

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JAMES HOWARD BROWN, JR.	:	
	:	
Appellant	:	No. 794 MDA 2025

Appeal from the Judgment of Sentence Entered February 13, 2025
In the Court of Common Pleas of York County Criminal Division at No(s):
CP-67-CR-0002327-2023

BEFORE: BECK, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY NEUMAN, J.:

FILED SEPTEMBER 10, 2026

Appellant, James Howard Brown, Jr., appeals from the aggregate judgment of sentence of life imprisonment without the possibility of parole (LWOP), imposed after a jury convicted him of second-degree murder, 18 Pa.C.S. § 2502(b), robbery (serious bodily injury), 18 Pa.C.S. § 3701(a)(1)(i), and conspiracy to commit robbery, 18 Pa.C.S. § 903. On appeal, Appellant solely challenges the sufficiency of the evidence to sustain his convictions. Although we affirm Appellant's convictions, we *sua sponte* deem his mandatory LWOP sentence for second-degree murder unconstitutional under our Supreme Court's decision in ***Commonwealth v. Lee***, 357 A.3d 356, 357 (Pa. 2026) (holding "a mandatory life without parole sentence for all felony murder convictions, absent an assessment of culpability, is inconsistent with the protections bestowed upon our citizens under the 'cruel punishments'").

clause of our Commonwealth's organic charter"). Accordingly, we vacate Appellant's judgment of sentence and remand for resentencing.

The trial court summarized the facts and procedural history of Appellant's case, as follows:

On April 13, 2022, [Appellant], along with co-conspirators Kyree Dickson, Jordan Simpson, and an unidentified male, conspired to rob a drug dealer. Earlier that day, [Appellant] initiated contact with Miguel Roman regarding the sale of "1.5 adrenaline," a term later confirmed to mean 1.5 pounds of marijuana.

At approximately 8:30 p.m., Daisy Cortez picked up her boyfriend, ... Simpson, from work. Upon returning home, Cortez heard Simpson receive a call from his cousin, [Appellant], who stated he needed Simpson to "roll with him" that night and asked whether to pick him up first or collect Dickson beforehand. Simpson responded that [Appellant] should go ahead and pick up Dickson, indicating his girlfriend was pregnant and would not want him out late.

Surveillance footage later captured Simpson['s] being dropped off in an alleyway on Clarke Avenue in York City by a dark-colored sedan. Shortly thereafter, Dickson and the unidentified male joined Simpson. A parking lot connecting Clarke Avenue and West Market Street served as the rendezvous point. [Appellant] arrived at this lot in a white Infiniti. All four individuals met in the lot for approximately one minute and forty-one seconds, after which [Appellant] walked to 529 West Market Street to meet Roman.

Upon meeting Roman, who was holding a beer given to him by [Appellant], the two approached a Toyota Highlander parked outside the address. Gabriel Colon-Perez was seated in the driver's seat. [Appellant], carrying a black bag, entered the front passenger seat while Roman entered the back.^[1]

¹ Testimony at trial indicated the black bag Appellant was holding as he approached the car appeared to be empty. **See** N.T. Trial, 11/18/24-11/22/24, at 199 (Detective Daniel Kling's testifying surveillance footage *(Footnote Continued Next Page)*)

Moments later, Dickson, Simpson, and the unidentified male approached the vehicle. Gunshots were fired from both sides of the car. Roman was killed by gunfire from the passenger side, and [Appellant] was shot through the front passenger seat. Simpson fired through the driver's side door, prompting Colon-Perez to return fire and fatally shoot Simpson. Surveillance footage showed [Appellant's] exiting the vehicle, handling the black bag, and fleeing on foot along with the others.

[Appellant's] wife, Iesha Barnes, transported him to the hospital for treatment of his gunshot wounds. She then returned to the Infiniti and removed a black bag containing marijuana from the trunk.^[2] Barnes later informed law enforcement that [Appellant] had a marijuana supplier, described as a "Spanish guy," later identified as ... Roman.

Cell phone and Facebook records obtained by law enforcement demonstrated consistent[,] drug-related communications between [Appellant] and Roman, including a conversation on April 13, 2022, discussing the "1.5" purchase. Communication between [Appellant], Simpson, and Dickson was documented before and after the shooting.^[3]

showed Appellant's approaching the vehicle holding "a bag that appeared to be empty on the left side" of his body); **see also id.** at 201 (Detective Kling's reiterating the surveillance video "looked like [Appellant] had an empty bag in ... his left hand on [the] left side of his body when he approached" the vehicle).

