

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
BASIL ROBBINS	:	
	:	
Appellant	:	No. 1841 EDA 2025

Appeal from the Judgment of Sentence Entered June 2, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0006619-2023

BEFORE: PANELLA, P.J.E., STABILE, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED SEPTEMBER 9, 2026**

Appellant, Basil Robbins, appeals from the judgment of sentence entered by the Court of Common Pleas of Philadelphia County after the trial court found him guilty of murder of the third degree, conspiracy to commit murder of the third degree, carrying a firearm without a license, carrying a firearm on public streets or public property in Philadelphia, and possessing an instrument of crime.¹ He challenges the discretionary aspects of his sentence and the sufficiency of the evidence sustaining his convictions. We affirm.

The trial court sets forth the following factual summary for this case:

[Appellant], with another [person], travelled from 52nd and Market Streets [in Philadelphia] to the decedent's home in the area of 49th and Olive Streets, where they ambushed Tamir Hightower, both

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 2502(c), 903/2502(c), 6106(a)(1), 6108, and 907(a), respectively.

individuals shooting their victim. Approximately sixty hours later, [Appellant] was found in possession of one of the murder weapons. The entirety of the incident was captured on surveillance video. Upon apprehension, [Appellant] told the police if they arrested him [that] he would never see his children again.

Trial Court Opinion, 10/15/25, 2.

On March 10, 2025, Appellant waived a jury and proceeded to a non-jury trial. **See** N.T. Trial, 3/10/25, 5-9. The Commonwealth presented testimony from Police Officers Barry Stewart and Naeem Crawley and Detectives Matthew Dydak, Thorsten Lucke, and Frank Mullen.

Officer Stewart testified about his April 19, 2023 response to the crime scene, along with his partner, Officer Brandon Moore, and their discovery of the wounded victim, lying face down and unresponsive on the sidewalk.² **See** N.T. Trial, 3/10/25, 10-12. Officers Stewart and Moore transported Hightower to the Penn Presbyterian Medical Center and recovered, from Hightower's clothing, a large clear plastic bag that contained three individual clear bags, each containing one hundred heat-sealed green tinted bags of crack cocaine. **See id.** at 12-13. After Hightower underwent surgery at the hospital, the hospital staff provided Officer Stewart with a bullet fragment recovered from Hightower's body. **See id.** at 13. Hightower passed away at the hospital sometime around midnight. **See id.** at 14.

Detective Dydak of the police Shooting Investigation Group testified about his processing of the crime scene. **See** N.T. Trial, 3/10/25, 18-24.

² Police testimony at trial reflected that Hightower lived in the block where the shooting occurred. **See, e.g.,** N.T. Trial 3/10/25, 91-92.

Detective Dydak and his fellow officers recovered four fired cartridge cases on the southeast corner of the intersection of 50th and Olive Streets, five projectiles, mostly on the north side of the 4900 block of Olive Street, and one projectile from the middle of the south side of the 4900 block of Olive Street. **See id.** at 19-23. The recovered cartridge casings had been fired by two separate firearms; two were 9-mm casings and the other two were .40-caliber casings. **See id.** at 26. After the officers finished processing the scene, Detective Dydak received information about an additional fired cartridge casing that was found at the scene. **See id.** at 22. The parties stipulated that crime scene police officers later recovered an additional 9-mm fired cartridge casing that was found eleven inches south of the south corner of Olive Street. **See id.** at 47-48.

Officer Crawley testified about his encounter with Appellant at around 11:19 a.m. on April 22, 2023. **See** N.T. Trial, 3/10/25, 29-39. Appellant approached the officer, asking about a bus that goes to Girard Avenue, and the officer observed a bulge in the center of Appellant's waistband. **See id.** at 30. At some point, Appellant asked Officer Crawley about "the shooting that happened the day before." **Id.** at 31. Appellant mentioned that he was "out there selling narcotics." **Id.** at 31, 37. Officer Crawley asked him if he had a gun, and Appellant said, "Yeah." **Id.** at 31. Officer Crawley recovered the gun and asked Appellant if he had a license to carry that gun. **See id.** Appellant said he had a license to carry "out of Texas." **Id.** Officer Crawley subsequently confirmed that Appellant did not have a license to carry the

