NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SAMUEL R. STEWART, 3RD	:	
Appellant	:	No. 2228 EDA 2025

Appeal from the Judgment of Sentence Entered July 16, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0002069-2021

BEFORE: PANELLA, P.J.E., NICHOLS, J., and KING, J.

MEMORANDUM BY NICHOLS, J.: **FILED NOVEMBER 25, 2026**

Appellant Samuel R. Stewart, 3rd, appeals from the judgment of sentence imposed following his conviction of possession of a controlled substance with intent to deliver and related offenses. Appellant claims that the trial court erred in denying his motion to suppress the evidence obtained from a vehicle search and in denying his Pa.R.Crim.P. 600(A) speedy trial motion. After careful review, we affirm the judgment of sentence.

The trial court provided the following facts, to which Appellant had stipulated at the commencement of a bench trial on February 10, 2025:

> On January 29, 2021, at approximately 11:52 p.m., Pennsylvania State [Police] Trooper Jordan Bermudez was on routine patrol with Trooper Justin Howell on Interstate 76 West. At that time, [Appellant] was a passenger in a silver Toyota Camry operated by Tai Mitchell. Troopers Bermudez and Howell proceeded to conduct a traffic stop on the silver Toyota Camry and made contact with [Appellant] and Mr. Mitchell.

> During the course of the traffic stop, Trooper Bermudez performed a pat down on Mr. Mitchell. While performing the pat down, Trooper Bermudez located a small black vial, commonly used for the storage of crack cocaine, within Mr. Mitchell's pocket. Mr. Mitchell consented to Trooper Bermudez's request to search the vehicle.
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> Following Mr. Mitchell's grant of consent, Trooper Howell removed [Appellant] from the front seat of the vehicle and performed a pat down of [Appellant]'s person. Trooper Howell asked [Appellant] to remove the contents of his pockets, and [Appellant] responded that [Appellant] he was in possession of "paraphernalia and hard[," a street term commonly associated with crack cocaine. Appellant] subsequently removed multiple bags containing narcotics from his person, which the troopers suspected to be crack cocaine and heroin.
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> Trooper Bermudez proceeded to search the silver Camry and recovered a white plastic bag containing multiple bundles of narcotics which were suspected to be heroin. Trooper Bermudez also recovered three [] white paper bricks, which he knew was a common form of packaging heroin in bulk.
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> [Appellant] informed Trooper Bermudez that all of the recovered narcotics belonged to him. In total, authorities recovered 641 small Ziploc bags containing fentanyl, 132 plastic vials containing cocaine, 12 Ziploc bags containing cocaine, and a clear glass tube with wire mesh containing burnt cocaine residue which was used for the consumption of controlled substances. The total weight of the recovered narcotics was 25.59 grams of fentanyl and 18.56 grams of cocaine. [Appellant] provided a written statement to authorities acknowledging that he purchased the narcotics in Philadelphia and he was the owner of these items.

Trial Ct. Op., 11/5/25, at 1-2 (some formatting altered).

On January 30, 2021, Appellant was charged with two counts of possession of a controlled substance with intent to deliver, three counts of

possession of a controlled substance by person not registered, and possession of drug paraphernalia. ***See*** Criminal Complaint, 1/30/21.[1]

> On February 17, 2022, [Appellant] filed an omnibus pre-trial motion which contained a motion to suppress. On April 5, 2024, [Appellant] filed a more thorough motion to suppress physical evidence seized from the silver Camry. On April 2, 2024, [Appellant] filed a motion to dismiss pursuant to Rule 600(A), and filed an amended motion on April 3, 2024.

Trial Ct. Op., 11/5/25, at 2-3 (some footnotes omitted and some formatting altered). The trial court heard Appellant's motion to suppress as well as his Rule 600(A) motion on April 11, 2024.

On January 3, 2025, the trial court denied Appellant's Rule 600(A) motion and on January 8, 2025, the trial court denied Appellant's suppression motion. ***See id.***. Appellant proceeded to a stipulated bench trial on February 10, 2025, and the trial court found him guilty of two counts of possession of a controlled substance with intent to deliver, three counts of possession of a controlled substance, and one count of possession of drug paraphernalia. ***See id.*** at 3. On July 16, 2025, the trial court imposed an aggregate sentence of five to ten years of imprisonment for the convictions. ***See id.*** Appellant did not file any post-sentence motions. Appellant filed a timely notice of appeal and both Appellant and the trial court complied with Pa.R.A.P. 1925.

