

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH,

vs.

TYREE TYQUAN MOY,
Defendant.

No. CR 1400-2024

OPINION AND ORDER

FILED
LYCOMING COUNTY
2026 AUG -7 PM 1:29
HOLLY L. THOMAS
PROTHONOTARY &
CLERK OF COURTS

AND NOW, this 7th day of August, 2026, upon consideration of the

Defendant's post-sentence motion (the "Motion")¹ and the arguments of the parties,² it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained below.

I. BACKGROUND.

By information filed October 31, 2024 (the "Information"),³ the Commonwealth charged the Defendant with delivery of a controlled substance (cocaine) (Count 1)⁴ and criminal use of a communication facility (Count 2).⁵ The charges arise out of a

¹ Defendant's "Post-Sentence Motion Pursuant to Pa. R. Crim. P. 720," filed April 10, 2026. Defendant filed the following amended or additional post-sentence motions: "Post-Sentence Motion Pursuant to Pa. R. Crim. P. 720," filed April 27, 2026; "Supplemental Motion [] Pursuant to Pa. R. Crim. P. 720 (Post Sentence Motion)," filed June 19, 2026; "Supplemental Motion Pursuant to Pa. R. Crim. P. 720 (Post Sentence Motion)," filed July 13, 2026.

² The Court heard argument on the Motion on June 22, 2026. Scheduling Order dated May 5 and entered May 6, 2026. In addition to oral argument, the Court considers Defendant's "Memorandum of Law to Support Post Sentence Motion," filed June 29, 2026.

³ Information, filed October 31, 2024.

⁴ 35 P.S. § 780-113(a)(30) ("The following acts and the causing thereof within the Commonwealth are hereby prohibited: ... [e]xcept as authorized by this act, the ... delivery ... [of] a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board..." for delivery of cocaine on June 6, 2024. Cocaine is a Schedule II controlled substance, 35 P.S. § 780-104(2)(i)(4), so the offense was graded as a felony. See 35 P.S. § 780-113(f)(1) (grading violation of Section 780-113(a)(30) as a felony when the substance is a controlled substance classified in Schedules I or II).

⁵ 18 Pa. C.S. § 7512(a) ("A person commits a felony of the third degree if that person uses a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under ... The Controlled Substance, Drug, Device and Cosmetic

controlled purchase of crack cocaine from Defendant by a confidential informant ("CI") working with detectives of the Lycoming County Narcotics Enforcement Unit ("NEU") on June 6, 2024.⁶

On that day, NEU Detectives met the CI at a predetermined location, where the CI was strip-searched, and his vehicle was searched to negate the presence of drugs, contraband or currency. Nothing was found. The CI contacted Defendant, who directed him to meet the Defendant at the Econo Lodge. Detectives gave the CI \$160.00 of prerecorded money and equipped him with a covert recorder, then followed him to the meeting location.⁷

Through video surveillance, Detectives observed Defendant getting into the CI's vehicle, whereupon they traveled to a Sheetz convenience store. The CI provided Defendant with the prerecorded money, and Defendant exited the vehicle and entered Sheetz. The CI advised Detectives that Defendant would be meeting the drug dealer in the bathroom. Detectives observed Defendant and an unknown black male exit the bathroom. Defendant returned to the CI's vehicle and delivered one knotted-off bag containing what later tested positive as cocaine.⁸

Act") for use of a cellular telephone on June 6, 2024 to commit, cause or facilitate the commission of a felony violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §§ 780-1 - 780-144. A "communication facility" is "a public or private instrumentality used or useful in the transmission of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part, including, but not limited to, telephone, wire, radio, electromagnetic, photoelectronic or photo-optical systems or the mail," 18 Pa. C.S. § 7512(c), so a cellular telephone is a "communication facility." This offense is graded as a felony of the third degree. 18 Pa. C.S. § 7512(a).

⁶ Affidavit of Probable Cause, sworn by NEU Detective Robert Anderson on September 9, 2024 in Magisterial District Court 29-3-02 and filed in the instant matter on October 11, 2024.

⁷ *Id.*

⁸ *Id.*

Following the buy, detectives again strip-searched the CI and searched his vehicle to negate the presence of any other drugs, contraband or currency. Again, nothing was found. The cocaine field-tested positive, and detectives sent it to the Pennsylvania State Police's Wyoming Regional Laboratory to confirm its chemical makeup.⁹ The laboratory determined that the substance in the bag had a net weight of 2.81 grams, plus or minus .01 grams, and contained cocaine, a Schedule II controlled substance.¹⁰

The charges were tried to a jury on January 21, 2026,¹¹ and the jury found the Defendant guilty of both counts in the Information, delivery of a controlled substance, cocaine (Count 1) and criminal use of a communication facility (Count 2).¹² On April 10, 2026, the Court sentenced Defendant to an aggregate indeterminate sentence of incarceration in a State Correctional Institution of thirty (30) months to nine (9) years, as follows: Under Count 1, delivery of a controlled substance (cocaine), the Court sentenced Defendant to an indeterminate period of incarceration of twenty-four (24) months to seven (7) years, and under Count 2, criminal use of a communication facility, the Court sentenced Defendant to an indeterminate period of incarceration of six (6) months to two (2) years, with the sentences to run consecutively to each other and to any other sentence the Defendant was presently serving.¹³

⁹ *Id.*

¹⁰ The Commonwealth and the Defendant stipulated to this at trial. Transcript of Proceedings held January 21, 2026 (the "Trial Transcript"), at 53; see also Com. Trial Exh. 6 (Laboratory Report No. W24-003143-1, Incident No. 24-0144, dated December 18, 2024, by the Pennsylvania State Police Bureau of Forensic Services).

¹¹ Trial Transcript.

¹² *Id.*, at 196; Verdict Form, dated January 21 and filed January 22, 2026.

¹³ Sentencing Order dated April 10 and entered April 20, 2026.

Defendant thereafter filed the instant post-sentence Motion on April 10, 2026.¹⁴ Defendant moves for an arrest of judgment, and, alternatively, for a new trial and for modification of his sentence.¹⁵ He asserts numerous reasons in support of his contentions.

Defendant alleges the following in support of arrest of judgment: (i) trial counsel was ineffective (a) for failing to object to delayed receipt of discovery, (b) for failing to prepare adequately for trial, (c) for failing to object when law enforcement testified falsely that they followed department procedure when utilizing recording devices and a confidential informant, (d) for failure to call witnesses subpoenaed by the Defendant;¹⁶ (e) for failure to cross-examine the CI at trial adequately; and (f) for failure to request a continuance when the Commonwealth provided a statement of

¹⁴ See, *supra*, n.1. Generally, a post-sentence motion must be filed within ten (10) days after imposition of sentence. Pa. R. Crim. P. 720(A). Here, the Court sentenced Defendant on April 10, 2026, and he filed his post-sentence Motion on that same day, which is within ten days after sentencing. Ergo, the Court finds the Motion was filed timely.

Defendant filed supplemental post sentence motions on April 27, June 19 and July 13, 2026. See, *supra*, n.1. The Court is permitted, but not required, to consider supplemental post-sentence motions. See Pa. R. Crim. P. 720(B)(1)(b) ("The defendant may file a supplemental post-sentence motion in the judge's discretion as long as the decision on the supplemental motion can be made in compliance with the time limits of paragraph (B)(3) [pertaining to time limits for decision on a post-sentence motion]"). Defendant did not request or obtain leave of court for his supplements *nunc pro tunc*. The first supplement filed on April 27, 2026 is likely timely, in that Defendant's certificate of service indicates it was sent for filing on April 19, 2026, which is within ten (10) days after sentencing. Although the supplement was not received by the Clerk of Courts within the requisite time, Defendant was incarcerated, and, under the "prisoner mailbox rule," a *pro se* prisoner's appeal documents are deemed filed on the date the prisoner deposits them in a prison mailbox or with prison authorities. See, e.g., *Com. v. Jones*, 700 A.2d 423, 425-26 (Pa. 1997).

The Superior Court has held that "permission *must* be requested and granted *on the record before* supplemental post-trial motions may be filed." *Com. v. Sheaff*, 530 A.2d 480, 483 (Pa. Super. 1987) (emphasis in original). Nevertheless, this rule is not followed rigidly. If a trial court addresses an issue raised in an untimely supplement filed *nunc pro tunc* without prior approval, the issue is preserved for appeal notwithstanding the procedural violation. *Com. vs. Sopota*, 587 A.2d 805, 808-09 (Pa. Super. 1991). Defendant did not request permission to file supplemental motions *nunc pro tunc*, and this Court did not grant such permission. Accordingly, the supplemental motions filed on June 19 and July 13, 2026 will not be considered by this Court.

¹⁵ Motion, *introductory paragraph*.

¹⁶ *Id.*, ¶ 6.

Mikhail Lattimore on the eve of trial;¹⁷ (ii) the trial court improperly denied Defendant's pre-trial motion to suppress; (iii) law enforcement provided false information and omitted material facts; (iv) the Commonwealth admitted a video without supporting the creation time and date that would have changed the outcome;¹⁸ (v) the Commonwealth presented insufficient evidence to convict Defendant; (vi) the suppression court improperly denied Defendant's motion for a *Franks*¹⁹ hearing; (vii) the Commonwealth failed to disclose Mikhail Lattimore's name during *voir dire* and thereafter mentioned his name in criminal association with Defendant during trial, to Defendant's prejudice; and (viii) the court improperly denied Defendant's pre-trial motions for discovery at a hearing held on January 6, 2026 and, thereafter, failed to require the Commonwealth to provide certain discovery.²⁰

Defendant contends the verdict was against the weight of the evidence (i) because trial counsel stipulated to evidence and chain of custody without Defendant's consent; (ii) because the trial court failed to rule on four objections; (iii) because the trial court erroneously instructed the jury that stipulations applied to evidence; (iv) because the Commonwealth's witnesses failed to testify credibly and were motivated to fabricate their testimony; (v) because the Commonwealth knowingly used perjured testimony by failure to correct the CI's testimony; (vi) because Defendant's counsel had a conflict of interest in that one of her colleagues

¹⁷ Defendant's supplemental post-sentence motion filed April 27, 2026 (the "Supplemental Motion"), ¶¶ (iii)(c), (d).

¹⁸ Motion, ¶ 6.

¹⁹ *Franks v. Delaware*, 98 S. Ct. 2674, 2676 (1978) (requiring a hearing at the defendant's request "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause").

²⁰ Supplemental Motion, ¶¶ (f); (l)(d), (f); (ii).

in the Public Defender's Office worked for the District Attorney's Office when the charges were filed against the Defendant; (vii) because the Commonwealth failed to provide impeachment material concerning their witnesses; (viii) because the Commonwealth, over Defense objection, utilized the transcript of Defendant's preliminary hearing where Defendant appeared *pro se*, in violation of his Fifth Amendment right against self-incrimination; (ix) because the court improperly denied Defendant's pre-trial motions where law enforcement failed to follow standard operational procedures; (x) because the Commonwealth misled the jury by bringing up Defendant's criminal background and the alleged activities between Defendant and Mikail Lattimore without presenting him as a witness;²¹ (xi) because the Commonwealth's witnesses entrapped Defendant or participated in entrapment; (xii) because the Commonwealth failed to prove Defendant was not entrapped; and (xiii) because the Information was not sufficiently detailed.²²

In support of his motion for modification of his sentence, Defendant argues that the Court erred as a matter of law regarding calculation of Defendant's prior record score and offense gravity score and that his sentence should be modified accordingly.²³

The Court received arguments from the parties,²⁴ and the Motion, as supplemented, is now ripe for disposition.

²¹ Motion, ¶ 7.

²² Supplemental Motion, ¶¶ (II)(II)-(IV).

²³ *Id.*, ¶ (III)(A).

²⁴ See, *supra*, n.2.