firearm. **See id.** at 31, 44. The trial court was able to watch body-worn camera footage of Officer Crawley's encounter with Appellant. **See id.** at 31-32; Commonwealth Exhibit 38 (body-worn camera footage from Officer Crawley). The gun Officer Crawley recovered from Appellant was a black Taurus 9-mm handgun, loaded with sixteen live rounds and one live round in the chamber. **See** N.T. Trial, 3/10/25, 31, 34, 36. From Appellant's person, Officer Crawley recovered six black Ziploc bags, labeled "Grand Theft Auto Gotham," each containing marijuana. **Id.** at 33-35. During their interaction, Appellant told Officer Crawley, "If you take this gun from me, I'm never coming home. I'm never going to see my kids," over and over again. **Id.** at 38.

Detective Lucke testified about his investigation into the shooting of Hightower, including his efforts to analyze surveillance video footage with Detective Mullen and process a warrant pertaining to an Instagram account. **See** N.T. Trial, 3/10/25, 49-69. Detective Lucke explained that he compiled videos from ten to twelve sources reflecting the shooting and the shooters passing through the surrounding area, and guided the court through its viewing of a compilation of the videos. **See id.** at 50-60. The compilation reflected that the shooting happened at around 10:36 p.m. on the night in question. **See id.**

As for the warrant Detective Lucke referenced, he testified that he recovered information for an Instagram account that "was attributable" to Appellant, covering a period from December 1, 2022, to April 22, 2023. N.T.

Trial, 3/10/25, 60-63. Among the information recovered from that account, Detective Lucke identified: (1) direct messages between Appellant's account and another specific account, "_Big.Lu_", from around 7:06 p.m. on April 19, 2023, and then no direct communications between those accounts until 2:40 a.m. on April 20, 2023, at which time Appellant's account sent the other account a screenshot including a depiction of Hightower from an Instagram account which the parties stipulated was Hightower's account, *id.* at 62, 65-67; and (2) multiple searches by Appellant's Instagram's account for Hightower's Instagram account on April 11-13, and 20, 2023, *see id.* at 68-69.

Detective Mullen testified to the process by which the videos that were used in the compilation were obtained and some of the physical evidence was recovered from the crime scene. **See** N.T. Trial, 3/10/25, 96-100. He acknowledged that the two shooters "had their faces and heads completely covered, except for when they were fleeing," but that the shooters' hoods "came off as they were fleeing southbound on 50th Street after the shooting." *Id.* at 100-01. He explained that, following Appellant's arrest with the 9-mm firearm, he received information on April 25, 2023, confirming that the recovered gun matched the one that fired the 9-mm cartridge casings that were recovered from the scene of Hightower's murder. **See id.** at 101-02. Detective Mullen testified to his belief that Appellant, based on his physical characteristics, was one of the shooters who had been wearing a gray hooded

sweatshirt. **See id.** at 102-03 (“I believe that he is an exact match for the individual I observed in the gray firing the handgun.”).

Detective Mullen also testified that search warrants were executed for information from two cellular phones that had been in Appellant’s possession at the time of his arrest and for Appellant’s Instagram account. **See id.** at 104-05, 126. He summarized the communications between Appellant’s Instagram and the account of “_Big.Lu_,” and described the holder for that account as a female with whom Appellant had a relationship. **Id.** at 105. He confirmed that the search warrants for the phones did not result in the collection of useful information because the phones “were not active during the time frame ... around the decedent’s murder.” **Id.** at 106-07. Detective Mullen noted that, pursuant to another search warrant execution at Appellant’s home on May 23, 2023, the police recovered a silver Smith & Wesson 9-mm magazine and two pairs of New Balance sneakers. **See id.** at 107-11. Detective Mullen authenticated a video recording of his post-arrest interaction with Appellant in a police interview room. **See id.** at 114-18.

