NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
QUINZELL CHUCKY MICKEY	:	
Appellant	:	No. 2433 EDA 2025

Appeal from the Judgment of Sentence Entered September 2, 2025
In the Court of Common Pleas of Chester County Criminal Division at
No(s): CP-15-CR-0002507-2023

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY LAZARUS, P.J.: **FILED NOVEMBER 18, 2026**

Quinzell Chucky Mickey appeals from the judgment of sentence, entered in the Court of Common Pleas of Chester County, imposed following his convictions of one count each of first-degree murder,[1] person not to possess a firearm,[2] and carrying a firearm without a license.[3] After careful review, we affirm.

Mickey was charged and convicted of first-degree murder for killing William Stafford in the early morning hours on April 15, 2023, at Park Springs

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 2502(a).

[2] ***Id.*** at § 6105(a)(1).

[3] ***Id.*** at § 6106(a)(1).

Apartments[4] on Park Springs Boulevard, East Vincent Township, Chester County. We provide the following chronological factual summary gleaned from testimony and exhibits entered at Mickey's second jury trial.[5]

On April 14, 2023, at approximately 10:00 p.m., Mickey and Stafford left Park Springs Apartments in a white Ford Taurus and traveled to the 200 block of Bridge Street in Phoenixville. The two men proceeded to travel between various bars whilst drinking together. During this time, Stafford was texting his long-time girlfriend, Nichelle Hockaday, with whom he lived in Unit 511 of the apartment complex.

During the early morning hours of April 15, 2023, Mickey and Stafford returned to the white Ford Taurus and began traveling back to the Park Springs Apartments. The two men stopped at the Citgo gas station near the Park Springs Apartments, where the two men interacted with several other customers. Additionally, Stafford is depicted on Citgo's surveillance footage stealing multiple vape cartridges from behind the counter.

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[4] The Park Springs Apartments is a Section 8 housing development. ***See*** N.T. Jury Trial (Day 1), 6/16/25, at 85-86. The Park Springs Apartments consists of 13 buildings with a total of 150 units and approximately 425 residents. ***Id.*** at 86.

[5] We note with displeasure that neither of the parties provided us with a complete factual summary. We remind the parties that a proper statement of the case includes a factual summary. ***See*** Pa.R.A.P. 2111(a)(5).

The men returned to the 100 block of Park Springs Apartments at approximately 2:30 a.m.[6] The white Ford Taurus was parked in the driveway of the 100 block of Park Springs Apartments. Stafford exited the passenger seat, leaned back into the car, and, after a couple of minutes, closed the passenger door. Mickey exited the driver's side door and both men walked towards the rear of the car. After a few moments, Stafford closed the trunk, returned to the front passenger side of the vehicle and Mickey returned to the driver's seat. Stafford threw a bag onto the grass near the car.[7] Mickey immediately exited the driver's side, aimed a handgun over the top of the vehicle and began to walk around the rear of the car towards Stafford. Mickey shot Stafford, in the chest, from across the car and Stafford collapsed next to the passenger side of the car. Stafford's body rolled towards the curb and Mickey, with the gun still aimed at Stafford, continued to walk around the car. Mickey stood over Stafford and shot him multiple times until his gun broke, at

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[6] These events are captured fully on the Park Springs Apartments surveillance system, which was recovered, reviewed, and summarized by Detective Jonathan Shave. ***See*** N.T. Jury Trial (Day 3), 6/18/25, at 10-30 (Detective Shave summarizing Park Springs Apartments surveillance); ***see also*** Commonwealth Exhibit 12 (Park Springs Apartments surveillance depicting shooting). Additionally, we note that the Park Springs Apartments surveillance videos did not record audio. ***See id.*** at 93 (Nelligan testifying surveillance videos do not have sound).

[7] Police later recover this bag, which contained the partially consumed tequila Stafford had purchased earlier on April 14, 2023. ***See*** N.T. Jury Trial (Day 3), 6/18/25, at 10-11.

which point Mickey returned to the driver's seat. After another five seconds, Mickey exited the vehicle again, walked around the front of the car, and repeatedly bludgeoned Stafford, who was still on the ground, with the broken gun. After bludgeoning Stafford, Mickey searched Stafford's body before searching the passenger seat of the car. Mickey searched Stafford's body again, returned to the driver's seat, turned off the car, and fled the scene on foot.

Multiple residents of the 100 block of Park Springs Apartments were awoken by two men arguing loudly, followed by a gunshot, a scream, and two more gunshots. ***See*** N.T. Jury Trial (Day 1), 6/16/25, at 79 (100 block resident Sharhonda Anderson, testifying about argument and shooting);[8] N.T. Jury Trial (Day 2), 6/17/25, at 102-07 (C.C., 13-year old child residing at grandmother's home on 100 block, testifying he heard Stafford and another man arguing, heard gunshots, saw Mickey standing over Stafford's body, and watched Mickey bludgeon Stafford's body with an object); ***id.*** at 114-23 (100 block resident Laura Anderson, testifying she and her daughter heard argument and multiple gunshots). Laura called 911 and ran outside to check on Stafford.

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[8] There are multiple witnesses in this case with the last name Anderson. The record does not specify any relation between these individuals and we presume none. Accordingly, we refer to each of them by their first name when necessary.