II. LAW AND ANALYSIS.

A. Motion for arrest of judgment.

1. Ineffective assistance of counsel.

Defendant asserts that his trial counsel was ineffective in a variety of ways, including failing to prepare adequately for trial, failing to call various witnesses, failing to make certain objections, and failing to request a necessary continuance.²⁵

It is well-established that counsel is presumed effective, and the defendant bears the burden of proving ineffectiveness. To overcome this presumption, [Defendant] must demonstrate that: (1) the underlying substantive claim has arguable merit; (2) counsel whose effectiveness is being challenged did not have a reasonable basis for his or her actions or failure to act; and (3) the defendant suffered prejudice as a result of counsel's deficient performance.²⁶

Generally, " 'claims of ineffective assistance of counsel are to be deferred to PCRA review; trial courts should not entertain claims of ineffectiveness upon post-verdict motions; and such claims should not be reviewed upon direct appeal.' "²⁷

"[W]hile the trial court retains discretion to address ineffectiveness claims on post-sentence motions, 'the presumption weighs heavily in favor of deferring such claims to collateral review.' "²⁸

Defendant contends the Court should entertain his claims of ineffective assistance under the exceptions to the general rule requiring their deferral to the collateral review process. These exceptions provide for review on direct appeal (1) in "an extraordinary case where the trial court, in the exercise of its discretion,

²⁵ Motion, ¶ 6; Supplemental Motion, ¶¶ (iii)(c), (d).

²⁶ *Com. v. Hanible*, 30 A.3d 426, 439 (Pa. 2011) (citing *Com. v. Cooper*, 941 A.2d 655, 664 (Pa. 2007); *Com. v. Pierce*, 786 A.2d 203, 213 (Pa. 2001)).

²⁷ *Com. v. Watson*, 310 A.3d 307, 310 (Pa. Super. 2024) (quoting *Com. v. Holmes*, 79 A.3d 562, 576 (Pa. 2013)).

²⁸ *Id.*, at 311 (quoting *Com. v. Knox*, 165 A.3d 925, 928 (Pa. Super. 2017)).

determines that a claim (or claims) of ineffectiveness is *both meritorious and apparent from the record* so that immediate consideration and relief is warranted;” (2) when the defendant raises “multiple, and indeed comprehensive, ineffectiveness claims[,]” which the court, “in its discretion, *and for good cause shown*,” determines post-verdict review is warranted, and the defendant *waives his right to PCRA review*, or (3) “where the defendant is statutorily precluded from obtaining subsequent PCRA review.”²⁹

“Our Supreme Court has strongly linked the first exception to so-called ‘short sentence’ cases[,] where an appellant might be unable to avail him or herself of PCRA review prior to the expiration of the sentence.”³⁰ This is not a “short sentence” case, so Defendant is unlikely to qualify in any event. Nonetheless, Defendant did not allege any extraordinary circumstances in his Motion,³¹ and a claim is not “apparent from the record” when the Court must schedule an evidentiary hearing to determine whether counsel was ineffective.³² The Court finds that it would be required to hold an evidentiary hearing to find ineffectiveness in this case,³³ so Defendant has failed to qualify for the first exception.

²⁹ *Id.* (quoting *Holmes*, *supra*, 79 A.3d at 577-78; *Com. v. Delgros*, 183 A.3d 352, 361 (Pa. 2018)).

³⁰ *Id.*, at 311 n.4 (citing *Com. v. Burno*, 94 A.3d 956, 971 (Pa. 2014) (citation omitted)).

³¹ A court may find that defendant has failed to qualify for the first exception where he fails to allege any extraordinary circumstances in his post-sentence motion. *Id.*, at 311-312.

³² *Id.*, at 311 (citing *Com. v. Alford*, 1052 WDA 2020, 2021 WL 2907814 (Pa. Super. 2021) (unpublished memorandum at 8-9) (discussing that a claim is not apparent from the record if an evidentiary hearing is required and citing other unpublished memoranda holding the same)).

³³ Defendant asserts that his trial counsel was ineffective for failing to prepare adequately for trial, failing to call various witnesses, failing to make certain objections, and failing to request a necessary continuance. As to counsel’s alleged lack of preparation, Defendant has provided no evidence beyond his bald assertion that counsel was unprepared for trial, and the Court observed no indicia of lack of preparation at trial; indeed, in the Court’s experience, Defendant’s attorney typically is adequately prepared when she appears before the Court. The remaining allegations of ineffectiveness, if true, are arguable. Without an evidentiary hearing, the Court has no basis to determine whether counsel’s failure to call a particular witness, make a particular objection or request

In order to find that the Defendant qualifies for the second exception, Defendant must raise multiple and comprehensive claims of ineffectiveness and establish "good cause" for post-verdict review. Here, Defendant indeed raises multiple claims of ineffectiveness, but he fails to assert any good cause for post-verdict review. Additionally, the Court must also find that he has waived his right to PCRA review.

[I]n order for a defendant to raise counsel's ineffectiveness on direct appeal, he or she *must expressly, knowingly and voluntarily waive his or her right to PCRA review*. Thus, established waiver principles must be applied to waiver of PCRA review when a defendant wishes to expedite the review of ineffective assistance of counsel claims by way of a post-trial motion. Consequently, a defendant *must participate in an on-the-record colloquy*, which ensures the defendant is aware of the rights being waived, *i.e.*, the "essential ingredients" of PCRA review. This includes, but is not limited to, an explanation of (1) the eligibility requirements for PCRA relief; (2) the right to be represented by counsel for a first PCRA petition; (3) the types of issues that could be raised pursuant to the PCRA that are now being given up; and (4) the PCRA is the sole means of obtaining nearly all types of collateral relief. The trial court must also ensure the defendant has made the decision to waive [his] right to PCRA review after consulting with counsel (if any) and in consideration of his rights as they have been explained in the colloquy.³⁴

Defendant did not participate in such a colloquy, so the Court cannot find that he qualifies for the second exception.

Finally, Defendant is not statutorily precluded from obtaining post-conviction collateral review, so he does not qualify for the third exception. As he qualifies for

a continuance or whether defendant suffered prejudice are matters of ineffectiveness or reasonable trial strategy. Counsel will not be found ineffective where she had a reasonable basis for her actions, and "generally, the court should not glean from the record whether counsel had a reasonable basis for his action or inaction absent an evidentiary hearing," and "it is only in the most clear-cut cases that the reasons for counsel's conduct are apparent from the record." *Hanible, supra*, 30 A.3d at 442 (citing *Com. v. McGill*, 832 A.2d 1014, 1022 (Pa. 2003)). In other words, if counsel's alleged inaction resulted from reasonable trial strategy, she was not ineffective. See, e.g., *Hanible, supra*; *Com. v. Chmiel*, 889 A.2d 501 (Pa. 2005).

³⁴ *Watson, supra*, 310 A.3d 312 (citations omitted) (emphasis in original) (quoting *Com. v. Baker*, 72 A.3d 652, 668 (Pa. Super. 2013)) (citing 42 Pa. C.S. §§ 9542-9543; Pa. R. Crim. P. 904(C)).

none of the exceptions, it would be an abuse of discretion for this Court to entertain Defendant's claims of ineffective assistance of trial counsel at this stage of the proceedings.³⁵

2. Denial of motion to suppress.

Defendant asserts that his pre-trial motion to suppress was improperly denied.³⁶ Defendant's motion to suppress was heard before another judge of this court along with a variety of other motions Defendant filed on March 4, April 15 and July 14, 2025. The Court issued orders on May 16, 2025 addressing the discovery motion and the petition for *habeas corpus*. By Opinion and Order entered October 6, 2025, the Court denied the remainder of the motions in Defendant's omnibus pre-trial motion, including the motion to suppress.³⁷

As a general matter, the coordinate jurisdiction rule likely precludes this Court from overruling the decision denying Defendant's motion to suppress. As our Supreme Court has explained:

[T]his Court has long recognized that judges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions. This rule, known as the "coordinate jurisdiction rule," is a rule of sound jurisprudence based on a policy of fostering the finality of pre-trial applications in an effort to maintain judicial economy and efficiency.

In our view, this coordinate jurisdiction rule falls squarely within the ambit of a generalized expression of the "law of the case" doctrine. This doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter.³⁸

³⁵ *Id.*, at 313.

³⁶ Motion, ¶ 6(b).

³⁷ Opinion and Order entered October 6, 2025.

³⁸ *Com. v. Starr*, 664 A.2d 1326, 1331 (Pa. 1995) (citations omitted) (citing *Okkerse v. Howe*, 556 A.2d 827, 831 (Pa. 1989); *Golden v. Dion & Rosenau*, 600 A.2d 568, 570 (Pa. Super. 1991); 21 C.J.S. Courts § 149a; 5 Am. Jur. 2d Appeal and Error § 744).

A court typically cannot depart from the coordinate jurisdiction rule or the law of the case doctrine absent “exceptional circumstances,” such as an intervening change in controlling law, a substantial change in the facts or evidence, or where the prior decision was “clearly erroneous” and creates a “manifest injustice.”³⁹ Indeed, where the evidence is substantially the same as that ruled on by the previous judge, a second judge of the same court who overrules that decision commits a *per se* abuse of discretion.⁴⁰

Accordingly, as Defendant’s motion to suppress was denied by Opinion and Order entered October 6, 2025 by another judge of this Court, the decision denying Defendant’s Motion to Suppress will not be disturbed.⁴¹

3. *Alleged false testimony by Commonwealth witnesses.*

Defendant makes various claims concerning alleged false testimony by law enforcement and Commonwealth witnesses.⁴² It appears to the Court that he is claiming that officers and Commonwealth witnesses lied in connection with the suppression hearing and at trial. To the extent his claim concerns the suppression

³⁹ *Id.*, at 1332 (citations omitted).

⁴⁰ *Com. v. Brown*, 402 A.2d 1007, 1008 (Pa. 1979); *see also Com. v. Washington*, 236 A.2d 772, 773 n.2 (Pa. 1968) (“[T]he trial judge cannot reverse on the same record at trial the decision made after the pre-trial suppression hearing that defendant’s statement need not be suppressed”).

⁴¹ Defendant previously raised this issue when he filed a “Motion for Rule to Show Cause” on September 2, 2025. His motion asserts that he subpoenaed Detective Sarah Edkin of the NEU and Amy Lillian, manager of the EconoLodge in Williamsport, to testify on July 14, 2025 at the hearing on his omnibus pre-trial motion; that Det. Edkin and Ms. Lillian were unavailable and did not attend the hearing; and that their failure to appear prejudiced his defense. The purpose of the hearing on July 14 was to address Defendant’s motions to suppress evidence and dismiss charges. At argument on the Motion for Rule to Show Cause on September 25, 2025, Defendant was unable to articulate any prejudice to his defense arising from the failure of those witnesses to appear. Accordingly, the Court denied the Defendant’s motion by Order dated December 16 and entered December 17, 2025.

⁴² Motion, ¶¶ 6(a)(iii), (c), 7(d), (e); Supplemental Motion, ¶¶ (l)(c), (g), (ii)(b).

hearing, the suppression court has already addressed, and denied, this claim.⁴³ To the extent Defendant claims false testimony was given at trial, he essentially asks this Court to find that his version of events is more credible than that presented by the Commonwealth. It is well-established that the jury, as finder of fact, is responsible for passing upon the weight the evidence and the credibility of the witnesses and that, in so doing, they are free to believe all, some or none of the evidence presented.⁴⁴ In this instance, the jury apparently believed a sufficient amount of the testimony and evidence presented by the Commonwealth to find Defendant guilty of the crimes charged.

As explained in more detail below, this Court will not reweigh the evidence and discount testimony simply because Defendant claims that it is false. Indeed, this court cannot conclude, solely on the basis of Defendant's say-so, that the jury's verdict is so contrary to the evidence as to shock one's sense of justice.⁴⁵ Accordingly, the judgment against Defendant will not be arrested on the basis of alleged false statements made by law enforcement or Commonwealth witnesses.

