

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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|------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
|                              | : | PENNSYLVANIA             |
|                              | : |                          |
| v.                           | : |                          |
|                              | : |                          |
|                              | : |                          |
| MIGUEL ANGEL VARGAS          | : |                          |
|                              | : |                          |
| Appellant                    | : | No. 514 EDA 2026         |

Appeal from the Judgment of Sentence Entered September 16, 2025  
In the Court of Common Pleas of Montgomery County Criminal Division  
at No(s): CP-46-CR-0007117-2024

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

MEMORANDUM BY MURRAY, J.:

**FILED AUGUST 28, 2026**

Miguel Angel Vargas (Appellant) appeals from the judgment of sentence imposed following his non-jury convictions of two counts of loitering and prowling at nighttime (Loitering).<sup>1</sup> Appellant raises a sole challenge to the sufficiency of the evidence supporting his convictions, asserting the Commonwealth failed to prove the requisite *mens rea* for Loitering (*i.e.*, malice) beyond a reasonable doubt. After careful review, we affirm.

In its Pa.R.A.P. 1925(a) opinion, the trial court summarized the evidence adduced at Appellant's bench trial:<sup>2</sup>

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. § 5506.

<sup>2</sup> The judge who authored the Rule 1925(a) opinion, the Honorable Wendy G. Rothstein, also presided as fact-finder at trial.

On September 24, 20[24], at approximately 4:46 a.m., a security guard at the Trianon Apartments in Bala Cynwyd, P[ennsylvania (the Trianon)], observed an individual, later identified as [Appellant], riding [an electric] motorbike around the rear area of the building. [Appellant], who was not a resident of the [Trianon], attempted to open the pedestrian door to the [Trianon's] lobby adjoining the underground parking garage, and subsequently looked through a window in the door, in addition to a separate window, to observe the lobby. [Appellant] later drove to the gated door to the [Trianon's] pool area and looked over the top of the gate.

Later that morning, at approximately 5[:00] a.m., security cameras captured videos of [Appellant] riding a motorbike through the parking lot of the [nearby] Sutton Terrace Condominiums [(Sutton Terrace)] ....<sup>3</sup> [Appellant], who was not a resident at the [Sutton Terrace] complex, [] looked into cars located in the parking lot. [Appellant] subsequently drove to other portions of the [Sutton Terrace] property, including a building entrance and a garage entrance.

[Shortly after 5:00 a.m., Lower Merion Township Police Officer Stephen Patton (Officer Patton)] responded to a report of a suspicious person looking into vehicles at [] Sutton Terrace, [] and encountered [Appellant] in a parking lot located across the street from the [Sutton Terrace] complex. [According to Officer Patton, Appellant] matched the description of the individual seen [at Sutton Terrace], and no one else was present in the area. Later analysis of the [V]ideos confirmed [that Appellant] was the

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<sup>3</sup> Pertinently, at trial, the Commonwealth introduced a series of surveillance videos (the Videos), captured at and around the Trianon and Sutton Terrace, which were admitted into evidence. N.T., 5/6/25, Exhibits C1-C8. For ease of reference, we hereinafter collectively refer to the Trianon and Sutton Terrace as the "Properties." As we explain *infra*, at the time of Appellant's activities at the privately owned Properties, both (1) were not open for entry to the general public, *id.* at 14, 18; and (2) had posted "no trespassing" signs, *id.* at 8, 11, 16.

individual captured in the [V]ideos at the Trianon [] and [] Sutton Terrace....<sup>4</sup>

Trial Court Opinion, 3/17/26, at 1-2 (footnotes added; some punctuation and paragraphing modified).

Via a criminal complaint filed on October 21, 2024, the Commonwealth charged Appellant with two counts of Loitering. After Appellant waived his right to a jury trial, the matter proceeded to a bench trial on May 6, 2025.

At trial, in addition to the Videos, the Commonwealth presented testimony from Officer Patton, the general manager of Sutton Terrace, and an employee of the Trianon. After the conclusion of the Commonwealth's case-in-chief, Appellant moved for judgment of acquittal on all counts, which the trial court denied. N.T., 5/6/25, at 26.