Police Officer Karl Jones of the East Vincent Township Police Department was on patrol in the early morning hours of April 15, 2023. At approximately 2:30 a.m., Officer Jones responded to a report of a shooting at the 100 block of the Park Springs Apartments. ***See*** N.T. Jury Trial (Day 1), 6/16/25, at 57-74 (Officer Jones' testimony). Upon arrival, Officer Jones observed a white Ford Taurus in the driveway of the 100 Building, with Stafford's body lying face-up next to the front passenger side of the vehicle. Officer Jones also encountered Laura next to Stafford's body. Laura explained to Officer Jones that she saw a heavyset, bald, black male with a partial beard running from the scene before she found Stafford's body.

Officer Jones radioed for paramedics and additional officers. While canvassing the area, Officer Jones located a black grocery bag, two fired cartridge casings (FCCs), approximately $5.00 in cash near Stafford's body, and a set of keys between the rear of the white sedan and the curb. Officer Jones did not locate a firearm or any weapons. Officer Jones ran the white Ford Taurus's vehicle registration and discovered it was registered to Macy Green, who lived at the Park Springs Apartments in Unit 902. Green was Mickey's long-time girlfriend and the mother of his children.

Paramedics arrived and pronounced Stafford dead at the scene. The officers secured the scene, taped off the block, and began taking statements. Police Chief Matthew Williams of the East Vincent Township Police Department and Police Officer Rob Catrin of the Phoenixville Police Department learned

that the Park Springs Apartments had a security camera system. Chief Williams spoke with Louie Valladares, the Park Springs Apartments superintendent, and requested access to the surveillance system. Valladares informed Chief Williams that only the community manager, Heidi Nelligan, had access to the surveillance system. Shortly thereafter, Nelligan arrived at the Park Springs Apartments. Chief Williams, Officer Catrin, Nelligan, and Valladares watched the surveillance footage of the shooting together. Nelligan immediately recognized the shooter as Unit "902's boyfriend." ***See id.*** at 98 (Nelligan testifying she did not know shooter's name but knew him to be dating Green in Unit 902). Valladares, who lived in Unit 901, identified the shooter as one of his neighbors who lived in Unit 902. ***See id.*** at 111-13.

Nelligan and Valladares both knew of Stafford and Mickey by appearance but did not know either man personally. ***See id.*** at 98-99, 113-14. Nelligan and Valladares had previously seen Stafford and Mickey jogging and kick boxing together, and, thus, believed that Stafford and Mickey were training together. ***See id.*** Neither Nelligan nor Valladares saw any prior altercations between Stafford and Mickey. ***See id.*** Different police officers and detectives continued to view the shooting footage for the rest of the morning. Ultimately, Nelligan provided police with copies of the relevant surveillance footage.

At some point, Detectives Jonathan Shave, Gary Lynch, and Christopher Bucci, of the Chester County Detectives, responded to the scene. Upon arrival, the Detectives spoke with the responding officers and began marking

and photographing evidence. The Detectives discovered much of the same evidence as Officer Jones. They also located the following evidence: a cell phone between Stafford's legs, multiple blood stains near Stafford's body, bullet strike marks on the pavement, a brown bag containing a partially consumed bottle of tequila, a black canvas bag containing marijuana and drug paraphernalia, an additional FCC, a live bullet in Stafford's hand, a sear and sear spring on Stafford's body,[9] and Stafford's wallet in his pants pocket.

At 5:33 a.m., the Chester County Deputy Coroner, Brittany Gavin, responded to the Park Springs Apartments. Gavin took custody of Stafford's

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[9] Detective Mark Wilusz of the Chester County Detectives, an expert in firearms examination, testified that the sear and sear spring recovered are parts of a firearm that "holds the firing pin rearward, . . . in the cocked or ready position." N.T Jury Trial (Day 2), 6/17/25, at 86. Detective Wilusz continued that "the trigger is connected to the trigger bar, which would then push on the cam, which would then pull down the sear, which would then allow the firing pin to snap forward under spring tension and fire the firearm." ***Id.*** Detective Wilusz testified that these specific parts were consistent with "Highpoint-type pistols." ***See id.*** at 85-86. Detective Wilusz explained that Highpoint is a manufacturer of pistols and makes a 40-caliber pistol capable of firing Smith and Wesson ammunition, which matches the ammunition recovered from the scene. ***See id.*** at 87-88. Further, Detective Wilusz testified that if a Highpoint pistol did not have a sear or sear spring, it would be incapable of firing. ***See id.*** Detective Wilusz opined that these parts can come out of a Highpoint during discharge "due to the placement of the sear in the firearm itself, either the slide retainer pin would not have to be installed, or some sort of catastrophic breakage to either that pin or slide retainer that would then cause the slide to lift up off the frame." ***Id.*** at 88-89. Thus, the Detectives concluded that Mickey's firearm broke while he was shooting Stafford and hypothesized that the sear and sear spring came out of the gun during discharge, or when Mickey bludgeoned Stafford with the gun. Notably, the firearm was never recovered.

body at 8:07 a.m. and transported Stafford's body for an autopsy. At this point, the Detectives located another bullet, matching the same firearm, underneath Stafford's body.[10]

Later that same morning, the Detectives interviewed Green at Unit 902, but Mickey was not present. Green told the Detectives that she and Mickey had two children together. Mickey lived in Philadelphia but would often travel to Green's home and help her take care of the children. Green owned a white Ford Taurus, but she routinely let Mickey drive it to his job at the Giant Supermarket in Royersford.

