

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ILYA MIKHAILOVICH MIRONENKO	:	
	:	
Appellant	:	No. 1750 MDA 2025

Appeal from the Judgment of Sentence Entered November 3, 2025
In the Court of Common Pleas of Union County Criminal Division at
No(s): CP-60-CR-0000181-2024

BEFORE: KUNSELMAN, J., KING, J., and STEVENS, P.J.E.*

MEMORANDUM BY KING, J.:

FILED SEPTEMBER 10, 2026

Appellant, Ilya Mikhailovich Mironenko, appeals from the judgment of sentence entered in the Union County Court of Common Pleas, following his bench trial convictions for strangulation, simple assault, and harassment.¹ We affirm.

The trial court set forth the relevant facts and procedural history of this case as follows:

[Appellant] was charged with ... strangulation, simple assault and harassment for an incident that occurred [with his wife, Esther Mironenko ("Victim"),] on or about February 24, 2024. The Union County Public Defender's Office was initially appointed to represent [Appellant] and assisted [Appellant] with the filing of his waiver of arraignment form. On September 16, 2024, Assistant Public Defender Steve

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 2718(a), 2701(a), and 2709(a), respectively.

Buttorff then filed a motion to withdraw as counsel. Attorney Buttorff averred that (1) [Appellant] had accused Attorney Buttorff of being ineffective, and (2) [Appellant] had accused Attorney Buttorff of advising [Appellant] to commit an act that would constitute a violation of his bail conditions and the laws of the Commonwealth. [Appellant] filed an answer to the court's rule to show cause in which he said he would concur with the motion to withdraw if conflicts counsel could be appointed. In response, the court granted the motion to withdraw and appointed Attorney K. Michael Sullivan as conflicts counsel to represent [Appellant].

On January 13, 2025, Attorney Sullivan filed a motion to withdraw as counsel. Attorney Sullivan averred that after having some initial contact, [Appellant] stopped communicating with Attorney Sullivan completely. Attorney Sullivan detailed the due diligence that he exercised in trying to contact [Appellant] in order to prepare for his defense. [Specifically, Attorney Sullivan reported that after their initial meeting, Appellant failed to appear at a scheduled meeting and failed to communicate with Attorney Sullivan in any manner, despite Attorney Sullivan's attempts to contact Appellant by phone and mail.] As jury selection approached, Attorney Sullivan averred that he could not effectively represent [Appellant]. Immediately prior to jury selection on January 27, 2025, the court conducted a hearing on Attorney Sullivan's motion to withdraw... [Appellant testified that he stopped communicating with Attorney Sullivan because he asked Attorney Sullivan to file a motion to remand the case back to the preliminary hearing stage and Attorney Sullivan did not do so. Attorney Sullivan responded that at their initial meeting, after reviewing the record, Attorney Sullivan explained to Appellant that he did not have any grounds to file a motion to return the case to the preliminary hearing stage. Appellant acknowledged that he did not take any action to inform the court of his dissatisfaction with Attorney Sullivan or procure new counsel after their initial meeting.] [T]he court granted the motion [to withdraw]. The court made a finding that [Appellant] had forfeited his right to appointed counsel for failing to take basic steps [to] cooperate with not just one, but two attorneys appointed to represent him. Proceedings were continued until the next term of court to allow [Appellant] to hire counsel, or to prepare for self-

representation.

Immediately prior to jury selection on April 28, 2025, the court [informed Appellant that he had the right to be represented by an attorney and inquired whether Appellant wished to represent himself for jury selection. Appellant affirmed that he wanted to represent himself and the court] found that he had made an intelligent, knowing and voluntary decision to proceed as a self-represented party. With the consent of [Appellant], the [assistant] public defender was appointed as standby counsel for the sole purpose of assisting with jury selection. A jury was picked and the case [was] scheduled for [a] jury trial.

On May 13, 2025, [Appellant] filed a motion to waive his right to a jury and have a bench trial instead. After on the record colloquies at a hearing on May 16, 2025, [Appellant] and the Commonwealth agreed to waive their right to a jury trial and the case was scheduled for a bench trial on May 29, 2025. A subsequent continuance request by [Appellant] was granted and a bench trial was finally conducted on August 18, 2025. On that date, the court confirmed with [Appellant] that he wished to proceed as a self-represented party.