4. Evidentiary foundation for video.

Defendant next asserts that "[t]he Commonwealth admitted a video without supporting the creation time/date that would have changed the outcome of the case had the creation time/date been properly challenged."⁴⁶ Defendant provides no further discussion regarding how challenging the time and date of the video would

⁴³ See, *supra*, Part II.A.2.; *infra*, Part II.A.6.

⁴⁴ See, e.g., *Com. v. Smith*, 351 A.3d 1245, 1254 (Pa. Super. 2026) (citations omitted).

⁴⁵ See, *infra*, Part II.B.

⁴⁶ Motion, ¶ 6(d).

have changed the outcome of the case, and he does not address this issue in his brief.

In any event, the Commonwealth introduced two videos into evidence. The first video was admitted without objection of the Defendant and is a video taken from inside Det. Dent's undercover vehicle on June 6, 2024, while Det. Dent was physically present and observing what the video depicted, in front of the Sheetz where Defendant retrieved the drugs. Det. Dent testified as to when and where the video was taken and provided commentary on its contents.⁴⁷ The second video was surveillance footage taken inside the Sheetz on June 6, 2024 and was obtained by the Commonwealth from Sheetz. The parties stipulated to its authenticity. Det. Laudenslager, who entered the Sheetz while Defendant was inside, provided certain testimony concerning the video and his personal observations.⁴⁸

Authentication of evidence is addressed by Rule 901, Pennsylvania Rules of Evidence. Generally, "[u]nless stipulated, to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."⁴⁹ The official comment to Rule 901 states that "[t]he authentication or identification requirement may be expressed as follows: When a party offers evidence contending either expressly or impliedly that the evidence is connected

⁴⁷ Trial Transcript, at 89-92; Com. Exh. 7.

⁴⁸ Trial Transcript, at 137-39; Com. Exh. 8.

⁴⁹ Pa. R. Evid. 901(a).

with a person, place, thing, or event, the party must provide evidence sufficient to support a finding of the contended connection.”⁵⁰

One of the suggested means the Rule provides for accomplishing this is testimony of a witness with knowledge “that an item is what it is claimed to be.”⁵¹ The Commonwealth authenticated the first video by the testimony of Det. Dent, who testified that it was taken from inside his surveillance vehicle on June 6, 2024 when he was physically present and that it showed what he personally observed. It was also admitted without objection from the Defendant. “Demonstrative evidence such as photographs, motion pictures, diagrams and models must be authenticated by evidence sufficient to support a finding that the demonstrative evidence fairly and accurately represents that which it purports to depict.”⁵² Det. Dent’s testimony accomplishes precisely this and sufficiently authenticates the first video so as to permit it to be published to and considered by the finder of fact.

The parties stipulated as to the authenticity of the second video. The proponent of a particular piece of evidence “may be relieved of [his] burden [of authentication] when all parties have stipulated the authenticity or identification of the evidence.”⁵³ In addition to the stipulation, the testimony of Det. Laudenslager “support[s] a finding that the demonstrative evidence fairly and accurately represents that which it purports to depict.” The stipulation and Det. Laudenslager’s testimony

⁵⁰ Pa. R. Evid. 901, *Comment* (citing *Com. v. Hudson*, 414 A.2d 1381 (Pa. 1980); *Com. v. Pollock*, 606 A.2d 500 (Pa. Super. 1992)).

⁵¹ Pa. R. Evid. 901(b)(1). The official comment to Rule 901 states that this “is consistent with Pennsylvania law in that the testimony of a witness with personal knowledge may be sufficient to authenticate or identify the evidence.” Pa. R. Evid. 901, *Comment* (citing *Hudson*, *supra*).

⁵² Pa. R. Evid. 901, *Comment* (citing *Nyce v. Muffley*, 119 A.2d 530 (Pa. 1956)).

⁵³ Pa. R. Evid. 901, *Comment* (citations omitted).

sufficiently authenticate the second video so as to permit it to be published to and considered by the finder of fact.

As the Court finds that both videos were sufficiently authenticated, Defendant's objection is without merit. Both videos were properly published to the jury, which assigned to them, as well as to the testimony of Dets. Dent and Laudenslager, the weight the jury deemed appropriate in rendering its verdict.

5. Sufficiency of the evidence.

Sufficient evidence supports a criminal conviction if "the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, ... [was] sufficient to prove every element of the offense beyond a reasonable doubt."⁵⁴ The Commonwealth need not preclude every possibility of innocence and may sustain its burden entirely with circumstantial evidence.⁵⁵ "Evidence will be deemed to support the verdict when it establishes each element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt."⁵⁶ As the Superior Court has explained,

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. ...

⁵⁴ *Com. v. Keister*, 292 A.3d 1138, 1141 (Pa. Super. 2023) (quoting *Com. v. Palmer*, 192 A.3d 85, 89 (Pa. Super. 2018)).

⁵⁵ *Id.*

⁵⁶ *Com. v. Teems*, 74 A.3d 142, 144 (Pa. Super. 2013) (quoting *Com. v. Toland*, 995 A.2d 1242, 1245 (Pa. Super. 2010) (citations omitted)), *alloc. denied*, 79 A.3d 1098 (Pa. 2013).

Finally, the finder 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.⁵⁷

A defendant is guilty of delivery of a controlled substance when “he knowingly made an actual, constructive, or attempted transfer of a controlled substance to another person without the legal authority to do so.”⁵⁸ The elements of criminal use of a communication facility are: (1) that the defendant knowingly and intentionally used a communication facility; (2) that, in using the communication facility, the defendant knowingly, intentionally, or recklessly facilitated an underlying felony; and (3) that the underlying felony occurred.⁵⁹ The Commonwealth introduced sufficient evidence against Defendant as to each element of both crimes.

A sufficiency claim is only preserved for review when the defendant identifies specifically the element or elements upon which the evidence was insufficient to permit analysis of the claim.⁶⁰ Defendant asserts generally that “[t]he evidence was insufficient to sustain the verdict”⁶¹ and that “[t]he Commonwealth was unable to satisfy its burden of proof”⁶² without specifying which element or elements of the crimes are unsupported. As such, Defendant has not preserved this objection and it is dismissed, accordingly.

⁵⁷ *Com. v. Jones*, 271 A.3d 452, 457-58 (Pa. Super. 2021) (quoting *Com. v. Brockman*, 167 A.3d 29, 38 (Pa. Super. 2017) (quoting *Com. v. Antidormi*, 84 A.3d 736 (Pa. Super. 2014))).

⁵⁸ *Com. v. Murphy*, 844 A.2d 1228, 1234 (Pa. 2004) (citation omitted).

⁵⁹ *Com. v. Moss*, 852 A.2d 374, 382 (Pa. Super. 2004).

⁶⁰ See, e.g., *Com. v. Roche*, 153 A.3d 1063, 1072 (Pa. Super. 2017) (stating that in order to preserve a sufficiency claim on appeal, an appellant must specify in the 1925(b) statement the element or elements upon which the evidence was insufficient).

⁶¹ Motion, ¶ 6.

⁶² Supplemental Motion; ¶ 1.

6. Denial of a Franks hearing.

Defendant asserts he was improperly denied a *Franks* hearing in connection with his motion to suppress.⁶³ In *Franks v. Delaware*, the United States Supreme Court held that

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.⁶⁴

The suppression court addressed this issue and found that the items sought to be suppressed were lawfully acquired without a warrant with the consent of the parties owning or controlling them.⁶⁵ Accordingly, the suppression court's denial of Defendant's request for a *Franks* hearing will not be disturbed for the same reasons that this Court will not overrule its decision denying the motion to suppress.⁶⁶

7. Non-disclosure of Mikail Lattimore's name during voir dire.

Defendant complains that the Commonwealth failed to mention Mikail Lattimore's name during *voir dire* and that it was a "trial by ambush" when the Commonwealth used his name and referred to the criminal investigation at trial.⁶⁷ At

⁶³ Supplemental Motion, ¶ (l)(d).

⁶⁴ *Franks*, *supra*, 98 S. Ct. at 2676.

⁶⁵ Opinion and Order entered October 6, 2025.

⁶⁶ See, *supra*, Part II.A.2.

⁶⁷ Supplemental Motion, ¶ (l)(f).

trial, Mr. Lattimore's name first came up during the following exchange between the prosecutor and Det. Laudenslager:

BY ATTORNEY SWEeley:⁶⁸

Q. Detective, you mentioned another black male that had entered the store and you saw in the store, do you know who that black male is?

A. Yes.

Q. Who is that?

A. That is Mikail Lattimore.

Q. And are you familiar with Mikail Lattimore?

A. Yes, I am.

Q. And how are you familiar with Mikail Lattimore?

A. Mikail Lattimore has been the subject of several NEU investigations for the delivery of controlled substances in Lycoming County.⁶⁹

In the same exchange, after the surveillance video inside Sheetz⁷⁰ was published to the jury, Det. Laudenslager, who was performing surveillance at the time, pointed out his observations of what the video showed, including the following:

THE WITNESS: All right, if you look at the top right, this here (indicating) is the front door, it's the Western most facing door. This is the door you'll see the individual that came in the Jeep enter. This is also the door that I'll enter when I entered the store. And in the lower left corner, out this door back here (indicating), is the South facing door. Just outside that door is where the CI's vehicle was parked. And you'll see an individual wearing a white shirt enter through that door as well. Right-hand box, Mikail Lattimore, the male that came in the black Jeep, entering the store. There he is walking [] back to the bathroom. Bottom left corner is Tyree Moy entering the store wearing the white

⁶⁸ Attorney Sweeley is the Assistant District Attorney who prosecuted the case for the Commonwealth. Trial Transcript, at 14-15.

⁶⁹ Trial Transcript, at 136.

⁷⁰ Com. Exh. 8.

shirt. Again, top right-hand box there the door that he's walking into [is] going to be the bathroom. Had -- that's me entering the store now top right-hand corner. I'm not --

BY ATTORNEY SWEeley:

Q. Did you press a button?

A. Maybe.

Q. I'll backtrack a couple seconds. I don't know what was missed. There we go.

A. Top right-hand box, you'll see both men wearing white T-shirts exiting the bathroom at the same time. Mr. Moy is in the middle aisle. Mr. Lattimore is leaving without purchasing anything. Mr. Moy is in the West-most aisle, as am I at this time, top left-hand box. Bottom left-hand box is Mr. Moy bypassing the cash registers and leaving the store.⁷¹

This testimony was simply a factual description of events that occurred in a public place and were captured on the surveillance video of a business that was open to the public, together with the context of the events and persons in the video provided by a person with first-hand knowledge of them. Defendant did not object to any of this testimony at the time. Generally, a party waives an issue when he does not make a contemporaneous objection at trial,⁷² and raising an issue in a post-sentence motion does not cure the waiver.⁷³

Later during trial, Defendant did not object to further testimony about Mr. Lattimore, but did ask for a missing witness instruction:⁷⁴

⁷¹ Trial Transcript, at 138-39.

⁷² See, e.g., Pa. R.A.P. 302(a) ("[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal"); *Com. v. Bryant*, 855 A.2d 726, 740 (Pa. 2004) (holding that failure to raise a contemporaneous objection at trial waives claim on appeal).

⁷³ *Com. v. Baumhammers*, 960 A.2d 59, 73 (Pa. 2008) (rejecting appellant's claim that objections not contemporaneously raised at trial were preserved "by virtue of having been set forth in post-sentence motions").

⁷⁴ "Where a party does not produce the testimony of a potential witness who appears to have special information that is material to an issue and whose testimony would not be merely cumulative, the

ATTORNEY PAULHAMUS:⁷⁵ One more thing. I'd request a missing witness instruction for Mikail Lattimore.

THE COURT: Okay. So, let me ask you this: Prior to today, were -- was the Defense on notice that the Commonwealth believed the drug dealer at the Sheetz was Mikail Lattimore?

ATTORNEY PAULHAMUS: Um, we received a couple days ago an updated supplemental on 1/20/2026 that was written by Detective Dent that they met with Mikail Lattimore, with Mikail's attorney, and that Mikail did not wish to speak with them. That was provided to us, I believe, yesterday. It was received by the District Attorney's Office 1/20.