The parties stipulated to testimony from the medical examiner who conducted the autopsy of Hightower. **See** N.T. Trial, 3/10/25, 26-28. The doctor located three gunshot wounds on the body, two for penetrations to the victim’s left upper buttock and one for a penetration of his lower lumbar back. **See id.** at 27. The doctor would have testified that the cause of the victim’s death was the gunshot wound to the victim’s torso and that the manner of death was a homicide. **See id.** The parties also stipulated to a toxicology

report reflecting that Hightower tested positive, post-mortem, for benzodiazepines, ketamine, and other medications intended for saving his life, and tested negative for cocaine. **See id.** at 27-28.

The parties stipulated to expert testimony reflecting that the firearm recovered from Appellant was determined to be operable and to have fired three 9-mm fired cartridge casings and two bullet jackets recovered at the crime scene by the police. **See id.** at 145-47. The Commonwealth moved into the evidentiary record a certificate of non-licensure reflecting that Appellant did not have a valid license to carry a firearm on the date of the shooting of Hightower. **See id.** at 147-48. Appellant declined to testify or present any live witnesses. **See id.** at 148-50.

After reviewing the evidence and the arguments of counsel, the trial court found Appellant guilty of the above-referenced offenses. **See** N.T. Trial, 3/10/25, 176. The court deferred sentencing to another date to permit the preparation of a pre-sentence investigation report and a mental health evaluation. **See id.** at 177.

On June 2, 2025, the court sentenced Appellant to fifteen to forty years' imprisonment for murder of the third degree, and lesser concurrent imprisonment terms of five to ten years for conspiracy and two and one-half to five years for carrying a firearm without a license; no further penalty was

imposed for the remaining weapons offenses.³ **See** Order (sentencing), 6/2/25, 1-2; N.T. Sentencing Hearing, 6/2/25, 36-37.

³ On the date of the sentencing hearing, Appellant pleaded guilty to offenses in a separate criminal matter that is not presently before this Court in this appeal. **See** N.T. Sentencing Hearing, 6/2/25, 4-9. Those offenses included possession of a controlled substance with intent to deliver, criminal conspiracy, carrying a firearm without a license, knowing or intentional possession of a controlled substance, and carrying a firearm on public streets or public property in Philadelphia at CP-51-CR-0002277-2023. **See id.** Appellant also was sentenced for additional offenses in a second separate case not presently before this Court in this appeal. **See id.** at 10. The offenses in that case included convictions for carrying a firearm without a license and carrying a firearm on public streets or public property in Philadelphia at CP-51-CR-0003353-2023. **See id.** The court imposed concurrent five-year probation terms for all of the convictions in these other two matters, to be served consecutively to the imprisonment imposed in the homicide case before us at CP-51-CR-0006619-2023. **See** Order (sentencing), 6/2/25, 2; N.T. Sentencing Hearing, 6/2/25, 37.

As for the imprisonment terms in the instant case, the Sentencing Guidelines recommended the following minimum imprisonment terms: ninety months to the statutory limit (which would be two hundred and forty months for murder of the third degree and conspiracy to commit murder of the third degree), with a possible mitigation period of twelve months, for murder of the third degree and conspiracy to commit murder of the third degree; twelve to twenty-four months, plus or minus twelve months for aggravating or mitigating circumstances, for carrying a firearm without a license; restorative sanctions to nine months' imprisonment, plus three months for aggravating circumstances, for carrying a firearm on public streets or public property in Philadelphia; and restorative sanctions to one month of imprisonment, plus one month for aggravating circumstances, for possessing an instrument of crime. **See** 204 Pa. Code § 303.15 (offense list applying offense gravity scores of fourteen for murder of the third degree, nine for carrying a firearm without a license, five for carrying a firearm on public streets or public property in Philadelphia, and three for possessing an instrument of crime) (7th ed., amend. 6); 204 Pa. Code § 303.3(c)(4) (requiring an offense gravity score of fourteen for conspiracy to commit murder of the third degree where there is serious bodily injury) (7th ed., amend. 6); 204 Pa. Code § 303.17(b) (deadly weapon enhancement/used matrix applicable to Appellant's murder and