On appeal, Appellant raises the following claims:

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[1] ***See*** 35 P.S. §§ 780-113(a)(16), (30), (32).

1. Did the lower court err in failing to suppress all evidence recovered from the vehicle in which [Appellant] was a passenger when the consent to search the vehicle was not given knowingly and voluntarily, but rather, was the product of coercion?

2. Did the lower court err in denying [Appellant's] motion to dismiss pursuant to Pa.R.Crim.P. 600 where the Commonwealth failed to establish its due diligence in bringing the case to trial before the adjusted Rule 600 run date?

Appellant's Brief at 3 (some formatting altered).

Because the success of Appellant's Rule 600(A) claim would result in the dismissal of all charges, we address this claim first. Appellant argues that the Commonwealth failed to exercise due diligence to bring him to trial within 365 days, as required by Pa.R.Crim.P. 600(A). ***See*** Appellant's Brief at 14-15. Appellant notes that he was charged on January 30, 2021 and, therefore, the mechanical run date to bring him to trial under Rule 600(A) was January 30, 2022. ***See id.*** at 18-19. Specifically, Appellant contends that the Commonwealth was not diligent because it failed "to comply with its discovery obligations" in that it had "discovery in its possession since August of 2021," Appellant had requested discovery on February 17, 2022, and the Commonwealth passed discovery to Appellant on May 10, 2022. ***Id.*** at 20, 23.[2] Appellant argues that the period from February 16, 2022 to May 9, 2022 should therefore be attributed to the Commonwealth. ***Id.*** at 23. Appellant further argues that on two occasions, specifically on August 9, 2023 and on

[2] Appellant references both February 16, 2022 and February 17, 2022 as the date he requested discovery. ***See id.*** at 20, 23. The record reflects that he filed a request for pre-trial discovery on February 17, 2022. ***See*** Appellant's Discovery Req., 2/17/22.

March 27, 2024, both scheduled calls of the trial list dates, the Commonwealth failed to request earlier, potentially available dates for the rescheduled calls of the trial list. ***See id.*** at 21-22, 24.

The Commonwealth responds that, while Rule 600(A) is intended to protect a defendant's right to a speedy trial, it was "never intended to be used as a device by which a defendant may escape responsibility for his actions . . . [nor] a sword to allow the accused to benefit from his own misconduct." Cmwlth.'s Brief at 7 (citing ***Commonwealth v. Barbour***, 189 A.3d 944, 958-59 (Pa. 2018); some formatting altered). Specifically, the Commonwealth argues that the trial court properly denied the motion because Appellant "requested numerous continuances, failed to appear on multiple occasions, and filed complex pre-trial motions, resulting in 1,153 excludable or excusable days." ***Id.*** at 12. The Commonwealth claims that 319 days "are includable against the Commonwealth" and the "final adjusted run date, [after] accounting for all the excludable and excusable time, is March 28, 2025," whereas trial commenced on February 10, 2025. ***Id.***

Responding to Appellant's argument that various periods of time should be chargeable to the Commonwealth because it "failed to comply with its discovery obligations in a timely manner," the Commonwealth contends that where the delay was caused by Appellant's conduct, such as "requesting continuances or failing to appear," the trial court need not examine the Commonwealth's conduct to determine whether it acted with due diligence. ***Id.*** at 13 (citing ***Commonwealth v. Lear***, 325 A.3d 552, 560 n.7 (Pa. 2024)

(stating, "the causation analysis precedes the due diligence inquiry")). Even if it had failed to act with due diligence in its discovery obligations, the Commonwealth argues that it was still "ready to proceed to trial on May 10, 2022," the date it completed passing discovery, "close to three years before [Appellant]'s case [] went to trial[] and nearly two years before [Appellant] filed his suppression motion." ***Id.*** at 14.

In reviewing a claim that the Commonwealth violated the speedy trial mandates of Rule 600(A), we evaluate

> whether the trial court abused its discretion, and our scope of review is limited to the trial court's findings and the evidence on the record, viewed in the light most favorable to the prevailing party. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will[,] discretion is abused.
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> * * *
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> Rule 600 has the dual purpose of both protecting a defendant's constitutional speedy trial rights and protecting society's right to effective prosecution in criminal cases. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it.

