NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WESLEY ANDRE CURETON	:	
Appellant	:	No. 582 MDA 2026

Appeal from the Judgment of Sentence Entered December 10, 2025
In the Court of Common Pleas of Franklin County Criminal Division at
No(s): CP-28-CR-0001463-2023

BEFORE: BOWES, J., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY DUBOW, J.: **FILED: NOVEMBER 4, 2026**

Appellant Wesley Andre Cureton appeals *pro se* from the December 10, 2025 judgment of sentence entered in the Franklin County Court of Common Pleas after a jury convicted him of Firearms Not to be Carried Without a License and Persons Not to Possess, Use, Manufacture, Control, Sell, or Transfer Firearms.[1] Appellant challenges the sufficiency and weight of the evidence, contests the denial of his motion to suppress, and alleges several evidentiary errors as well as prosecutorial misconduct. Upon review, we affirm.

The following factual and procedural history is relevant to this appeal. On July 27, 2022, the Chambersburg Police Department dispatched police officer Konnor Eshbaugh to 203 South Main Street in Chambersburg after a

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[1] 18 Pa.C.S. §§ 6106(a)(1) and 6105(a)(1), respectively.

woman called 911 alleging that a male had threatened her and pointed a gun in her face. He arrived at the scene and detained Appellant who was wearing all black and was identified as the male who threatened the 911 caller. When Officer Eshbaugh questioned Appellant, he denied having any weapons. Officer Eshbaugh searched Appellant's vehicle with Appellant's consent and found a fanny pack and black mask but no weapons. Officer Eshbaugh released Appellant but continued to search the surrounding area for any "ditched" firearms. N.T. Trial, 10/29/25, at 38. Officer Eshbaugh walked through a public, ungated breezeway behind 213 South Main Street. In the courtyard, he observed a black suitcase on a concrete pad or patio in front of a vacant first floor apartment. Officer Eshbaugh observed that the suitcase was partially unzipped, pried the suitcase open, looked inside, and saw the barrel of an AR-style firearm. He opened the suitcase completely and observed a second firearm. Officer Eshbaugh called for backup and police office Eric McGinnis arrive on the scene. After the officers observed that both firearms were operable and loaded with ammunition in the magazines, they transported the firearms to the police station and secured them in a temporary evidence locker. On their next shift, Officers Eshbaugh and McGinnis took the weapons into evidence.

Soon thereafter, Officer Eshbaugh and Detective Schockey viewed camera footage from the Chambersburg Police Department's downtown surveillance system and observed a man wearing the same black clothing and the same black face mask as Appellant. They observed the man exit 203

South Main Street with a black suitcase, walk down the sidewalk with the suitcase, walk behind 213 South Main Street with the suitcase, and walk back out onto South Main Street without the suitcase. The man then got into the same vehicle that Officer Eshbaugh searched and drove away.

On July 28, 2022, the Commonwealth charged Appellant with Firearms Not to be Carried Without a License and Persons Not to Possess, Use, Manufacture, Control, Sell, or Transfer Firearms. On August 16, 2024, Appellant filed an Omnibus Pretrial Motion to Suppress.

The court held an evidentiary hearing on October 31, 2024, regarding Appellant's suppression motion. The court heard testimony from Officer Eshbaugh. Appellant testified on his own behalf.

Officer Eshbaugh testified in accordance with the above-stated facts. In addition, Officer Eshbaugh testified that he had been employed as a patrol officer for the Chambersburg Police Department for three and a half years. He also testified that he did not obtain a warrant to search the suitcase because it was unattended and, therefore, he considered the suitcase to be abandoned.

Appellant testified that he lived at 203 South Main Street and that the suitcase was his. Appellant explained that he placed the suitcase upright against the wall near a window, not in the middle of the patio. He testified that the suitcase was fully zipped when he left it. He further testified that he intended to return for the suitcase and that he was just moving it temporarily because the woman who called 911 had lived in his apartment, still had a key, and he did not trust her. Appellant explained that he regularly used that

walkway behind 213 South Main Street to go to the Southgate Shopping Center. On December 20, 2024, the court issued an order and opinion denying the suppression motion.

On October 29, 2025, the court held a jury trial. The Commonwealth presented testimony from Officer Eshbaugh; Officer McGinnis; Detective Todd Hardin; and Halie Prince, Appellant's former girlfriend.

Officer Eshbaugh testified in accordance with the above-stated facts. Officer McGinnis testified that he had been a patrol officer with the Chambersburg Police Department since 2015. He responded to 213 South Main Street after Officer Eshbaugh reported finding a suitcase with firearms.