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Appellant timely filed a post-sentence motion for reconsideration of sentence in which he cited the following factors for a reduction of his sentence: he took responsibility for his actions in his allocution statement; he was not “the initial shooter;” he “was cooperative with law enforcement throughout their investigation”; he has a learning disability; he had numerous “character references” from members of his family and the community; and he had a prior record score of zero. **See** Post-Sentence Motion, 6/11/25, ¶¶ 7-12. After the trial court denied the post-sentence motion, Appellant timely filed a counseled notice of appeal.⁴ **See** Order (denying post-sentence motion), 6/13/25, 1; Notice of Appeal, 7/14/25, 1. Following the withdrawal of

conspiracy convictions) (7th ed., amend. 6); 204 Pa. Code § 303.16(a) (basic sentencing matrix applicable to Appellant’s weapon and firearms convictions) (7th ed., amend.6); N.T. Sentencing Hearing, 6/2/25, 10 (noting Appellant had a prior record score of zero); **see also** 18 Pa.C.S. § 1102(c)-(d) (setting, as an exception to 18 Pa.C.S. § 1103(1), a twenty-to-forty-year maximum term limit for murder of the third degree and a twenty-to-forty-year maximum term limit for conspiracy to commit murder where serious bodily injury results). Appellant thus received a standard guideline-range imprisonment term for murder of the third degree, a concurrent imprisonment term below the mitigated range recommended by the guidelines for conspiracy, and a concurrent imprisonment term in the aggravated range for carrying a firearm without a license.

⁴ Because the thirtieth day after the denial of Appellant’s post-sentence motion fell on Sunday, July 13, 2025, Appellant had until Monday, July 14, 2025, to file a timely notice of appeal. **See** Pa.R.A.P. 107 (incorporating by reference the rules of construction in the Pennsylvania Rules of Judicial Administration including Pa.R.J.A. 107(a)-(b), relating to computation of time for the rule of construction relating to the exclusion of the first date and inclusion of the last date of a time period and the omission of the last day of a time period which falls on Saturday, Sunday, or a legal holiday); Pa.R.A.P. 903(a) (general rule requiring notices of appeal to be filed “within 30 days after the entry of the order from which the appeal is taken”).

Appellant's trial counsel and the appointment of present counsel, Appellant and the trial court satisfied their obligations under Pennsylvania Rule of Appellate Procedure 1925. **See** Order (Rule 1925(b)), 7/16/25, 1; Motion for Withdrawal of Trial Counsel, 7/22/25, 1-2; Order (granting withdrawal of trial counsel and appointing present counsel), 7/28/25, 1; Rule 1925(b) Statement, 9/10/25, 1-2; Trial Court Opinion, 10/15/25, 1-10.

Appellant presents the following questions for our review:

1. Whether the [trial] court abused its discretion in imposing a manifestly excessive sentence of fifteen (15) years to forty (40) years for third[-]degree murder, (F1), where Appellant expressed heartfelt remorse and accepted responsibility at sentencing, Appellant was a first[-]time offender with a prior record score of zero, which combined with the deadly weapon enhancement and offense gravity score of fourteen (14) yielded a standard sentencing range of nine (90) months to the statutory limit, plus or minus twelve (12) months, Appellant had tremendous family support at his sentencing hearing, and the Commonwealth cited no aggravating factors?
2. Whether there was insufficient evidence to support Appellant's conviction for third[-]degree murder, (F1), where there was no eyewitness or videographic evidence identifying Appellant as the assailant, the Commonwealth offered no motive for the shooting, and the evidence against Appellant was merely circumstantial?

Appellant's Brief, 6 (unnecessary capitalization omitted).

In his first issue, Appellant challenges the discretionary aspects of his sentence. **See** Appellant's Brief, 20-24. Even though his aggregate sentence was the result of a standard guideline-range sentence for his conviction for murder of the third degree, he alleges that the trial court imposed a manifestly

excessive sentence that “did not reflect [the] mitigating factors in [his] favor or [his] amenability to rehabilitation.” ***Id.*** at 22. As for the mitigating factors which he suggests should have resulted in a lesser sentence, he points to: the fact that he was nineteen years old at the time of his offense; his lack of a prior criminal record; the fact that he suffered from a learning disability that “rendered him susceptible to negative peer pressure”; the death of his mother when he was nine years old; the absence of his father in his life; his “great family support” evidenced by “several letters from family and the community”; and his allocution statement that included an expression of “great remorse” and an apology to the victim’s family. ***Id.*** at 22-23.