* * *

[At trial,] Trooper Sean Doherty testified that he responded to a 911 call on the night in question... He met with [V]ictim [at Victim's friend's house] and she appeared extremely emotional, stressed and upset. He noticed that she had a bruise or bump under her right eye and on her forehead. He also noticed that she had a red and swollen bite injury on her right hand; he could see the outline of a mouth and teeth marks on her hand. He also noticed that her neck was extremely red and had a few lines on the right side of her neck. [V]ictim told [Trooper Doherty] that [Appellant], her husband, put her in a headlock and squeezed. She said that ... while he was doing that, she was not able to breathe and was afraid she was going to lose consciousness when it happened. She also said that the injuries on her face were from when [Appellant] punched her and headbutted her. [Trooper Doherty] documented [V]ictim's injuries by taking a series of photographs which were introduced into

evidence. He testified that the photos were accurate representations of [V]ictim's injuries [on that night], and the photos corroborated his observations about [V]ictim's injuries. [Trooper Doherty] testified that [he drove to Appellant and Victim's residence and Appellant] was positively identified [through the window], but [the troopers] were unable to talk with him [because Appellant refused to come out.] ...

Trooper Nathan Wenzel also testified [that he was] present with Trooper Doherty. He also testified that [V]ictim told them that she had been assaulted by her husband, [Appellant]. He also testified that she told them she had been strangled by [Appellant], *i.e.* put in a chokehold type headlock and thought she was going to pass out. He testified that [V]ictim was upset, scared and disheveled and that she said the assault occurred at her residence.... He testified about observing her injuries and that the photos introduced by the Commonwealth were accurate representations of those injuries. ...

Jennifer Bryan testified that she knew [V]ictim ... and identified [Appellant] in court as [Victim's] husband. [Appellant and Victim] lived about a mile from Ms. Bryan... Around 11:00 p.m. on February 24, 2024, [V]ictim came to Ms. Bryan's house ... crying and asking if she could stay the night. [V]ictim had bruising on her face and a bite mark on her hand. Ms. Bryan testified that [V]ictim told her that [Appellant] caused these injuries. Ms. Bryan then called 911. ...Ms. Bryan was shown [the] photograph[s] taken by [Trooper Doherty] and affirmed that they accurately reflected how [V]ictim appeared that evening. The photos corroborated her testimony about [V]ictim's injuries. ...

Jared Stumpff, an EMT [who] responded and treated [V]ictim on the night in question, ... testified that [V]ictim, who told him she had been assaulted by her husband, had bruises on her face and an abrasion on the back of her right arm. [V]ictim appeared to him to be upset and in pain. ...

After the Commonwealth rested, [Appellant testified that Victim was staying with Ms. Bryan for over a week when this incident occurred and Appellant was not present.] ...

[Appellant] then called [V]ictim to the stand. [V]ictim [initially] denied giving a statement to the state troopers, but then on cross-examination conceded that she did answer questions that the state troopers had asked of her. [V]ictim was shown the photos [taken by Trooper Doherty], but she disputed the existence of any injuries [in the photos] other than a scratch on her elbow. She disputed the trooper's testimony about their description of her injuries and of how she suffered those injuries. She testified that she did not tell the troopers or Ms. Bryan that [Appellant] assaulted her. She then testified that [Appellant] "did not assault me. He never laid his hands on me in any way." [(N.T. Trial, 8/18/25, at 56).] [V]ictim testified that she is back living with [Appellant]. ...

On rebuttal, the Commonwealth called Jo Ellen Boman ... [as] an expert about dynamics and victim behavior within an intimate partner domestic violence relationship. ...[T]he court accepted her as an expert in that field. Ms. Bowman... [testified regarding] reasons [why] domestic violence victims ... recant their disclosures of abuse and return to live with an abuser.

(Trial Court Opinion, filed 2/2/26, at 1-7) (unpaginated).

The court found Appellant guilty of all charges. The court further appointed the Union County Public Defender's Office to represent Appellant for post-trial proceedings. On November 3, 2025, the court sentenced Appellant to an aggregate sentence of 26 to 120 months' incarceration. Appellant filed a timely post-sentence motion,² seeking a new trial on the

² The docket indicates that Appellant filed a post-sentence motion on November 14, 2025, which is untimely. **See** Pa.R.Crim.P. 720(A)(1) (stating that post-sentence motion must be filed no later than 10 days after imposition of sentence). On January 8, 2026, this Court directed Appellant to show cause why this appeal should not be quashed as untimely. Appellant's counsel filed a response on January 18, 2026, averring that counsel PACFiled the post-sentence motion on November 13, 2025, and attached proof of the filing on that date. Based on counsel's response, we conclude that Appellant timely filed his post-sentence motion on November 13, 2025.

grounds that the verdict was against the weight of the evidence and that the court did not properly colloquy Appellant regarding waiver of his right to counsel. The court denied Appellant's post-sentence motion on November 14, 2025. Appellant filed a timely notice of appeal on Monday, December 15, 2025. On December 17, 2025, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied on January 5, 2026.