² Specifically, Ms. Barnes testified when she brought Appellant to the hospital, she was told by police she could remove whatever she needed from the vehicle, and she took her "makeup bag" and "the black bag" from the trunk of the car. N.T. Trial at 522-23. After she arrived home, she looked inside the black bag and found it contained a "vacuum[-]sealed" bag of marijuana. **Id.** at 525-26.

³ As the Commonwealth aptly summarizes:

Text messages and phone calls from throughout April 13, 2022, show that [Appellant] was in communication with Dickson and Simpson while he arranged a drug delivery with Roman. At 6:48[]pm, [Appellant] messaged Roman about purchasing marijuana. N.T. [Trial] at 363. At 9:52[]pm, [Appellant] again
(Footnote Continued Next Page)

[Appellant] was formally charged on May 8, 2023. A jury trial commenced on November 18, 2024. The jury returned guilty verdicts on [the] charges ... [of] second-degree murder, robbery, and conspiracy to commit robbery. On February 13, 2025, [Appellant] was sentenced to life imprisonment without parole for second-degree murder, with concurrent sentences of nine to eighteen years for the robbery-related offenses.

A timely notice of appeal followed. On June 16, 2025, th[e trial] court issued an order pursuant to Pa.R.A.P. 1925(b) directing the

messed Roman. **Id.** Around that time, a thirty-seven [second] video chat on Facebook occurred between Dickson and [Appellant]; immediately subsequent to that video chat, Dickson and [Appellant] exchanged a message in which [Appellant] wrote to Dickson “come on, fam” to which Dickson replied by sending [Appellant] his phone number. [**Id.** at] 360-[]61, 363. After Dickson provided [Appellant] with a phone number, [Appellant] immediately called him. [**Id.**] at 364. [Appellant] called Dickson multiple times, with one phone call lasting four seconds and another lasting 45 seconds that occurred at 9:35[]pm. [**Id.**] at 364.

At 10:03[pm], Roman messaged [Appellant] to indicate that he was ready and confirmed with [Appellant] the meeting place as well as what drugs [Appellant] wanted. [**Id.**] At 10:46[pm], Roman informed [Appellant] that ... Colon-Perez was ready, to which [Appellant] replied at 10:50[pm] that he was “finna to leave this spot.” [**Id.**] at 365. Roman responded a minute later with an acknowledgment that he was still waiting; one minute after Roman’s response, ... Simpson called [Appellant], and that phone call lasted 45 seconds. [**Id.**]

Commonwealth’s Brief at 14-15. Additionally, after that 45 second call from Simpson to Appellant, Simpson called Appellant for another 26 seconds and, at 11:35 pm (approximately 8 minutes before the robbery and shooting), Appellant “call[ed] Simpson for a 175 second conversation.” N.T. Trial at 365. After the shooting took place “around 11:11[pm to] 11:13[pm,]” Appellant attempted to call Dickson twice, and he also tried to call Simpson once, at approximately 11:16 pm. **Id.** Those calls were unanswered. **Id.** A little over two hours after the shooting, Dickson attempted to call Appellant, but it was not answered. **Id.** at 365-66.

filing of a [concise] statement of errors complained of on appeal.
The statement was filed on July 3, 2025.

Trial Court Opinion (TCO), 7/30/25, at 1-3 (unnecessary capitalization and citations to the record omitted). The trial court filed its Rule 1925(a) opinion on July 30, 2025.

On appeal, Appellant presents the following issues for our review:

1. Whether there was insufficient evidence presented at trial to support a conviction for murder of the second degree where there was no evidence admitted at the trial that proved ... Appellant planned, participated in[,] or agreed to participate in a robbery that resulted in the death of another person?
2. Whether there was insufficient evidence presented at trial to sustain a conviction for robbery on the basis o[f] accomplice liability where there was no evidence admitted at the trial that proved ... Appellant planned, participated in[,] or agreed to participate in a robbery with his alleged co-conspirators?
3. Whether there was insufficient evidence presented at trial to sustain a conviction for conspiracy to commit robbery where there was no evidence admitted at trial that proved ... Appellant was a part of an agreement to participate in a robbery with his alleged co-conspirators?

Appellant's Brief at 4 (unnecessary capitalization omitted).

