they did. Officer Saunders performed a pat-down search of [Hairston] and found a plastic bag in his pocket. The plastic bag contained 64 packets of heroin, each of which was stamped with the word "Goodfellas." The heroin contained in the packets weighed a total of 752 milligrams.

Officer Saunders then noticed that, on a boarded-up window of the abandoned house next to the alleyway, a piece of the board was pushed "down and out." Remembering the banging noise that he and Officer Krewer had heard when he entered the alleyway, Officer Saunders looked down into the window. Laying on the floor immediately under the window were a .9 millimeter Luger handgun and a revolver. Both Mr. Jenkins and [Hairston] were arrested. Ballistics tests done on the fired ca[r]tridge casings recovered from the scene of Mr. Dade's murder showed that Mr. Dade had been killed by the .9

millimeter Luger handgun that was recovered from the abandoned house.

Police recovered the Buick on the 2500 block of South Wanamaker Street. From the center console of the car, police recovered a plastic bag containing 67 packets of heroin, each of which was stamped with the word "Goodfellas," as well as an additional plastic bag containing chunks of crack cocaine. The heroin contained in the packets weighed a total of 1.378 grams.⁵

⁵ The Commonwealth did not charge [Hairston] with possession of the crack cocaine, and therefore, the weight of the crack cocaine was not proven during the trial.

Trial Court Opinion, 8/12/2013, at 2-6 (record citations and some footnotes omitted).

As stated above, on December 10, 2012, a jury convicted Hairston of one count of carrying a firearm without a license, two counts of PWID (heroin), one count of knowingly and intentionally possessing a controlled substance (heroin), and one count of criminal conspiracy.² On January 25, 2013, the court imposed a sentence of seven and one-half to 15 years' incarceration on the PWID charge, seven and one-half to 15 years' imprisonment on the conspiracy charge, and three and one-half to seven

² At Docket No. CP-51-CR-0010002-2011, which had been consolidated with the present matter at trial, the jury did not reach a verdict on any of the charges, that is, one count of first-degree murder, one count of third-degree murder, one count of carrying a firearm without a license, and one count of possessing an instrument of crime.

years' incarceration on the carrying a firearm without a license conviction.³ All sentences were to run consecutively, which resulted in an aggregate sentence of 18½ to 37 years' incarceration. Hairston filed post-sentence motions, which were denied on May 21, 2013. This timely appeal followed.⁴

In Hairston's first issue, he complains the trial court erred in consolidating the present case (Docket No. CP-51-CR-0010427-2010) with his homicide case (Docket No. CP-51-CR-0010002-2011). Specifically, he states:

[E]vidence concerning the drug and gun charges at CP-51-CR-0010427-2010 was clearly admissible in a separate trial to show access to the murder weapon and to explain its discovery. The lower court, in turn, argues that evidence of the homicide would be admissible in a separate trial for the charge at CP-51-CR-0010427-2010 to show that [Hairston] constructively possessed the murder weapon on March 31, 2010. This argument, however, ignores the fact that the murder weapon was only one of three firearms recovered that day, one of which [was] lying next to [him] at the time of his arrest. The possession of any one of these weapons was sufficient to establish the offense of Firearms Not to be Carried Without a License. Thus, the probative value of demonstrating access to the murder weapon in no way outweighed its prejudicial effect.

³ Hairston's conviction for knowingly and intentionally possessing a controlled substance merged for sentencing purposes.

⁴ On June 11, 2013, the trial court ordered Hairston to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Hairston filed a concise statement on June 27, 2013. The trial court issued an opinion pursuant to Pa.R.A.P. 1925(a) on August 12, 2013.

Hairston's Brief at 13. Moreover, Hairston argues the trial court's "assertion that evidence of the murder supported an inference that [he] possessed the same weapon on March 31, 2010 rests entirely on the premise that evidence of the murder demonstrates a propensity on the part of [Hairston] to possess the weapon in question." **Id.**

"Whether or not separate indictments should be consolidated for trial is within the sole discretion of the trial court and such discretion will be reversed only for a manifest abuse of discretion or prejudice and clear injustice to the defendant." **Commonwealth v. Newman**, 528 Pa. 393, 598 A.2d 275, 277 (Pa. 1991).