Officer McGinnis testified that Officer Eshbaugh and he transported the firearms to the police station and secured them in a temporary evidence locker. He explained that Officer Eshbaugh and he photographed the weapons during their next shift and entered them into evidence. Officer McGinnis identified the Commonwealth's Exhibits 3-10 as photographs of the firearms that they recovered from the suitcase on South Main Street.

Detective Todd Hardin testified that he had been employed by the Chambersburg Police Department for approximately 23 years. He further testified that he is a certified armorer and a certified firearms instructor. He identified one of the firearms as a 9-millimeter pistol and the other firearm as an AR-15 pistol. Detective Harden explained that he test-fired both weapons at the police department's controlled shooting range and determined that both

firearms were operable. Officer Eshbaugh recorded the test-firing on his body-worn camera and this video was entered into evidence.

Ms. Prince testified that she had been in a romantic relationship with Appellant but that they were no longer together. She explained that while they were together, Appellant asked her to take a picture of him holding two firearms. She identified the Commonwealth's Exhibit 1 as a picture that she took, which depicted Appellant holding two firearms that appear to be the same firearms that Officer Eshbaugh discovered in the suitcase.

Finally, the parties read two stipulations into the record: 1) Appellant did not have a valid and lawfully issued license to carry a firearm concealed on or about his person on July 27, 2022; and 2) on December 12, 2017, Appellant entered a guilty plea to possession with intent to deliver a Schedule I controlled substance, rendering him a person not permitted to possess a firearm under 18 P.C.S. § 6105.

At the conclusion of the trial, the jury convicted Appellant of both charges. On December 10, 2025, the court imposed an aggregate sentence of 102-204 months' incarceration. Appellant filed a post-sentence motion, which the trial court denied.

Appellant filed a timely *pro se* appeal. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant raises the following issues for this Court's review:

1. Did the court err by denying suppression after a warr[a]ntless suitcase search without consent, probable cause to even want to engage in a illegal search, and no real exigent circumstances

to the warr[a]nt requirement, and at the most in the circumstance s[ei]zing the bag and bringing the suitcase back to the station to proceed with further legal steps?

2. Was the evidence insufficient where the [C]ommonwealth failed to prove identity or possession, whether actual or constructive, without any witnesses stating seeing [Appellant] with firearms, and breezeway/porch not being an area exclusive to [Appellant], as well as no forensic evidence linking [Appellant] to the firearms and police not bothering to take the only key evidence, being the suitcase, that is the only thing police are alleging to see [Appellant] with on street footage?

3. Was the verdict against the great weight of the evidence due to speculative identification, shared access to the suitcase and no proof what so ever of possession, constant switching and changing of testimony from Officer Eshbaugh, lacking I reliability?

4. Did the court err by admitting a[] year old, prejudicial photograph lacking reliable authentication and relevance?

5. Was [Appellant] denied a fair trial by prosecutorial misconduct, speculation, emotional appeals, and chain of custody failures?

Appellant's Br. at 6-7 (reordered for ease of disposition).

In his first issue, Appellant avers that the supression court erred in denying his suppression motion. ***Id.*** at 6. "Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct." ***Commonwealth v. Evans***, 153 A.3d 323, 327 (Pa. Super. 2016) (citation omitted). "Once a motion to suppress evidence has been filed, it is the Commonwealth's burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights." ***Commonwealth v. Wallace***,

42 A.3d 1040, 1047–48 (Pa. 2012). Our scope of review of the suppression court's factual findings is limited to the record from the suppression hearing. ***Commonwealth v. Barr***, 266 A.3d 25, 39 (Pa. 2021). "Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error." ***Evans***, 153 A.3d at 327 (citation omitted). Additionally, an appellate court can affirm a valid judgment for any reason supported by the record. ***Commonwealth v. Conforti***, 303 A.3d 715, 729 (Pa. 2023).

Appellant argues that the police officers' warrantless search of the closed suitcase violated the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution. Appellant's Br. at 20. Appellant asserts that the "[p]olice lacked consent, probable cause, exigent circumstances, or any valid exception" to the requirement to obtain a warrant. ***Id.*** at 15. Specifically, Appellant argues that the Commonwealth failed to prove that the suitcase was abandoned because no one observed him "possess, carry, or discard the suitcase at the time of the illegal search" and the video depicting him with the suitcase was observed by police after the warrantless search had already taken place. ***Id.*** at 15, 19. We discern no error.

