

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
JOSEPH MILLER	:	
	:	
Appellant	:	No. 2915 EDA 2024

Appeal from the Judgment of Sentence Entered October 11, 2024
 In the Court of Common Pleas of Philadelphia County Criminal Division at
 No(s): CP-51-CR-0004188-2023

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

OPINION BY DUBOW, J.:

FILED SEPTEMBER 30, 2026

Appellant Joseph Miller appeals from the October 11, 2024 judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his conviction for Indirect Criminal Contempt (“ICC”) for violating a Protection from Abuse (“PFA”) Order.¹ After careful consideration, we conclude that the Commonwealth failed to present sufficient evidence that Appellant received notice of the final PFA order. Accordingly, we are constrained to vacate the judgment of sentence, reverse the conviction, and discharge Appellant.

We glean the relevant factual and procedural history from the trial court’s opinion and the certified record. On March 7, 2023, Victim obtained a temporary PFA order against Appellant, with whom she resided and had been in a relationship for approximately two years. Victim, however, failed to

* Retired Senior Judge assigned to the Superior Court.

¹ 23 Pa.C.S. § 6114(a).

appear at the hearing for a final PFA order, resulting in the court dismissing the temporary PFA order, without prejudice. On March 16, 2023, Victim refiled and the court granted a second temporary PFA order. On March 17, 2023, Appellant received service of the temporary PFA order.

On April 19, 2023, the court held a hearing for a final PFA order at which Victim appeared, but Appellant did not.² The court entered a final PFA order against Appellant by default, prohibiting him from contacting Victim or being present at her residence for three years.

The relevant violation of the final PFA order occurred in the early morning of May 29, 2023. At 2:19 a.m., Police Officer Derrick Wright responded to Victim's call to police. His report indicated that she had been "in a verbal dispute with [Appellant] and that he violated a final PFA Order." Trial Ct. Op., 7/24/25, at 3 (citing the parties' stipulation regarding Officer Wright's report); N.T., 12/13/23, at 5-6. According to Officer Wright, Victim "did not report any physical assault or break-in" by Appellant nor did she report "a weapon, pain or injury, or property damage." Trial Ct. Op. at 3. In contrast, Victim subsequently testified that she told Officer Wright that Appellant assaulted, strangled, and threatened to kill her during the incident. ***Id.*** at 2.

Police arrested Appellant for violating the final PFA order and additionally charged him with Strangulation, Terroristic Threats, Unlawful Restraint,

² On the day of the hearing, Appellant was in Philadelphia County custody.

Simple Assault, Recklessly Endangering Another Person, and False Imprisonment.

On December 12-13, 2023, the court conducted a bench trial, at which Victim testified. During the cross-examination of Victim, defense counsel, Kevin Yao, played a portion of Victim's video interview with police to demonstrate that Victim was intoxicated on the night of the incident. The following exchange between Attorney Yao and Victim relating to the video is relevant to the issues on appeal, as it indicates that the court viewed only a brief portion of the beginning of the video:

[Mr. Yao]. Just going to play a brief portion, ma'am. Is this a fair and accurate depiction of you speaking to detectives that day?

A. Yes.

Q. So start playing from the beginning.

MR. YAO: I'll cross-mark what I think complaining witness has marked C-30 as D-1.

THE COURT CRIER: Your Honor, for the record, D-1 is cross-marked.

(Defendant's Exhibit No. D-1 was marked for identification.)
(Video played.)

[Assistant District Attorney ("ADA")]: And if we can pause here briefly. Could we pick a different section, if that's not all the identifying information of the complainant?

THE COURT: Does your -- does the complaining witness currently live there now?

[ADA]: The address is going to be on record, but they are about to get the phone number.

MR. YAO: Strike the --

[ADA]: I'm --

MR. YAO: Stop here real quick, ma'am.

BY MR. YAO:

Q. You just watched this video and would you agree with me again, after watching the video, is this still your testimony that you were not under the influence of any narcotics that night?

A. No, I wasn't.

Q. Okay. Would you agree with me this time when speaking with the detective that your speech is pretty slurred?

A. Yeah, alcohol does that.

N.T., 12/12/23, at 36-38. The record does not indicate that either the defense or the Commonwealth played any other portion of the video during trial. Moreover, while both sides marked the video, neither moved for admission of the video into evidence.³

On the second day of trial, the parties stipulated to the procedural history relating to the temporary and final PFA orders, as set forth above. ***Id.***, 12/13/23, at 13-14; ***see also*** N.T., 12/12/23, at 21-23. Importantly, the parties did not stipulate to, nor did the Commonwealth present, any evidence that Appellant received notice of the final PFA order. However, the Commonwealth now relies upon a portion of the video, at approximately the 8-minute mark, in which the Commonwealth asserts that Victim claimed that Appellant "'took' [her] copy of the final PFA order" when he left her residence. Commonwealth Br. at 2-3. The Commonwealth contends that a "reasonable

³ Following a misstatement during oral argument before this Court, the Commonwealth filed a petition for post-submission communication acknowledging that the video was not included in the certified record. We accept the post-submission communication and appreciate the Commonwealth's candor.

inference” drawn from Victim’s alleged statement is that Appellant “had actual notice of the final PFA order prior to violating it because he took it from [V]ictim.” ***Id.*** at 5.