Police, including the Chester County Detectives and United States Marshals, attempted to locate Mickey for several months, to no avail. ***See id.*** at 34-36 (Detective Shave describing multi-agency manhunt). Mickey was not seen again until August 18, 2023, when he turned himself in at the 18th Police District in Philadelphia. ***See id.*** at 33-34, 36.

Gary Collins, M.D., a forensic pathologist and the Chief Medical Examiner of the Delaware Division of Forensic Science, conducted Stafford's autopsy. Doctor Collins noted six distinct gunshot wounds to Stafford's body including "to his chest, [] left thigh, [and] right hand and [] forearm." N.T. Jury Trial (Day 2), 6/17/25, at 15.

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[10] At some point, police ordered a tow of the white Ford Taurus and it was taken back to the police station. Officer Jones followed the tow truck to the police station.

Doctor Collins listed the gunshot wounds in order of severity and explained that the first gunshot wound, to Stafford's chest, was a perforating wound that entered Stafford's body just below his collar bone on the left side of his chest. ***See id.*** at 18-20. The same bullet exited the middle-left side of Stafford's back. Doctor Collins explained that the bullet traveled downwards from Stafford's upper left side chest to the middle-left exit wound on his back, which indicated that Stafford was facing the firearm and that the shooter either had an elevated position or Stafford was bent forward at the time he was shot. ***See id.*** at 20-25. Doctor Collins' examination revealed that the perforating bullet to Stafford's chest punctured Stafford's heart and his left side lung. ***See id.*** at 25. Doctor Collins concluded that this bullet, alone, was fatal. ***See id.*** at 25-26 (Doctor Collins explaining the chest gunshot would result in Stafford losing ability to breathe and pump blood).

Next, Dr. Collins documented the second gunshot wound to the right side of Stafford's chest as another entrance wound. ***See id.*** at 26-27. Doctor Collins recovered that bullet from Stafford's chest cavity. ***See id.*** at 27-29. Doctor Collins concluded that this bullet traveled through Stafford's right-side lung and his liver, which is located below the lung. ***See id.*** at 29. Based on the second bullet's trajectory through Stafford's body, Dr. Collins concluded that the firearm would have been "fired from the front and to the right side of [] Stafford." ***Id.*** at 29-30. Doctor Collins concluded that the second gunshot

was also likely fatal due to loss of breathing and that the damage to the liver would have resulted in significant blood loss. ***See id.***

Doctor Collins then described the third gunshot wound as a perforating gunshot wound to Stafford's right forearm. ***See id.*** at 30-31. Doctor Collins explained that the third bullet entered the back of Stafford's forearm and exited the front. ***See id.*** Doctor Collins concluded the trajectory of this bullet was consistent either with Stafford's arm being in front of his body while he was shot from the front, or with the arm being down and Stafford being shot from behind. ***See id.*** at 31, 33. Doctor Collins further explained that it "is entirely possible" this third gunshot wound is related to either of the first gunshot wounds. ***See id.*** at 33-35 (Doctor Collins explaining possible body positions and bullet trajectories that may result in third gunshot would being same bullet from either first or second gunshot wound).

Next, Dr. Collins explained the fourth gunshot wound was a perforating wound to Stafford's right hand. ***See id.*** at 35-36. Doctor Collins stated that it is nearly impossible to tell where the bullet would have traveled after exiting Stafford's hand, and that the damage to the hand was not fatal. ***See id.*** at 36-37.

The fifth gunshot wound was a perforating wound to Stafford's left thigh, which entered the leg through the outer thigh and exited the anterior upper left thigh. ***See id.*** at 38. Doctor Collins explained that this bullet, unlike gunshots one and two, had an upwards trajectory. ***See id.*** at 39. Thus, Dr.

Collins concluded that if Stafford was standing at the time he sustained this wound, then the firearm would have to have been positioned below Stafford on his left side. ***See id.*** Alternatively, Dr. Collins explained, Stafford could have been on the ground with the firearm located above him shooting downwards, which would result in an "upward" trajectory through the body. ***See id.*** Doctor Collins concluded that this wound was not fatal. ***See id.***

The sixth and final gunshot wound was a perforating wound to Stafford's right ankle. ***See id.*** at 40. Doctor Collins determined that this bullet, much like the fifth gunshot wound, had an upwards trajectory. ***See id.*** at 42. Thus, just like with the fifth gunshot wound, the firearm was either beneath Stafford while he was standing, or was shot at an angle from above whilst Stafford was on the ground. ***See id.*** (Doctor Collins explaining various hypothetical trajectories comparable to fifth gunshot trajectories).

Next, Dr. Collins noted lacerations, bruising, and scrapes to the back of Stafford's head and abdomen. ***See id.*** In particular, Dr. Collins concluded that the lacerations and bruises to Stafford's head were consistent with blunt impact caused by a hard object striking the head. ***See id.*** at 43-45. He further determined that the bruising to Stafford's abdomen was also caused by blunt trauma. ***See id.*** at 45.

As part of the autopsy, Dr. Collins took blood samples for toxicology tests, which were conducted by toxicologist Kristopher Graf. The toxicology tests revealed that Stafford was under the influence of alcohol and marijuana

at the time of his death. Ultimately, Dr. Collins determined that Stafford died from the gunshot wounds to his chest.

