

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
CHONG LING DAN	:	
	:	
Appellant	:	No. 2882 EDA 2022

Appeal from the Judgment of Sentence Entered October 24, 2022
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0000254-2022

BEFORE: DUBOW, J., McLAUGHLIN, J., and KING, J.

MEMORANDUM BY DUBOW, J.:

FILED JANUARY 10, 2024

Appellant, Chong Ling Dan, appeals from the October 24, 2022 Judgment of Sentence entered in the Montgomery County Court of Common Pleas following his conviction of First-Degree Murder and Conspiracy¹ arising from his role in the November 28, 2020 murder-for-hire of the Victim. Appellant challenges the court's refusal to conduct follow-up questioning of certain prospective jurors, the sufficiency of the evidence, and certain evidentiary rulings. After careful review, we find each of Appellant's issues waived. We, thus, affirm his Judgment of Sentence.

In light of our disposition, we need not provide a detailed recitation of the facts and procedural history. Briefly, on November 23, 2021, the

¹ 18 Pa.C.S. §§ 2502(a) and 903, respectively.

Commonwealth charged Appellant with the above crimes² in connection with the November 28, 2020, murder of the Victim in Lansdale, Montgomery County. Evidence discovered during the course of the investigation of the Victim's murder—including cell phone records and location data collected and stored by Google, video surveillance, and eyewitness statements—indicated that Appellant engaged two men, Ricky Vance and Terrence Marche, to shoot and kill the Victim. Further evidence indicated that the Victim was romantically involved with Appellant's former girlfriend, that Appellant and Vance were good friends, and that Vance and Marche were friends.

Following a lengthy trial at which numerous witnesses testified, a jury convicted Appellant of First-Degree Murder and Conspiracy.³ On October 24, 2022, the trial court sentenced Appellant to a term of life imprisonment. Appellant did not file a post-sentence motion.

This timely appeal followed. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant raises the following issues on appeal:

1. Did the court err and abuse its discretion thus denying Appellant a fair trial secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and

² The Commonwealth also charged Appellant with two counts of Solicitation and one count each of Third-Degree Murder and Conspiracy to Commit Third-Degree Murder.

³ The Commonwealth tried Appellant and Vance jointly. The jury also convicted Vance of First-Degree Murder and Conspiracy. His appeal of his Judgment of Sentence is currently pending before this Court at Docket No. 2886 EDA 2022. To date, police have not apprehended Marche.

Article I, Sections 6 and 9 of the Pennsylvania Constitution, when it denied counsel's request that it conduct follow up individual questioning of prospective jurors 5 and 41, each of whom had indicated on the standard jury questionnaire that they "would be more likely to believe the testimony of a police officer or any other law enforcement officer because of his or her job?"

2. Did the court err and abuse its discretion when it granted the Commonwealth's Motion in *Limine*, over defense objections, permitting it to introduce post-offense "paper proof of Marche and Dan's international travel . . . as evidence of conspiracy?"
3. Did the Court err and abuse its discretion and violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, when it denied Appellant's motion for a judgment of acquittal at the close of the prosecution's case because taking the prosecution's evidence as true, including all reasonable inferences, the evidence was insufficient to sustain the convictions of murder in the first degree and criminal conspiracy to commit murder of the first degree?
4. Did the Court err and abuse its discretion and violate the Confrontation Clause of the Sixth Amendment and Article I, Section 9 of the Pennsylvania Constitution, when it permitted testimony and evidence related to Google location information over counsels' objections that there was no witness presented whom he could cross examine regarding the accuracy of such information?

Appellant's Brief at 2-3 (footnote omitted).

A.

In his first issue, Appellant asserts that the trial court abused its discretion when it denied "counsel's request that the court follow up with two jurors who provided affirmative responses to question 8" of the standard juror questionnaire. Appellant's Brief at 27. Appellant has not, however, cited to the place in the Notes of Testimony where he made this request, in violation of Pa.R.A.P. 2119(c).

It is axiomatic that the argument portion of an appellate brief must be developed with citation to and relevant authority. Pa.R.A.P 2119(a)-(c). “[I]t is an appellant’s duty to present arguments that are sufficiently developed for our review. The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities.” **Commonwealth v. Hardy**, 918 A.2d 766, 771 (Pa. Super. 2007) (internal citation omitted). “This Court will not act as counsel and will not develop arguments on behalf of an appellant.” **Id.** If a deficient brief hinders this Court’s ability to address any issue on review, we shall consider the issue waived. **Commonwealth v. Gould**, 912 A.2d 869, 873 (Pa. Super. 2006) (holding that appellant waived issue on appeal where he failed to support claim with relevant citations to case law and record). **See also In re R.D.**, 44 A.3d 657, 674 (Pa. Super. 2012) (finding that, where the argument portion of an appellant’s brief lacked meaningful discussion of, or citation to, relevant legal authority regarding issue generally or specifically, the appellant’s issue was waived because appellant’s lack of analysis precluded meaningful appellate review).