THE COURT: My question is is that the first that the Defense learned that the drug dealer that Mr. Moy allegedly met with at the Sheetz was Mikail Lattimore?

ATTORNEY PAULHAMUS: No.

THE COURT: So[,] in order for me to give a missing witness instruction, you have to establish for me that this is a witness that is only available to the Commonwealth and not the Defense. And if you knew who this alleged drug dealer was, Mr. Lattimore, then you had the same ability to track them down and attempt to subpoena them to appear at trial as the Commonwealth had so they are not missing --

ATTORNEY PAULHAMUS: Okay.

THE COURT: -- such that I can hold it against the Commonwealth. Now, if you didn't know who this person was and they did, this would be a different conversation. But since the Defense was on notice, I'm not hearing that the Defense made any effort before today to locate Mr. Lattimore, is that correct?

ATTORNEY PAULHAMUS: Correct. It would have just been in light of the additional supplemental that we got.

THE COURT: So[,] you were aware of Mr. Lattimore, no effort was made before today to get him yourself, and in light of those representations, I deny your request for a missing witness instruction. Anything else?

court may instruct the jury that they may draw an inference that the testimony would have been unfavorable to the party." *Std. Pa. Prac. 2d, Conduct of Criminal Trial*, § 135:377 (citations omitted).

⁷⁵ Attorney Paulhamus is Defendant's attorney. *Id.*, at 18.

The Superior Court has explained when the missing witness instruction should be given:

A missing witness instruction may be given in limited circumstances. "When a potential witness is available to only one of the parties to a trial, [] it appears this witness has special information material to the issue, and this person's testimony would not merely be cumulative, then if such party does not produce the testimony of this witness, the jury may draw an inference that it would have been unfavorable." However, this Court has clarified at least six circumstances where a party is not entitled to the missing witness adverse inference instruction:

1. The witness is so hostile or prejudiced against the party expected to call him that there is a small possibility of obtaining unbiased truth;
2. The testimony of such a witness is comparatively unimportant, cumulative, or inferior to that already presented;
3. The uncalled witness is equally available to both parties;
4. There is a satisfactory explanation as to why the party failed to call such a witness;
5. The witness is not available or not within the control of the party against whom the negative inference is desired; and
6. The testimony of the uncalled witness is not within the scope of the natural interest of the party failing to produce him.⁷⁷

Here, Defendant was not entitled to the missing witness instruction for at least two of the reasons identified by the Superior Court as exclusions—the witness was equally available to both parties, and he was not available or not within the control of the Commonwealth.

In her closing argument, the prosecutor also mentioned Mr. Lattimore:

⁷⁶ *Id.*, at 164-65.

⁷⁷ *Com. v. Miller*, 172 A.3d 632, 645-46 (Pa. Super. 2017) (citations omitted) (quoting and citing *Com. v. Boyle*, 733 A.2d 633, 638 (Pa. Super. 1999) (citation and quotation omitted)).

It's not a coincidence that another individual, who we can see on the screen here, also went into the bathroom for less than a minute. It's not a coincidence that the two exited the bathroom together. It's not a coincidence that that individual in the lower left, Mikail Lattimore, is known to detectives as a drug dealer when Tyree Moy told the CI that he had to go meet his dealer in the bathroom. It's not a coincidence that neither gentleman left the store with a single thing that they purchased, right, because the reason they went in there was to do a drug transaction.⁷⁸

Again, Defendant did not object to this portion of the prosecutor's argument to the jury. As Defendant did not object to the mention of Mikail Lattimore's name at any point during trial, he has waived this issue. Furthermore, Defendant has never articulated any reason why mention of Mikail Lattimore's name caused him prejudice. Prejudice does not flow *ipso facto* from the mere mention of any fact Defendant finds inconvenient, and Defendant's failure to articulate cognizable prejudice calls into question the salience of his objection.

For the reasons explained above, this issue does not afford Defendant relief.

8. Denial of pre-trial motions for discovery.

Defendant first claims that the Court denied his right to a fair trial by not granting his discovery request "for the paperwork and chain of custody of the electronic surveillance ... on January 6th 2026."⁷⁹ He also contends the Court ordered the Commonwealth to provide "the unredacted copy of the confidential informant statement to the defense counsel before trial" on January 6, 2026; that the Commonwealth was reminded of this on January 12, 2026 and again during a sidebar at trial; that the Commonwealth did not provide a copy of the unredacted document until trial; and that this constitutes a disregard of Court orders, a violation

⁷⁸ Trial Transcript, at 173.

⁷⁹ Supplemental Motion, ¶ ii (some spelling errors corrected).

of Defendant's right to a fair trial and of the Commonwealth's obligation to disclose exculpatory evidence to the defense; and that it was prejudicial and affected the outcome of the trial.⁸⁰

Discovery in criminal cases is governed by Rule 573, Pennsylvania Rules of Criminal Procedure,⁸¹ which, generally, "requires disclosure of evidence by the Commonwealth where it is '(1) requested by the defendant, (2) material to the case, and (3) within the possession or control of the prosecutor.'"⁸² The Rule makes disclosure of certain categories of evidence mandatory⁸³ and makes others discretionary with the Court.⁸⁴ A criminal defendant is not entitled to unfettered pre-trial discovery of relevant materials, as in a civil case, and questions involving discovery lie within the sound discretion of the trial court.⁸⁵ Rather, the purpose of pre-trial discovery is merely to permit parties to be prepared for trial,⁸⁶ although the defendant is not entitled to a preview of the evidence the Commonwealth will use to prove its case.⁸⁷

By Order entered December 17, 2025, the Court ruled on Defendant's pre-trial motions for discovery.⁸⁸ Among other things, the Court granted in part and

⁸⁰ Supplemental Motion, ¶ ii(a) (some unnecessary capitalization removed).

⁸¹ Pa. R. Crim. P. 573.

⁸² *Com. v. Kelly*, 325 A.3d 1262, 1267 (Pa. Super. 2024) (quoting *Com. v. Santos*, 176 A.3d 877, 882 (Pa. Super. 2017)).

⁸³ Pa. R. Crim. P. 573(B)(1).

⁸⁴ Pa. R. Crim. P. 573(B)(2).

⁸⁵ See, e.g., *Com. v. Rucci*, 670 A.2d 1129, 1140 (Pa. 1996).

⁸⁶ *Com. v. Shelton*, 640 A.2d 892, 895 (Pa. Super. 1994).

⁸⁷ *Kelly*, *supra*, 325 A.3d at 1267 (citing *Com. v. Monahan*, 549 A.2d 231, 235 (Pa. Super. 1988)).

⁸⁸ Order dated December 16 and entered December 17, 2025.

denied in part his requests for information concerning the CI, but it mandated certain redactions to protect the CI's safety. Further, the Court directed the Commonwealth to turn over NEU policies to the Court for *in camera* review.⁸⁹ The Commonwealth complied, and the Court conducted its review. Thereafter, the Court issued another Order on December 19, 2025 denying Defendant's request, finding that disclosure of the policies was not mandatory and that Defendant failed to establish that disclosure would be in the interests of justice.⁹⁰

At jury selection in this case on January 12, 2026, which occurred before another judge of this Court, Defendant confirmed he was proceeding with counsel and withdrew the outstanding motions that he had filed *pro se*. The following exchange occurred on the record:

THE COURT: Good afternoon, folks. I believe ... what we are scheduled for is selection of the jury in the matter of Commonwealth vs. Tyree Moy, docketed to 1400-2024. Attorney Paulhamus, I think this case has been the subject of several pretrial motions, some of which have been decided and some of which have not. Is that correct?

ATTORNEY PAULHAMUS: Yes, Your Honor.

THE COURT: With regard to the pretrial motions that have not yet been decided by written order, what is your position?

ATTORNEY PAULHAMUS: After consulting Mr. Moy, Defense will withdraw his *pro se* motions.

THE COURT: All Right. So, Mr. Moy, I'm Judge Carlucci, I think you and I have met once before. Defense counsel is telling me that as to any motion that you filed that has not yet been decided by an order of court, that I should regard that motion as withdrawn. Is that correct?

THE DEFENDANT: Yes.

THE COURT: I can't hear you.

⁸⁹ *Id.*

⁹⁰ Order dated December 20 [sic] and entered December 19, 2025.

THE DEFENDANT: Yes.

THE COURT: All right. So[,] what I'm going to do, Mr. Moy is – do we know exactly what the names are of those motions or do we not know?

ATTORNEY PAULHAMUS: Off the top of my head, Your Honor, I don't know. They were argued last Thursday, I believe.

THE COURT: And they were argued in Courtroom 1?⁹¹

ATTORNEY PAULHAMUS: Yes.

THE COURT: So[,] Mr. Moy, I'm going to enter an order right now, I want you to listen carefully and tell me if the order is acceptable to you after I dictate it. Are you ready?

THE DEFENDANT: Yes.

ATTORNEY PAULHAMUS: Your Honor, one – just one thing? One thing that was addressed that I just want to reiterate was the Judge did ask the Commonwealth to comply with the previous orders, specifically there was one dated December 17th for them to turn over certain information regarding the CI. I would ask that that is still complied with before trial.

THE COURT: All right is – was there one pretrial order or several?

ATTORNEY PAULHAMUS: For – it was – this was one order specifically to be – dated December 17th. There were previously other ones as well.

THE COURT: All right. One thing at a time. Attorney Feese, do you know the order to which Attorney Paulhamus is making reference?

ATTORNEY FEESE: I do not, Your Honor. Your Honor, I can follow up with the attorney assigned to the case.

THE COURT: I guess it's already been the subject of an order and all Attorney Paulhamus is doing is reminding you.

ATTORNEY FEESE: Okay, I can pass on the reminder.

⁹¹ Courtroom 1 is the undersigned's courtroom.

THE COURT: Mr. Moy, here comes the order, you listening?

THE DEFENDANT: Yes.

(**WHEREUPON**, the Court dictated an Order.)

THE COURT: Is that acceptable to you, Attorney Paulhamus?

ATTORNEY PAULHAMUS: Yes, Your Honor.

THE COURT: Mr. Moy?

THE DEFENDANT: Yes.

THE COURT: Thank you. I guess it wouldn't hurt if I added an order which says nothing set forth herein will be regarded as modifying any Order of Court deciding a pretrial motion.⁹²

Thereafter, the Court entered an Order stating:

AND NOW, this 12th day of January, 2026, at the time scheduled for selection of a jury in the above-captioned matter, the Court inquired of the Defendant and Defense counsel how they wished to manage outstanding motions filed by the Defendant which were argued prior to this date, but have not yet been decided by the Court. Both counsel for the Defendant and the Defendant advised the Court that those motions should be marked as **WITHDRAWN**. Thus, upon motion of counsel for the Defendant, and with the concurrence of the Defendant, and without objection by the Commonwealth, any pretrial motions filed by the Defendant which have not yet been decided by an Order of Court, are hereby marked **WITHDRAWN**. Nothing set forth herein will be regarded as modifying any Order of Court deciding a pretrial motion.⁹³

In other words, nothing that happened at jury selection modified or otherwise affected the existing Order pertaining to pretrial discovery of the CI's statement by the Defendant.

At trial, the Court conducted a sidebar when defense counsel sought to cross-examine the CI with the statement:

⁹² Transcript of Proceedings held January 12, 2026, filed May 7, 2026 (the "Jury Selection Transcript"), at 2-4.

⁹³ Order dated January 12 and entered January 14, 2026 (emphasis in original).

Q. And after getting released from jail that's when you started working with the NEU?

A. Yes.

Q. And as part of working with the NEU you would have had to sign some documents?

A. Yes.

Q. And one of those is called an informant conditions statement, do you remember that?

A. Yes.

Q. Okay, I'm going to show what you I'm going mark as Defense Exhibit 1.

ATTORNEY PAULHAMUS: May we approach at sidebar?