Pennsylvania Rule of Criminal Procedure 582 provides that joinder of offenses charged in separate indictments or informations is permitted when "the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion." Pa.R.Crim.P. 582(A)(1)(a). Evidence of other criminal behavior is not admissible to show a defendant's propensity to commit crimes. **Newman**, 598 A.2d at 278. However, such evidence "may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident" so long as the "probative value of the evidence outweighs its prejudicial effect." Pa.R.E. 404(b)(2),(3); **Id.**

Commonwealth v. Smith, 47 A.3d 862, 866-867 (Pa. Super. 2012), *appeal denied*, 60 A.3d 536 (Pa. 2012). "Consolidation of indictments requires that there are shared similarities in the details of each crime." **Id.**

Here, after reviewing the record, we conclude that the trial court did not abuse its discretion in granting the Commonwealth's motion to consolidate as we agree with the trial court's rationale. The trial court explained its reasons for consolidating the two indictments as follows:

Here, the evidence from [Hairston]'s homicide case would clearly have been admissible in a separate trial for the gun and drug charges in the present case. At issue in the gun and drug case was whether [Hairston] constructively possessed the handgun that was found underneath a window in an abandoned house near the location where [Hairston] had been arrested with drugs in his pocket. The Commonwealth needed to prove, therefore, that [Hairston] had the power and intent to exercise dominion and control over that gun. ***Commonwealth v. Kirkland***, 831 A.2d 607, 610 (Pa. Super. 2003); *appeal denied*, 847 A.2d 1280 (Pa. 2004) (citing ***Commonwealth v. Macolino***, 469 A.2d 132, 134 (Pa. 1983)). That [Hairston] had been in possession of that same gun three months before, during the murder of Mr. Dade, was extremely compelling evidence of [Hairston]'s identity as the possessor of that gun on the day of his drug arrest and his intent on that day to exercise dominion and control over the gun. The evidence from the murder case was, therefore, admissible in the gun and drug case under Rule 404(b), to prove identity and intent.

Trial Court Opinion, 8/12/2013, at 7-8.

Moreover, contrary to Hairston's argument that evidence of the murder weapon was not necessary because he could have been found to possess any one of the weapons found on his person or in the abandoned house on March 31, 2010, the evidence of the gun at issue, the .9 millimeter Luger handgun, established a nexus that connected Hairston with the two crimes. Ballistics tests done on the fired cartridge casings recovered from the scene of Dade's murder demonstrated Dade had been killed by the .9 millimeter Luger handgun that was recovered from the abandoned house. As such, evidence of the gun with respect to both incidents was probative to establishing that Hairston had possession of this gun and threw it away in the abandoned house. Accordingly, we conclude the probative value of the

evidence of each crime outweighed the potentially prejudicial effect of consolidation. Therefore, the trial court did not abuse its discretion in consolidating the matters for trial, and Hairston's first argument fails.

Next, Hairston contends the court erred in not granting a mistrial after the Commonwealth elicited hearsay testimony from a witness, Detective Kane. Hairston's Brief at 15. Specifically, he states Detective Kane's testimony indicated that "another male" had implicated Hairston in the murder and such evidence denied him the opportunity to confront this alleged accuser. *Id.* at 16. Moreover, he asserts counsel did not open the door on cross-examination to the detective's response merely because counsel inquired when the investigation had narrowed to Hairston where Detective Kane had stated that it was the interview with Smith and the phone records of Hairston's mother, Kim Corbett. *Id.*

By way of background, at trial, defense counsel questioned Detective Kane, who had interviewed Smith regarding the admission that Hairston had made about murdering Dade. N.T., 12/5/2012, at 230-231. The following exchange occurred between defense counsel and Detective Kane:

[Defense counsel]: And you just referred to the statement of Marcus Smith.

[Detective Kane]: Yes.

. . . .

[Defense counsel]: You will agree with me, then, that the reason why the investigation narrowed on to my client was because of the statement that Marcus Smith gave?

[Detective Kane]: No.

[Defense counsel]: Isn't it true that my client was not really a person of interest until Marcus Smith gave that statement?

[Detective Kane]: That's true.

[Defense counsel]: And that because of the statement that Marcus Smith gave, you began to investigate my client more closely?

[Detective Kane]: Because of that and because of the phone records I received in the name of Kim Corbett, yes.

Id. On redirect, the Commonwealth asked Detective Kane if there was any other information, apart from Smith's statement, that led the police to narrow their investigation of Dade's murder to Hairston. **Id.** at 234. He replied that in reference to Hairston, there was ballistic evidence and "another individual" gave them information. **Id.** Defense counsel then objected and the following exchange occurred:

THE COURT: Overruled. I'm not admitting it for its truth. I'm admitting it to reply to your point, which was you asked this man if what was the -- what narrowed the investigation to your client and you asked him if it was Mr. Smith's statement.