On January 27, 2025, Mickey proceeded to a multi-day jury trial that ultimately resulted in his conviction of carrying a firearm without a license. However, after several days of deliberation, the jury was unable to reach a unanimous decision as to first-degree murder. As a result, the trial court declared a mistrial, and subsequently scheduled Mickey's retrial. ***See*** N.T. First Trial, 2/3/25, at 39-42.

On February 28, 2025, Mickey filed a pre-trial motion wherein he sought to have M.M., his daughter, declared unavailable pursuant to the Tender Years Act[11] and admit her prior out-of-court statements into evidence. ***See*** Pre-Trial Motion, 2/28/25, at 1-3 (unpaginated). In particular, Mickey asserted that M.M.'s statements to Detective Christine Bleiler[12] at the CAC should be admitted due to M.M.'s unavailability. ***See id.*** at 1. Mickey posited that M.M. was unavailable pursuant to 42 Pa.C.S.A. § 5985.1(a)(1)(ii) because testifying at trial would cause M.M. to suffer serious emotional distress. ***See*** Pre-Trial Motion, 2/28/25, at 2-3.

On March 6, 2025, the trial court conducted a hearing on Mickey's pre-trial motion at which Green testified. ***See*** N.T. Pre-Trial Hearing, 3/6/25, at

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[11] 42 Pa.C.S.A. § 5985.1.

[12] On April 17, 2023, Detective Bleiler interviewed M.M. at the Chester County Child Advocacy Center (CAC).

27-41. At the close of the hearing, the trial court deferred its decision pending briefs. ***See id.*** at 41-43. On June 9, 2025, the trial court found that M.M. was not unavailable pursuant as set forth in section 5985.1(a)(1)(ii) of the Tender Years Act and denied Mickey's pre-trial motion. ***See*** Order, 6/9/25, at 1. Ultimately, Mickey did not call M.M. to testify at his second trial.

On June 16, 2025, Mickey proceeded to a second jury trial, after which he was found guilty of first-degree murder. The trial court deferred sentencing. On September 2, 2025, the trial court sentenced Mickey to the mandatory term of life imprisonment for his conviction of first-degree murder, a concurrent sentence of 6 to 12 years' imprisonment for his conviction of person not to possess a firearm, and no further penalty for his conviction of carrying a firearm without a license.

On September 10, 2025, Mickey's counsel filed a timely post-sentence motion arguing, *inter alia*, that his convictions were against the weight of the evidence. On September 23, 2025, the trial court denied Mickey's post-sentence motion. Mickey filed a timely *pro se* notice of appeal[13] and a

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[13] We observe that Mickey filed his *pro se* notice of appeal on September 17, 2025, while his counseled post-sentence motion was still pending before the trial court. First, despite our prohibition against hybrid representation, a *pro se* notice of appeal is an exception and this Court will accept a *pro se* notice of appeal even where the appellant is represented by counsel. ***See Commonwealth v. Williams***, 151 A.3d 621, 623-24 (Pa. Super. 2016) (explaining *pro se* notice of appeal protects constitutional right to appeal pursuant to Pennsylvania Constitution and, thus, is distinguished from other forms of hybrid representation) (citing ***Commonwealth v. Ellis***, 626 A.2d

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counseled court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.[14] Mickey now raises the following claims for our review:

1137 (Pa. 1993)). Second, Mickey's *pro se* and premature notice of appeal does not preclude our review pursuant to Pa.R.A.P. 905(a)(5), which provides that "[a] notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof." Pa.R.A.P. 905(a)(5). Therefore, we accept Mickey's *pro se* and premature notice of appeal and treat it as though it was timely filed on September 23, 2025. ***See Williams***, ***supra***; Pa.R.A.P. 905(a)(5). Accordingly, Mickey's notice of appeal is timely and we address the merits of his appeal.

[14] The trial court indicated, in its opinion, that Mickey's counsel filed the Rule 1925(b) concise statement one day late. ***See*** Trial Court Opinion, 2/3/26, at 3-5. Thus, pursuant to Pa.R.A.P. 1925(b)(3), Mickey's concise statement is untimely and all claims within are waived. ***See id.***; ***see also Commonwealth v. Lord***, 719 A.2d 306 (Pa. 1998). However, we note that the trial court has amply addressed all of Mickey's claims in its Rule 1925(a) opinion. ***See*** Trial Court Opinion, 2/3/26, at 1-52.