Initially, we address the Commonwealth's argument Appellant has waived his sufficiency challenges by failing to state them with specificity in his Rule 1925(b) statement. **See** Commonwealth's Brief at 9-11. In Appellant's concise statement, he presented his sufficiency claims as follows:

- [1]. The evidence presented at trial was insufficient to sustain a conviction for murder of the [second-]degree.
- [2]. The evidence presented at trial was insufficient to sustain a conviction for robbery.

[3]. The evidence presented at trial was insufficient to sustain a conviction for conspiracy to [commit] robbery.

Pa.R.A.P. 1925(b) Statement, 7/3/25, at 3 (unnumbered; unnecessary capitalization omitted).⁴

The Commonwealth insists Appellant's sufficiency issues are waived because, in his Rule 1925(b) statement, he did not "identify the element or elements of the individual charges that he allege[s] the Commonwealth failed to prove." Commonwealth's Brief at 10-11. In support, the Commonwealth relies on this Court's decision in **Commonwealth v. Williams**, 959 A.2d 1252 (Pa. Super. 2008). There, Williams' Rule 1925(b) statement set forth the following sufficiency claim: "There was insufficient evidence to sustain the charges of murder, robbery, [carrying a firearm without a] license, and [carrying a firearm] on the streets. Thus[, Williams] was denied due process of law." **Id.** at 1256. We held Williams' issue was waived, as "[t]he 1925(b) statement language [did] not specify how the evidence failed to establish which element or elements of the three offenses for which [Williams] was convicted." **Id.** at 1257 (citation omitted). We reasoned:

If [an] appellant wants to preserve a claim that the evidence was insufficient, then the [Rule] 1925(b) statement needs to specify the element or elements upon which the evidence was insufficient. This Court can then analyze the element or elements on appeal. [Where a] 1925(b) statement ... does not specify the allegedly unproven elements[, ... the sufficiency issue is waived [on appeal].

⁴ Appellant raised multiple other claims in his concise statement (including challenges to the weight of the evidence and evidentiary rulings by the court) that he does not assert herein. **See** Pa.R.A.P. 1925(b) Statement at unnumbered 1-3. Thus, they are waived.

Id. (emphasis omitted). Additionally, the **Williams** panel noted waiver applied even though the trial court had addressed Williams' sufficiency issue in its Rule 1925(a) opinion. **Id.** We found the court's consideration of the issue to be

of no moment to our analysis because we apply [Rule] 1925(b) in a predictable, uniform fashion, not in a selective manner dependent on an appellee's argument or a trial court's choice to address an unpreserved claim. Thus, we find 1925(b) waiver where appropriate despite the lack of objection by an appellee and despite the presence of a trial court opinion.

Id. (some citations omitted).

We recognize this Court has consistently applied **Williams** to find sufficiency issues waived where the appellant's Rule 1925(b) statement did not specify the element(s) of the offenses the Commonwealth purportedly failed to prove. **See Commonwealth v. Roche**, 153 A.3d 1063, 1072 (Pa. Super. 2017); **Commonwealth v. Tyack**, 128 A.3d 254, 260-61 (Pa. Super. 2015); **Commonwealth v. Gibbs**, 981 A.2d 274, 281 (Pa. Super. 2009).⁵ "Such specificity is of particular importance in cases where, as here, the [a]ppellant was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt." **Gibbs**, 981 A.2d at 281 (citing **Williams**, 959 A.2d at 1258 n.9). Because

⁵ **See also Commonwealth v. Cook**, No. 967 WDA 2023, unpublished memorandum at 5-6 (Pa. Super. filed June 24, 2024); **Commonwealth v. Gardopee**, No. 186 WDA 2022, unpublished memorandum at 7 (Pa. Super. filed Oct. 28, 2022); **Commonwealth v. Moyer**, No. 106 MDA 2019, unpublished memorandum at 8 (Pa. Super. filed Feb. 10, 2020). Pursuant to Pa.R.A.P. 126(b), non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value.

here, Appellant was convicted of several offenses, each of which contain multiple elements, and he did not specify, in his Rule 1925(b) statement, which element(s) of his crimes the Commonwealth failed to prove, he has waived his sufficiency issues for our review.

In any event, even if not waived, no relief would be due. Preliminarily, we note:

Whether the evidence was sufficient to sustain the charge presents a question of law. Our standard of review is *de novo*, and our scope of review is plenary. In conducting our inquiry, we examine[,]

whether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict-winner, [is] sufficient to establish all elements of the offense beyond a reasonable doubt. We may not weigh the evidence or substitute our judgment for that of the fact-finder. Additionally, the evidence at trial need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant's guilt 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. When evaluating the credibility and weight of the evidence, the fact-finder is free to believe all, part[,], or none of the evidence. For purposes of our review under these principles, we must review the entire record and consider all of the evidence introduced.

