NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. NICHOLAS SARVER Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1062 WDA 2013

Appeal from the Judgment of Sentence June 5, 2013
In the Court of Common Pleas of Fayette County
Criminal Division at No(s): CP-26-CR-0002160-2012

BEFORE: GANTMAN, P.J., DONOHUE, J., and FITZGERALD, J.*

MEMORANDUM BY GANTMAN, P.J.: FILED: April 23, 2014

Appellant, Nicholas Sarver, appeals from the judgment of sentence entered in the Fayette County Court of Common Pleas, following his jury trial convictions for possession of a controlled substance, possession of a controlled substance with the intent to deliver ("PWID"), and possession of drug paraphernalia.[1] We affirm.

In its opinion, the trial court sets forth the relevant facts and procedural history of this case as follows:

> On July 23, 2012, Sergeant Ryan Reese of the Connellsville Police Department arrived at a residence located at 2635 Moyer Road, Connellsville with Officers John James, Steve

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[1] 35 P.S. § 780-113(a)(16), (30), and (32), respectively.

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* Former Justice specially assigned to the Superior Court.

> Shaffer, and Brian Harvey in an attempt to recover stolen handguns. Sergeant Reese knocked on the door and Appellant answered and invited the officers into his residence. Sergeant Reese followed Appellant into what Appellant called his parents' bedroom and produced three long rifles. Sergeant Reese asked Appellant for a fourth gun that he was looking for at the time and Appellant responded by walking to his bedroom.
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> However, when Sergeant Reese entered Appellant's bedroom, he observed multiple long rifles on the bed, a silver bowl with white powder, suspected heroin, beside the dresser, and glassine packets that he recognized were used to package heroin. Sergeant Reese testified that the long rifles were within five feet of the suspected heroin. Sergeant Reese then recovered the fourth handgun from Appellant's bedroom on the nightstand.
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> Upon entering the bedroom and seeing this evidence, Sergeant Reese advised Appellant that he was under arrest, provided ***Miranda***[2] warnings to Appellant, and requested Appellant's permission to continue searching his room. Appellant consented and advised Sergeant Reese of the location of the items he was going to find.
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> At trial, Sergeant Reese was recognized as an expert in the field of narcotics investigation and the sale of narcotics on the street. The Commonwealth presented the drugs, four knotted baggie corners containing drugs, glassine packets used to package drugs, a silver bowl with drug residue, two digital scales, and [$2,983.00] U.S. currency of small denominations that were all seized from Appellant's room. Sergeant Reese also located within the bedroom a Social Security card and an identification card from the State of Pennsylvania for Appellant. Upon questioning, Appellant admitted to Sergeant Reese that the guns and drugs were his, that he sold drugs from his house numerous times, and that he would trade heroin for guns. The residence at 2635 Moyer Road was equipped with a surveillance camera

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[2] ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

that provided footage of the outside of the residence to a television located within Appellant's bedroom. When asked about the camera, Appellant responded that he used it for protection against the police and to prevent someone from entering the residence to take his drugs. Based upon this evidence, Sergeant Reese opined that the heroin was possessed with the intent to deliver it.

On the following day, at the request of Sergeant Reese, Appellant arrived at the Connellsville Police Station. Sergeant Reese provided a written ***Miranda*** rights and warning form to Appellant, who acknowledged such, and made the following statement:

> Sergeant Reese knocked on my door, I let him in, he asked me about some stolen guns, he asked if they were at my home and if [he] could he have them. I handed the guns over to him stating I got them from Camie Johnson and Trisha. He didn't know her last name. I stated there were more guns and items at my home from them and others. I also stated to him I had drugs at my house and that I was in over my head and didn't know what to do so I showed him everything. I explained where and [who] brought the items, a Camie Johnson, a Trisha, a Dylan Wagner had brought various items to my house and that I had either bought them or traded…drugs for them. The items that they brought are supposedly stolen.

Lisa Moore, a Forensic Scientist with Pennsylvania State Police crime lab, was recognized as an expert in the analysis of controlled substances and as a Forensic Scientist. Ms. Moore testified that substances submitted as Commonwealth's Exhibits 2, 3, and 4 tested positive as heroin and weighed a combined 6.31 grams.