Commonwealth v. Speed, 323 A.3d 850, 855 (Pa. Super. 2024) (citation omitted and some formatting altered).

> Rule 600 provides that: "[t]rial . . . shall commence within 365 days from the date on which the complaint is filed[;]" "trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty . . .[;]" and, if the Commonwealth is not ready for trial by this deadline, a defendant may file a written motion requesting that the charges

> be dismissed with prejudice. Pa.R.Crim.P. 600(A)(1), (A)(2)(a), (D)(1).
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> Rule 600 allows for extension of the Commonwealth's deadline to commence trial in certain circumstances, directing that:
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> > periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. **Any other periods of delay shall be excluded from the computation**.
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> Pa.R.Crim.P. 600(C)(1) (emphasis added).
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> The Comment to Rule 600 provides in relevant part: "[w]hen the defendant or the defense has been instrumental in causing the delay, the period of delay will be excluded from [the] computation of time." Rule 600, Cmt., Computation of Time (citations omitted). Further, the Comment gives as examples of delay caused by the defendant: "such period of delay at any stage of the proceedings as results from either the unavailability of the defendant or the defendant's attorney or any continuance granted at the request of the defendant or the defendant's attorney." ***Id.***

Id. at 854-55 (some citations omitted). In hearing a Rule 600(A) motion, the trial court must examine whether the date for the Commonwealth to bring a defendant to trial, *i.e.*, the adjusted run date, had passed on the date the defendant filed the Rule 600(A) motion. ***See Commonwealth v. Rice***, 331 A.3d 5, 10 (Pa. Super. 2025) (stating that "Rule 600[(A)] is examined as of the date the [] motion is filed" (citation omitted)).

This Court has described the Commonwealth's obligations under Rule 600(A) as follows:

> Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth. Due diligence includes, *inter alia*, listing a case for trial prior to the run date, preparedness for

> trial within the run date, and keeping adequate records to ensure compliance with Rule 600[(A)]. Periods of delay caused by the Commonwealth's failure to exercise due diligence must be included in the computation of time within which trial must commence.

Commonwealth v. Martz, 232 A.3d 801, 810-811 (Pa. Super. 2020) (citations omitted and some formatting altered). In evaluating a Rule 600(A) motion, "time attributable to the normal progression of a case simply is not 'delay.'" ***Commonwealth v. Lockett***, 1023 WDA 2024, 2025 WL 1172016 at *7 (Pa. Super. filed Apr. 22, 2025) (unpublished mem.) (quoting ***Commonwealth v. Mills***, 162 A.3d 323, 325 (Pa. 2017)).[3]

In ***Lear***, our Supreme Court considered whether periods of delay **not** caused by the Commonwealth should be excluded from the Commonwealth's time to bring a defendant to trial, stating:

> Rule 600 establishes two requirements that must be met for delay to count toward the 365-day deadline: (1) the delay must be caused by the Commonwealth; **and** (2) the Commonwealth must have failed to exercise due diligence. . . . [A]ny periods of delay not caused by the Commonwealth or not resulting from the Commonwealth's lack of due diligence[] are "excludable" and are removed from the computation of the Rule 600 deadline. Once the "excludable time" is calculated, this time is added to the mechanical run date to produce the adjusted run date, which is the deadline for the Commonwealth to bring the defendant to trial under Rule 600.

Lear, 325 A.3d at 560 (citations omitted and some formatting altered).

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[3] We may cite to unpublished memorandum decisions of the Superior Court filed after May 1, 2019, for their persuasive value. ***See*** Pa.R.A.P. 126(b).

In assessing whether a period of delay has been caused by the Commonwealth, trial courts may need to address periods of "judicial delay." In considering the treatment of judicial delay in a Rule 600(A) claim, our Supreme Court in ***Commonwealth v. Harth***, 252 A.3d 600 (Pa. 2021), noted that

> trial courts retain the discretion to differentiate between time necessary for ordinary trial preparation and judicial delay arising out of the court's own scheduling concerns, such that, where a **trial-ready** prosecutor must wait several months due to a court calendar, the time should be treated as 'delay' for which the Commonwealth is not accountable.

