

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1965-2005
 :
 MATTHEW D. WATKINS, :
 :
 Defendant : 1925(a) OPINION

Date: May 2, 2007

**OPINION IN SUPPORT OF THE ORDER OF FEBRUARY 6, 2007 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Matthew D. Watkins has appealed this court’s sentence of February 6, 2007. On appeal, Watkins asserts that his trial counsel was ineffective for failing to prevent the admission of his statement to police, that said statement was inadmissible, and that the guilty verdict was against the weight of the evidence. Watkins’s appeal should be denied and his sentence affirmed.

I. BACKGROUND

A. Procedural History

On January 19, 2007, a jury convicted Watkins of Count 1 Robbery, 18 Pa.C.S.A § 3701(a)(1)(ii), Count 2 Criminal Conspiracy (robbery), 18 Pa.C.S.A. § 903(a)(1)/18 Pa.C.S.A. § 3701(a)(1)(ii), Count 3 Theft by Unlawful Taking or Disposition, 18 Pa.C.S.A. § 3921(a), Count 4 Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a), Count 5 Possessing Instruments of Crime, 18 Pa.C.S.A. § 907(b), and Count 6 Simple Assault, 18 Pa.C.S.A. § 2701(a)(3). On February 6, 2007, this court sentenced Watkins. On March 7, 2007, Watkins filed a *pro se* Petition to Motion “Appeal” for Jury Trial and/or Sentence Judgment.

On March 12, 2007, the court issued an order regarding Watkins's *pro se* Petition. The court treated the Petition as a request to dismiss current counsel and appoint new counsel to represent Watkins on appeal. The court granted that request and relieved trial counsel of further representation in the matter. The court also treated Watkins's Petition as a notice of appeal from his February 6, 2007 sentence.

On March 9, 2007, Watkins's trial counsel filed a Post-sentence Motion. In the Motion, trial counsel asserted his ineffectiveness for failing to object to the introduction of Watkins's statement at trial and for failing to file a motion *in limine* to prevent the admission of Watkins's statement. On March 14, 2007, this court denied the Post-sentence Motion. The court determined that there was no factual or legal basis for the assertions in the Motion.

On March 27, 2007, the court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Watkins to file a concise statement of matters complained of on appeal within fourteen days of the order. On April 5, 2007, Watkins filed a statement of matters.

B. Facts of the Case

1. The Plan

Sometime prior to, Watkins and Shawn Harper were outside on the porch of Watkins's residence. They were smoking marijuana together and discussing problems that Watkins was having. Watkins was employed as a cab driver by the Billtown Cab Company. Watkins had been on medical leave since October 5th because of back surgery and had been experiencing financial difficulties.

While on the porch, Watkins brought up to Harper the idea of robbing the Billtown Cab Company. Watkins told Harper that he could draw him a map of the Cab Company's layout. Subsequently, Watkins provided Harper with this detailed map.

Harper had enlisted two individuals to help him rob the Billtown Cab Company. On October 10, 2005, Harper and his two accomplices arrived at the Billtown Cab Company. They waited about forty-five minutes to one hour for the shift change. Once the shift changed, Harper and his two accomplices entered the Cab Company.

2. The Robbery

Charles Fisher was employed by the Billtown Cab Company as a dispatcher. As a dispatcher, he was charged with collecting the money from the drivers at the end of each shift, placing that money into money bags, and then placing those bags in a file cabinet. Fisher was on duty when Harper and his two accomplices entered the Cab Company at around 3:00 a.m.

Harper and his two accomplices had their faces covered in order to conceal their identities. One of Harper's accomplices had a revolver in his possession, while Harper had a crow bar in his. Harper had the crow bar in case he needed to pry open the file cabinet to get the money bags.

The individual with the revolver pointed it at Fisher and told him not to move. Harper went about the Cab Company ripping out the phone lines. Harper then went over to the file cabinet, opened the bottom drawer, and removed the money bags.

It was common knowledge among those individuals who worked at the Billtown Cab Company that the money bags would be located in the file cabinet. Typically, the bottom

drawer would be locked. However, it was not locked on this occasion as Fisher was preparing to gather the money from the shift, place it in the bags, and then place the bags in the drawer.

The individual with the revolver continued to point it at Fisher as Harper took the money bags out of the drawer. The individual told Fisher not to do anything because it was not worth it. This individual also took money that had been on the counter that Fisher had yet to place in the money bags. While the individual with the revolver and Harper were going about their business, the second accomplice stood at the doorway of the Cab Company.

Once the money bags were secured, the individual with the revolver told Fisher to get into the bathroom. Fisher complied and entered the bathroom. After Fisher went into the bathroom, Harper and his two accomplices left. Fisher waited about fifteen seconds before exiting the bathroom. Sometime after the robbery, Harper met with Watkins and gave Watkins his cut of the loot.

II. ISSUES

Watkins raises four issues in his statement of matters. They are:

1. Was trial counsel ineffective for failing to file a motion *in limine* seeking to exclude Watkins's statement made to Agent Raymond Kontz?
2. Was trial counsel ineffective for failing to object at trial when the Commonwealth introduced Watkins's statement made to Agent Raymond Kontz?
3. Was the admission of Watkins's statement reversible error?
 - a. Was Watkins's statement made pursuant to plea negotiations and thereby inadmissible?
4. Was the guilty verdict (on all charges) against the weight of the evidence?

III. DISCUSSION

Watkins's appeal should be denied and his sentence affirmed. Watkins's ineffectiveness claims are not ripe for decision and cannot be addressed on direct appeal. Watkins's challenge to the admission of his statement at trial also cannot be addressed on appeal since Watkins failed to preserve the issue for review. Watkins's weight of the evidence challenge fails as the guilty verdict against Watkins is not so contrary to the evidence so as to shock one's sense of justice.