In certain situations, this Court has found that "where the trial court addresses the issues raised in an untimely Rule 1925(b) statement, we need not remand but may address the issues on their merits." ***Commonwealth v. Brown***, 145 A.3d 184, 186 (Pa. Super. 2016); ***see also Commonwealth v. Burton***, 973 A.2d 428, 433 (Pa. Super. 2009) (en banc) ("[I]f there is an untimely filing, this Court may decide the appeal on the merits if the trial court had adequate opportunity to prepare an opinion addressing the issues raised on appeal."). Notably, the exceptions in ***Brown*** and ***Burton*** apply specifically to counseled Rule 1925(b) concise statements because Rule 1925(c)(3) allows this Court to find counsel per se ineffective for filing untimely Rule 1925(b) statements. ***See Commonwealth v. Boniella***, 158 A.3d 162, 164 (Pa. Super. 2017). Consequently, in the interests of judicial economy, this Court may consider untimely counseled Rule 1925(b) concise statements. ***See id.***

Instantly, as described above, counsel filed Mickey's Rule 1925(b) concise statement one day late. ***See*** Trial Court Opinion, 2/3/26, at 3-5. Thus, we **could** remand pursuant to Rule 1925(c)(3) and for the trial court to prepare
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> 1. Did the trial court err in finding child witness M.M. not "unavailable" for purposes of 42 Pa.C.S.[A.] §[ ]5985.1(a)(1)(ii)?
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> 2. Did the trial court err in omitting the language "in heat of passion following serious provocation" from P[ennsylvania] jury instruction 15.2503(a)(1), voluntary manslaughter-murde[r] in issue?
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> 3. Did the trial court err in omitting the language "under a sudden and intense passion resulting from serious provocation by the victim" from Pennsylvania jury instruction 15.2503[(a)(2)], voluntary manslaughter-murder in issue?
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> 4. Did the trial court err in refusing to instruct the jury with regard to the heat of passion Pennsylvania Jury Instruction 15.2503(a)(3)-(4), voluntary manslaughter-murder in issue?
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> 5. Was the jury's verdict on first-degree murder against the weight of the evidence presented?

Brief for Appellant, at 4 (cleaned up).

In his first argument, Mickey contends that the trial court erred when it denied his motion to find M.M. unavailable and admit M.M.'s pre-recorded statements and, instead, found that M.M. was available to testify. ***See id.*** at 20-28. Mickey argues that Green testified that M.M. would suffer serious emotional distress if called to testify. ***See id.*** at 21-24. Mickey asserts that, based upon Green's testimony, the trial court's finding M.M. was available under section 5985.1 was manifestly unreasonable. ***See id.*** at 25-26. Mickey

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an opinion. ***See*** Pa.R.A.P. 1925(c)(3). However, the trial court has already prepared an opinion, in which it thoroughly addressed the claims raised in Mickey's Rule 1925(b) statement and, in light of the interests of judicial economy, we see no need to remand pursuant to Rule 1925(c)(3). Accordingly, we decline to find Mickey's claims waived on this basis.

posits that the trial court's reliance on Green's word choice, which included "like," "you know," and "maybe," constituted error where Green's testimony was not equivocating but rather a "common speech habit." ***See id.*** Thus, Mickey alleges that Green did not waver in her testimony and the trial court's finding to the contrary was error. ***See id.*** Consequently, Mickey asserts the trial court misapplied the law under section 5985.1 and the rules of evidence. ***See id.*** at 27-28. We disagree.

> The standard of review employed when faced with a challenge to the trial court's decision as to whether or not to admit evidence is well[-]settled. Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and a reviewing court will not reverse the trial court's decision absent a clear abuse of discretion. Abuse of discretion is not merely an error of judgment, but rather whether the judgment is manifestly unreasonable or where the law is not applied or whether the record shows that the action is a result or partiality, prejudice, bias[,] or ill will.

Commonwealth v. Young, 989 A.2d 920, 924 (Pa. Super. 2010) (citations omitted).

"Generally, an out-of-court statement is inadmissible at trial unless it falls into one of the exceptions to the hearsay rule." ***Commonwealth v. Hunzer***, 868 A.2d 498, 510 (Pa. Super. 2005); ***see also*** Pa.R.E. 801(c) (defining "hearsay" as statement that "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement"); Pa.R.E. 802 ("Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.").

The Tender Years Act provides as follows:

> (1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 16 years of age or younger, describing any of the offenses enumerated[], not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:
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> (i) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content[,] and circumstances of the statement provide sufficient indicia of reliability; and
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> (ii) the child either:
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> (A) testifies at the proceeding; or
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> (B) is unavailable as a witness.

42 Pa.C.S.A. § 5985.1(a).

To make a finding that the child is unavailable as a witness, "the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress that would substantially impair the child's ability to reasonably communicate." ***Id.*** at § 5985.1(a.1). Pursuant to the statute, in making this finding, the trial court may "[o]bserve and question the child, either inside or outside the courtroom." ***Id.*** at (a.1)(1). The court may also rely on testimony "of a parent or custodian or any other person, such as a person who has dealt with the child in a medical or therapeutic setting." ***Id.*** at (a.1)(2). "These possible avenues of inquiry are merely advisory, not mandatory." ***Fidler v. Cunningham-Small***, 871 A.2d 231, 237 (Pa. Super. 2005).

> The admissibility of this type of hearsay is determined by assessing the particularized guarantees of trustworthiness surrounding the circumstances under which the statements were uttered to the person who is testifying. To determine whether a child's out-of-court statements are admissible under the [act], a trial court must assess the relevancy of the statements and their reliability in accordance with the test enunciated in [***Idaho v. Wright***, 497 U.S. 805 (1990)]. Although the test is not exclusive, the most obvious factors to be considered include the spontaneity of the statements, consistency in repetition, the mental state of the declarant, use of terms unexpected in children of that age[,] and the lack of a motive to fabricate.

Commonwealth v. Walter, 93 A.3d 442, 451 (Pa. 2014) (formatting altered, quotation marks and citations omitted).