“We shall not develop an argument for an appellant, nor shall we scour the record to find evidence to support an argument[.]” **Milby v. Pote**, 189 A.3d 1065, 1079 (Pa. Super. 2018). To do so would place this Court “in the conflicting roles of advocate and neutral arbiter.” **Commonwealth v. Williams**, 782 A.2d 517, 532 (Pa. 2001) (Castille, J., concurring). Therefore, when an appellant fails to develop his issue in an argument, the issue is

waived. ***Sephakis v. Pa. State Police Bureau of Records and Id.***, 214 A.3d 680, 686-87 (Pa. Super. 2019).

The argument Appellant has presented in support of this claim is woefully underdeveloped. Although Appellant has provided citation to pertinent legal authority, as noted above he did not provide citation to the place in the record where he requested that the court conduct further inquiry into the prospective jurors' responses. Appellant's failure to include this information in his Brief has impeded our ability to conduct meaningful appellate review. To undertake review of Appellant's issue would require us to scour the record and craft an argument on his behalf, which we will not do. This issue is, therefore, waived.⁴

⁴ Moreover, we observe that the only citation to the record provided by Appellant is to a page in the Notes of Testimony where, after the jury had been selected, the court noted that "I even asked you at the end of process [of reviewing the hardships and excuse challenges for cause] if you were satisfied with jury selection at that time. You said that you were. Quite clearly you could have raised this issue in the back. You didn't do so. Furthermore, I find that there is no merit whatsoever. I made it very, very clear that the questions and answers asked by the [c]ourt are the ones that count under oath." N.T. Trial, 9/22/20 AM, at 31-32. Thus, even if Appellant had not waived this issue by failing to cite to the place in the record where he preserved the issue, he would have waived it by failing to place a contemporaneous objection to the court's conduct **on the record**. See ***Commonwealth v. Strunk***, 953 A.2d 577, 580 (Pa. Super. 2008) ("One must object to errors, improprieties or irregularities at the earliest possible stage of the criminal . . . adjudicatory process to afford the jurist hearing the case the first occasion to remedy the wrong and possibly avoid an unnecessary appeal to complain of the matter.") (citation omitted); ***Commonwealth v. Duffy***, 832 A.2d 1132, 1136 (Pa. Super. 2003) ("[T]o preserve an issue for review, a party must make a timely and specific objection.") (citation omitted).

B.

In his second issue, Appellant claims that the lower court abused its discretion when it permitted evidence of Appellant's international travel that occurred subsequent to the Victim's murder as evidence of Appellant's consciousness of guilt because that ruling was inconsistent with the court's rulings on other motions in *limine*. Appellant's Brief at 31-23. He claims that this ruling was an "about-face because the court permitted this travel as 'evidence of the conspiracy' which the court had already determined ended with the death of" Victim. ***Id.*** He concludes that this "inconsistent ruling constitutes an abuse of discretion" because the admission of Appellant's subsequent travel "cannot be reconciled with the earlier order finding that the conspiracy ended with the death of" Victim. ***Id.*** at 34.

As an initial matter, we must determine whether Appellant has preserved this claim for our review. In his Rule 1925(b) Statement, with respect to this allegation of error, Appellant stated: "The [c]ourt erred and abused its discretion when it granted the Commonwealth's Motion in *Limine*, over defense objection, permitting it to introduce 'paper proof' of Marche and [Appellant's] international travel . . . as evidence of conspiracy. Order, August 29, 2022. Said evidence was introduced at trial. N.T., 9/21/22, 196-198; N.T. 9/22/22, 85-87, 96-97, 127-129." Pa.R.A.P. 1925(b) Statement, 1/24/23, at 3. In addressing this issue in its Rule 1925(a) Opinion, the trial court focused, *inter alia*, on its finding that Appellant's subsequent travel to Honduras with Marche was relevant to demonstrate Appellant's consciousness

of guilt and their desire to evade the intense investigation into this murder. Trial Ct. Op., 2/8/23, at 18-20. The court did not address the argument that Appellant has raised before this Court, *i.e.*, that the court's ruling constituted an abuse of discretion because it was inconsistent with other rulings.