"Both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution guarantee individuals freedom from unreasonable searches and seizures." ***Commonwealth v. Kane***, 210 A.3d 324, 330 (Pa. Super. 2019) (citation and internal quotation mark omitted). In Pennsylvania, a defendant charged with a possessory

offense has "automatic standing" to pursue a suppression motion under Rule 581. ***Commonwealth v. Enimpah***, 106 A.3d 695, 698 (Pa. 2014). However, in addition to standing, "a defendant must show that he had a privacy interest in the place invaded or thing seized that society is prepared to recognize as reasonable." ***Id.*** "The expectation of privacy is an inquiry into the validity of the search or seizure itself; if the defendant has no protected privacy interest, neither the Fourth Amendment nor Article I, § 8 is implicated." ***Id.*** at 699.

"Generally, the Fourth Amendment requires that law officers obtain a warrant before they intrude into a place of privacy; however, an exception to the warrant requirement exists when the property seized has been abandoned." ***Kane***, 210 A.3d at 330. "[T]o prevail on a suppression motion, a defendant must demonstrate a legitimate expectation of privacy in the area searched or effects seized, and such expectation cannot be established where a defendant has meaningfully abdicated his control, ownership or possessory interest." ***Commonwealth v. Dowds***, 761 A.2d 1125, 1131 (Pa. 2000). "Simply put, no one has standing to complain of a search or seizure of property that he has voluntarily abandoned." ***Kane***, 210 A.3d at 330 (citation and internal quotation mark omitted).

Our Supreme Court has explained, "abandonment of a privacy interest is primarily a question of intent and may be inferred from words spoken, acts done, and other objective facts." ***Dowds***, 761 A.2d at 1131. "All relevant circumstances existing at the time of the alleged abandonment should be considered." ***Kane***, 210 A.3d at 330 (citation omitted). "The issue is not

abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search." ***Id.*** at 331 (citation omitted).

In ***Kane***, ***supra***, an analogous case, this Court upheld the denial of motion to suppress where the appellant left his cell phone unattended, powered on, and recording in a dormitory bathroom that was open and available to dorm residents as well as visitors. ***See id.*** We concluded that the warrantless search of the cellphone did not violate the appellant's constitutional right to be free from unreasonable searches and seizures because when the appellant "intentionally and voluntarily left his cell phone in a public bathroom he did **not** have a reasonable expectation of privacy in his cell phone." ***Id.***

Likewise, in this case, the suppression court concluded that Appellant did not have a reasonable expectation of privacy in the suitcase because he abandoned it. Tr. Ct. Op., 12/20/24, at 6, 8. The court considered the totality of the circumstances, including the fact that the suitcase was unattended, the suitcase was on a patio in a public area, and the patio was easily accessible to the public because there were no fencing or signs prohibiting access. ***Id.*** at 8-9. The suppression court concluded "once [Appellant] voluntarily left the suitcase on his neighbor's porch, he lost any reasonable expectation of privacy

in the suitcase and its contents" and "the suitcase was abandoned at the time of the search." ***Id.***

In light of the suppression court's findings of fact, which the record supports, we discern no error of law in the court's conclusion that when Appellant voluntarily left his suitcase on patio in a public area, he did not have a reasonable expectation of privacy in the suitcase. Once Appellant voluntarily abandoned the suitcase, he abandoned not only any legitimate expectation of privacy in its contents, but also standing to challenge the search of that suitcase. This issue merits no relief.

In his second issue, Appellant avers that the Commonwealth's evidence was insufficient to establish that Appellant exercised actual or constructive possession over the firearms. Appellant's Br. at 22.

We review claims regarding the sufficiency of the evidence by considering 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." ***Commonwealth v. Melvin***, 103 A.3d 1, 39 (Pa. Super. 2014) (citation omitted). Further, a conviction may be sustained wholly on circumstantial evidence, and the trier of fact—while passing on the credibility of the witnesses and the weight of the evidence—is free to believe all, part, or none of the evidence. ***Id.*** at 40. "Because evidentiary sufficiency is a matter of law, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Brooker***, 103 A.3d 325, 330 (Pa. Super. 2014).