THE COURT: Counsel, she can mark it as an exhibit.

ATTORNEY SWEeley: I thought we discussed this this morning if it was necessary?

THE COURT: Okay, sidebar.

(WHEREUPON, the following discussion was held at sidebar:)

ATTORNEY SWEeley: My only problem is that this morning my understanding was if it's absolutely necessary to mark it as an exhibit, then they can mark it as an exhibit. Once it's marked as an exhibit it's going into the court file. So[,] when he ultimately appeals conviction, he's going to have access to that. So[,] I thought we were going to try to do the first one, her -- the copy they have first, and then if it's an issue, then we would mark it as an exhibit. But I didn't know we were going right into the signature on the document.

THE COURT: If she's showing it to a witness it needs to be marked as an exhibit. We can put the exhibit under seal.

ATTORNEY SWEeley: I didn't know that was a thing.

THE COURT: So[,] we can -- so then it's not a public record but it needs to be part of the court record for the trial, okay?

ATTORNEY SWEeley: Okay.

THE COURT: Do you have the unredacted copy you're going to present to the witness?

ATTORNEY PAULHAMUS: No, the Commonwealth does.

ATTORNEY SWEELEY: That's why I thought they were going to start with the unredacted. I have the copy but with the signature on it.

THE COURT: Okay. She's asking for the unredacted copy to be marked as Defendant's Exhibit. Could you please give that to her?

(WHEREUPON, the discussion at sidebar concluded.)

ATTORNEY PAULHAMUS: I believe this is going to be Defense Exhibit 3. I can't keep track of them. May I approach?

THE COURT: Yes.

BY ATTORNEY PAULHAMUS:

Q. Mr. Perry, do you recognize that document?

A. Yes.

Q. Okay. And can you tell me what I just handed you?

A. The informant confidential statement.⁹⁴

The Court's December 17, 2025 Order did not grant Defendant access to the unredacted statement. Rather, the Order directed certain redactions "so as to protect the CI's safety."⁹⁵ At Defendant's jury selection on January 12, 2026, the Court reminded the Commonwealth of its obligations to comply with the December 17 Order and made clear that the Court was not modifying the December 17 Order.⁹⁶ At trial, defense counsel had the redacted document the Commonwealth was ordered to provide in the December 17 Order, but the Court required that the

⁹⁴ Trial Transcript, at 121-23.

⁹⁵ Order, dated December 16 and entered December 17, 2025, ¶¶ A.1., 2.

⁹⁶ Jury Selection Transcript, at 2-4; Order dated January 12 and entered January 14, 2026.

unredacted document be marked and entered as an exhibit for the Court file, with the stipulation that it would be kept under seal, consistent with the December 17 Order.

There is no indication in the record, beyond Defendant's bald claim, that the Commonwealth failed to comply with the pretrial discovery Order, and Defendant did not lodge any contemporaneous objection alleging non-compliance. Further, Defendant has yet to allege any prejudice resulting from the Court's decisions regarding pre-trial discovery. He has claimed that he was deprived of his right to a fair trial and made various other allegations, but his mere statement does not make it so. The Court previously articulated its reasons for denying Defendant's pretrial discovery requests and it stands by its decisions.⁹⁷ Defendant's failure to demonstrate that the prior decisions were incorrect and to demonstrate any prejudice allegedly flowing from them renders this objection meritless.

B. Motion for a new trial/weight of the evidence.

A claim that a verdict is against the weight of the evidence concedes that there is sufficient evidence to sustain the verdict⁹⁸ and is addressed to the discretion of the court.⁹⁹ Accordingly, the trial court is not obliged to view the evidence in the

⁹⁷ The Court has inherent authority to modify its own interlocutory pre-trial orders, even more than 30 days after entry of the order, notwithstanding the time constraint contained in 42 Pa. C.S. § 5505 concerning modification of court orders. *Com. v. James*, 69 A.3d 180, 184-86 (Pa. 2013). Nonetheless, a court should exercise this power judiciously and sparingly, as a party in whose favor a pretrial decision has been rendered must be allowed to rely on the decision and proceed accordingly. See, e.g., *Starr*, *supra*, 664 A.2d at 1332 (citing *Golden*, *supra*, 600 A.2d at 570). Moreover, some of the decisions concerning Defendant's pre-trial discovery requests were made by other judges of this Court. Undersigned has limited ability to modify those decisions according to the coordinate jurisdiction rule and the law of the case doctrine. See, *supra*, Part II.A.2.

⁹⁸ *Com. v. Widmer*, 744 A.2d 745, 751-52 (Pa. 2000) (citing *Com. v. Whiteman*, 485 A.2d 459 (Pa. Super. 1984)).

⁹⁹ *Widmer*, *supra*, 744 A.2d at 751-52 (citing *Com. v. Brown*, 648 A.2d 1177, 1189 (Pa. 1994)).

light most favorable to the verdict winner.¹⁰⁰ Nevertheless, “the finder 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.”¹⁰¹ As the Superior Court recently explained:

Appellant's assertion that the trial court erred in denying his weight claim based upon the inconsistencies in the victim's testimony and the fact that portions of the victim's testimony were contradicted by other witnesses ... invites this Court to do nothing more than alter the result reached by the fact-finder by reassessing witness credibility and reweighing the evidence presented at trial, which the trial court, based upon its observations, found worthy of belief. We decline Appellant's invitation since the jury, while passing on the credibility of the witnesses and weight of the evidence, was free to believe all, part, or none of the evidence.¹⁰²

Thus, a court may not find that the verdict was against the weight of the evidence “because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion.”¹⁰³ Rather, a challenge to the weight of the evidence should be granted only where “the trial judge ... determine[s] that ‘notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.’”¹⁰⁴ “[A] new trial should be awarded [only] 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.”¹⁰⁵

¹⁰⁰ *Tibbs v. Florida*, 102 S. Ct. 2211, 2216 n. 11 (1982).

¹⁰¹ *Jones, supra*, 271 A.3d at 458 (Pa. Super. 2021) (quoting *Brockman, supra*, 167 A.3d at 38 (quoting *Antidormi, supra*, 84 A.3d 736 at 756))).

¹⁰² *Smith, supra*, 351 A.3d at 1254 (citing *Com. v. Dunkins*, 229 A.3d 622, 634 (Pa. Super. 2020), *aff'd*, 669 A.3d 247 (Pa. 2021), *cert. denied*, 142 S. Ct. 1679 (2022)).

¹⁰³ *Widmer, supra*, 744 A.2d at 752 (citing *Thompson v. City of Phila.*, 493 A.2d 669, 673 (Pa. 1985)).

¹⁰⁴ *Id.* (citation omitted).

¹⁰⁵ *Brown, supra*, 648 A.2d at 1189 (citing *Thompson, supra*, 493 A.2d at 672).

1. Stipulations to evidence and chain of custody.

Defendant first claims that “[t]rial [c]ounsel stipulated to the evidence and chain of custody without the Defendant being [colloquied] about giving up his rights to challenge the sufficiency of the evidence.”¹⁰⁶ The chain of custody issues Defendant raises were addressed at the hearing on his motion to suppress and were dismissed by another judge of this Court. As such, these issues are without merit for the reasons explained above.¹⁰⁷ Furthermore, the Commonwealth’s photographs, recordings, videos, maps, and reports were admitted at trial either without objection or by stipulation,¹⁰⁸ and the chain of custody of the drugs taken from Defendant was presented to the jury by defense counsel without objection of the Commonwealth.¹⁰⁹

A public defender is an attorney at law licensed to practice before the Supreme Court of Pennsylvania¹¹⁰ “responsible for furnishing legal counsel” in certain specific types of cases “to any person who, for lack of sufficient funds, is unable to obtain legal counsel.”¹¹¹ As trial counsel for a defendant, a public defender will not be found ineffective because of decisions made during trial for which she had a reasonable basis.¹¹² Moreover, Defendant has the burden of establishing that counsel was ineffective, and, to sustain his claim, he “must prove that the strategy employed by trial counsel ‘was so unreasonable that no competent

¹⁰⁶ Motion, ¶ 7(a).

¹⁰⁷ See, *supra*, Part II.A.2.

¹⁰⁸ Trial Transcript, at 29, 34-37, 40, 51, 53, 91, 131; Com. Exhs. 1-8.

¹⁰⁹ Trial Transcript, at 60; Def. Exh. 1.

¹¹⁰ 16 P.S. § 9960.5(c).

¹¹¹ 16 P.S. § 9960.6(a).

¹¹² *Chmiel*, *supra*, 889 A.2d at 540.

lawyer would have chosen that course of conduct.’ ”¹¹³ Defendant has not come close to meeting that burden here. He has not articulated any coherent reason in support of his claim that counsel wrongly stipulated to or failed to object to chain of custody. He merely asserts that counsel did so wrongly and that the Court was responsible to colloquy him regarding the rights he was “giving up” by not challenging evidence and chain of custody vigorously. The Court simply is not required to colloquy a defendant regarding every tactical decision counsel makes at trial. To impose such an obligation on the Court would grind the criminal justice system to a stop by making every trial interminable.

Defendant has not presented any specific information in support of his general claim regarding evidence or chain of custody. He had a full and fair opportunity to litigate any issue concerning his objections at trial, and did not raise such an issue at the time, thereby waiving it. Further, his failure to articulate any resulting prejudice suggests counsel had a good reason indeed for not challenging these matters more vigorously at trial.

Defendant is entitled to no relief on this issue.

2. Defense objections.

Defendant next argues that “[t]he Trial Court [erred] as a matter of law by leaving 4 objections open [and] failing to rule upon them.”¹¹⁴ Defendant does not explain which objections were allegedly left open, and a review of the transcript does not reveal that any objection was “left open” and not addressed at trial. More specifically, the Court identified seven instances in which the court made a ruling on

¹¹³ *Id.*, at 541 (quoting *Com. v. Williams*, 640 A.2d 1251, 1256 (Pa. 1994)).

¹¹⁴ Motion, ¶ 7(b); see also Supplemental Motion, ¶ iii.

objections¹¹⁵ and three instances in which objections were not pursued.¹¹⁶ The objections that were not pursued are as follows:

1. Q. Okay. Do you know where that person went?

A. Um, detectives observed that individual exit the CI's vehicle at Funston and Linn and then I believe they surveilled the individual --

ATTORNEY PAULHAMUS: Objection to hearsay at this point.

THE COURT: Counsel?

ATTORNEY SWEeley: I'll just move on.

THE COURT: Very good.¹¹⁷

2. Q. Did he give you anything when he got in the car?

A. No.

Q. So[,] if he didn't give you anything, did you ask for your money back?

ATTORNEY PAULHAMUS: Objection, leading.

BY ATTORNEY SWEeley:

Q. Did he give you your money back?

A. No.¹¹⁸

3. **THE COURT:** Commonwealth's Exhibit 6 is the Wyoming Regional Laboratory result for which there was a stipulation. I'm just reviewing this quickly to see if there is extraneous information or prejudicial information on this lab report that was not testified to. Give me a moment. I don't see anything on this lab report that was not testified to as part of the stipulation. Counsel, you certainly can take a closer look at it but is there any objection to the lab report going?

¹¹⁵ See Trial Transcript, at 97, 103, 109, 127-28, 130, 146-51, 194-95.

¹¹⁶ See *id.*, at 46, 109, 193-94.

¹¹⁷ *Id.*, at 46.

¹¹⁸ *Id.*, at 109.

ATTORNEY PAULHAMUS: I would object to the lab report going back since it was read into evidence, only portions of it. There is extra information on here that wasn't necessarily read into evidence.

THE COURT: What would that be?

ATTORNEY PAULHAMUS: Well, specifically it's Tyree Moy, next to his name it says suspect.

ATTORNEY SWEeley: I'll make this easier, I just forgot that was in there. I don't care, they don't need to have that.

THE COURT: All right. So[,] we're not going to send Commonwealth's 6, the lab report. We'll send these others....¹¹⁹

The Court did not make a ruling on these objections, but they were not pursued by the parties, and none of these instances is remotely prejudicial to the Defendant.