Harth, 252 A.3d at 616 (citation omitted and some formatting altered). ***Lear*** described ***Harth*** as holding that "a trial court may invoke 'judicial delay' in order to deny a defendant's Rule 600[(A)] motion . . . only after the Commonwealth has demonstrated that it complied with the due diligence requirements of Rule 600[(A)] at all relevant periods throughout the life of the case." ***Lear***, 325 A.3d at 561. Mindful that in ***Harth*** the Commonwealth had "caused multiple periods of delay and attempted to excuse them by pointing to other periods of judicial delay," ***Lear*** clarified that for periods of "judicial delay in conjunction with other periods of delay **caused by the Commonwealth**," the Commonwealth must establish that it acted with due diligence to bring a defendant to trial. ***Lear***, 325 A.3d at 561-62.

Lastly, in resolving a Rule 600(A) claim, trial courts may subtract periods of 'excusable delay,' *i.e.,* delays "caused by circumstances beyond the Commonwealth's control and despite its due diligence," from the

Commonwealth's time to bring a defendant to trial. ***Martz***, 232 A.3d at 810 (citation omitted).

> Here, the trial court stated that
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> [Appellant] was arrested on January 30, 2021 and the arresting officer filed the criminal complaint on the same date. The parties stipulated that the original mechanical run date of 365 days from the arrest date was therefore January 30, 2022 [and] that on February 11, 2021, [Appellant] requested a continuance of the scheduled preliminary hearing, which resulted in a 21 day adjustment to the mechanical run date [resulting in] a new run date of February 20, 2021. The parties stipulated that on March 4, 2021, [Appellant] requested a continuance of the rescheduled preliminary hearing, resulting in a 14 day adjustment and a new run date of March 6, 2022.
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> On June 1, 2021, [Appellant]'s scheduled formal arraignment was continued and later rescheduled to September 8, 2021. There was a factual dispute as to whether [Appellant] appeared in court for the June 1, 2021 proceeding. Thus, in an abundance of caution, the [trial] court will not exclude the 99 day period between these two dates. It is undisputed, however, that [Appellant] failed to appear at the formal arraignment on September 8, 2021 and the court issued a bench warrant. On August 5, 2021, the Commonwealth filed the bills of information in the instant matter. On February 16, 2022, the court held a bench warrant revocation and formal arraignment hearing, and the court scheduled a pre-trial conference for May 9, 2022. It is undisputed that the 161 [day] period between the September 8, 2021 formal arraignment and the February 16, 2022 formal arraignment is attributable to [Appellant]. The 82 day delay between the February 16, 2022 bench warrant and formal arraignment hearing and the May 9, 2022 pre-trial conference is excluded considering [Appellant]'s actions created this delay. This results in an adjusted run date of November 4, 2022. On May 9, 2022, the court held a pre-trial conference in which [Appellant] failed to appear and the court issued a bench warrant. On May 10, 2022, the Commonwealth sent discovery to defense counsel and was ready to proceed to trial on this date. On May 27, 2022, the court held a bench warrant revocation hearing and on July 19, 2022, the court held a pre-trial conference. The 71 day period between the May 9, 2022 pre-trial conference and the July 19,

2022 pre-trial conference is attributable to [Appellant] and results in an adjusted run date of January 14, 2023.

[Appellant] failed to appear at the scheduled October 12, 2022 call of the trial list and the court issued a bench warrant. On June 12, 2023, the court held a bench warrant revocation hearing and on July 10, 2023, the court held a pre-trial conference. The 271 period between the October 12, 2022 call of the trial list and the July 10, 2023 pre-trial conference is attributable to [Appellant] and results in an adjusted run date of October 12, 2023. On June 20, 2023, the court filed an order scheduling the matter for a call of the trial list on July 13, 2023. On July 10, 2023, the court issued an order scheduling the matter for a pre-trial conference in August at the request of [Appellant].[FN.8] There is no evidence in the record that expressly contradicts the notation in the July 10, 2023 order indicating [Appellant] requested the continuance. Thus, the 30 day period between July 10, 2023 and August 9, 2023[FN.9] are attributable to [Appellant] and results in an adjusted run date of November 11, 2023.

[FN.8] No document on the docket explains why the case was scheduled for the call of the trial list in July, only to be scheduled for a pre-trial conference at a later date.