And as I told you, if you got into that area, that would open up the door to him honestly responding to the Commonwealth's question as to what was it that, in fact, narrowed the investigation if it wasn't Mr. Smith's question. You opened up the door to that. I will allow him to say -- you got a statement from somebody else. You can tell us. You don't have to tell us what the person said, but you can -- I will allow you to say if there was another statement and if that -- whether or not that directed your investigation to [Hairston]. You can say that.

[Defense counsel]: Your Honor, I believe that the witness did not answer that this narrowed the investigation. In fact, he

responded that it didn't and that he had already pulled my client's phone records. So I'm not really seeing how this opens the door.

THE COURT: Well, I thought [the Commonwealth] asked him was there something that narrowed the investigation other than the statement of Mr. Smith?

What was your question to him?

[The Commonwealth]: I thought that was my question, Your Honor.

[Defense counsel]: That's not what my question was.

THE COURT: It wasn't? What did you ask him?

[Defense counsel]: I asked him isn't it true that Marcus Smith's statement was what led him toward my client. He said, no, it was phone records.

THE COURT: He said that was not the thing that caused him to focus on your client.

[Defense counsel]: And that it was on January 27th --

THE COURT: Was it something other than the phone records.

[Detective Kane]: The interview with Marcus Smith indicated Ricardo [Hairston], along with the phone records that I obtained on January 27th that were in the name of [Hairston]'s mother.

. . . .

THE COURT: Okay. That's all right. You've narrowed the investigation based on those things?

[Detective Kane]: Yes.

THE COURT: All right. I'm going to sustain the objection.

. . . .

[Defense counsel]: Your Honor, at this point, I move for a mistrial.

THE COURT: Your motion is denied. I will direct the jury to consider that last statement only in response to why the detective focused his investigation on the defendant for no other purpose.

. . . .

THE COURT: Sir, do you want to raise anything?

[Defense counsel]: Yes. Once again, I move for a mistrial.

THE COURT: Okay. My ruling was that -- and I explained this to you, I believe on the record, maybe not, at sidebar -- that if you got into asking this detective about suspects that he investigated, that that would open the door to the detective explaining the course of his investigation.

Meanwhile, I didn't allow the Commonwealth, even though I believe they could have, I didn't allow them to elicit from the detective the statement from the unnamed person that caused the investigation to further conclude that your client was the person who did it, but by raising the inference that there were other suspects that weren't pursued and that there are other people who the detective perhaps failed to thoroughly investigate, you opened the door to that evidence.

And in any event, it was a fair response to your questions about why did this investigation focus on your client? Why did the detective commence a case against your client to the exclusion of all the other people that you claimed did this crime?

[Defense counsel]: Well --

THE COURT: So your motion for a mistrial is denied.

N.T., 12/5/2012, at 235-238, 242-243.

We are guided by the following:

[T]he standard of review of a trial court's admission or exclusion of evidence is well established and very narrow:

Admission of evidence is a matter within the sound discretion of the trial court, and will not be reversed absent a showing that the trial court clearly abused its discretion. Not merely an error in judgment, an abuse of discretion occurs when the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence on record.

Commonwealth v. Montalvo, 604 Pa. 386, 403, 986 A.2d 84, 94 (2009) (internal citations and quotation marks omitted), *cert. denied*, ___ U.S. ___, 131 S. Ct. 127, 178 L. Ed. 2d 77 (2010). Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” **Commonwealth v. Dent**, 2003 PA Super 457, 837 A.2d 571, 577 (Pa. Super. 2003), *appeal denied*, 581 Pa. 671, 863 A.2d 1143 (2004); Pa.R.E. 801(c). Nevertheless, certain out-of-court statements offered to explain the course of police conduct are admissible; such statements do not constitute hearsay because they are offered not for the truth of the matters asserted but merely to show the information upon which police acted. **Dent, supra** at 577-79.

Commonwealth v. Akbar, ___ A.3d, ___, 2014 PA Super 89, *18-19 (Pa. Super. April 30, 2014). Moreover,

[a] motion for a mistrial is within the discretion of the trial court. A mistrial upon motion of one of the parties is required only when an incident is of such a nature that its unavoidable effect is to deprive the appellant of a fair and impartial trial. It is within the trial court’s discretion to determine whether a defendant was prejudiced by the incident that is the basis of a motion for a mistrial. On appeal, our standard of review is whether the trial court abused that discretion.

Commonwealth v. Tejada, 834 A.2d 619, 623 (Pa. Super. 2003) (internal citations and footnote omitted).