Defendant's complaint concerning supposed unresolved objections lacks merit and does not afford him any relief.

3. *Instruction that stipulations apply to the evidence.*

Defendant asserts that the "[t]rial [c]ourt [erred] as a matter of law when instructing the [j]ury that stipulations applied to evidence when this was not supported by documentation."¹²⁰ The Court gave the following instruction to the jury during an exchange with counsel at trial:

ATTORNEY SWEeley: All right. At this time, Your Honor, I'm going seek to move into evidence as Commonwealth's 6 the lab report in this case, which there has been a stipulation between the parties as to authenticity and the accuracy of the results.

THE COURT: Did you say there is a stipulation?

ATTORNEY SWEeley: There is.

THE COURT: Any objection to the Commonwealth's 6?

ATTORNEY PAULHAMUS: No objection.

¹¹⁹ *Id.*, at 193-94.

¹²⁰ Motion, ¶ 7(c).

ATTORNEY SWEELEY: At this time could I read that?

THE COURT: You may read the stipulation. Ladies and gentlemen, I just wanted to give you a brief instruction. Counsel for the Commonwealth, Attorney Sweeley, has indicated that the parties have reached a stipulation. Earlier in my preliminary instructions I had told [you that] statements by counsel are not evidence and are not binding on you. There are some exceptions to that rule, the stipulation you are about to hear is one of those exceptions. When the District Attorney and counsel for the Defendant stipulate, that is that they have agreed, that means that the certain fact is true and you may accept the stipulation as evidence of that fact and you are to regard the stipulation as an agreed-upon fact that has been proven. You may read the stipulation.

ATTORNEY SWEELEY: Thank you, Your Honor. Okay. Can everyone hear me okay? So, the -- this is Commonwealth's Exhibit 6, this is the drug identification lab report....

...

That would be the end of the stipulation.

THE COURT: Counsel, does Defense so stipulate?

ATTORNEY PAULHAMUS: Yes.

THE COURT: Very good.

ATTORNEY SWEELEY: Thank you.

(WHEREUPON, Commonwealth's 6 was admitted into evidence.)¹²¹

The statement the Court made to the jury is consistent with the law. A stipulation is "[a] voluntary agreement between opposing parties concerning some relevant point," especially "an agreement relating to a proceeding, made by attorneys representing adverse parties to the proceeding," and "[a] stipulation relating to a pending judicial proceeding ... is binding without consideration."¹²² A

¹²¹ Trial Transcript, at 51-53

¹²² Black's Law Dictionary (12th ed. 2024), *stipulation*, def. 2.

stipulated fact is “ ‘binding on both the parties and on [the] court, and facts effectively stipulated are controlling and conclusive.’ ”¹²³ Thus, the Court acted entirely properly when it informed the jury that the stipulated fact was to be regarded as proven.

Moreover, the Court’s statement to the jury closely tracks the suggested standard jury instruction for stipulations of fact, which states:

3.17 Stipulations of Fact

[Earlier, in my preliminary instructions, I told you that statements made by counsel are not evidence and are not binding on you. There are exceptions to this. The stipulation that was just [stated] [read] to you by [[name of district attorney or counsel]] [the defendant because [he] [she] is representing [himself] [herself]] is one of these exceptions.]

When the district attorney and [counsel for the defendant] [the defendant because [he] [she] is representing [himself] [herself]] stipulate, that is, when they agree, that a certain fact is true, their stipulation is evidence of that fact. You should regard the stipulated or agreed fact as proven.

SUBCOMMITTEE NOTE

The subcommittee recommends giving this instruction before the relevant evidence is introduced.¹²⁴

The Court’s instruction recapitulates the suggested standard instruction nearly *verbatim*, and the Court followed the subcommittee’s advice by giving it “before the relevant evidence [was] introduced.”

Defendant’s otiose complaint concerning the Court’s instruction lacks merit and does not afford him any relief.

¹²³ *Kennedy Blvd. Assocs. I, L.P. v. Tax Review Bd. of City of Phila.*, 751 A.2d 719, 724 (Pa. Commw. 2000) (quoting *Tyson v. Com.*, 684 A.2d 246, 251 n. 11 (Pa. Commw. 1996) (citing *Beasley Indus., Inc. v. Com.*, 116 505, 542 A.2d 210 (Pa. Commw. 1988))); see also *Cobbs v. Allied Chem. Corp.*, 661 A.2d 1375, 1378 (Pa. Super. 1995) (finding that a stipulation unambiguous on its face is enforced in accordance with its terms).

¹²⁴ PA-JICRIM 3.17, *Stipulations of Fact*.

4. Credibility of Commonwealth witnesses.

Defendant argues that "[t]he Commonwealth[']s witnesses, Thomas Perry, Detective Anderson, Detective Dent, and Detective [Laudenslager,] failed to testify [credibly] and [were] motivated to fabricate their testimony as evidence[d] by prior inconsistent statements and reports made prior to the time of trial and at trial."¹²⁵

The jury sat as finder of fact during Defendant's trial and, as noted above, the finder 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.¹²⁶ The witnesses testified as they did and the evidence appeared as it was, and Defendant had a free and fair opportunity to present witnesses and evidence in opposition. The weight and credibility the jury assigned to each witness and to each piece of evidence presented by the parties is known only to the jury, but they found enough of the witnesses and evidence sufficiently credible and worthy of sufficient weight to find Defendant guilty beyond a reasonable doubt of the charges levied against him, Defendant's protestations to the contrary notwithstanding.

Defendant's mere assertion that the Commonwealth's witnesses were incredible and motivated to fabricate their testimony is not sufficient for the Court to determine that "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice"¹²⁷ of that "the jury's verdict is so contrary to the evidence as to shock one's

¹²⁵ Motion, ¶ 7(d); see also Supplemental Motion, ¶ 11(I).

¹²⁶ See, e.g., *Jones*, *supra*, 271 A.3d at 457-58.

¹²⁷ *Widmer*, *supra*, 744 A.2d at 752 (quoting *Thompson*, *supra*, 493 A.2d at 673).

sense of justice and [that] the award of a new trial is imperative so that right may be given another opportunity to prevail."¹²⁸ This objection is without merit.

5. Credibility of the CI.

Defendant contends that "[t]he Commonwealth knowingly used [perjured] testimony to obtain a conviction by failing to correct the testimony of the confidential informant's testimony when it appeared."¹²⁹ This objection is devoid of merit for the same reasons that Defendant's generalized objection to the credibility of Commonwealth witnesses is specious.¹³⁰ Accordingly, absent any compelling argument concerning either issue, Defendant is not entitled to relief.

6. Conflict of interest.

Defendant maintains that "Defendant's counsel had a conflict of interest [because] Public Defender Matthew Welickovitch was employed by the District Attorney's Office when charges were filed against the Defendant."¹³¹ Defendant did not raise this objection at trial and, to the best of the Court's understanding, raised it for the first time in his Motion. As indicated above, a party generally waives an issue when he does not make a contemporaneous objection at trial, and he cannot cure his initial failure by raising the issue for the first time in his post-sentence motion.¹³² Because Defendant did not raise this issue timely, he has waived it.

¹²⁸ *Brown, supra*, 648 A.2d at 1189 (citing *Thompson, supra*, 493 A.2d at 672).

¹²⁹ Motion, ¶ 7(e).

¹³⁰ See, *supra*, Part II.B.4.

¹³¹ Motion, ¶ 7(f).

¹³² See, *supra*, Part II.A.7 at 19; see also *Baumhammers, supra*, 960 A.2d at 73 (rejecting appellant's claim that objections not contemporaneously raised at trial were preserved "by virtue of having been set forth in post-sentence motions").

Further, Defendant has, once again, simply raised an issue untimely without presenting any supporting evidence or argument. The Court is aware that Attorney Matthew Welickovitch was employed as an assistant district attorney for approximately a decade before being appointed Deputy Public Defender in or around January, 2025, but there is no indication in the record that Attorney Welickovitch had any involvement whatsoever in Defendant's case. Indeed, Defendant does not even allege that Attorney Welickovitch possessed any of his confidential information or that Attorney Welickovitch was involved in his case, either with the district attorney's office or with the public defender's office. Defendant simply asserts that Attorney Welickovitch worked for the district attorney's office when he was charged and for the public defender's office when he was tried and appears to treat Attorney Welickovitch's employment history as a magic talisman that alone voids his conviction.

It is not unprecedented for an attorney to move from one office to another, and such movement does not inherently create a conflict of interest that disqualifies other attorneys from either office.¹³³

[W]here a lawyer who has represented a criminal defendant joins a prosecutor's office, disqualification of the entire office is not necessarily appropriate. That lawyer is of course disqualified from participating in the case on behalf of the prosecution. But individual rather than vicarious disqualification is the general rule.¹³⁴

Here, nothing in the record shows that Attorney Welickovitch either prosecuted or defended Defendant through either office. Moreover, as an assistant district

¹³³ "The mere fact that an attorney or employee of the PD's Office has moved to the DA's Office does not necessarily compel disqualification of the entire DA's Office." *Com. v. Sims*, 799 A.2d 853, 857 (Pa. Super. 2002).

¹³⁴ *Com. v. Miller*, 422 A.2d 525, 529 (Pa. Super. 1980) (citations omitted).

attorney, Attorney Welickovitch did not represent Defendant and would not have had access to his confidential information in any event.

When a potential conflict is raised and an attorney is alleged to have an opposing party's confidential information, the trial court typically would be required to hold a hearing to determine whether confidential information has been disclosed and whether measures are in place or could be implemented to contain or prevent such disclosure.¹³⁵ Defendant's failure to raise this issue prior to, or even during, trial precluded the possibility of this from occurring. The fact that Attorney Welickovitch did not represent Defendant calls into question whether there is any confidential information to protect in any event. Furthermore, the Court is aware generally that the public defender's office has isolated Attorney Welickovitch from any cases that he handled while an assistant district attorney.

Defendant's failure to raise this issue at his first available opportunity, coupled with the lack of specificity of his allegation and the dearth of evidence in support of it, as well as the unlikelihood that any of Defendant's confidential information was or could have been compromised, renders this objection meritless.

7. Impeachment material.

Defendant claims that "[t]he Commonwealth failed to provide impeachment material regarding the Commonwealth's witnesses."¹³⁶ Once again, Defendant did not provide any detail or other substantiation in support of his bald allegation. Absent clarification from the proponent, the Court is unable to understand this objection. Thus, consequent to Defendant's failure to explain or substantiate this

¹³⁵ See, e.g., *Com. v. Ford*, 122 A.3d 414, 418 (Pa. Super. 2015).

¹³⁶ Motion, ¶ 7(g).

issue and the Court's resulting inability to understand it, his objection must be considered waived.

To the extent this can be addressed, the Court surmises that Defendant's objection is a generalized contention that the Commonwealth failed to disclose *Brady* material. Such a claim is without merit, as explained at length above.¹³⁷ To the extent this is a complaint that the Commonwealth did not impeach its own witnesses beyond its responsibility to turn over applicable materials in discovery, the duties of its office, or its obligation of candor to the Court, this objection is inconsistent with " '[t]he very premise of our adversary system of criminal justice [which] is that partisan advocacy on both sides of a case will best promote the ultimate objective' of justice."¹³⁸

This objection is procedurally defective, substantively vacuous, and does not afford Defendant relief, as explained above.

8. Transcript of the preliminary hearing.

Defendant asserts that "[t]he Commonwealth utilized the transcript of the preliminary hearing where the [D]efendant was pro se[,] violating his 5th [A]mendment right to [avoid] self-incrimination over counsel's objection in violation of the hearsay rule."¹³⁹ This refers to an interaction that occurred during trial while the prosecutor was questioning Detective Anderson:

Q. Okay. Detective Anderson, were you present at a preliminary hearing for this case on October 7th, 2024?

A. Yes.

¹³⁷ See, *supra*, Parts II.A.2., 6., 8.