In support of his claim, Appellant also notes that “the Commonwealth could cite no aggravating factors, not even a motive for the murder,” and “the court did not cite specific reasons [for] imposing an aggravated sentence,” even though his sentence was squarely within the standard range recommended by the Sentencing Guidelines. Appellant’s Brief, 23; ***see also supra*** fn. 3. He also improperly characterizes his sentence as “double the standard sentencing guideline range.” Appellant’s Brief, 24. Moreover, while he highlights his exhibited remorse for his crimes, he counterproductively argues that “there was no direct evidence presented at his waiver trial which established that [he] shot” the victim. ***Id.*** at 23-24.

“Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right.” ***Commonwealth v. Lawrence***, 313 A.3d 265, 284 (Pa. Super. 2024) (citation and internal brackets omitted).

Rather, an appellant challenging the sentencing court's discretion must invoke this Court's jurisdiction by[:] (1) filing a timely notice of appeal; (2) properly preserving the issue at sentencing or in a motion to reconsider and modify the sentence; (3) complying with [Pennsylvania Rule of Appellate Procedure] 2119(f), which requires a separate section of the brief setting forth a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence; and (4) presenting a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S. § 9781(b), or sentencing norms. An appellant must satisfy all four requirements.

Commonwealth v. Miller, 275 A.3d 530, 534 (Pa. Super. 2022) (internal citations omitted).⁵

Appellant satisfied the first requirement where he filed his notice of appeal within thirty-one days of the denial of his timely-filed post-sentence motion where the thirtieth-day of the appeal period fell on a Sunday. **See** Order (denying post-sentence motion), 6/13/25, 1; Notice of Appeal, 7/14/25, 1; Pa.R.A.P. 903(a); Pa.R.A.P. 107; **see also** Pa.R.Crim.P. 720(A)(2)(a) ("If the defendant filed a timely post-sentence motion, the notice of appeal shall be filed ... within 30 days of the order deciding the motion[.]").

⁵ We note that the Commonwealth's analysis of this claim jumps immediately to substantive merits review absent any briefing as to whether Appellant preserved the arguments, which is necessary to invoke our jurisdiction to review this claim on the merits. **See** Appellee's Brief, 6-7. We must remind the Commonwealth that we may not place the cart before the horse in that fashion, and that its advocacy on the reviewability of a discretionary sentencing claim is as equally important and welcomed as its recommendation for disposition on the merits. **See *Commonwealth v. Akhmedov***, 216 A.3d 307, 328 (Pa. Super. 2019) (*en banc*) (noting only after the appellant has satisfied each of the four requirements to invoke our jurisdiction will we proceed to review the merits of a discretionary sentencing issue).

As for the second requirement, a defendant must object and request a remedy at the sentencing hearing or raise the challenge to the discretionary aspects of the sentence in a post-sentence motion. **See *Commonwealth v. McAfee***, 849 A.2d 270, 275 (Pa. Super. 2004); **see also *Commonwealth v. Tejada***, 107 A.3d 788, 798 (Pa. Super. 2015) (noting that, “where the [appellate] issues raised assail the trial court’s exercise of discretion in fashioning the defendant’s sentence, the trial court must be given the opportunity to reconsider the imposition of the sentence either through the defendant raising the issue at sentencing or in a post-sentence motion.”). “Absent such efforts, an objection to a discretionary aspect of a sentence is waived.” ***McAfee***, 849 A.2d at 275 (citation omitted). Moreover, our Rules of Criminal Procedure specifically caution defendants that, when filing post-sentence motions, “[a]ll requests for relief from the trial court shall be stated with specificity and particularity[.]” Pa.R.Crim.P. 720(B)(1)(a).