[FN.9] Although the order continuing the "pre-trial conference" only stated the proceeding would be rescheduled for August, an order issued on July 18, 2023 scheduled a call of the trial list proceeding for August 9, 2023.

At the August 9, 2023 call of the trial list, [Appellant] requested a relist and the court rescheduled the call of the trial list to September 6, 2023. The 28 day period between the August 9, 2023 call of the trial list and the September 6, 2023 all of the trial list is attributable to [Appellant] and results in an adjusted run date of December 9, 2023. [Appellant] failed to appear at the scheduled September 6, 2023 call of the trial list and the court issued a bench warrant. On January 30, 2024, the court held a bench warrant revocation hearing, and on March 27, 2024, the court held the call of the trial list. The 203 day period between the September 6, 2023 call of the trial list and the March 27, 2024 call of the trial list is attributable to [Appellant] and results in an adjusted run date of June 29, 2024.

At the March 27, 2024 call of the trial list, [Appellant] requested a hearing with respect to a forthcoming motion to suppress, which the court scheduled for April 11, 2024. [Appellant filed the motion

> to suppress on April 5, 2024.] On April 2, 2024, [Appellant] filed a motion to dismiss pursuant to Rule 600(A) and filed an amended motion on April 3, 2024.

Trial Ct. Op., 11/5/25, at 6-8 (some footnotes omitted and some formatting altered).

After reviewing all periods of delay in the case in chronological order, the trial court identifies June 29, 2024 as the adjusted run date on April 2, 2024, when the Rule 600(A) motion was filed, and concludes that the Commonwealth had therefore not violated Appellant's Rule 600(A) right to a speedy trial. ***See*** Trial Ct. Op., 11/5/25, at 6-8.

Here, Appellant does not dispute the chronology of events set forth by the trial court, nor the court's tally of the continuances he requested or the four times that he failed to appear. Instead, Appellant directs our attention to how long the Commonwealth took to pass discovery to him and, further, contends that the Commonwealth failed to act with due diligence because it did not request earlier dates for rescheduled proceedings on two occasions. ***See*** Appellant's Brief at 20-24.

After our review of the record, we agree that the trial court properly excluded the following days of delay caused by Appellant: (1) preliminary hearing scheduled for February 11, 2021 rescheduled to March 4, 2021 due to Appellant's continuance request, causing 21 days of delay; (2) preliminary hearing scheduled for March 4, 2021 rescheduled to March 18, 2021 due to Appellant's continuance request, causing 14 days of delay; (3) Appellant failed to appear at a scheduled formal arraignment on September 8, 2021, the trial

court issued a bench warrant, and held a warrant revocation hearing and formal arraignment on February 16, 2022, causing 161 days of delay; (4) Appellant failed to appear at a scheduled pretrial conference on May 9, 2022, the trial court issued a bench warrant, and held a warrant revocation hearing on May 27, 2022, causing 18 days of delay; (5) due to Appellant's failure to appear at the prior pretrial conference, the trial court was required to reschedule Appellant's pretrial conference on July 19, 2022, causing 53 days of delay; (6) Appellant failed to appear at a scheduled pretrial conference on October 12, 2022, the trial court issued a bench warrant, and held a warrant revocation hearing on June 12, 2023, causing 243 days of delay; (7) due to Appellant's failure to appear at the prior pretrial conference, the trial court was required to reschedule Appellant's pretrial conference on July 10, 2023, causing 28 days of delay; (8) at a pretrial conference on July 10, 2022, the trial court granted Appellant's continuance request and scheduled the matter for the call of the trial list for August 9, 2023, causing 30 days of delay; (9) Appellant requested a continuance at the call of the trial list on August 9, 2023 and the matter was rescheduled to September 6, 2023, causing 28 days of delay; (10) Appellant failed to appear at the call of the trial list on September 6, 2023, the trial court issued a bench warrant, and held a warrant revocation hearing on January 30, 2024, causing 147 days of delay; (11) consequently, the trial court was required to reschedule Appellant's call of the trial list on March 27, 2024, due to Appellant's failure to appear at the prior call of the trial list, causing 58 days of delay; and, finally, (9) at the March 27, 2024 call