¹³⁸ *Com. v. Brown*, 358 A.3d 469, 510 (Pa. 2026) (quoting *United States v. Cronin*, 104 S. Ct. 2039, 2045 (1984) (quoting *Herring v. New York*, 95 S. Ct. 2550, 2555 (1975))).

¹³⁹ Motion, ¶ 7(h).

Q. Was that at District Magistrate Judge Whiteman's?

A. Yes.

Q. Was Tyree Moy there?

A. Yes, he was.

Q. Were you present for the entire hearing?

A. Yes.

Q. So[,] you were there to hear any statement that Mr. Moy made?

A. Yes, I was.

ATTORNEY PAULHAMUS: I'm going to object. Can we approach?

THE COURT: Yes.

(WHEREUPON, the following discussion was held at sidebar:)

THE COURT: What's the statement that you intend to introduce?

ATTORNEY SWEELEY: I will show you so I don't misquote it. It's just one. So[,] he was -- he was in a pro se capacity at that point and he asked this specific question, that's the only --

THE COURT: We're looking at page 10 beginning at line 8.

ATTORNEY SWEELEY: Nine and ten, just the question.

THE COURT: And again, this is Mr. Moy speaking, representing himself. So[,] question nine is -- this is Mr. Moy speaking?

ATTORNEY SWEELEY: Yes.

THE COURT: Okay, the Defendant didn't tell you, didn't say nothing about a black Subaru parked by the gas pump? Answer, no. Question, Okay, so, the Defendant didn't tell you that there was allegedly a drug task force guy in the store? Answer, Yes, the Defendant told me that.

ATTORNEY SWEeley: Actually, yeah, I wanted those lines as well.

THE COURT: I'm confused by -- because this is out of context, so could you explain to me --

ATTORNEY SWEeley: Sure, so I asked Detective Dent when he was on there what kind of car he was driving. He was in an undercover black vehicle and nobody told Mr. Moy that so the only way he would know this is if he knew that those were NEU drug task force guys, which goes to my closing argument. And then he proceeds to ask him about if he told the CI in the car that he allegedly saw drug task force guys in the store.

THE COURT: Okay. Is the Defendant -- when Mr. Moy's referring to the Defendant, is he referring to himself?

ATTORNEY SWEeley: Yes. You can see in the whole transcript he does refer to himself as the accused and the Defendant in the third person.

THE COURT: Okay, who is he questioning here?

ATTORNEY SWEeley: Thomas Perry he's questioning.

THE COURT: Okay. So[,] before we get to what the objection is, if there's any, you're going to have to make it awfully clear who is asking the question, what he meant by the question, who is he referring to, because it isn't clear to me.

ATTORNEY SWEeley: Um-hum.

THE COURT: So[,] this isn't going to be particularly helpful to a jury if you're not going to take the time to explain it to them.

ATTORNEY SWEeley: Okay.

THE COURT: Now understanding all of that, do you have an objection to the Commonwealth use of this transcript?

ATTORNEY PAULHAMUS: Yes. I think it's prejudicial because it's the Defendant acting as his own attorney at that time and attorney statements wouldn't necessarily be used. And I think if she gets into the fact that he's making these statements as his attorney, that's prejudicial.

THE COURT: Are you taking the position that because he was acting in the capacity as his own lawyer, that statements he makes in that capacity are not admissions?

ATTORNEY PAULHAMUS: Correct.

THE COURT: Okay. That's overruled. You can use the transcript.

ATTORNEY PAULHAMUS: Um, I also would object that this isn't the appropriate witness to get into it with. This is testimony from Thomas Perry.

ATTORNEY SWEELEY: It's not --

ATTORNEY PAULHAMUS: He should be questioned.

ATTORNEY SWEELEY: He was present for the entire thing and I'm not asking about everything.

ATTORNEY PAULHAMUS: But this is --

ATTORNEY SWEELEY: I'm focused on what he's saying --

THE COURT: Don't interrupt each other because the court reporter can't get both of you.

ATTORNEY PAULHAMUS: Okay, because I'm kind of confused, the person that is answering the questions is Thomas Perry here. I think it would be more appropriate to ask Mr. Perry the question.

THE COURT: She could have asked Mr. Perry but she can also ask a witness who was present for the hearing and can testify that this is, in fact, what was said by the Defendant while he was questioning Mr. Perry.

ATTORNEY PAULHAMUS: And if she is going to be allowed to say that Mr. Moy asked that question in the capacity of representing himself, how's that --

THE COURT: Well, she's only going to be able -- she's going to have to because otherwise it's not going to be known to the Jury who the speaker is. So she's going to have to establish that. I don't know why that would be -- you're concerned it's prejudicial that he was representing himself at the preliminary hearing. I don't know why that would be prejudicial.

ATTORNEY PAULHAMUS: Yes, I think it would be prejudicial.

THE COURT: Okay. So, um, I'm going to allow you to use the transcript. You can introduce it through this witness as long as you

can lay an appropriate foundation that he was present and he recalls the testimony.

ATTORNEY SWEeley: Do you want me to repeat the questions I asked? I can since we've been up here for a little bit.

THE COURT: Yeah, yeah. And then I'll defer to you to ask what questions you deem appropriate about the transcript.

ATTORNEY SWEeley: Okay. Thank you.

(**WHEREUPON**, the discussion at sidebar concluded.)¹⁴⁰

Under the Pennsylvania Rules of Evidence, an opposing party's out of court statement may be used against that opposing party in a subsequent proceeding and is excepted from the hearsay rule regardless of the availability of the declarant.¹⁴¹ The exception applies when the statement is offered against the declarant and, among other things, was made by the declarant in an individual or representative capacity.¹⁴² Here, the Commonwealth used statements made by Defendant at a preliminary hearing in this case, so the exception to the hearsay rule applies and his statements are not excludable as hearsay. A criminal defendant's voluntary out of court statements generally may be used against the Defendant and qualify for introduction into evidence as an exception to the hearsay rule.¹⁴³

¹⁴⁰ Trial Transcript, at 146-51.

¹⁴¹ Pa. R. Evid. 803(25) ("The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: ... (25) **An Opposing Party's Statement.** The statement is offered against an opposing party and: (A) was made by the party in an individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or (E) was made by the party's coconspirator during and in furtherance of the conspiracy").

¹⁴² *Id.*

¹⁴³ See, e.g., *Com. v. Ograd*, 839 A.2d 294, 326 (Pa. 2003) ("What Appellant objects to as being hearsay and in violation of his confrontation clause rights is nothing more than fully admissible admissions by Appellant"), *reargument denied*, 850 A.2d 614 (Pa. 2004), *cert. denied*, 125 S. Ct. 1395 (2005).

[V]oluntary extrajudicial statements made by a defendant may be used against a defendant even though they contain no admission of guilt.... These extrajudicial statements, which differ from confessions in that they do not acknowledge all essential elements of a crime, are generally considered to qualify for introduction into evidence under the admission exception to the hearsay rule.¹⁴⁴

Any statement Defendant made on the record in his preliminary hearing was a voluntary out of court statement for purposes of his trial and is admissible as an exception to the hearsay rule. Furthermore, such statements do not implicate his right to freedom from compelled self-incrimination.¹⁴⁵ This objection lacks merit.

9. Denial of pre-trial motions.

Defendant contends that "[t]he Trial Court [erred] in the denial of the pre-trial motions where [l]aw enforcement failed to follow standard operational procedures."¹⁴⁶ This objection is without merit, for the reasons explained above.¹⁴⁷

10. Defendant's prior criminal activity.

Defendant maintains that "[t]he Commonwealth mislead the jury when they brought up the [Defendant's] criminal background and alleged [activities] between the Defendant and [Mikail] Lattimore without presenting him as a witness."¹⁴⁸ The Commonwealth did not refer to Defendant's criminal background during the testimony regarding Mr. Lattimore. As quoted more fully above,¹⁴⁹ the only mention

¹⁴⁴ *Id.*, at 327 (quoting *Com. v. Tervalon*, 345 A.2d 671, 676 (Pa. 1975) (citations omitted)).

¹⁴⁵ See, e.g., *Com. v. Nester*, 790 A.2d 879 (Pa. 1998) (holding that defendant's confession to caseworker investigating child abuse allegation was voluntary and admissible).

¹⁴⁶ Motion, ¶ 7(i).

¹⁴⁷ See, *supra*, Parts II.A.2., 6., 8.

¹⁴⁸ Motion, ¶ 7(j).

¹⁴⁹ See, *supra*, Part II.A.7.

in front of the jury of anyone's "prior criminal background" during this testimony was the following exchange that occurred during Det. Laudenslager's testimony:

Q. Who is that?

A. That is Mikail Lattimore.

Q. And are you familiar with Mikail Lattimore?

A. Yes, I am.

Q. And how are you familiar with Mikail Lattimore?

A. Mikail Lattimore has been the subject of several NEU investigations for the delivery of controlled substances in Lycoming County.¹⁵⁰

This excerpt of testimony clearly shows that there was not discussion in front of jury of Defendant's criminal background during the testimony concerning Mr. Lattimore. Rather, Det. Laudenslager testified that Defendant was present at the Sheetz with Mr. Lattimore and that Mr. Lattimore previously "has been the subject of several NEU investigations for the delivery of controlled substances in Lycoming County." In other words, Det. Laudenslager testified that Defendant publicly met with an individual who has been the subject of previous narcotics investigations. Defendant is not entitled to be protected from the consequences of his own public activities.

This objection lacks merit.

11. Entrapment by Commonwealth witnesses.

Defendant asserts that "[t]he Commonwealth witness[es], [the] [c]onfidential informant, Officer Anderson, Officer Dent, [and] Officer [Laudenslager] entrapped and ... participated in entrapment[,] violating the [guidelines] of the [Office of the

¹⁵⁰ Trial Transcript, at 136.

Attorney General].”¹⁵¹ Under the Crimes Code, entrapment is an affirmative defense available to defendants and is defined as follows:

A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either:

(1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.¹⁵²

Pennsylvania Courts employ an objective test for entrapment that focuses on the conduct of the police and is not concerned with the defendant’s prior criminal activity or predisposition to commit a crime.¹⁵³ Thus, “government agents may not originate a criminal design, implant in an innocent person’s mind the disposition to commit a criminal act and then induce commission of the crime so that the government may prosecute.”¹⁵⁴ “Where police ‘do no more than afford appellant an opportunity’ to commit an illegal act, their actions are not considered sufficiently outrageous police conduct to support an entrapment defense,” and the entrapment defense “does not preclude police from acting ‘so as to detect those engaging in

¹⁵¹ Supplemental Motion, ¶ II(II).

¹⁵² 18 Pa. C.S. § 313(a).

¹⁵³ *Com. v. Marion*, 981 A.2d 230, 238 (Pa. Super. 2009) (citing *Com. v. Jones*, 363 A.2d 1281 (Pa. Super. 1976)). This approach “conceives the entrapment defense as aimed at deterring police wrongdoing” and “provides a sanction for overzealous and reprehensible police behavior comparable to the exclusionary rule.” *Id.* (quoting *Com. v. Lucci*, 662 A.2d 1, 3 (Pa. Super. 1995), *alloc. denied*, 672 A.2d 305 (1995)).