Concerning the requirement of issue preservation, we interpret three components to Appellant’s claim: (1) an assertion that the sentence was manifestly excessive; (2) an allegation that the sentencing court did not properly weigh Appellant’s mitigating factors; and (3) a suggestion that the circumstantial nature of the evidence of Appellant’s identity as one of the shooters should have been factored into the court’s determination of a reasonable sentence. Appellant did not raise any objections to the discretionary aspects of his sentence at the conclusion of his sentencing hearing. We must then review his post-sentence motion to ascertain whether

he preserved all three parts of his claim. In the post-sentence motion, Appellant stated that he “wished for [the sentencing court] to reconsider his sentence, with the hope that [the court] could agree to decrease the minimum period of incarceration,” and then proceeded to reiterate most of the mitigating factors addressed in his appellate claim. **See** Post-Sentence Motion, 6/11/25, ¶¶ 7-11. The claim in the post-sentence motion was completely silent as to the first and third components of the instant claim; it did not allege that the sentence imposed was excessive, let alone manifestly excessive, or address the trial evidence in any fashion. As for the second component, the post-sentence motion did not allege that the sentencing court abused its discretion in its prior weighing of the mitigating factors. Instead, it merely requested the court to reconsider his sentence without stating any objections to the sentencing court’s prior review. **See id.** at ¶¶ 7, 14-15.

We conclude that Appellant’s post-sentence motion failed to preserve the arguments that Appellant is now making in support of his appellate challenge to the discretionary aspects of his sentence. Because Appellant did not specifically allege in his post-sentence motion that his sentence was excessive or that the sentencing court failed to adequately conduct review of the factors for mitigation, he has waived his instant issue on appeal.⁶ **See**

⁶ Even if we were able to reach the merits of Appellant’s unpreserved discretionary sentencing claim, we would conclude no relief is warranted. There is no support for Appellant’s suggestion that his sentence is excessive. His sentence is firmly within the standard range recommended by the
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McAfee, 849 A.2d at 275; **see also Commonwealth v. Rosser**, 135 A.3d 1077, 1086 (Pa. Super. 2016) (*en banc*) (holding that an appellant cannot pursue alternative theories for relief for the first time on appeal).

In his second issue, Appellant challenges the sufficiency of the evidence supporting his conviction for murder of the third degree. **See** Appellant's Brief, 24-28. He claims that the evidence was insufficient because "there was no eyewitness [testimony] or videographic [evidence] identifying [him] as [one of] the assailant[s], the Commonwealth offered no motive for the shooting, and the evidence against [him] was merely circumstantial." **Id.** at 24 (unnecessary capitalization omitted). He describes the trial evidence

Sentencing Guidelines. **See supra** fn. 3. As such, it is presumed to be reasonable. **See Commonwealth v. Ventura**, 975 A.2d 1128, 1135 (Pa. Super. 2009) (noting that a standard guideline range sentence "is presumptively where a defendant should be sentenced"); **see also Commonwealth v. Hill**, 210 A.3d 1104, 1117 (Pa. Super. 2019) ("where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code"). Moreover, in spite of Appellant's assertion that the sentencing court failed to give adequate consideration of his mitigating factors, we must presume that the court was aware of the appropriate sentencing factors and appropriately weighed those factors based on the court's review of a pre-sentence investigation report. **See Commonwealth v. Devers**, 546 A.2d 12, 18 (Pa. 1988) ("Where pre-sentence reports exist, we shall continue to presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those consideration along with mitigating statutory factors."); N.T. Sentencing Hearing, 6/2/25, 10 (referencing the sentencing court's review of a pre-sentence investigation report). Appellant's arguments fail to overcome the presumptions we would need to consider based on the Sentencing Guidelines' recommendation and the sentencing court's review of a pre-sentence investigation report, and Appellant presents no supporting caselaw to validate his suggestion that the circumstantial nature of the trial evidence should have been regarded as a mitigating factor for sentencing purposes.

presented by the Commonwealth as “purely speculative, circumstantial, and plagued by inconsistencies and contradictions.” ***Id.*** at 26.

For challenges to the sufficiency of evidence to support a criminal conviction, we employ a well-settled standard of review:

[T]he 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. The Commonwealth may sustain its burden of proof [of] proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all the evidence actually received must be considered. Finally, the trier of fact, while passing upon the credibility of witnesses and weight of the evidence produced, is free to believe all, part[,] or none of the evidence.