of the trial list, Appellant requested a suppression hearing and hearing on the motion was scheduled April 11, 2024, and then filed his Rule 600(A) motion on April 2, 2024, causing 6 days of delay for purposes of calculating the adjusted run date. ***See*** Trial Ct. Op., 11/5/25, at 6-8; ***see also*** Trial Ct. Orders, 2/11/21; 3/4/21; 8/19/21; 10/5/21; 2/14/22; 2/16/22; 4/18/22; 5/9/22; 5/10/22; 5/13/22; 5/27/22; 6/28/22; 7/20/22; 9/19/22; 10/19/22; 6/12/23; 6/20/23; 7/10/23; 7/18/23; 8/9/23; 8/14/23; 9/6/23; 12/11/23; 1/29/24; 1/30/24; 3/4/24; and 3/27/24.

We disagree, however, with the trial court's conclusion that the "82 day delay between the February 16, 2022 bench warrant [revocation] and formal arraignment hearing and the May 9, 2022 pretrial conference is excluded considering [Appellant]'s actions created this delay." ***Id.*** at 7 (some formatting altered). Rather than a 'delay' caused by Appellant, the time between the bench warrant revocation and formal arraignment hearing on February 16, 2022 and the pretrial conference on May 9, 2022 is the normal progression of the case and, therefore, is not a 'delay' amenable to an excludable or excusable time analysis. ***See Lockett***, 2025 WL 1172016, *7; ***see also Martz***, 232 A.3d at 810. Accordingly, as of April 2, 2024, Appellant had caused 807 days of delay, resulting in an adjusted run date of April 16, 2024.

Further, we find no merit to Appellant's argument that additional time should be attributed to the Commonwealth due to its failure to request earlier, potentially available dates to reschedule proceedings. ***See*** Appellant's Brief

at 21-24. As established above, the trial court found and the record supports the finding of the days of delay caused by Appellant's requests for continuances or failures to appear. Pursuant to ***Lear***, it is clear that, before we ask whether the Commonwealth acted with due diligence during a certain period of time in prosecuting a case, we first ask which party caused the delay in question. ***See Lear***, 325 A.3d at 561-62. Here, Appellant contends that the Commonwealth failed to act with due diligence during periods of delay that were caused by Appellant himself. Under these circumstances, we do not reach the question of whether the Commonwealth acted with due diligence and, accordingly, conclude that the trial court properly excluded these periods of delay from the computation of time for the Commonwealth to bring Appellant to trial. ***See id.***

Ultimately, after our review of the record, we find no error of law or abuse of discretion in the trial court's conclusion that the Commonwealth did not violate Rule 600(A) as of the date Appellant filed his motion, although our review identified a different adjusted run date. ***See*** Pa.R.Crim.P. 600(A), (C); ***see also Lear***, 325 A.3d at 560; ***Speed***, 323 A.3d at 855; ***Martz***, 232 A.3d at 810; ***Rice***, 331 A.3d at 10; ***Lockett***, 2025 WL 1172016 at *7.

Suppression Claim

Next, Appellant argues that under the Fourth Amendment to the United States Constitution, "in the context of a vehicle stop, . . . when both a driver and passenger are using a vehicle with the owner's permission, both enjoy a reasonable expectation of privacy with respect to car and its contents." ***See***

Appellant's Brief at 10(citation omitted). To lawfully search a vehicle in which a party has a reasonable expectation of privacy, Appellant contends that Trooper Bermudez was required to obtain either a search warrant or "unequivocal, specific, and voluntary" consent. ***Id.*** at 11 (citations omitted). Appellant argues that Mr. Mitchell's consent to search the vehicle was invalid because it was coerced. ***See id.*** at 11-13.

At the time "consent" was obtained, Appellant notes that Mr. Mitchell was "sitting in a police vehicle and [Trooper] Bermudez was holding his paperwork and [Appellant's] identification." ***Id.*** at 13 (citation omitted). When initially asked, Mr. Mitchell

> clearly refused to consent to a search of the vehicle . . . , a piece of illegal drug paraphernalia had been recovered from the driver . . . , [and Trooper] Bermudez[] indicat[ed] that if the driver continued to refuse, he would seize and tow the vehicle and that the driver would be responsible for the towing and storage expenses.