At the conclusion of trial, the court found Appellant guilty of indirect criminal contempt for violating the final PFA order but not guilty on all remaining charges. The court stated that it found Victim’s testimony regarding the alleged altercation not credible but found that Appellant had been present at her residence in violation of the final PFA Order. N.T., 12/13/23, at 30. On October 11, 2024, the court imposed a sentence of six months of reporting probation.⁴

Appellant filed a timely notice of appeal and complied with Pa.R.A.P. 1925(b). On July 24, 2025, the court filed its Rule 1925(a) opinion.

Appellant raises the following issue on appeal:

Was the evidence insufficient to convict Appellant of [ICC] for violating a final [PFA] order where the evidence failed to prove that Appellant had notice that a final [PFA] order was in effect at the time of the alleged violation of that order?

Appellant’s Br. at 2.

When reviewing challenges to the sufficiency of an ICC conviction, we consider whether “the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the

⁴ The court imposed the sentence concurrent with a sentence of 5 to 10 years of imprisonment, imposed at CP-51-CR-0007476-2017, for violation of probation, which resulted from Appellant’s ICC conviction in the instant case. Appellant appealed the revocation, as well as the probation revocations at four other dockets, which we address in 1875-79 EDA 2024.

Commonwealth as verdict winner, was sufficient to enable the fact finder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt.” **Commonwealth v. Felder**, 176 A.3d 331, 333 (Pa. Super. 2017) (citation omitted). We will not reweigh “the evidence and substitute our judgment for the fact-finder[,]” who “is free to believe all, part or none of the evidence.” **Id.** (citation omitted). Moreover, we will not overturn a trial court’s ICC determination “absent an abuse of discretion.” **Commonwealth v. Padilla**, 885 A.2d 994, 997 (Pa. Super. 2005).

To demonstrate that a defendant committed indirect criminal contempt, the Commonwealth must prove the following elements:

1) the order was sufficiently clear to the contemnor as to leave no doubt of the conduct prohibited; 2) **the contemnor had notice of the order**; 3) the act must have been one prohibited by the order; and 4) the intent of the contemnor in committing the act must have been wrongful.

Id. (emphasis added).

Regarding the element of notice, “the Commonwealth must demonstrate beyond a reasonable doubt that, at the time of the violation, the defendant had actual knowledge of the PFA order, regardless of how the defendant gained this knowledge.” **Commonwealth v. Stevenson**, 283 A.3d 196, 199 (Pa. 2022); **see also** 23 Pa.C.S. § 6108(g). A defendant may obtain notice “(1) by service of the PFA order; (2) verbally from anyone; or (3) by other scenarios that can establish that the defendant had knowledge of the order.” **Stevenson**, 283 A.3d at 206; **see also** 23 Pa.C.S. § 6114 (“Contempt for violation of order or agreement”).

In ***Stevenson***, the Supreme Court found that that the defendant received sufficient notice where the victim's cousin verbally informed him of the final PFA order, even though the Commonwealth did not demonstrate that he received service of the PFA order. 283 A.3d at 207. While broadly defining the method by which Appellant can obtain notice of a final PFA order, the Supreme Court clarified that it was "not holding that a defendant's knowledge of a **temporary** PFA order equates to the defendant knowing of a **final** PFA order." ***Id.*** at 207 n.5 (emphasis added).

In contrast to the actual notice in ***Stevenson***, this Court reversed an ICC conviction, concluding that a defendant who "received no actual or constructive notice of the final PFA order, cannot be found in violation of that order[,]" even where he received "notice of the temporary PFA order and of the final PFA hearing." ***Commonwealth v. Wilson***, 2020 WL 2904890, at *3 (Pa. Super. July 9, 2021) (non-precedential decision). We find the analysis in ***Wilson*** persuasive, consistent with ***Stevenson***, and applicable to the instant case.