Commonwealth v. Kim, 888 A.2d 847, 851-52 (Pa. Super. 2005) (citation omitted).

Murder of the third degree is defined as “[a]ll other kinds of murder[.]” 18 Pa.C.S. § 2502(c). Namely, it is murder that does not otherwise rise to the level of first- or second-degree murder. ***See Commonwealth v. Windslowe***, 158 A.3d 698, 709 (Pa. Super. 2017).

To convict a defendant of the offense of third[-]degree murder, the Commonwealth need only prove that the defendant killed another person with malice aforethought. This Court has long held

that malice comprehends not only a particular ill-will, but also a wickedness of disposition, hardness of heart, recklessness of consequences, and a mind regardless of social duty, although a particular person may not be intended to be injured.

Commonwealth v. Fisher, 80 A.3d 1186, 1191 (Pa. 2013) (citations, brackets, and ellipsis omitted).

Appellant challenges the sufficiency of the evidence proving his identity as one of the two shooters who repeatedly shot the victim. As to the identification of the perpetrator of a crime, we have noted:

In addition to proving the statutory elements of the crimes charged beyond a reasonable doubt, the Commonwealth must also establish the identity of the defendant as the perpetrator of the crimes. Evidence of identification need not be positive and certain to sustain a conviction. As our Supreme Court has stated[,], any indefiniteness and uncertainty in the identification testimony goes to the weight. Direct evidence of identity is, of course, not necessary and a defendant may be convicted solely on circumstantial evidence.

Commonwealth v. Smyser, 195 A.3d 912, 915 (Pa. Super. 2018) (citations and internal quotation marks omitted). “Furthermore, even if the Commonwealth presented only circumstantial evidence and offered no positive identification of the assailant, we may not weigh the evidence and substitute our judgment for the fact-finder as long as the evidence was sufficient to prove [the a]ppellant’s guilt.” ***Commonwealth v. Robertson***, 874 A.2d 1200, 1206 (Pa. Super. 2005) (citation omitted).

Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we agree that the evidence was sufficient to prove Appellant’s identity as one of the shooters. The trial court, who previously sat

as the fact-finder at trial, offers us the following review of the evidence and its sufficiency, which we will adopt herein as our own:

Hightower's murder is clearly shown on the video compilation presented in court, outside of his home by two individuals. Prior to the murder, video shows the two assailants walking from 52nd and Market Streets to the decedent's home, where both shoot the victim, one with a nine-millimeter [firearm] and one with a forty[-]caliber [firearm]. [Appellant] is the individual in the gr[a]y sweatshirt, who again shoots the decedent while he is on the ground. The shooters are both masked and hooded up. Within sixty hours of the murder, [Appellant] is arrested – about a block away from the shooting – with one of the murder weapons. When he is arrested, [Appellant] tells the officer that ["]if you arrest me, I'll never see my kids ever again.["]

Instagram records show [Appellant] posted a picture of the decedent, with the decedent's song, just three and one-half hours after the shooting – and one minute after [the] Homicide [Unit] arrive[d] at the scene. However, when questioned by police, [Appellant] state[d] that he d[id not] know the decedent, [had] never seen him[,], and d[id not] know his rap name.

Clearly, reviewing all this testimony, in a light favorable the Commonwealth as the verdict winner, the evidence was more than sufficient to convict [Appellant] of murder of the third degree, as well as all of the other crimes [of which] he was convicted. The testimony was substantial and compelling and clearly the prosecution met their burden as to each and every crime [of which] this [appellant] was convicted.

Trial Court Opinion, 10/15/25, 6-7.

Appellant's specific arguments in favor of his claim do not sway us to conclude, as a matter of law, that his identity as one of the shooters went unproven. First, he alleges that the evidence failed to prove his identity as the shooter in the gray sweatshirt because a mask and the exact same sneakers worn by that shooter were not found in his home, and because he

has tattoos on his hand supposedly unlike the shooter in the video. **See** Appellant's Brief, 26. That a mask and the same type of sneakers worn by the shooter were not recovered from Appellant's home could have been explained by the fact that more than two days had passed between the shooting and Appellant's arrest and that time period permitted Appellant ample opportunity to dispose of any attire that he wore during the shooting or that would have more closely tied him to the shooting.