Based upon this evidence, the jury returned a verdict of guilty as to the charges of Possession with Intent to Deliver, Intent to Possess Controlled Substance by Person Not Registered, and Use/Possession of Drug Paraphernalia. Appellant was also charged with three charges of Receiving Stolen Property related to guns located in Appellant's residence, to which the jury acquitted him of these counts.

(Trial Court Opinion, filed January 9, 2014, at 2-4) (internal citations omitted). The court sentenced Appellant on June 5, 2013, to an aggregate term of five (5) to ten (10) years' imprisonment. Appellant's aggregate sentence included a mandatory minimum on the PWID conviction of five (5) years' imprisonment pursuant to 42 Pa.C.S.A. § 9712.1 (mandating five year minimum sentence for defendant convicted of PWID when at time of offense, defendant was in physical possession or control of firearm, or firearm was in close proximity to controlled substance). On June 12, 2013, Appellant timely filed a post sentence motion challenging imposition of the mandatory minimum sentence, which the court denied on June 14, 2013. Appellant timely filed a notice of appeal on June 27, 2013. The next day, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied.

Appellant raises the following issues for our review:

> THE EVIDENCE WAS INSUFFICIENT TO FIND APPELLANT GUILTY BEYOND A REASONABLE DOUBT OF THE CRIMINAL CHARGES.
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> WHETHER THE COURT ERRED IN DENYING APPELLANT'S OMNIBUS PRETRIAL MOTION?
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> WHETHER THE COURT ERR[ED] IN DENYING THE MOTION FOR RECONSIDERATION OF SENTENCE DUE TO ITS HARSH AND EXCESSIVE NATURE AND THE FACT THAT THE COURT IMPOSED A MANDATORY [MINIMUM] SENTENCE WHEN THE JURY RETURNED A [NOT] GUILTY VERDICT ON THE GUN CHARGES?

(Appellant's Brief at 7).

Initially, we observe:

> [G]enerally…issues not raised in a Rule 1925(b) statement will be deemed waived for review. An appellant's concise statement must properly specify the error to be addressed on appeal. 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*, 591 Pa. 712, 919 A.2d 956 (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. Thus, if a concise statement is too vague, the court may find waiver.

Commonwealth v. Hansley, 24 A.3d 410, 415 (Pa.Super. 2011), *appeal denied*, 613 Pa. 642, 32 A.3d 1275 (2011) (some internal citations omitted). Additionally, "when challenging the sufficiency of the evidence on appeal, the [a]ppellant's [Rule] 1925 statement must specify the element or elements upon which the evidence was insufficient in order to preserve the issue for appeal." ***Commonwealth v. Gibbs***, 981 A.2d 274, 281 (Pa.Super. 2009), *appeal denied*, 607 Pa. 690, 3 A.3d 670 (2010) (internal quotations omitted). "Such specificity is of particular importance in cases where…the [a]ppellant was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt." ***Id.*** (holding appellant waived challenge to sufficiency of evidence where appellant failed to specify in Rule 1925(b) statement which convictions, and which elements of those crimes, he was challenging on

appeal; fact that trial court addressed appellant's sufficiency claim in its opinion was of no moment to waiver analysis).

Instantly, Appellant presented his sufficiency claim in his Rule 1925(b) statement as follows: "The evidence was insufficient to find Appellant guilty beyond a reasonable doubt of the criminal charges." (Appellant's Rule 1925(b) statement, filed July 3, 2013, at 1). Significantly, Appellant failed to specify which convictions, and which elements of those crimes, he was challenging on appeal. ***See Gibbs, supra***. Consequently, we deem Appellant's first issue on appeal waived.[3] ***See Hansley, supra***; ***Gibbs, supra***.