A. Ineffectiveness of Trial Counsel

The court will not address the merits of Watkins's first two issues as they are not ripe for decision. As a general rule, claims of ineffectiveness of counsel must wait to be raised until collateral review. *Commonwealth v. Fowler*, 893 A.2d 758, 763 (Pa. Super. 2006); *Commonwealth v. Fitzgerald*, 877 A.2d 1273, 1274 (Pa. Super. 2005), *app. denied*, 891 A.2d 730 (Pa. 2005). Claims of ineffectiveness of counsel will not be addressed on direct appeal unless: (1) the ineffectiveness claims were presented to the trial court in the first instance; (2) a record devoted to the ineffectiveness claims was developed in the trial court; and (3) the trial court addressed the merits of the ineffectiveness claims. *Commonwealth v. Whitaker*, 878 A.2d 914, 924 (Pa. Super. 2005). Watkins did raise the ineffectiveness claims in his Post-sentence Motion. But, the court denied the Motion without holding an evidentiary hearing regarding the issues raised therein. As such, the court did not conduct an evidentiary hearing addressing the ineffectiveness claims thereby creating a record devoted to the claims. Therefore, the exception to the general rule does not apply, and Watkins's ineffectiveness claims must wait until collateral review to be addressed.

B. Admission of Watkins's Statement

The issue of whether the court erred in admitting testimony related to Watkins's statement cannot be addressed on appeal since the issue has been waived. Generally, issues not raised in the lower court are waived and cannot be raised for the first time on appeal. Pa.R.A.P. 302(a); *Commonwealth v. Dougherty*, 860 A.2d 31, 37 (Pa. 2004), *cert. denied*, 546 U.S. 835 (2005); *Commonwealth v. Duffy*, 832 A.2d 1132, 1136 (Pa. Super. 2005), *app. denied*, 845 A.2d 816 (Pa. 2004). In order to preserve an issue for appellate review, a party must make a timely and specific objection. *Commonwealth v. Melendez-Rodriguez*, 856 A.2d 1278, 1287 (Pa. Super. 2004); *Duffy*, 832 A.2d at 1136. Watkins did not raise any objection when the testimony concerning his statement to Agent Kontz was introduced. As such, Watkins failed to preserve the issue regarding the admissibility of such evidence for appellate review.

C. Weight of the Evidence Challenge

1. Standard of Review

A claim that the verdict was against the weight of the evidence is addressed to the sound discretion of the trial court. *Commonwealth v. Snyder*, 870 A.2d 336, 345 (Pa. Super. 2005). “A true weight of the evidence challenge concedes that sufficient evidence exists to sustain the verdict but questions which evidence is to be believed.” *Commonwealth v. Hunzer*, 868 A.2d 498, 507 (Pa. Super. 2005), *app. denied*, 880 A.2d 1237 (Pa. 2005) (quoting *Commonwealth v. Galindes*, 786 A.2d 1004, 1013 (Pa. Super. 2001)). In reviewing a weight of the evidence challenge, the trial court is not required to view the evidence in the light most favorable to the verdict winner. *Commonwealth v. Sullivan*, 820 A.2d 795, 806 (Pa. Super. 2003).

It is within the exclusive province of the trier of fact to determine the weight of the evidence and to pass on the credibility of the witnesses. *Hunzer*, 868 A.2d at 506. In so doing, the trier of fact is free to believe all, part, or none of the evidence presented. *Ibid*. A court may not substitute its judgment for that of the trier of fact. *Commonwealth v. Passmore*, 857 A.2d 697, 708 (Pa. Super. 2004), *app. denied*, 868 A.2d 1199 (Pa. 2005).

In reviewing a weight of the evidence challenge, “a trial court must determine whether certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the facts is to deny justice.” *Snyder*, 870 A.2d at 345.

‘A trial court will grant a new trial when it believes the verdict was against the weight of the evidence and resulted in a miscarriage of justice. Although a new trial should not be granted because of a mere conflict in testimony or because the trial judge on the same facts would have arrived at a different conclusion, a new trial should be awarded when the jury's verdict is *so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.*’

Commonwealth v. Lloyd, 878 A.2d 867, 872 (Pa. Super. 2005), *app. denied*, 887 A.2d 1240 (Pa. 2005) (emphasis in original).

2. The Verdict was not Against the Weight of the Evidence

The verdict was not against the weight of the evidence. The jury’s verdict was that Watkins participated in a criminal conspiracy to rob the Billtown Cab Company. This verdict is not so contrary to the evidence so as to shock one’s sense of justice.

The evidence established that Watkins was the mastermind of the robbery and enlisted Harper to execute his plan. Watkins broached the subject to Harper while the two were smoking marijuana on the front porch of Watkins’s residence. Watkins then provided Harper

with the necessary information he needed to successfully complete the robbery. Watkins provided Harper with intelligence on the Billtown Cab Company and with a detailed map of the Cab Company's layout. Harper took this information and used it to commit the robbery with his two accomplices

Thus, the evidence established that Watkins and Harper had entered into an agreement to rob the Billtown Cab Company. As such, Watkins was criminally liable for the acts that Harper and his two accomplices committed in furtherance of that agreement. *See, Commonwealth v. Wayne*, 720 A.2d 456, 463 (Pa. 1998), *cert. denied*, 528 U.S. 834 (1999) (each individual member of a criminal conspiracy is criminally responsible for the acts of his co-conspirator committed in furtherance of the conspiracy). Therefore, the guilty verdict against Watkins was not against the weight of the evidence.

IV. CONCLUSION

Accordingly, Watkins's appeal should be denied and the sentence of February 6, 2007 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: John A. Gummo, Esquire
DA (KO)
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)