Appellant raises the following issues for our review:

1. Was the verdict against the weight of the evidence, specifically where the Commonwealth's victim testified that no crime occurred?
2. Was Appellant's waiver of counsel at trial legally inadequate as he was not properly colloquied?

(Appellant's Brief at 4).

In his first issue, Appellant claims that Victim testified and refuted the testimony of the other witnesses regarding the night in question. Specifically, Appellant argues that Victim denied that she told anyone that Appellant had assaulted her and denied that the photographs of her depicted any injuries other than a scratch on her arm. Further, Appellant asserts that Victim categorically denied that Appellant ever harmed her in any way. Based on Victim's strong testimony refuting the Commonwealth's evidence, Appellant concludes that the verdict was against the great weight of the evidence and this Court should grant relief. We disagree.

When examining a challenge to the weight of the evidence, our standard

of review is as follows:

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the ... verdict if it is so contrary to the evidence as to shock one's sense of justice.

Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Champney, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003), *cert. denied*, 542 U.S. 939, 124 S.Ct. 2906, 159 L.Ed.2d 816 (2004) (internal citations omitted). A "trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings." ***Commonwealth v. Rivera***, 603 Pa. 340, 363, 983 A.2d 1211, 1225 (2009), *cert. denied*, 560 U.S. 909, 130 S.Ct. 3282, 176 L.Ed.2d 1191 (2010).

Appellant challenges the weight of the evidence for each of his convictions. "A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by: (1) applying pressure to the throat or neck; or (2) blocking the nose and mouth of the person." 18 Pa.C.S.A. § 2718(a). Further, a person commits simple assault if he "attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another." 18 Pa.C.S.A. § 2701(a)(1).

Additionally, a person commits summary harassment “when, with intent to harass, annoy or alarm another, the person ... strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same[.]” 18 Pa.C.S.A. § 2709(a)(1). Intent may be proven by circumstantial evidence that reasonably suggests a defendant intended to cause injury. ***Commonwealth v. Martuscelli***, 54 A.3d 940, 948 (Pa.Super. 2012). Bodily injury is the “impairment of physical condition or substantial pain.” 18 Pa.C.S.A. § 2301.

Instantly, the trial court determined that Victim’s testimony was not credible in light of the overwhelming evidence presented by the Commonwealth refuting her testimony. Specifically, the court credited the testimony of Trooper Doherty, Trooper Wenzel, Ms. Bryan and Mr. Stumpff, who all consistently testified that Victim had injuries to her face, neck and hand on the night in question. Further, these witnesses consistently testified that Victim told them that Appellant had caused her injuries. Additionally, Trooper Doherty and Trooper Wenzel testified that Victim told them that Appellant had put her in a chokehold, restricting her ability to breathe to such an extent that she felt like she was going to lose consciousness. Their testimony was further corroborated by photographs taken by Trooper Doherty on that night, which depicted injuries on Victim’s face, neck and hand. Further, the court credited Ms. Bowman’s expert testimony, explaining the reasons why victims of domestic violence commonly recant their prior

disclosures of abuse. The trial court, as the factfinder, was free to weigh the evidence and determine the credibility of the witnesses. ***See Champney, supra.*** On this record, we cannot say the court abused its discretion in denying Appellant's claim that the verdict was against the weight of the evidence. ***See id.***

In his second issue, Appellant argues that the court failed to properly colloquy Appellant by inquiring into the factors set forth in Pa.R.Crim.P. 121³

³ Rule 121 of the Pennsylvania Rules of Criminal Procedure states, in relevant part:

Rule 121. Waiver of Counsel

(A) Generally.

(1) The defendant may waive the right to be represented by counsel.

(2) To ensure that the defendant's waiver of the right to counsel is knowing, voluntary, and intelligent, the judge or issuing authority, at a minimum, shall elicit the following information from the defendant:

(a) that the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent;

(b) that the defendant understands the nature of the charges against the defendant and the elements of each of those charges;

(c) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;

(d) that the defendant understands that if he or she waives the right to counsel, the defendant will still be

(Footnote Continued Next Page)

to determine whether Appellant knowingly, voluntarily and intelligently waived his right to counsel. Appellant claims that although the court determined that Appellant forfeited his right to counsel, the court essentially undid its prior determination by subsequently conducting a partial colloquy with Appellant regarding the decision to represent himself. As such, Appellant concludes that the court erroneously determined that Appellant knowingly, voluntarily, and intelligently waived his right to counsel and this Court must vacate Appellant's judgment of sentence. We disagree.