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[3] Additionally, Appellant's sufficiency claim on appeal is undeveloped and vague. Appellant cites only general propositions of law in connection with the sufficiency of the evidence standard of review (without citation to the criminal statutes under which Appellant was convicted), and lacks any cogent argument applying the relevant law to the facts of his case. Thus, Appellant's first issue on appeal is waived on this ground as well. ***See Commonwealth v. Johnson***, 604 Pa. 176, 985 A.3d 915 (2009), *cert. denied*, ___ U.S. ___, 131 S.Ct. 250, 178 L.Ed.2d 165 (2010) (explaining appellant waives issue on appeal where he fails to present claim with citations to relevant authority or develop issue in meaningful fashion capable of review); ***Commonwealth v. Manley***, 985 A.2d 256 (Pa.Super. 2009), *appeal denied*, 606 Pa. 671, 996 A.2d 491 (2010) (holding appellant waived issue on appeal where argument concerning sufficiency challenge was vague and undeveloped, and appellant failed to specify elements of crimes which Commonwealth allegedly failed to prove at trial). Further, to the extent Appellant attempts to challenge the weight of the evidence, this claim is waived as well where Appellant failed to preserve it in his Rule 1925(b) statement or post-sentence motion. ***See Hansley, supra***; ***Commonwealth v. Ratushny***, 17 A.3d 1269 (Pa.Super. 2011) (explaining appellant waives challenge to weight of evidence where he fails to raise claim in oral or written post-sentence motion).

Moreover:

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

Hansley, supra at 416 (quoting ***Commonwealth v. Jones***, 874 A.2d 108, 120-21 (Pa.Super. 2005)).

The Controlled Substance, Drug, Device and Cosmetic Act defines the offenses of possession of a controlled substance, PWID, and possession of drug paraphernalia, as follows:

> **§ 780-113. Prohibited acts; penalties**
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> (a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:
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> * * *
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> (16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not

> registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.
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> * * *
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> (30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.
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> * * *
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> (32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 P.S. § 780-113(a)(16), (30), (32). Additionally, PWID requires the Commonwealth to prove beyond a reasonable doubt that the defendant both possessed the controlled substance and had the intent to deliver:

> When determining whether a defendant had the requisite intent to deliver, relevant factors for consideration are the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and large sums of cash. Expert opinion testimony is also admissible concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather than with an

> intent to possess it for personal use. The expert testimony of a witness qualified in the field of drug distribution, coupled with the presence of drug paraphernalia, is sufficient to establish intent to deliver.

Commonwealth v. Carpenter, 955 A.2d 411, 414 (Pa.Super. 2008) (internal citations and quotation marks omitted).

Instantly, the Commonwealth presented, *inter alia*, the following evidence at trial relative to Appellant's drug convictions: Sergeant Reese, an expert in the field of narcotics investigation and the sale of narcotics on the street, testified that on July 23, 2012, he arrived at Appellant's residence in an attempt to recover stolen handguns; Appellant initially led officers into his parents' bedroom and the officers recovered rifles from that room; Appellant then led officers into his bedroom and Sergeant Reese observed firearms, a silver bowl with white powder surrounded by drug paraphernalia including glassine packets commonly used to package heroin, and plastic bags containing heroin; Sergeant Reese testified that the guns were within five (5) to six (6) feet of the drugs; Sergeant Reese also recovered hundreds of packets used to package heroin, two digital scales, a surveillance system for the residence, small bills amounting to $2,983.00 in U.S. currency, a Social Security card bearing Appellant's name, and a Pennsylvania State identification card with Appellant's name; Sergeant Reese testified that in his expert opinion, the drugs, money, and paraphernalia recovered from the residence were consistent with an intent to distribute drugs; additionally, Appellant told Sergeant Reese he possessed the surveillance system to

protect against police and others who might attempt to take Appellant's drugs; Appellant also admitted he sold drugs from his house numerous times and received the guns in exchange for heroin; further, Appellant wrote and signed a statement confirming he possessed drugs and guns at his residence. Thus, even if Appellant had properly preserved his claim for review, it would nevertheless merit no relief as the Commonwealth presented sufficient evidence to sustain Appellant's drug convictions.[4] ***See*** 35 P.S. § 780-113(a)(16), (30), (32); ***Hansley, supra***; ***Carpenter, supra***.

In his second issue, Appellant argues police officers lacked probable cause to arrest Appellant and search his residence, where Appellant did not demonstrate evidence of criminal activity. Appellant maintains his mother, who owned the residence, did not give the officers permission to enter the home and did not consent to the search. Appellant insists the officers also failed to give Appellant ***Miranda*** warnings until after they searched the house and questioned Appellant. Appellant concludes the court should have suppressed the physical evidence recovered as well as Appellant's

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[4] Throughout his brief, Appellant proffers alternative bases for relief which are unrelated to his questions presented on appeal. For example, Appellant contends, *inter alia*, the police acted outside of their jurisdiction and failed to submit any of the Commonwealth's exhibits for fingerprint analysis; and the trial court improperly denied Appellant *habeas corpus* relief. Because Appellant failed to present these claims in his Rule 1925(b) statement and similarly failed to develop them on appeal, these issues are waived. ***See Johnson, supra***; ***Hansley, supra***.

incriminating statement as fruit of the poisonous tree, and this Court should reverse.[5] We disagree.

"Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct." ***Commonwealth v. Williams***, 941 A.2d 14, 26 (Pa.Super. 2008) (*en banc*) (quoting ***Jones, supra*** at 115).

> [W]e may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

Williams, supra at 27 (quoting ***Jones, supra***).

Pennsylvania law makes clear:

> The Fourth Amendment protects [against] unreasonable searches and seizures. A warrantless search or seizure is presumptively unreasonable under the Fourth Amendment, subject to a few specifically established, well-delineated exceptions. One such exception is a consensual search, which a third party can provide to police...known as the apparent authority exception.
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> A third party with apparent authority over the area to be searched may provide police with consent to search. Third party consent is valid when police reasonably believe a third party has authority to consent. Specifically, the

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[5] Appellant's arguments are vague and undeveloped which could constitute waiver of his suppression issue on appeal. ***See Johnson, supra***. Notwithstanding these deficiencies, we review the claim on the merits.

> apparent authority exception turns on whether the facts available to police at the moment would lead a person of reasonable caution to believe the consenting third party had authority over the premises. If the person asserting authority to consent did not have such authority, that mistake is constitutionally excusable if police reasonably believed the consenter had such authority and police acted on facts leading sensibly to their conclusions of probability.

Commonwealth v. Strader, 593 Pa. 421, 427, 931 A.2d 630, 634 (2007), *cert. denied*, 552 U.S. 1234, 128 S.Ct. 1452, 170 L.Ed.2d 281 (2008) (internal citations and quotation marks omitted) (holding officers reasonably believed third party had authority to consent to search, where he answered door to apartment and told officers he was in charge while appellant was away).

Instantly, the Commonwealth presented, *inter alia*, the following evidence at the suppression hearing: Sergeant Reese and Officer James testified that they arrived at Appellant's residence on July 23, 2012 to recover stolen guns; after the officers knocked and announced their presence, Appellant opened the door and addressed the officers while he remained in the doorway; when the officers asked Appellant about stolen guns, Appellant confirmed he had the guns and invited the officers into the residence to retrieve them; Appellant initially led the officers to his parents' bedroom where police recovered rifles, and advised them that another gun was in his bedroom; after the officers observed guns, drugs, and drug paraphernalia in Appellant's bedroom, Sergeant Reese arrested Appellant,

provided ***Miranda*** warnings, and asked Appellant for consent to continue searching his bedroom; Appellant allowed the officers to continue their search and told them money and another gun were under his bed and in a safe; Appellant remained polite and cooperative while interacting with the officers. Additionally, at no time did Appellant inform the officers he did not own the home, lacked authority to consent to a search, or needed his parents' permission to allow the officers to conduct a search. Based on the testimony presented at the suppression hearing, the suppression court concluded the officers reasonably believed Appellant had authority to consent to the search pursuant to the apparent authority doctrine. (***See*** N.T. Suppression Hearing, 4/9/13, at 37.) ***See Strader, supra***. The record supports the court's denial of Appellant's suppression motion on this basis. ***See Williams, supra***.[6]

Regarding Appellant's claims that the officers failed to issue Appellant

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[6] Moreover, the evidence presented at the suppression hearing strongly suggests Appellant was living in his parents' home, where Appellant maintained a bedroom, kept personal items in that bedroom, and led the officers to "his" bedroom. Thus, Appellant's consent to search was also valid under the common authority doctrine. ***See Commonwealth v. Basking***, 970 A.2d 1181 (Pa.Super. 2009), *appeal denied*, 604 Pa. 693, 986 A.2d 148 (2009) (explaining common authority doctrine permits third-party possessing common authority over premises to give valid consent to search against non-consenting person who shares authority because it is reasonable to recognize that any of cohabitants has right to permit inspection in his own right and that others have assumed risk that one of their cohabitants might permit search of common area).