As stated above, the jury convicted Appellant of two violations of the Uniform Firearms Act, including Person Not to Possess, Use, Manufacture, Control, Sell and or Transfer Firearms pursuant to Section 6105 and Firearms Not to be Carried Without a License pursuant to Section 6106. ***See*** 18 Pa.C.S. §§ 6105(a)(1) and 6106(a)(1). Both convictions require the Commonwealth to prove that Appellant "possessed" the firearm. ***See id.***

A jury may find that a defendant actually possessed contraband or did so constructively. ***Commonwealth v. Parrish***, 191 A.3d 31, 36 (Pa. Super. 2018). "Where a defendant is not in actual possession of the prohibited items, the Commonwealth must establish that the defendant had constructive possession to support the conviction." ***Id***. (citing ***Commonwealth v. Hopkins***, 67 A.3d 817, 820 (Pa. Super. 2013) (holding that a conviction under 18 Pa.C.S. § 6106(a) was supported by a finding of constructive possession)). "Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement." ***Parrish***, 191 A.3d at 36 (citation omitted). "We have defined constructive possession as conscious dominion, meaning that the defendant has the power to control the contraband and the intent to exercise that control." ***Id***. (citation and quotation marks omitted).

"[A]s with any other element of a crime, constructive possession may be proven by circumstantial evidence." ***Id***. at 36-37 (citation omitted). "In other words, the Commonwealth must establish facts from which the trier of fact can reasonably infer that the defendant exercised dominion and control over the contraband at issue." ***Id***. at 37 (citation omitted).

As noted above, Appellant argues that the Commonwealth failed to prove that he actually or constructively possessed the firearms and lists numerous reasons to conclude that his conviction was the result of "speculation." Appellant's Br. at 22-23. Appellant fails to acknowledge, however, that the Commonwealth's case included photographic evidence of Appellant holding two firearms that appear identical to the firearms located in the suitcase. The Commonwealth also presented video evidence showing a man wearing black pants, shirt, and mask, wheeling a suitcase out of 203 South Main Street to a walkway or patio beside 213 South Main Street and then return to 203 South Main Street without the suitcase. Finally, the jury heard evidence that the police found a black mask—like the one in the video—in Appellant's car and that Appellant was wearing a black shirt and pants when police initially interviewed him. Viewing all the evidence in the light most favorable to the Commonwealth as the verdict-winner, we conclude that it was reasonable for the jury to infer that Appellant exercised dominion and control over the firearms at issue. Appellant's claim that the Commonwealth failed to prove he had possession—actual or constructive—thus, fails.

In his third issue, Appellant argues that the verdict was contrary to the weight of the evidence because the Commonwealth failed to present sufficient evidence that it was Appellant who possessed the suitcase and, consequently, the firearms. Appellant's Br. at 23-24. We remind Appellant that sufficiency and weight claims are clearly distinct. ***See Commonwealth v. Widmer***, 744 A.2d 745, 751-52 (Pa. 2000) (discussing the distinctions between a claim

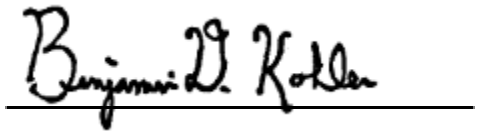
challenging sufficiency of the evidence and a claim that the verdict is against weight of the evidence). "A true weight of the evidence challenge concedes that sufficient evidence exists to sustain the verdict but questions which evidence is to be believed." ***Commonwealth v. Charlton***, 902 A.2d 554, 561 (Pa. Super. 2006) (citation omitted). While Appellant characterizes his third claim as a challenge to the weight of the evidence, Appellant merely repeats his argument that the evidence was insufficient to support his convictions because the Commonwealth failed to prove his possession of the firearms. ***See*** Appellant's Br. at 23-24. As Appellant has failed to present a proper weight of the evidence claim on appeal, we find this issue waived.

In his fourth and fifth issues, Appellant avers that he was denied a fair trial due to the trial court's evidentiary errors as well as prosecutorial misconduct. Appellant's Br. at 24. Appellant's five-sentence argument is insufficiently developed and incomprehensible. He fails to provide any legal authority to support his positions. An appellant must develop arguments and include pertinent citations in his brief. ***See Commonwealth v. Farmer***, 758 A.2d 173, 181 (Pa. Super. 2000); Pa.R.A.P. 2119(a). We refuse to develop an argument for an appellant or scour the record to make sense of his claims. ***Commonwealth v. Beshore***, 916 A.2d 1128, 1140 (Pa. Super. 2007). Where an appellant fails to develop an argument on appeal, we will find that issue waived. ***Commonwealth v. Charleston***, 94 A.3d 1012, 1022 (Pa. Super. 2014). Here, defects in Appellant's brief preclude our meaningful review of his final two issues.

In conclusion, the suppression court did not err when it denied Appellant's suppression motion. Moreover, the Commonwealth presented sufficient evidence to prove that Appellant possessed or constructively possessed two firearms. Finally, Appellant waived his challenges to the weight of the evidence, evidentiary errors, and prosecutorial misconduct.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/4/2026