

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

MATTHEW ZAREMBA

Appellant

: No. 1623 MDA 2025

Appeal from the Judgment of Sentence Entered June 20, 2025
In the Court of Common Pleas of Luzerne County Criminal Division at
No(s): CP-40-CR-0001857-2023

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

MATTHEW ALLEN ZAREMBA

Appellant

: No. 1624 MDA 2025

Appeal from the Judgment of Sentence Entered June 20, 2025
In the Court of Common Pleas of Luzerne County Criminal Division at
No(s): CP-40-CR-0002026-2023

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

MEMORANDUM BY KING, J.:

FILED: SEPTEMBER 29, 2026

Appellant, Matthew Zaremba, appeals from the judgments of sentence entered following his convictions at two underlying dockets for two counts of receiving stolen property, and one count each of firearms not to be carried

* Former Justice specially assigned to the Superior Court.

without a license and tampering with or fabricating physical evidence.¹ We affirm.

The relevant facts and procedural history of this matter are as follows. On June 17, 2023, Paul Fetchick called the police to report that a man wearing a black hooded sweatshirt was attempting to break into his van. When Mr. Fetchick confronted him, the man fled through the yard. Subsequently, Officer Richard Andress then came upon Appellant walking southbound on Ferry Road, carrying a red Craftsman tool set. Officer Andress drove next to Appellant and requested that he stop walking.

Appellant walked up to, and directly alongside, the patrol vehicle. From the side mirror, Officer Andress observed Appellant bend down, although he could not see what Appellant was doing due to an obstructed view, and heard a metal clanking noise. Sergeant Connor Duffy, who had also responded to the address, observed Appellant walking next to the vehicle, saw Appellant bend down behind the vehicle, and heard the clinking sound. Sergeant Duffy observed Appellant make “a quick motion with his hands.” (N.T. Trial, 4/22/25, at 66).

Sergeant Duffy took Appellant into custody and Officer Andress walked to where he had heard the clanking sound. At that time, Officer Andress saw a 9mm handgun and pointed it out to Sergeant Duffy. Officers then recovered the firearm.

¹ 18 Pa.C.S.A. §§ 3925, 6106, and 4910, respectively.

Appellant's case at docket No. 1857-2023 proceeded to a jury trial on April 22, 2025. At trial, Patrick Sosnak, the handgun's owner, testified that the gun had been stolen from his vehicle and that he had reported the theft to the police. At the conclusion of trial, the jury convicted Appellant of receiving stolen property, firearms not to be carried without a license, and tampering with or fabricating physical evidence. The court acquitted him of scattering rubbish.

On June 20, 2025, Appellant entered a guilty plea at separate docket No. 2606-2023, to one count of receiving stolen property. That same day, the court sentenced Appellant at both dockets. At docket No. 1857-2023, the court sentenced Appellant to an aggregate term of 70 to 140 months of incarceration. At docket No. 2606-2023, the court sentenced Appellant to 12 to 24 months of incarceration, to run consecutive to his other sentence, for a total aggregate sentence of 82 to 164 months' incarceration. That same day, Appellant filed a post-sentence motion for reconsideration of his sentence at both dockets, which the court denied on October 24, 2025.

On November 20, 2025, Appellant timely filed notices of appeal at each docket. On November 24, 2025, the court ordered Appellant to file Pa.R.A.P. 1925(b) statements of errors complained of on appeal. On December 12, 2025, Appellant timely complied. Subsequently, this Court consolidated Appellant's appeals *sua sponte*.

On appeal, Appellant raises a single issue for review:

Did the Commonwealth fail to present sufficient evidence

to establish the offense of tampering with evidence where the Appellant merely abandoned the subject firearm and did not alter, destroy, conceal, or remove any thing, in contravention of ***Commonwealth v. Delgado***, [544 Pa. 591, 679 A.2d 223 (1996)]?

(Appellant's Brief at 3).²

Appellant contends that the evidence was insufficient to support his conviction for tampering with evidence, where the Commonwealth failed to establish that he had altered, destroyed, concealed, or removed evidence, or that he had the specific intent to impair that evidence's availability in an official proceeding. Pursuant to ***Delgado***, Appellant claims that discarding contraband in plain view of a pursuing officer constitutes mere abandonment, not tampering with evidence. Appellant asserts that he placed a holstered, fully intact firearm on a public roadway in the direct and unobstructed line of sight of Sergeant Duffy, who observed the placement and heard the firearm strike the pavement. Appellant also contends that the record did not support his intent to tamper, as placing evidence in the immediate and unobstructed view of a police officer a few feet away rendered it available to officers. Appellant concludes the Commonwealth presented insufficient evidence to sustain his conviction for tampering with evidence, and this Court must grant relief. We disagree.

Our standard of review upon a challenge to the sufficiency of the evidence is well settled:

² Notwithstanding Appellant's appeals at both underlying docket numbers, Appellant challenges only his conviction for tampering with evidence at docket No. 1857-2023 in this appeal.

When reviewing a sufficiency claim, we construe “all the evidence admitted at trial in the light most favorable to the verdict winner[;]” the evidence is legally sufficient when it would “enable the fact-finder to find every element of the crime beyond a reasonable doubt.” **Commonwealth v. Brockman**, 167 A.3d 29, 38 (Pa.Super. 2017) (citation omitted). The Commonwealth may prove an offense by means of wholly circumstantial evidence, and the evidence presented “need not preclude every possibility of innocence.” **Id.** (citation omitted). It is the job of the fact-finder to pass upon “the credibility of witnesses and the weight of the evidence produced,” and the fact-finder “is free to believe all, part or none of the evidence.” **Id.** (citation omitted).