Miranda warnings until after he made an incriminating statement, and lacked probable cause to arrest him, Appellant failed to raise these issues in his suppression motion, argue them before the suppression court at the hearing, or specify these contentions in his Rule 1925(b) statement. Thus, these claims waived on appeal. ***See Hansley, supra***; ***Commonwealth v. Parker***, 847 A.2d 745 (Pa.Super. 2004) (holding appellant waived issue on appeal where he failed to preserve it in Rule 1925(b) statement and did not argue it at suppression hearing). ***See also*** Pa.R.A.P. 302(a) (stating issues not raised before trial court are waived and cannot be raised for first time on appeal). Therefore, Appellant's second issue on appeal merits no relief.

In his third issue, Appellant asserts that the jury acquitted Appellant of any charges relating to firearms, where the jury found him not guilty of receiving stolen property (firearms). Appellant argues the court erred by imposing the mandatory minimum sentence relating to physical possession or control of firearm in connection with a PWID conviction, and this Court should afford Appellant appropriate relief.[7] We disagree.

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[7] We note Appellant cites no law whatsoever to support this claim, does not specify the statute under which the court imposed the mandatory minimum sentence, and incorrectly phrases his complaint as a challenge to the discretionary aspects of his sentence. Despite these defects, we will review Appellant's claim because it implicates the legality of his sentence. ***See Commonwealth v. Edrington***, 780 A.2d 721 (Pa.Super. 2001) (explaining challenge to application of mandatory minimum sentence is non-waiveable challenge to legality of sentence which, assuming proper jurisdiction, this Court can raise *sua sponte*).

Our standard of review is as follows:

> Generally, a challenge to the application of a mandatory minimum sentence is a non-waiveable challenge to the legality of the sentence. Issues relating to the legality of a sentence are questions of law, as are claims raising a court's interpretation of a statute. Our standard of review over such questions is *de novo* and our scope of review is plenary.

Commonwealth v. Hawkins, 45 A.3d 1123, 1130 (Pa.Super. 2012), *appeal denied*, 617 Pa. 629, 53 A.3d 756 (2012) (quoting ***Commonwealth v. Brougher***, 978 A.2d 373, 377 (Pa.Super. 2009)).

Section 9712.1 sets forth the mandatory minimum sentence imposed in this case, as follows:

> **§ 9712.1. Sentences for certain drug offenses committed with firearms**
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> **(a) Mandatory sentence.**—Any person who is convicted of [PWID] when at the time of the offense the person or the person's accomplice is in physical possession or control of a firearm, whether visible, concealed about the person or the person's accomplice or within the actor's or accomplice's reach or in close proximity to the controlled substance, shall likewise be sentenced to a minimum sentence of at least five years of total confinement.
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> * * *
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> **(c) Proof at sentencing.**—Provisions of this section shall not be an element of the crime, and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford

> the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, **by a preponderance of the evidence**, if this section is applicable.

42 Pa.C.S.A. § 9712.1 (emphasis added) (internal footnote omitted).

On June 17, 2013, after Appellant's sentencing, the United States Supreme Court announced its decision in ***Alleyne v. United States***, ___ U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), expressly holding that any fact increasing the mandatory minimum sentence for a crime is considered an element of the crime to be submitted to the jury and found beyond a reasonable doubt. ***Id.*** at ___, 133 S.Ct. at 2155, 2163, 186 L.Ed.2d at ___.

This Court recently addressed ***Alleyne*** in connection with Section 9712.1, when physical control or possession of a firearm subjects a defendant to imposition of a mandatory minimum sentence. ***Commonwealth v. Watley***, 81 A.3d 108 (Pa.Super. 2013) (*en banc*). In ***Watley***, the Commonwealth charged the appellant with PWID, conspiracy to commit PWID, simple possession, firearms not to be carried without a license, and related offenses in connection with officers' discovery of guns and drugs in the appellant's vehicle. The Commonwealth presented evidence at trial showing the officers' recovered from the appellant's vehicle a loaded handgun under the floor mat; and inside the passenger side glove compartment, a pistol, magazine, box of ammunition, container with a small

amount of marijuana, and thirty-four Ecstasy pills. Following trial, a jury convicted the appellant on all charges. At sentencing, the court imposed the mandatory minimum sentence per Section § 9712.1. On appeal, this Court reversed the appellant's convictions for PWID and conspiracy to commit PWID; the Commonwealth sought *en banc* re-argument, and this Court granted the Commonwealth's request.