Our Supreme Court has held that "[a]ny issues not raised in a [Rule] 1925(b) statement will be deemed waived." ***Commonwealth v. Castillo***, 888 A.2d 775, 780 (Pa. 2005) (quoting ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998)). ***See also*** Pa.R.A.P. 1925(b)(4)(ii) ("The [1925(b)] Statement shall concisely identify each error that the appellant intends to assert with sufficient detail to identify the issue to be raised for the judge."). A Rule 1925(b) statement "which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no [Rule 1925(b)] Statement at all." ***Lineberger v. Wyeth***, 894 A.2d 141, 148 (Pa. Super. 2006); ***Commonwealth v. Tyack***, 128 A.3d 254, 260 (Pa. Super. 2015) (finding waiver where an appellant's concise statement was too vague to permit review).

Following our review, we conclude that Appellant's Rule 1925(b) Statement with respect to this issue was vague. Consequently, the trial court could not discern what specific issue Appellant intended to raise on appeal and, thus, did not address it. Accordingly, we conclude Appellant waived its issue.

C.

In his third issue, Appellant asserts that the Commonwealth presented insufficient evidence to support his convictions of first-degree murder and criminal conspiracy. Appellant's Brief at 35-43. In his Rule 1925(b) Statement, Appellant claimed as follows: "The [c]ourt erred and abused its discretion and violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, when it denied Appellant's motion for a judgment of acquittal at the close of the prosecution's case (N.T. 9/22/22, 144-146, 150-151). Taking the prosecution's evidence as true, including all reasonable inferences, the evidence was insufficient to sustain the convictions of murder in the first degree and criminal conspiracy to commit murder of the first degree, as no reasonable factfinder could have found the elements of each charge proven beyond a reasonable doubt." Rule 1925(b) Statement at 4.

A defendant challenging the sufficiency of the evidence must "specify the element or elements upon which the evidence was insufficient" in his Rule 1925(b) Statement. ***Commonwealth v. Williams***, 959 A.2d 1252, 1257 (Pa. Super. 2008) (citation omitted). If the defendant fails to identify the element or elements, he has not preserved the issue for appeal, and it is waived. ***Id.*** at 1257-58.

Our review of Appellant's Rule 1925(b) Statement, as set forth in relevant part above, indicates that Appellant did not specify which of the elements of which of the offenses he believes the Commonwealth did not

prove. This lack of specificity results in waiver of his sufficiency of the evidence claim.⁵

D.

In his final issue, Appellant challenges the trial court's admission of Google location data evidence, which he asserts is hearsay, contending that it was not properly authenticated and violated Appellant's right to confront witnesses. Appellant's Brief at 44-45.

In addressing his hearsay and Confrontation Clause arguments, Appellant cites ***Commonwealth v. Wallace***, 289 A.3d 894 (Pa. 2023), and acknowledges that the ***Wallace*** Court concluded that evidence of the kind admitted here is not hearsay and, thus, rejected the Confrontation Clause claim he advances. In support of his authentication claim, Appellant has cited only to ***Melendez-Diaz v. Massachusetts***, 557 U.S. 305 (2009), which involves the question of authentication of lab reports in a drug distribution and trafficking prosecution. Appellant's discussion of this case is, however, superficial and his analysis conclusory ("Just as with the lab report in [***Melendez-Diaz***], a criminal defendant has the right to confront the

⁵ Moreover, even if he had not waived this issue by failing to raise it with the requisite specificity, the argument proffered by Appellant in support of this claim is woefully undeveloped. Appellant has not set forth in his brief the elements of either of the criminal offenses of which he was convicted, nor has he articulated which of the elements he believes the Commonwealth has not proven. Rather, he has merely recounted the evidence presented by the Commonwealth and assails the inferences made by the jury from that evidence as unreasonable. Appellant's Brief at 39-43.

underlying methodology used (*i.e.*, the algorithm) to derive the locations.”). Appellant’s Brief at 45. Appellant’s failure to develop this argument with discussion and analysis of relevant authority has impeded our ability to conduct meaningful appellate review. It is, therefore, waived.

E.

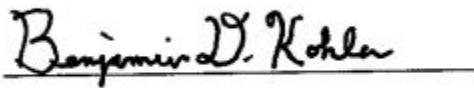
In sum, having found each of Appellant’s issues waived, we affirm his Judgment of Sentence.

Judgment of Sentence affirmed.

Judge King joined the memorandum.

Judge McLaughlin concurs in result.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/10/2024