Id. (citation omitted). Under these circumstances, Appellant claims that the trial court should have suppressed the evidence obtained pursuant to the vehicle search because consent had been obtained by coercion. ***See id.***

The Commonwealth responds that, as a passenger, Appellant had no reasonable expectation of privacy in the vehicle. ***See*** Cmwlth.'s Brief, at 15-21. Specifically, the expectation of privacy "could exist either where a defendant owns the vehicle[] or . . . has lawful possession or control of the vehicle." ***Id.*** at 18 (citing ***Commonwealth v. Anderson***, 340 A.3d 297, 309 (Pa. 2025); some formatting altered). That is, while passengers in a car "may

maintain a reasonable expectation of privacy in the contents of luggage they placed inside an automobile, it would be unreasonable to maintain a subjective expectation of privacy in locations of common access to all occupants." ***Id.*** (citing ***Commonwealth v. Powell***, 994 A.2d 1096, 1105 (Pa. Super. 2010)). Where objects in a car are "not shielded from the view" of other occupants, the Commonwealth argues that a defendant assumes "the risk that the driver [could] permit the common areas of the care to be searched." ***Id.*** at 19 (citation omitted).

Addressing the circumstances that led to obtaining Mr. Mitchell's consent to the vehicle search, the Commonwealth notes that Trooper Bermudez had frisked the driver and during the frisk detected a vial that the trooper suspected to be drug paraphernalia. ***See id.*** at 24 (citing N.T. Suppression Hr'g, 4/11/24, at 11-13). Trooper Bermudez then informed the driver that the vehicle would be seized and a warrant to search obtained if he continued to refuse consent; at this point, Mr. Mitchell consented to the search. ***See id.*** (citing N.T. Suppression Hr'g, 4/11/24, at 14-15, 17). Prior to Mr. Mitchell giving consent, the Commonwealth notes that "the troopers did not draw their firearms, place the driver in handcuffs[, . . .] or use any other physical force, besides the [] amount of contact required to frisk the driver initially." ***Id.*** at 24-25. The Commonwealth contends that consent to a search obtained after police had stated that they had "enough information to get a search warrant should [the person] refuse the search" is not "*per se* involuntary" consent. ***Id.*** at 23-24 (citing ***Commonwealth v. Metz***, 332 A.3d 92, 96, 101 (Pa.

Super. 2025)). The Commonwealth argues that informing Mr. Mitchell about "the potential collateral financial repercussions of the car being towed" was not coercive because Trooper Bermudez "explained these things for the driver's benefit, so that he was not caught off guard or surprised later." ***Id.*** at 25 (citing N.T., 4/11/24, at 14-15; some formatting altered).

Before considering Appellant's claim that Mr. Mitchell's consent to search the vehicle was coerced, we note that a document styled "Stipulations of Fact By and Between Counsel" (Stipulations), signed by Appellant's trial counsel, was admitted at the bench trial in this matter. ***See*** N.T., 2/10/25, at 8-10, Ex. C-3. After admitting the Stipulations, the trial court asked Appellant, "Sir, have you had an opportunity to review the stipulations of fact?" and also "Do you agree to those facts?" ***Id.*** at 10. Appellant responded "Yes" to both questions. ***Id.*** The seventh item in the Stipulations states, "Trooper Bermudez requested [Mr.] Mitchell's consent to search the vehicle; [Mr.] Mitchell consented." Ex. C-3, a 2 (unpaginated). Accordingly, at trial, Appellant conceded that Mr. Mitchell consented to the vehicle search and did not raise an objection that the consent was coerced. We therefore decline to entertain any claims or arguments that contradict the concession and find the claim waived. ***See*** Pa.R.A.P. 302(a) (stating that "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal"); ***see also Commonwealth v. Rial***, 891 WDA 2020, 2021 WL 3163154, *2, n.3 (Pa. Super. filed Jul. 27, 2021) (unpublished mem.) (where the appellant had conceded that police had "lawfully entered his property" at a suppression

hearing and in his appellate brief, this Court concluded that we "need not address" the issue); ***see also Commonwealth v. Flythe***, 3139 EDA 2024, 2026 WL 575272, *4 (Pa. Super. filed Mar. 2, 2026) (unpublished mem.) (concluding that no relief was due where the "[a]ppellant's attorney conceded at the suppression hearing that [the a]ppellant did not have a reasonable expectation of privacy in the vehicle"). Therefore, based on Appellant's prior concession, we conclude that his suppression claim also has no merit. ***See id.***

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/25/2026