On appeal *en banc*, this Court considered *sua sponte* whether the court's imposition of the Section 9712.1 mandatory minimum sentence was proper in light of ***Alleyne***. This Court explained that the jury determined the appellant possessed the firearms in question when it found him guilty of firearms violations. Additionally, the firearms in question were located within the same vehicle as the drugs recovered; in fact, one of the guns was found in the same glove compartment as the drugs. Significantly, this Court noted the appellant did not dispute that the firearms were in close proximity to the drugs. Based on the evidence presented, this Court concluded the jury had determined beyond a reasonable doubt the facts necessary to subject the appellant to the mandatory minimum per Section 9712.1, namely, that appellant possessed the firearms when he committed the PWID offense. ***Watley, supra*** at 118-21. Under these circumstances, this Court held the court's imposition of the mandatory minimum did not violate ***Alleyne***. ***Id.*** at 121 (stating: "Succinctly put, the jury did render a specific finding as to whether [a]ppellant possessed the handguns found in the car;

the reason it did not do so in conjunction with the PWID count is that the prevailing law at the time…did not require such a procedure. … [T]he factual predicates for determining the mandatory minimum were proven to a jury beyond a reasonable doubt, and his sentence is not illegal").

Instantly, the jury convicted Appellant of PWID, possession of a controlled substance, and possession of drug paraphernalia. The jury's convictions stemmed from the Commonwealth's presentation of, *inter alia*, the following evidence: Sergeant Reese's testimony that Appellant led officers into two bedrooms, where police located drugs, drug paraphernalia, and firearms in plain view; Sergeant Reese's observation of firearms within five (5) to six (6) feet of the heroin in Appellant's bedroom; Appellant's statement to police that he sold heroin from his house and traded firearms for heroin; Appellant's written statement confirming he possessed firearms and drugs at his residence; and Appellant's trial testimony that he possessed firearms at his residence. Additionally, at no time did Appellant deny possessing the firearms recovered from his residence or dispute that the firearms were in close proximity to the drugs. The record makes clear the jury's PWID conviction was based on evidence connecting Appellant not only to the drugs in question, but to the firearms in question as well. ***See Watley, supra***. The fact that the jury was not presented with a verdict sheet asking it to expressly determine whether Appellant committed "PWID with guns" does not undo the overwhelming evidence presented at trial

demonstrating Appellant's possession of guns at the time of his PWID offense, upon which the jury's PWID conviction was based. ***See id.*** Thus, the Commonwealth established the necessary factual predicate to support imposition of the mandatory minimum sentence. ***Id.***

Additionally, Appellant's contention that the jury's acquittal on the receiving stolen property charges necessitates removal of the mandatory minimum sentence is unavailing, particularly where the jury was required to determine more than Appellant's mere possession of the firearms in close proximity to the drugs to convict Appellant of those offenses. ***See*** 18 Pa.C.S.A. § 3925(a) (explaining defendant is guilty of receiving stolen property where defendant intentionally receives, retains, or disposes of another's property knowing it has been stolen, or believing that it has probably been stolen, unless defendant intends to restore it to owner).[8] ***See also Watley, supra*** at 119-20 (stating: "[t]he fact that we accept a jury's ability to potentially exercise leniency does not require us to disregard, for purposes of sentencing, its uncontroverted determination of facts that subject a defendant to an increased punishment, which under then-existing law did not have to be alleged in the criminal information. Indeed, an acquittal is not considered a specific factual finding"). Under these

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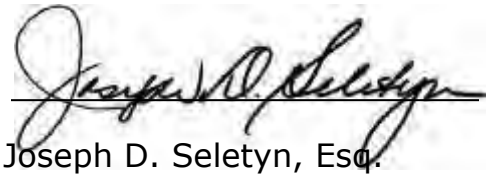
[8] Relevant to the jury's acquittal on the receiving stolen property charges, Appellant adamantly maintained at trial that he did not know the firearms were stolen.

circumstances, Appellant's sentence does not violate ***Alleyne***, and we afford him no relief on this claim. Accordingly, we affirm.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014