Commonwealth v. Rojas-Rolon, 256 A.3d 432, 436 (Pa. Super. 2021) (cleaned up).

Here, Appellant challenges his conviction for second-degree murder, robbery, and conspiracy. In discussing second-degree murder, we have explained:

"[A] person is guilty of criminal homicide if he intentionally, knowingly, recklessly[,], or negligently causes the death of another human being." 18 Pa.C.S. § 2501. The Crimes Code divides homicide into degrees of culpability. Murder of the second degree, also known as felony murder, is a criminal homicide committed while a defendant was engaged as a principal or an accomplice in the perpetration of a felony. 18 Pa.C.S. § 2502(b). The statute defines perpetration of a felony as "[t]he act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary[,], or kidnapping." 18 Pa.C.S. § 2502(d)[.]

Second-degree murder does not require a specific intent to kill. Rather, a person has the requisite intent for second-degree murder if he has a wanton disregard for the fact that death might result which is inherent in the commission of a dangerous felony. Thus, the malice or intent to commit the underlying crime is imputed to the killing to make it second-degree murder, regardless of whether the defendant actually intended to physically harm the victim. Stated another way,

[w]hen an actor engages in one of the statutorily enumerated felonies and a killing occurs, the law, via the felony-murder rule, allows the finder of fact to infer the killing was malicious from the fact that the actor engaged in a felony of such a dangerous nature to human life because the actor, as held to a standard of a reasonable man, knew or should have known that death might result from the felony.

Commonwealth v. Wellman, 344 A.3d 13, 19–20 (Pa. Super. 2025) (some citations and emphasis omitted).

Additionally, Appellant was convicted of robbery under 18 Pa.C.S. § 3701(a)(1)(i). Under that provision, a person is guilty of robbery, "if, in the course of committing a theft, he ... inflicts serious bodily injury upon another[.]" 18 Pa.C.S. § 3701(a)(1)(i). "A defendant also may be guilty of robbery as an accomplice or co-conspirator as long as the defendant

possessed the requisite *mens rea* to commit the criminal act and the additional elements of accomplice liability or conspiratorial liability are established.” **Commonwealth v. Mitchell**, 135 A.3d 1097, 1102 (Pa. Super. 2016). “Accomplice liability may be established wholly by circumstantial evidence. Only the least degree of concert or collusion in the commission of the offense is sufficient to sustain a finding of responsibility as an accomplice. No agreement is required, only aid.” **Id.** (cleaned up).

Moreover, regarding the crime of conspiracy, we have explained:

A person is a conspirator if the defendant: 1) entered into an agreement to commit or aid in an unlawful act with another person or persons; 2) with a shared criminal intent; and 3) an overt act was done in furtherance of the conspiracy.

Id. (cleaned up). We have also elucidated:

The essence of a criminal conspiracy, which is what distinguishes this crime from accomplice liability, is the agreement made between the co-conspirators. It is essential that the co-conspirators have a shared criminal intent. The agreement must rest upon the mutual specific intent to carry out a particular criminal objective.

Wellman, 344 A.3d at 18-19.

Here, the crux of Appellant’s challenge to the sufficiency of the evidence to sustain each of his three convictions is that the Commonwealth failed to prove he agreed to participate in the robbery, which ultimately resulted in Roman’s death. **See** Appellant’s Brief at 19 (concluding “there was insufficient evidence to sustain a conviction for second-degree murder based on a theory Appellant entered a partnership with ... Dickson, ... Simpson, and an unknown male to engage [in] a robbery which resulted in the death of ... Roman”); **id.**

(stating “there was no evidence adduced at trial that showed ... Appellant was in a partnership with ... Dickson, ... Simpson, or the unknown male to commit a robbery; thus, insufficient evidence existed to support Appellant’s conviction for robbery based on accomplice liability”); *id.* at 22 (“Appellant contends there was insufficient evidence to find him guilty of conspiracy to commit robbery because he did not enter in an agreement with ... Simpson, ... Dickson, and/or the unknown male to participate in a robbery of the drug deal between him, ... Roman[,] and ... Colon-Perez, and the Commonwealth failed to present evidence to establish an agreement between him and the trio engaged in a robbery”). Although Appellant admits he “arranged a drug deal between himself and Gabriel Colon[-Perez,]” he insists “not a single witness testified at trial that Appellant conspired to arrange a robbery of the drug deal, nor was there any evidence admitted that logically lead to the conclusion that ... Appellant orchestrated or participated in a plan to rob ... Colon-Perez.” *Id.* at 14.