The trial court addressed this claim in its opinion as follows:

> The statements of M.M. . . . were sought to show [Mickey]'s demeanor on the night murder because M.M. observed [Mickey] when he returned to [Green]'s house after the shooting.
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> * * *
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> [Green] used a lot of equivocal words such as "like[,"]"you know[,"] and "maybe" in her testimony. She contradicted herself by testifying on direct that [M.M.] "shuts down" and doesn't want to talk about the surrounding circumstances of the shooting but later stating that [M.M.] is willing to talk about details of the evening in question that she remembers. [Green] testified that she ha[d not] spoken to M.M. about the court proceedings, either about [Mickey]'s first trial or his then-impending second trial. [Green] said that M.M. was unaware of any of the court proceedings.
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> [Green] made conclusory, boilerplate comments that M.M. would not be able to "communicate effectively" when it comes to anyone asking [M.M.] questions. [Green]'s testimony was contradictory to her prior assertion that M.M. can effectively communicate with people.
>
> [Green] replied "maybe[,"] when asked if M.M. needs to have her mother near her in order to feel comfortable enough to talk to

strangers. When asked if M.M. would be able to communicate to the court without [Green] being present, [Green] said "No." [Green's] reason for this conclusion was, "I just know her."

[Green] testified that she ha[d] never discussed with M.M. whether she would be willing or able to answer any questions in court. [Green] admitted that M.M. was able to communicate with law enforcement in the days following the shooting. [Green] reiterated that M.M. is able and does[,] in fact[,] talk to [Green] about her recollections of the night in question.

[Green] testified that M.M. has an I.E.P. for her academics, sees a school psychologist[,] and has an emotional support therapist at school. [Green] testified that she recommended that M.M. attend therapy to help resolve her alleged trouble communicating her feelings to [Green]. [Green] attributed M.M.'s need for therapy to the changes in M.M.'s behavior in the aftermath of her father's crimes. M.M. was approximately [10] years old when the shooting occurred; at the time of the [March 6, 2025] hearing, M.M. was approximately [12] years old.

[Green] testified that M.M., understandably, misses her dad, [Mickey], and experiences emotional distress as a result. However, the standard we are constrained to apply here is not mere sadness or emotional distress, but "**severe** emotional distress that would substantially impair the child's ability to reasonably communicate." 42 Pa.[C.S.A.] § 5985.1(a)(a.1).

[Green]'s equivocal language and internally inconsistent statements, along with her boilerplate, uncorroborated, and conclusory assumptions concerning M.M.'s ability to communicate at trial, in light of the fact that she had never broached the subject with M.M. prior to the hearing or even talked to M.M. about the fact that there were court proceedings involving [Mickey], did not imbue the court with confidence in [Green's] testimony regarding M.M.'s mental state vis-à-vis testifying on behalf of [Mickey] in court. We were unable to place trust in or embrace [Green]'s opinions as to M.M.'s communicative skills as a witness for [Mickey].

* * *

> Accordingly, we determined that M.M. was not unavailable and, if the defense wished to have her testify in court, they would be required to call [M.M.] as a witness.

Trial Court Opinion, 2/3/26, at 6-11 (emphasis added; some citations omitted).

Upon review, we agree with the trial court's well-reasoned and sound determination that M.M. was not unavailable under the language of the Tender Years Act. ***See id.*** Accordingly, we discern no abuse of discretion and we afford Mickey no relief.

Mickey addresses his second, third, and fourth claims together and, for ease of disposition, we do as well. These claims all pertain to the trial court's jury instructions regarding homicide and, specifically, the trial court's alleged failure to issue a heat-of-passion instruction. ***See*** Brief for Appellant, at 29-40. Upon review, we conclude that these claims are waived.

Mickey implies that he raised his objections during an off-record charging conference;[15] however, Mickey did not raise any of these objections on the record at trial and, consequently, they are waived. ***See Commonwealth v. Spotz***, 84 A.3d 294, 317 n.18 (Pa. 2014) (implications that objection may have occurred off record during *in camera* discussions will

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[15] Mickey states that he preserved these claims prior to closing arguments. ***See*** Brief for Appellant, at 16-18 (statement of places raising or preserving issues). Specifically, he quotes a brief on-the-record exchange, which we also quote below, during which the trial court refers to an off-the-record exchange and allows defense counsel to place his argument on the record. ***See id.***

not preserve jury instruction objection where counsel objection does not appear of record); ***see also*** Pa.R.A.P. 302(b) ("A general exception to the charge to the jury **will not preserve an issue for appeal**. Specific exception **shall** be taken to the language or omission complained of.") (emphasis added); Pa.R.Crim.P. 647(C) ("No portions of the charge nor omissions from the charge may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate.").

Notably, prior to closing arguments, the trial court conducted a charging conference, at which it allowed the parties to argue regarding the heat of passion charge. ***See*** N.T. Jury Trial (Day 4), 6/20/25, at 2-5 (trial court conducting charging conference prior to closing arguments). The following exchange occurred:

> [Trial Court]: Any of you believe I should not give any of the proposed instructions?
>
> [ADA]: No.
>
> [Trial Court]: Are you satisfied with the list?
>
> [Defense Counsel]: Yes.
>
> [ADA]: Yes.
>
> [Trial Court]: Defense, I think you already made your argument, but I will allow you to restate it here with regard to my instruction on voluntary manslaughter with murder in issue, which is 15.2503.A. We have had much discussion about whether to include both options, the self-defense, be it reasonable or not, coupled with the other option, which is the provocation case. You can make your record now with why you think the provocation piece should also stay in.