Here, we conclude that the testimony at issue did not constitute hearsay as Detective Kane did not testify as to the contents of the statement made by the unidentified second individual. Moreover, Detective Kane's testimony was being offered to explain the course of the police's conduct as they narrowed their investigation and focused on Hairston as the perpetrator. Lastly, Hairston suffered no prejudice as this evidence was offered solely with respect to the murder charges and the jury did not return a verdict on the charges related to the murder. Likewise, we find the "trial court's cautionary instruction was sufficient to overcome any potential prejudice" the detective's testimony may have had upon Hairston, and the trial court did not abuse its discretion when denying his request for a mistrial. ***Commonwealth v. Lopez***, 57 A.3d 74, 85 (Pa. Super. 2012) ("The jury is presumed to follow the trial court's instructions."), *appeal denied*, 62 A.3d 379 (Pa. 2013).⁵ Accordingly, Hairston's second argument is unavailing.

⁵ We note the trial court found the following:

Defense counsel's objection to this testimony was overruled, since [Hairston] had opened the door to that testimony by implying, on cross-examination, that the only reason the investigation narrowed onto [Hairston] was because of the statement of Marcus Smith. The Court did not admit the information for the truth of what "[a]nother male" said, but rather to rebut an untrue allegation raised by defense counsel on
(Footnote Continued Next Page)

With respect to Hairston's final claim, he argues the trial court abused its discretion by imposing a manifestly excessive sentence, which was disproportional to his conduct because his convictions were non-violent in nature. Hairston's Brief at 14. Moreover, he states:

[T]he guidelines for [PWID] were superseded by a mandatory minimum that was twice the upper end of the aggravated range of the guidelines. As a result the mandatory minimum of 5 to 10 years amply accounted [for] aggravating factors such as the arrests [Hairston] had incurred since March 31. The lower court's decision to go 2½ years beyond this minimum for [PWID] and 64 months beyond the upper end of the sentencing guidelines for Conspiracy to Commit [PWID] was grossly disproportionate and manifestly excessive given the nonviolent nature of the offenses.

Id. at 14-15 (citation omitted).

The standard of review for a claim challenging a discretionary aspect of sentencing is well-established:

Sentencing is a matter vested in the sound discretion of the judge, and will not be disturbed on appeal absent a manifest abuse of discretion. An abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of

(Footnote Continued) _____

cross-examination as to why the police investigation had focused on [Hairston].

Trial Court Opinion, 8/12/2013, at 10-11 (record citation omitted). To the extent that our conclusion is distinct from the trial court's finding, we note we "may affirm the lower court on any basis, even one not considered or presented in the court below." ***Commonwealth v. Burns***, 988 A.2d 684, 690 n.6 (Pa. Super. 2009), *appeal denied*, 8 A.3d 341 (Pa. 2010).

partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Sheller, 961 A.2d 187, 190 (Pa. Super. 2008) (citation omitted), *appeal denied*, 980 A.2d 607 (Pa. 2009).

“A challenge to the discretionary aspects of a sentence must be considered a petition for permission to appeal, as the right to pursue such a claim is not absolute.” ***Commonwealth v. Hoch***, 936 A.2d 515, 518 (Pa. Super. 2007) (citations and quotation marks omitted). To reach the merits of a discretionary issue, this Court must determine:

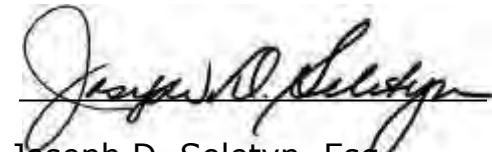
(1) whether appellant has filed a timely notice of appeal; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (3) whether appellant's brief has a fatal defect; and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code.

Commonwealth v. Dunphy, 20 A.3d 1215, 1220 (Pa. Super. 2011) (footnotes omitted). Here, Hairston did not properly preserve his argument as he failed to set forth a concise statement of reasons pursuant to Pa.R.A.P. 2119(f), and the Commonwealth objected. **See** Commonwealth’s Brief at 16-17. Therefore, this issue is waived. **See *Commonwealth v. Pardo***, 35 A.3d 1222 (Pa. Super. 2011), *appeal denied*, 50 A.3d 125 (Pa. 2012) (concluding that because defendant failed to include the required Rule 2119(f) statement in his appellate brief and the Commonwealth objected to

its omission, defendant's claim was waived). Accordingly, we affirm the judgment of sentence.⁶

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014

⁶ We discern no abuse of discretion with respect to the trial court's imposition of Hairston's sentence as it adequately explained its rationale in its Rule 1925(a) opinion. **See** Trial Court Opinion, 8/12/2013, at 8-9. Nevertheless, as stated above, we "may affirm the lower court on any basis, even one not considered or presented in the court below." **Burns**, 988 A.2d at 690 n.6.