The question of "[w]hether [a defendant] forfeited his right to counsel is a question of law over which our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Fill***, 202 A.3d 133, 139 (Pa.Super. 2019). This Court has explained:

Although a criminal defendant has the right to be

bound by all the normal rules of procedure and that counsel would be familiar with these rules;

(e) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and

(f) that the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently.

* * *

Pa.R.Crim.P. 121(A).

represented by counsel, the right can be waived or forfeited. ... Waiver is an intentional and voluntary relinquishment of a known right. It is well established that waiver of the right to counsel is valid only if it is made voluntarily, knowingly and intelligently. By contrast, forfeiture ... does not require that the defendant intend to relinquish a right, but rather may be the result of the defendant's extremely serious misconduct or extremely dilatory conduct.

Commonwealth v. Thomas, 879 A.2d 246, 257 (Pa.Super. 2005), *appeal denied*, 605 Pa. 685, 989 A.2d 917 (2010) (quotation marks and citations omitted). ***See also Commonwealth v. Kelly***, 5 A.3d 370, 381-82 (Pa.Super. 2010) (concluding that appellant forfeited right to counsel by engaging in dilatory conduct by failing to cooperate with three appointed counsel because appellant disagreed with counsel's legal strategy).

Our Supreme Court has further clarified:

The consequences of the distinction between waiver of the right to counsel and forfeiture of the right to counsel are significant because, we now hold, Pa.R.Crim.P. 121 and its colloquy requirements do not apply to situations where forfeiture is found. To hold otherwise would permit a recalcitrant defendant to engage in the sort of obstructive behavior that mandates the adoption of the distinction between forfeiture and waiver in the first instance. Should an unrepresented defendant choose not to engage in the colloquy process with the trial court, were there no provision for forfeiture of counsel, that defendant could impermissibly clog the machinery of justice or hamper and delay the state's efforts to effectively administer justice. Such a result would be untenable.

Commonwealth v. Lucarelli, 601 Pa. 185, 195, 971 A.2d 1173, 1179 (2009). ***See also Commonwealth v. Coleman***, 905 A.2d 1003, 1008 (Pa.Super. 2006) (holding that appellant "played games" with court system to

such extent that she forfeited her right to counsel, thereby rendering unnecessary colloquy required for waiver of counsel); ***Commonwealth v. Wentz***, 421 A.2d 796 (Pa.Super. 1980) (holding that criminal defendant who has been duly notified of date of his trial, and who has been advised to obtain counsel to represent him, and who nevertheless later appears without counsel and with no reasonable excuse for lack thereof, and no concrete plans for obtaining counsel, has “waived” his right to counsel; court is not required to conduct waiver colloquy in this scenario).

Here, the court determined at the hearing on January 27, 2025 that Appellant forfeited his right to appointed counsel. The court announced its determination on the record at the hearing and clearly explained its decision to Appellant. The court further set forth its decision in an order filed on January 28, 2025, which unequivocally stated:

The court finds [Appellant] has forfeited his right to appointed counsel. The court notes that [Appellant] has failed to take basic steps to cooperate with two appointed counsel prompting both of them to move to withdraw because of [Appellant’s] failure to cooperate.

(Order Granting Motion to Withdraw, filed 1/28/25).

On appeal, Appellant does not challenge the court’s determination that Appellant forfeited his right to counsel. Rather, Appellant claims that the court essentially revoked its determination that Appellant forfeited his right to counsel by subsequently questioning Appellant regarding his decision to represent himself at trial. There is no support in the record for Appellant’s

contention. After the court determined that Appellant forfeited his right to appointed counsel, Appellant did not at any point request the court to reconsider its decision and the court did not do so *sua sponte*. The court continued the case to allow Appellant time to prepare for self-representation or to retain private counsel. When Appellant appeared at jury selection without privately retained counsel, the court asked Appellant questions to confirm that Appellant wished to proceed *pro se* and ascertain whether Appellant wanted the assistance of standby counsel. The court did not revoke its prior determination that Appellant forfeited his right to appointed counsel. Similarly, prior to the bench trial, the court confirmed with Appellant that he wished to proceed *pro se*. Again, the court did not otherwise revoke its prior determination.

On this record, we find no merit to Appellant's claim that the court revoked its decision that Appellant forfeited his right to counsel. As such, the court was not required, thereafter, to conduct a colloquy pursuant to Rule 121 to determine whether Appellant knowingly, voluntarily, and intelligently waived his right to counsel. ***See Lucarelli, supra***. Accordingly, Appellant is not entitled to relief on any of his issues on appeal and we affirm the judgment of sentence.

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: 09/10/2026