> [Defense Counsel]: I think the record supports the fact there was arguably serious provocation that would allow such an instruction to be read to the jury and I think it should stay in, that's all.
>
> * * *
>
> [Trial Court]: . . . I do not believe that the evidence is of record to support giving both parts of that instruction. So, counsel, your request is noted for the record . . . but the provocation piece is removed from that standard instruction. There were some alterations made by agreement to th[at] instruction relating to prior testimony. Both sides have had an opportunity to see the instruction the [c]ourt will give both for those areas of the law; are they acceptable?
>
> [Defense Counsel]: Yes.
>
> * * *
>
> [Trial Court]: Anything else with regard to the instructions?
>
> * * *
>
> [Defense Counsel]: **No.**

Id. (emphasis added). Following closing arguments, the trial court issued the jury instructions without any heat of passion or provocation language, at which point the following exchange occurred:

> [Trial Court]: Counsel, is the charge sufficient or do you need to see me at sidebar?
>
> [Commonwealth]: It's sufficient your Honor.
>
> [Defense Counsel]: **It's sufficient**.

Id. at 82 (emphasis added).

Based upon the foregoing, there was "much discussion" **off the record** about Mickey's requested jury instructions. ***See id.*** at 2-3; ***see also Spotz***,

supra. The trial court afforded Mickey's counsel the opportunity to place his objection on the record, but his on-the-record objections were ultimately vague and unspecific. ***See*** N.T. Jury Trial (Day 4), 6/20/25, at 3-4. Furthermore, at the close of jury instructions, Mickey did not make a timely objection to the trial court's omission of the instruction as required by our case law and rules. ***See*** Pa.R.A.P. 302(b); Pa.R.Crim.P. 647(C); ***see also Commonwealth v. Parker***, 104 A.3d 17, 29-30 (Pa. Super. 2014) (defendant failed to preserve jury instruction issue where defense counsel objected at charging conference but did not renew objection after trial court issued instruction to jury); ***see also*** Pa.R.A.P. 302(b). Further, we emphasize that Mickey acquiesced to the trial court's jury instructions **after** the trial court issued the jury instruction. ***See*** N.T. Jury Trial (Day 4), 6/20/25, at 82 ("[Trial Court]: Counsel is the charge sufficient or do you need to see me at sidebar? . . . [Defense Counsel]: **It's sufficient**.") (emphasis added). Consequently, Mickey's jury instruction claims are waived.[16] ***See Parker***, ***supra***.

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[16] Additionally, we observe that, based upon the trial record and the arguments made before the trial court, it is unclear what specific objection Mickey had to the trial court's jury instructions where the trial court **did** provide at least some instructions regarding provocation. ***See*** N.T. Jury Trial (Day 4), 6/20/25, at 73-74, 78-79. Thus, this lack of specificity also supports our conclusion that Mickey's trial counsel waived the jury instruction claims he now raises on appeal by failing to state them with specificity and timely object in accordance with our case law and rules. ***See Parker***, ***supra***; ***see also*** Pa.R.A.P. 302(b); Pa.R.Crim.P. 647(C). In reaching our conclusion, we are cognizant that Mickey was appointed new counsel for appeal and we recognize the difficulty in divining issues from a cold record.

In his fifth issue, Mickey argues that the jury's verdict finding him guilty of first-degree murder was against the weight of the evidence. ***See*** Brief for Appellant, at 41-47. Mickey asserts that the Commonwealth's evidence demonstrated a lack of malice and, therefore, the jury erred in finding he had the requisite mens rea for first-degree murder. ***See id.*** at 43-44. Specifically, Mickey argues that the evidence at trial showed Mickey and Stafford were friendly with each other, worked out together, were neighbors, had no history of problems or fights, and had spent the evening prior to Stafford's death "getting along." ***See id.*** at 44-45. Mickey alleges that additional evidence from that evening showed Stafford was "acting erratically," intoxicated, getting sick in the street, and stealing from the Citgo convenience store, and that Stafford had "high levels" of THC and alcohol in his system. ***See id.*** at 45. Mickey posits that Sharhonda, Mickey and Stafford's neighbor, testified she heard the two men talking and that one of them said "yo, yo, yo, stop playing, B" and "B" was Stafford's nickname. ***See id.*** Mickey contends Sharhonda's testimony indicates that Mickey attempted to de-escalate the situation. ***See id.*** Mickey further contends that, immediately after shooting Stafford, he was panicking and crying, as testified by Green, and Mickey alleges that such a reaction negates a finding of malice pursuant to ***Commonwealth v. Stewart***, 336 A.2d 282 (Pa. 1975). ***See*** Brief for Appellant, at 45-46. In addition, Mickey argues that his reasonable belief that Stafford was armed further negates the mens rea required for first-degree

murder. ***See id.*** at 46. In support of this assertion, Mickey claims that he was aware Stafford owned several weapons and that Stafford had asked if he should bring his gun with them. ***See id.*** Mickey argues that all of the foregoing, coupled with Stafford's instigation of punching Mickey in the face, throwing Mickey's car keys, and brandishing a dark object that Mickey believed to be firearm negated the mens rea of first-degree murder. ***See id.*** at 46-47. We disagree.