Instead, Appellant contends the evidence demonstrated he ***did not*** participate in the robbery, as he arrived separately from his alleged co-conspirators, he was not armed or wearing a face covering like the others, and there was no evidence he “stole or attempted to steal anything from anyone.” *Id.* at 17. Indeed, Appellant avers it

defies logic that [he] would set up a robbery of a drug deal, come to the drug deal unarmed, place himself inside of a vehicle that he knew was about to be robbed at gun point[,] and end up getting shot by his alleged co-conspirator’s bullets. If Appellant wanted

to set up a robbery of the drug deal, he could have done so without the need to enter the car unarmed and with his face exposed.

Id. at 18. Appellant also stresses the man who actually shot Roman was unidentified, and there was no evidence presented that Appellant knew this person. **Id.** Consequently, he maintains the Commonwealth could not prove he entered “a conspiracy with a person whom he did not know.” **Id.**

After thoroughly reviewing the record, we conclude the evidence was sufficient to sustain Appellant’s convictions. Contrary to Appellant’s argument, there was significant evidence to prove he agreed with Simpson, Dickson, and the unknown man to commit a robbery. Namely, the Commonwealth presented evidence Appellant communicated with Dickson and Simpson as he was arranging the drug deal with Roman. Minutes before the robbery, Appellant and Simpson spoke on the phone. Additionally, Appellant met in person with Dickson, Simpson, and the unknown male just before he walked to the location where he met Roman and then approached Colon-Perez’s vehicle. Moreover, in the hours after the attempted robbery and shooting, Appellant tried to call both Dickson and Simpson, and Dickson attempted to call Appellant.

Additionally, Appellant’s arriving separately from his cohorts, and not covering his face, is consistent with Appellant’s attempting to conceal from Roman and Colon-Perez that a robbery was about to occur. To the extent it seems illogical Appellant would enter the vehicle unarmed when he knew an armed robbery was about to take place, that irrationality does not overcome the evidence establishing he conspired with Simpson, Dickson, and the

unidentified male to participate in that robbery. Likewise, the fact Appellant was also shot during the commission of that offense does not negate the proof of his guilt in planning it.

Moreover, we reject Appellant's insistence there was no evidence he "stole or attempted to steal anything from anyone." *Id.* at 17. He argues:

Prior to and up to the trial, the Commonwealth alleged that Appellant committed a robbery because he came to the drug deal empty handed and left with a black bag. However, at trial, the affiant, Detective Kling of the York City Police [Department], agreed with Appellant's counsel that Appellant came to the drug deal with a black bag and left with the same black bag that he came with. [N.T. Trial] at 418. This is important because it shows that there was no evidence to suggest that Appellant took anything from anyone as alleged by the Commonwealth to support their theory that Appellant robbed a drug deal.

Id. at 17-18.

Appellant conveniently ignores Detective Kling's multiple statements (including in the portion of the record cited by Appellant) that from viewing different angles of the surveillance footage, he believed the bag Appellant was carrying as he approached Colon-Perez's vehicle **was empty**. *See* footnote 1, *supra*; *see also* N.T. Trial at 418 (Detective Kling's stating the bag Appellant was holding as he approached the car "appeared [to be] light, likely to be empty from the view [he] saw"). As Appellant's wife, Iesha Barnes, testified she found marijuana in the black bag **after** the shooting, the jury could reasonably infer Appellant took marijuana from Colon-Perez during the incident. Accordingly, this evidence bolsters our conclusion the evidence was sufficient to prove Appellant conspired to — and did — participate in the

robbery that resulted in Roman's death. Thus, we would reject his challenges to the sufficiency of the evidence to sustain his convictions, even had he preserved those issues for our review.