¹⁵⁴ *Com. v. Borgella*, 611 A.2d 699, 701 (Pa. 1992) (citing *Jacobson v. U.S.*, 112 S. Ct. 1535 (1992)).

criminal conduct and ready and willing to commit further crimes should the occasion arise. Such indeed is their obligation.’ ”¹⁵⁵

[T]he determination of whether police conduct constitutes entrapment is for the jury, unless the evidence of police conduct clearly establishes entrapment as a matter of law.... Thus, after the defense of entrapment has been properly raised, the trial court should determine the question as a matter of law wherever there is no dispute as to the operative facts relating to the defense.¹⁵⁶

Defendant did not raise his alleged entrapment at trial; hence this issue has been waived, and the waiver is not cured by raising it for the first time in a post-sentence motion.¹⁵⁷ Further, because the defense was not raised at trial, the jury was not charged on entrapment¹⁵⁸ and was not given the opportunity to determine whether Defendant had proven entrapment by a preponderance of the evidence.¹⁵⁹ Moreover, since this matter has not previously been raised, the Court is unable to decide the question in Defendant’s favor as a matter of law, as the Court is unable to determine at this stage of the proceedings and without the Commonwealth’s input whether there is any dispute as to the operative facts relating to the defense. Nonetheless, having presided at trial and over some of the pre-trial proceedings, the Court cannot conclude that the evidence establishes entrapment. In sum, the Court finds that Defendant’s contention lacks merit, as it is procedurally defective and substantively dubious.

¹⁵⁵ *Marion*, *supra*, 981 A.2d at 239 (quoting *Com. v. Morrow*, 650 A.2d 907, 913-14 (Pa. Super. 1994), *alloc. denied*, 659 A.2d 986 (Pa. 1995)) (other citations omitted).

¹⁵⁶ *Id.* (quoting *Lucci*, *supra*, 662 A.2d at 3).

¹⁵⁷ *See, supra*, Part II.A.7., at 19.

¹⁵⁸ Trial Transcript, at 175, *et seq.*

¹⁵⁹ Verdict Form, dated January 21 and filed January 22, 2026.

12. Failure to prove Defendant was not entrapped.

Defendant alleges that “[t]he Commonwealth failed to prove that the [Defendant] was not entrap[ped] for the [crimes] that he [w]as found [guilty] of at trial[:]. Specifically[,] that [Defendant] delivered a controlled substance on June 6th 2026.”¹⁶⁰ The Commonwealth is not under any obligation to prove that a defendant has not been entrapped. The Crimes Code specifies that “a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response to an entrapment.”¹⁶¹ As the Commonwealth is not required to disprove entrapment, this objection lacks merit.

13. Level of detail in the information.

Defendant argues that he “was denied his due process right to adequate notice of the charges in violation of the 6th and 14th Amendments to the United States Constitution and Article 1, Section 9, of the Pennsylvania Constitution [because] the criminal information never specified the [weight] of the specific drug alleged.”¹⁶² Defendant further claims that “[t]he [c]riminal [information] stated the knotted off bag, [t]he 6th [Amendment] of the Constitution and due process of the [Defendant] [were] violated by withholding this from the [j]ury. This increase or [decrease] in penalties could not be establish[ed] [beyond] a [reasonable] doubt. The Commonwealth presented evidence at trial of a [c]ontrolled substance over 2 grams.”¹⁶³

¹⁶⁰ Supplemental Motion, ¶ II(III).

¹⁶¹ 18 Pa. C.S. § 313(b); *see also Com. v. Willis*, 900 A.2d 773, 775 (Pa. Super. 2010) (explaining that, after enactment of the 1972 Crimes Code, defendants alleging entrapment are now required to prove entrapment by a preponderance of the evidence).

¹⁶² Motion, ¶ 7(k).

¹⁶³ Supplemental Motion, ¶ (II)(IV).

A criminal information is a formal statement charging the commission of an offense,¹⁶⁴ the purpose of which "is to apprise the defendant of the charges ... so that [the defendant] may have a fair opportunity to prepare a defense."¹⁶⁵ It is not intended to be a comprehensive recitation of every detail that will be presented at trial. Rather, the Rules of Criminal Procedure state that

(A) After the defendant has been held for court following a preliminary hearing or an indictment, the attorney for the Commonwealth shall proceed by preparing an information and filing it with the court of common pleas.

(B) The information shall be signed by the attorney for the Commonwealth and shall be valid and sufficient in law if it contains:

(1) a caption showing that the prosecution is carried on in the name of and by the authority of the Commonwealth of Pennsylvania;

(2) the name of the defendant, or if the defendant is unknown, a description of the defendant as nearly as may be;

(3) the date when the offense is alleged to have been committed if the precise date is known, and the day of the week if it is an essential element of the offense charged, provided that if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient;

(4) the county where the offense is alleged to have been committed;

(5) a plain and concise statement of the essential elements of the offense substantially the same as or cognate to the offense alleged in the complaint;

¹⁶⁴ Pa. R. Crim. P. 103, *Information* ("**Information** is a formal written statement charging the commission of an offense signed and presented to the court by the attorney for the Commonwealth after a defendant is held for court, is indicted by the grand jury, or waives the preliminary hearing or a grand jury proceeding") (emphasis in original).

¹⁶⁵ *Com. v. Hoffman*, 198 A.3d 1112, 1122 (Pa. Super. 2018) (citing *Com. v. Brown*, 727 A.2d 541, 543 (Pa. 1999)).

(6) a concluding statement that "all of which is against the Act of Assembly and the peace and dignity of the Commonwealth"; and

(7) a certification that the information complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

(C) The information shall contain the official or customary citation of the statute and section thereof, or other provision of law that the defendant is alleged therein to have violated; but the omission of or error in such citation shall not affect the validity or sufficiency of the information.

(D) In all court cases tried on an information, the issues at trial shall be defined by such information.¹⁶⁶

As our Supreme Court has explained, "an Information is sufficient if it sets forth the elements of the offense intended to be charged with sufficient detail that the defendant is apprised of what he must be prepared to meet, and may plead double jeopardy in a future prosecution based on the same set of events."¹⁶⁷ Upon review of the Information,¹⁶⁸ the Court finds that it meets all of the legal requirements of a valid information; that it "sets forth the elements of the offense intended to be charged with sufficient detail;" that Defendant "is apprised of what he must be prepared to meet" and "may plead double jeopardy in a future prosecution based on the same set of events." Thus, it is sufficient.

This objection is without merit.

¹⁶⁶ Pa. R. Crim. P. 560.

¹⁶⁷ *Com. v. Alston*, 651 A.2d 1092 (Pa. 1994) (citations omitted).

¹⁶⁸ Information, filed October 31, 2024.

C. Motion to modify sentence.

Defendant claims that his sentence should be modified, as the Court erred regarding calculation of his prior record score and his offense gravity score.¹⁶⁹ Defendant's crimes were committed on June 6, 2024, so the Eighth Edition of the Sentencing Guidelines¹⁷⁰ applies.¹⁷¹ At sentencing, the Commonwealth calculated Defendant's prior record score ("PRS")¹⁷² to be three (3)¹⁷³ and his offense gravity score ("OGS")¹⁷⁴ to be twelve (12) for delivery of cocaine and seven (7) for criminal use of a communication facility.¹⁷⁵ Defendant objected that his PRS is two (2) and that the OGS for delivery is improperly calculated because the Information did not specify the weight of the cocaine.¹⁷⁶ He did not dispute the OGS for criminal use of a communication facility.

At sentencing, the Commonwealth stated the following concerning Defendant's PRS and the OGS for delivery:

ATTORNEY WADE: Prior record score is a three. There are three felony convictions, the forgery, the felony drug, and the criminal

¹⁶⁹ Supplemental Motion, ¶ (III)(A).

¹⁷⁰ 204 Pa. Code §§ 303a.1, *et seq.*

¹⁷¹ 204 Pa. Code § 303a.8 (stating that the Eighth Edition of the Sentencing Guidelines applies to crimes committed after January 1, 2024).

¹⁷² See 204 Pa. Code § 303a.4. "The PRS is a measure of a person's criminal history, reflecting the number and seriousness of certain previous juvenile adjudications and adult convictions. The PRS addresses the greater culpability and risk to reoffend of repeat offenders. There are five PRS categories (PRS 0--PRS 4)." 204 Pa. Code § 303a.4(a)(1).

¹⁷³ Sentencing Transcript, at 15-17.

¹⁷⁴ See 204 Pa. Code § 303a.3. "The OGS measures the seriousness of the current conviction offense and is the primary determinant of the guideline sentence recommendation. An OGS is assigned to each conviction offense, based on the elements of the offense and the classification of the crime. There are 30 general OGS categories, with another eight OGS categories limited to assignments for murder." 204 Pa. Code § 303a.3(a)(1).

¹⁷⁵ Sentencing Transcript, at 15-18.

¹⁷⁶ *Id.*, at 17-18.

attempt felony drug. Those are all POG 2 offenses. Three or more POG 2 offenses make his prior record score a three.

For the delivery of cocaine, the lab report reflected a weight of 2.81 grams. For a first offense, the guideline offense gravity score would be a 10. But for a second or subsequent offense, this would be his second felony drug conviction, at least his second, the offense gravity score would be a 12.¹⁷⁷

The Commonwealth accurately calculated Defendant's PRS as three (3) based on his three prior felony convictions¹⁷⁸ and accurately calculated the OGS for delivery of 2.81 grams of cocaine as ten (10) for a first offense and twelve (12) for a second or subsequent offense,¹⁷⁹ which this is.

Defendant stated his conviction that his PRS is two (2), but he did not state any reason for his belief.¹⁸⁰ As such, he has waived this issue. Moreover, the Court has found that the Commonwealth correctly calculated Defendant's PRS. Defendant also challenges the PRS for the delivery charge. As stated above, Defendant's claim that he cannot be convicted of delivering 2.81 grams of cocaine because the Information did not state the weight of the drugs lacks merit.¹⁸¹ He has articulated no other reason for his disagreement,¹⁸² and the Court has found that the Commonwealth correctly calculated the OGS for the delivery charge.

Accordingly, Defendant's motion to modify his sentence is denied, as his claim on this issue merits no relief.

¹⁷⁷ *Id.*, at 15-16.

¹⁷⁸ 204 Pa. Code §§ 303a.4, 313a.13.

¹⁷⁹ 204 Pa. Code §§ 303a.3, 313a.9.

¹⁸⁰ Sentencing Transcript, at 17-18; Supplemental Motion, ¶ (III)(A).

¹⁸¹ See, *supra*, Part II.B.13.

¹⁸² Sentencing Transcript, at 18; Supplemental Motion, ¶ (III)(A).

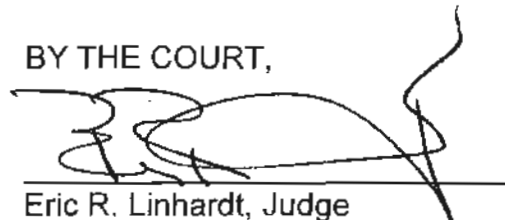
III. CONCLUSION AND ORDER.

For the reasons explained at length above, Defendant's post-sentence Motion is DENIED. His motions for an arrest of judgment, for a new trial, and for a modification of his sentence merit no relief on any of the issues he has raised.

Pursuant to Rule 720(B)(4), Pennsylvania Rules of Criminal Procedure,¹⁸³ Defendant is hereby advised (a) that he has a right to appeal to the Superior Court within thirty (30) days after entry of this Order;¹⁸⁴ (b) that he has the right to assistance of counsel in the preparation of the appeal; (c) that, if he is indigent, he has the rights to appeal *in forma pauperis* and to proceed with assigned counsel as provided in Rule 122;¹⁸⁵ and (d) that he has the qualified right to bail under Rule 521(B).¹⁸⁶

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

cc: Lindsay K. Sweeley, Esq., *District Attorney's Office*
Taylor J. Paulhamus, Esq., *Public Defender's Office*
Tyree T. Moy, NP4592, *SCI-Forest, 286 Woodland Dr., P.O. Box 307,*
Marienville, PA 16239
Court Administration/Court Scheduling

¹⁸³ Pa. R. Crim. P. 720(B)(4) (requiring that an order denying a post-sentence motion provide notice to the defendant of certain rights).

¹⁸⁴ See Pa. R.A.P. 903 (setting the time for filing an appeal to an appellate court).

¹⁸⁵ Pa. R. Crim. P. 122 (providing for appointment of counsel for defendants in certain cases).

¹⁸⁶ Pa. R. Crim. P. 521(B) (providing for allowance of bail post-sentence in certain situations).