Our standard of review is well-settled. "Appellate review of a weight claim is a review of the [trial court's] exercise of discretion, **not of the underlying question of whether the verdict is against the weight of the evidence**." ***Commonwealth v. Widmer***, 744 A.2d 745, 753 (Pa. 2000) (emphasis added, citation omitted). Where the trial judge has had the opportunity to hear and see the evidence presented, "an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination[.]" ***Id.*** (citing ***Commonwealth v. Farquharson***, 354 A.2d 545 (Pa. 1976)). A challenge to the weight of the evidence is one of the least assailable reasons for granting or denying a new trial. ***See Widmer***, ***supra***.

Nevertheless, a trial court's exercise of discretion is not unfettered. ***See id.*** The "propriety of the exercise of discretion in such an instance may be assessed by the appellate process when it is apparent that there was an abuse of that discretion." ***Id.*** Moreover, the trier of fact, "while passing upon the

credibility of witnesses and the weight of the evidence produced, is free to believe all, part[,] or none of the evidence." ***Commonwealth v. Britton***, 134 A.3d 83, 86 (Pa. Super. 2016).

The trial court addressed Mickey's weight claim as follows:

> [Mickey] argues that his testimony should be given credit over all of the Commonwealth's witnesses and evidence. However, [Mickey]'s testimony, the self-serving [nature] of which cannot be overlooked, is pockmarked with inconsistencies and his actions here speak louder than his words. There is a video of [Mickey] pointing his gun at [] Stafford and firing into [] Stafford's chest from the distance of the width of a car. The video then shows [Mickey] walk behind the car toward [] Stafford and [fire] two more shots into [] Stafford's body. [Mickey] fires the gun until it breaks apart. Still not satisfied, [Mickey] then pistol whips the dying man in the head while rifling through his pockets to find his car keys. [Mickey] did not call for help from any of his neighbors or ask anyone to dial 9-1-1. He started off at a run to the apartment he shared with [] Green, supposedly to get help for [] Stafford, but slowed down to a walk because he was out of shape and "tired." Inside the residence, [Mickey] cried and told [] Green that he had been robbed and carjacked. He did not mention his assailant having a gun. He did not ask [] Green to call 9-1-1 or to take [] Stafford to the hospital. [Mickey] phoned his brother, texted that he loved him and was going to be "booked," slang for jailed, and then took off in the direction of the woods near the house. [Mickey] didn't tell his brother he had just been carjacked at gunpoint. [Mickey] remained a fugitive from police, hiding in an abandoned house in Philadelphia, for approximately four [] months. He eventually turned himself into the 18th precinct in Philadelphia. When he was being taken back to Chester County to face his charges, [Mickey], who laughed and joked with the transporting officers about having shot a black man when he supports Black Lives Matters (his jokes and laughter, not [the officers')], never mentioned to them that his assailant had a gun. [Mickey] did not tell the officers [] Stafford had punched him in the face. [Mickey] did a lot of legal research on self-defense when he was on the lam and while he was in custody and his narrative developed in direct [relation] to the principles he learned both while running from the police and after he was taken into custody. Far from shocking the conscience of the court, we determined that

> the evidence from which the jury could conclude that [Mickey] was guilty of [f]irst-[d]egree [m]urder was abundant and far outweighed [Mickey]'s self-serving and unsupported narrative of self-defense.
>
> * * *
>
> [Mickey]'s actions of shooting [] Stafford multiple times while he was already on the ground with a gunshot wound to his chest and then pistol-whipping him while he lay dying in the street is more than ample evidence from which a jury could find [Mickey] acted with both the specific intent to kill and the malice requisite for [f]irst-[d]egree [m]urder. Further, actions that attempt to conceal a crime or destroy evidence are also [proof of] malice for purposes [f]irst-[d]egree [m]urder. [***See***] ***Commonwealth v. Gonzalez***, 858 A.2d 1219 (Pa. Super. 2004)[. Mickey]'s flight following the crime and concealment of the murder weapon, which was never found because [Mickey disposed of it during his flight], support the conclusion that [Mickey] acted with malice when he killed [] Stafford.
>
> * * *
>
> The evidence supporting the Commonwealth's case was overwhelming. The jury was well within its province to conclude that the Commonwealth's evidence, which was internally corroborated among the various witnesses and physical evidence as well as by some of [Mickey]'s own testimony, was worthy of greater weight and credibility than [Mickey]'s uncorroborated, self-serving, and internally inconsistent narrative.
>
> Thus, . . . [t]he jury's verdict was rooted in the abundant evidence presented showing [Mickey] shot [] Stafford with the specific intent to kill him and acted with the requisite malice to render him guilty of [f]irst-[d]egree [m]urder. The evidence of record supporting the conclusion that [Mickey] unlawfully killed [] Stafford with premediated intent and malice far outweighs in quantity and quality the evidence of record presented in support of self-defense. . . . The jury's determination is supported by . . . the record.

Trial Court Opinion, 2/3/26, at 47-51 (some citations omitted).

Upon review of the record, we conclude that the trial court did not abuse its discretion in denying Mickey's weight claim and, accordingly, he is entitled to no relief. ***See Widmer***, ***supra***.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/18/2026