Although we affirm Appellant's convictions for second-degree murder, robbery, and conspiracy to commit robbery, we conclude his mandatory sentence of LWOP for second-degree murder must be vacated in light of our Supreme Court's decision in **Lee**. There, our Supreme Court considered a "facial challenge to a mandatory sentence of [LWOP] for second-degree murder[,]” **Lee**, 357 A.3d at 362, and ultimately held such a sentence is unconstitutional under the 'cruel punishments' clause of Article I, Section 13 of the Pennsylvania Constitution. **Id.** at 357, 396.⁶ The **Lee** Court explained:

We find that the sentencing framework imposing a *mandatory* sentence of [LWOP] for second[-]degree murder convictions in *all* cases, regardless of the culpability and characteristics of the defendant — ... such as the extent of an offender's participation in the conduct, and the details of his offense — without individualized assessment either at sentencing or through parole, prevents the sentencer from considering whether this harshest of sentences proportionately punishes the offender. Furthermore, this mandatory sentencing scheme runs afoul of notions of individualized sentencing for defendants facing the second most severe punishment after death, and the harshest type of incarceration. Finally, the mandatory nature of the sentencing scheme without individualized sentencing lacks adequate penological justification. Ultimately, we find that the mandatory

⁶ The **Lee** Court also held that Pennsylvania's constitutional proscription against cruel punishments is broader than the Eighth Amendment of the United States Constitution, in part because "the cruel punishments provision in the Pennsylvania Constitution ... does not use the term 'unusual....'" **Lee**, 357 A.3d at 380.

sentencing scheme for second[-]degree murder poses too great a risk of disproportionate punishment, and, thus, find it to be cruel.

Id. at 395-96 (emphasis in original). Accordingly, the Court vacated Lee's sentence for second-degree murder and remanded for resentencing, directing:

On remand, the sentencing court must, after consideration of [Lee's] individual culpability, determine whether he should be resentenced to life imprisonment without the possibility of parole; or to a maximum sentence of life imprisonment, as required by 18 Pa.C.S. § 1102(b), accompanied by a minimum sentence determined by the court.

Id. at 397.

Notably, the ***Lee*** Court did not explicitly state its holding applies only prospectively;⁷ thus, Appellant is entitled to the retroactive application of the rule announced in ***Lee*** on direct appeal from his judgment of sentence. ***See Commonwealth v. Cabeza***, 469 A.2d 146, 148 (Pa. 1983) ("[W]e hold that where an appellate decision overrules prior law and announces a new principle, unless the decision specifically declares the ruling to be prospective only, the new rule is to be applied retroactively to cases where the issue in question is properly preserved at all stages of adjudication up to and including any direct appeal."). Additionally, although Appellant did not raise this constitutional challenge to his sentence below, our Supreme Court "has long held that a claim that a sentence violates an individual's right to be free from

⁷ Indeed, the Court expressly stated it was declining to address whether its decision applied retroactively. ***See Lee***, 356 A.3d at 397 n.20 ("As this matter comes to us on direct appeal, and the only question before us is the constitutionality of [Lee's] sentence, we decline to address questions of retroactivity.").

cruel and unusual punishment is a challenge to the legality of the sentence, rendering the claim unwaivable.” ***Commonwealth v. Brown***, 71 A.3d 1009, 1015-16 (Pa. Super. 2013) (citing ***Commonwealth v. Yasipour***, 957 A.2d 734, 740 n.3 (Pa. Super. 2008), *appeal denied*, 980 A.2d 111 (Pa. 2009) (finding a claim that a sentence is cruel and unusual punishment was not waived where the appellant failed to preserve it below, as it is a challenge to the legality of the sentence); ***Commonwealth v. Howard***, 540 A.2d 960, 961 (Pa. Super. 1988) (stating that because “no court may legally impose cruel and unusual punishment[,] ... [a] contention that the sentence imposed constitutes cruel and unusual punishment is a challenge to the legality of sentence which may be appealed as of right on direct appeal”). Finally, Appellant’s failure to assert this legality-of-sentencing issue on appeal does not preclude us from raising it *sua sponte*. ***See Commonwealth v. Armolt***, 294 A.3d 364, 376 (Pa. 2023) (“An appellate court may address, and even raise *sua sponte*, challenges to the legality of an appellant’s sentence even if the issue was not preserved in the trial court.”) (citing ***Commonwealth v. Hill***, 238 A.3d 399, 407 (Pa. 2020)).

Therefore, in accordance with ***Lee***, we vacate Appellant’s mandatory LWOP sentence for second-degree murder and remand for the trial court to resentence Appellant consistent with that decision. Furthermore, as our decision upsets the court’s overall sentencing scheme, we also vacate Appellant’s sentences for robbery and conspiracy so the court may resentence Appellant on those convictions, as well. ***See Commonwealth v. Thur***, 906

A.2d 552, 569-70 (Pa. Super. 2006) (stating if our disposition upsets the overall sentencing scheme of the trial court, we must remand so that the court can restructure its sentence plan).

Judgment of sentence vacated. Case remanded for resentencing.
Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 09/10/2026