The record also does not support Appellant's suggestion that his identity as the shooter was disproven by a lack of tattoos on the hands of the shooter in the video compilation viewed by the trial court. When asked on cross-examination about whether the shooter in the video had tattoos on his hands, Detective Mullen responded, "I believe the hands [of the shooter] were covered. I'm not 100 percent sure, but we can watch that again." N.T. Trial, 3/10/25, 142. Detective Mullen also testified that in other portions of the video compilation both shooters had their hands in their pockets. **See id.** at 143 ("Q. For some of the -- you know, some of the time in the videos, the doers have their hands in their pockets, correct? Both of them do? A. My recollection is yes."). Appellant fails to cite to any evidence in the record proving an absence of tattoos on the shooter's hands and our review of the detective's testimony, which the trial court accepted as credible, does not support the argument Appellant is making under the applicable standard of review. **See** Appellant's Brief at 26.

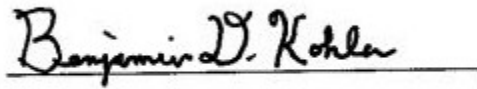
Appellant next argues that neither of the testifying detectives who were involved with the creation of the surveillance video compilation were able to confirm his identity as the shooter based on a comparison of his height with the height of the shooter in the compilation: "Neither Detective Thorst[en] Lucke, who was the first person in the investigation to analyze the recovered video surveillance, [n]or Detective Mullen were able to offer an opinion about the height of the shooter, identified Appellant, due to varying camera angles and that some cameras utilized infrared lighting." Appellant's Brief at 26. Detective Lucke admitted that an exact height for the shooter could not be extrapolated from the video in the compilation, noting that, even with the use of historical footage of the areas seen in the video and the use of the same equipment which recorded the original footage, there would still be "a margin of error of several inches." N.T. Trial, 3/10/25, 80-82. With the available footage, however, Detective Mullen opined that, upon his review of Appellant's height, weight, the area in which he lived, and the other circumstantial evidence, that he believed Appellant was "an exact match for the individual ... observed in the gray [sweatshirt] firing the handgun" in the compilation. ***Id.*** at 103. The trial court as the fact-finder credited that testimony, ***see*** Trial Court Opinion, 10/15/25, 6 ("Basil Robbins is the individual in the gr[a]y sweatshirt, who again shoots the decedent while he is on the ground."), and observed Appellant in the courtroom and in the video exhibit, and could make its own determination as to whether Appellant was consistent with the relevant actor for identification purposes, and that identity determination remains

binding on us under the sufficiency standard of review. That the detectives could not confirm the exact height of the shooter in the presented compilation did not render the evidence insufficient.

Appellant lastly points out that the “only physical evidence introduced by the Commonwealth tying Appellant to the shooting” was the recovered ballistics reflecting that Appellant was later found in possession of one of the murder weapons and suggests that the Instagram message he sent about the victim was irrelevant because the victim was well known in the area of the shooting. Appellant’s Brief, 27. He follows those assertions by noting that he denied any involvement in the shooting and denied that he previously knew the victim. ***See id.*** He also points out the absence of evidence of a motive for the shooting and the absence of additional inculpatory text messages and phone calls. ***See id.*** His arguments fail to view the evidence in the light most favorable to the Commonwealth and fail to consider that his identity as the shooter could be wholly proven through circumstantial evidence. Properly assessing the evidence, including his possession of the murder weapon days after the shooting, the detective’s assessment that Appellant was “an exact match” for the shooter in the video compilation, Appellant’s inculpatory statement upon being caught with the murder weapon, and the involvement on Appellant’s Instagram account addressing the victim before and after the shooting, it was sufficient to prove Appellant’s identity as the shooter in the gray sweatshirt. We thus deny Appellant’s sufficiency claim as meritless.

Judgment of sentence affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/9/2026