

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. CR 672-2008
	:	
TRACEY HICKS,	:	
Defendant	:	
James Lavelle, Esquire		Counsel for the Commonwealth
Paul Levy, Esquire		Counsel for the Defendant

Nanovic, P.J. - April 19, 2011

MEMORANDUM OPINION

The Defendant, Tracey Hicks, has appealed the judgment of sentence which followed her conviction, by jury, of robbery, theft by receiving stolen property, and conspiracy to engage in theft by receiving stolen property. Defendant's Post-Sentence Motion filed on October 1, 2010, was denied by this Court on February 22, 2011.

Argument on Defendant's Post-Sentence Motion was originally scheduled for December 17, 2010. This date was continued several times at Defendant's request. In our order of October 4, 2010, originally scheduling argument, Defendant was directed to file a legal memorandum in support of her Post-Sentence Motion within thirty days of the filing of the trial

transcript. This memorandum was filed in the form of Proposed Findings of Fact and Conclusions of Law on January 19, 2011.

The only issue addressed in Defendant's memorandum was a claim of prosecutorial misconduct during closing argument. In our Memorandum Opinion of June 11, 2010, we fully addressed this issue. A copy of that opinion is attached hereto and incorporated by reference.

Following receipt of Defendant's notice of appeal, we issued a Rule 1925 (b) order directing Defendant to file of record a Concise Statement of Matters Complained of on Appeal. Defendant did so on April 15, 2011. In this statement, Defendant again identified the issue of prosecutorial misconduct and further claimed that the jury's verdict is against the weight and sufficiency of the evidence. While raised in Defendant's Post-Sentence Motion, these latter two issues were neither briefed nor argued in the memorandum we directed counsel to file in support of Defendant's Post-Sentence Motion. Accordingly, both issues have been waived.

In addition to waiver for failure to brief or argue, these two issues are further waived by the generality and vagueness in which raised in Defendant's Concise Statement of Matters Complained of on Appeal. While Defendant was convicted of three separate offenses, Defendant has failed to identify or set forth in what respect Defendant contends the evidence was

insufficient to support the jury's verdict or why the verdict was against the weight of the evidence. See Commonwealth v. Lemon, 804 A.2d 34, 37 (Pa.Super. 2002) (Rule 1925 (b) Statement claiming that "[t]he verdict of the jury was against the evidence," "[t]he verdict of the jury was against the weight of the evidence," and "[t]he verdict was against the law" held to be too vague to preserve sufficiency of the evidence claim). For this reason, we respectfully submit our attached Memorandum Opinion on the preserved issue of prosecutorial misconduct and suggest that the remaining issues raised by Defendant have been waived.

BY THE COURT:

P.J.