In addressing the element of notice, the trial court opined that Appellant "knew about the PFA order because he was served with [Victim's] PFA petition that contained notice of the April [19], 2023 hearing date when the final order would be determined, along with a copy of the temporary PFA order." Trial Ct. Op. at 4. Notably, the court does not reference the alleged video or any other evidence indicating that Appellant had knowledge of the final PFA order. We respectfully reject the court's analysis as contrary to ***Stevenson***, which

acknowledged that notice of a temporary PFA order does not equate to notice of a final PFA order; rather, the defendant must have actual knowledge of the final PFA order.

The Commonwealth urges us to affirm by relying on the portion of the police interview video in which it avers that Victim, at the 8:00-8:15 minute mark of the video, alleged that Appellant “‘took’ [her] copy of the final PFA order.”⁵ Commonwealth’s Br. at 2-3, 5. **See *Commonwealth v. Adames***, 352 A.3d 470, 478 n.5 (Pa. Super. 2026) (reiterating that appellate courts “are not limited by the trial court’s rationale and may affirm its decision on any basis that is apparent from the record” (citation and internal quotation marks omitted)).

Appellant responds that the portion of the video referenced by the Commonwealth was not played for the court nor was the video entered into evidence. Appellant’s Reply Br. at 1-5. Rather, he observes that the defense played only a “brief portion” “from the beginning” of the video involving questions relating to the victim’s name, address, and phone number to permit the judge to hear Victim’s slurred speech, a portion which would not have included the 8:00-8:15 minute mark of the video. ***Id.*** at 8-9 (citing N.T., 12/12/23, at 36; 12/13/23, at 19-20). Appellant also highlights that the alleged statement was not addressed during Victim’s testimony or by the trial

⁵ The Commonwealth initially argued that Victim testified at trial that Appellant took the PFA order. Commonwealth Br. at 4 (citing N.T., 12/12/23, at 36). The record does not support that assertion. In its sur-reply brief, the Commonwealth focuses its argument on the video.

court in its Rule 1925(a) opinion addressing Appellant's challenge to whether he had notice of the final PFA order. Appellant's Reply Br. at 9-10.⁶

Arguing for our consideration of the later portion of the video, the Commonwealth relies upon this Court's decision in **Commonwealth v. Jones**, 271 A.3d 452 (Pa. Super. 2021). Commonwealth's Sur-Reply Br. at 2-3. In **Jones**, we found that the defendant waived any challenge to our consideration of a video, even though it was not formally admitted into evidence, where the defendant stipulated to its admissibility, the video was played for the trial court sitting as fact finder, and treated by the trial court, the Commonwealth, and the defense as if it had been admitted. **Jones**, 271 A.3d at 457. We rejected the argument "that a recording that was played to the finder of fact after the trial court determined that the requirements for admission were met is not in evidence simply because no formal motion was made and granted." **Id.** at 456.

Jones is factually distinguishable. While in **Jones**, there was no dispute that the video depicting a shooting was played for the trial court as factfinder, **id.**, in the instant case, the record indicates that the trial court, as fact finder, viewed only a brief portion at the beginning of the video played by defense counsel to demonstrate Victim's slurred speech. N.T., 12/12/23, at 36-37.

⁶ In response, the Commonwealth does not suggest that this Court should consider portions of a video not played at trial; rather, it claims that "[t]here is no evidence to suggest that the portion of the video at issue was not played in court." Commonwealth's Sur-Reply Br. at 3-4. It argues that any ambiguity should be resolved in favor of the Commonwealth as verdict winner. **Id.** at 4.

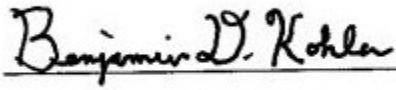
There is nothing in the notes of testimony to suggest that the trial court viewed the entire video or the portion the Commonwealth relies upon. Notably, the trial court does not mention Victim's alleged statement in the video asserting that Appellant took the PFA order, as would be expected if the court had relied upon that statement. Trial Ct. Op. at 4-5.

Absent the facts of **Jones**, we rely on the general rule that "exhibits that are merely marked for identification and submitted by the offering party do not constitute evidence on which a finder of fact can rely." **Jones**, 271 A.3d at 456. As the parties did not move the video into evidence and there is no indication that the trial court viewed or relied upon the referenced portion of the video, we reject the Commonwealth's reliance on the video as evidence of notice to the Appellant of the final PFA order. Moreover, as the Commonwealth cites to no other relevant evidence indicating that Appellant had notice of the final PFA order, we conclude that the Commonwealth failed to provide sufficient evidence to satisfy the element of notice.

Accordingly, we are constrained to vacate the judgment of sentence, reverse the conviction, and discharge Appellant.

Judgment of sentence vacated; order of conviction reversed; Appellant discharged.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/30/2026