Commonwealth v. Reyes, 350 A.3d 988, 997-98 (Pa.Super. 2025). “A challenge to the sufficiency of the evidence ‘presents a pure question of law and, as such, our standard of review is *de novo*, and our scope of review is plenary.’” **Commonwealth v. Akeley**, 320 A.3d 106, 110 (Pa.Super. 2024) (quoting **Commonwealth v. Santiago**, 294 A.3d 482, 485 (Pa.Super. 2023)).

The Crimes Code defines tampering with or fabricating physical evidence, in relevant part, as follows:

§ 4910. Tampering with or fabricating physical evidence

A person commits a misdemeanor of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

- (1) alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation[.]

18 Pa.C.S.A. § 4910. To establish the offense of tampering with evidence,

the Commonwealth must prove three interrelated elements: (1) the defendant knew that an official proceeding or investigation was pending (or about to be instituted); (2) the defendant altered, destroyed, concealed, or removed an item; and (3) the defendant did so with the intent to impair the verity or availability of the item to the proceeding or investigation.

Commonwealth v. Toomer, 159 A.3d 956, 961 (Pa.Super. 2017) (citing ***Commonwealth v. Jones***, 904 A.2d 24, 26 (Pa.Super. 2006)).

In support of his argument, Appellant relies upon ***Delgado, supra***. In that case, Delgado attempted to flee from police, who were about to arrest him following a drug purchase. ***See Delgado, supra*** at 592-93, 679 A.2d at 224. As he ran down an alley, Delgado discarded a bag containing cocaine. ***See id.*** Delgado was charged with and convicted of tampering with evidence; however, our Supreme Court ultimately reversed his conviction, concluding that the act of discarding contraband in plain view of a pursuing officer failed to rise to the level of conduct constituting the destruction or concealment of evidence as contemplated by the statute, and was nothing more than abandonment of evidence. ***Id.*** at 594-95, 679 A.2d at 225.

This Court has subsequently distinguished ***Delgado*** in situations where the defendant did not discard the contraband in plain view of law enforcement. For example, in ***Commonwealth v. Howard***, No. 54 WDA 2023, 2024 WL 552465 (Pa.Super. filed Feb. 12, 2024) (unpublished memorandum),³ police officers arrived at a specific location to execute a search warrant. After officers

³ ***See*** Pa.R.A.P. 126(b) (stating we may rely on unpublished decisions filed in this Court after May 1, 2019 for their persuasive value).

knocked and announced their presence, they observed someone discarding a box from the back window and discovered multiple small bags containing suspected narcotics and blue latex gloves inside. **See id.** at *1. Howard was charged with and convicted of tampering with evidence and, on appeal, he argued that, similar to **Delgado**, Howard did not attempt to destroy the evidence or impair its availability to the police. **See id.** at *5. This Court rejected his argument, observing that the police officers were not in pursuit: they were stationary in the backyard when Howard discarded the drugs. **See id.** Additionally, this Court noted that there was no evidence introduced at trial indicating Howard's awareness of police presence in the yard; they had knocked at the front door, and the warrant was executed in early morning hours with little light. **Id.**

Instantly, the trial court evaluated Appellant's claim as follows:

Contrary to **Delgado**, [Appellant] walked up against the patrol vehicle operated by Patrolman Andress to an area where he could not be seen. Using a side mirror allowed Patrolman Andress to see [Appellant] bend down. Although he heard metal clanking, Patrolman Andress could not see what [Appellant] was doing. Patrolman Andress could not see [Appellant] discard the firearm. [Appellant] did not discard the firearm in plain view. He was able to conceal the firearm and discard it in an area that was not visible to Patrolman Andress. [Appellant] did not merely abandon the firearm, he concealed it.

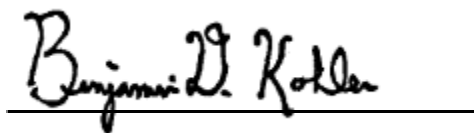
(Trial Court Opinion, 1/16/26, at 4).

We agree with the trial court that **Delgado** is distinguishable. At the time that Appellant discarded the firearm, Officer Andress could not see what

Appellant was doing as he ducked down behind the patrol vehicle. Further, although Sergeant Duffy testified that he saw Appellant make a quick motion with his hands, nothing in the record indicates that Appellant was aware of Sergeant Duffy's presence or that Appellant knew Sergeant Duffy was able to observe Appellant's actions. ***See Howard, supra.*** Unlike in ***Delgado***, Appellant was not fleeing or running from police when he discarded the firearm but was walking alongside the patrol car and ignoring commands to stop so that officers could speak to him. ***Compare Delgado, supra.*** Additionally, given the context of the 911 call, Appellant's limited options, and attempt to place the weapon in the only place he had available where it would not be seen, the evidence demonstrates Appellant's intent to conceal the firearm and impair the investigation. ***See Toomer, supra.*** Viewed in the light most favorable to the Commonwealth as verdict-winner, the evidence was sufficient to sustain Appellant's conviction for tampering with evidence. ***See*** 18 Pa.C.S.A. § 4910; ***Reyes, supra.*** Accordingly, we affirm.

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: 09/29/2026