Appellant then testified on his own behalf, as the sole defense witness. Appellant denied having any intent to commit a crime at the Properties, asserting his purpose of being there was "to test out my bike[.]" ***Id.*** at 29, 31; ***see also id.*** at 29 (Appellant testifying, "I made my way in to [the Properties to] just look around because I ... had nothing to do at nighttime, so I guess I was up all night."). As evidence of his lack of criminal intent, Appellant maintained that he had no implements on his person that could be

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<sup>4</sup> Appellant does not dispute that he is the individual depicted in the Videos. ***See*** N.T., 5/6/25, at 29 (Appellant's trial testimony). Further, in his appellate brief's statement of the case, Appellant's factual recitation closely resembles the foregoing recitation in the trial court's opinion. Appellant's Brief at 5-6.

used in connection with criminal activity, such as a screwdriver.<sup>5</sup> **Id.** at 31. Regarding his activities as depicted in the Videos, Appellant testified, “that wasn’t me trying to pop into cars. It was just me wandering around on my bike.” **Id.**; **see also id.** at 29 (Appellant pointing out that, in the Videos, “you don’t see me touching any cars while I’m riding around.”).

During questioning by the trial court, Appellant conceded that the Videos showed him unsuccessfully attempting to open the rear door to the lobby of the Trianon. **Id.** at 32. In response to the court’s question regarding why he tried to open this door, Appellant stated, “I can’t even recall. I [] was just wandering.” **Id.** However, Appellant also testified that he tried to open this door because he intended to ride his bicycle “through [the lobby] and just ride back out the other way[.]” **Id.** at 29, 32.

The trial court then considered the parties’ closing arguments. Appellant asserted that the Commonwealth had failed to prove the requisite *mens rea* for his convictions of Loitering, as his conduct was not malicious. **Id.** at 34. Appellant also emphasized Officer Patton’s testimony that he did not observe Appellant in possession of any criminal implements. **Id.** at 35. The Commonwealth countered that the fact-finder “can certainly reasonably infer

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<sup>5</sup> Officer Patton testified that although he cited Appellant for Loitering, he neither placed Appellant in custody nor searched his person, and permitted Appellant to leave the scene following the citations’ issuance. N.T., 5/6/25, at 25. On cross-examination, Officer Patton confirmed that he did not observe Appellant in possession of any implements “like a crowbar, [or a] screwdriver[.]” **Id.**

that [Appellant] was reconnoitering these areas with intent to commit a crime based on the [V]ideos alone.” ***Id.*** at 36. Further, pointing to Appellant’s testimony, the Commonwealth argued that Appellant, “himself, has stated that he intended to commit a crime by opening the back lot door of [the Trianon] to ride his bicycle through the ... building lobby, which, at this time, would be criminal trespass.” ***Id.*** (some punctuation modified).

The trial court found Appellant guilty of both counts of Loitering. ***Id.*** at 38. The court deferred sentencing pending the preparation of a pre-sentence investigation report.

On September 16, 2025, the trial court imposed an aggregate sentence of one to two months of imprisonment, followed by one year of probation. Nine days later, Appellant timely filed two separate post-sentence motions. Appellant requested (1) an arrest of judgment or a new trial; or (2) reconsideration of his sentence. Regarding the former, Appellant asserted that the evidence presented at trial was insufficient to sustain his Loitering convictions, as it established neither (1) his “specific intent to knowingly[, intentionally[, or] maliciously loiter or maliciously prowl”; nor (2) “a finding that [Appellant’s] conduct was malicious.” Post-sentence Motion, 9/25/25, ¶¶ 1, 2. On January 15, 2026, the trial court denied Appellant’s post-sentence motions.

This timely appeal followed. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents the following question for our review:

Was the evidence insufficient to sustain the offense of Loitering ... in that the Commonwealth failed to establish that [Appellant] acted maliciously during the two incidents in question?

Appellant's Brief at 3.

A sufficiency claim "presents a question of law, for which our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Packer***, 168 A.3d 161, 166 (Pa. 2017).

In conducting sufficiency review, we consider whether the evidence introduced at trial and all reasonable inferences derived therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish the elements of the offense beyond a reasonable doubt. Our review does not involve reweighing the evidence and substituting our judgment for that of the fact-finder. In addition, the facts and circumstances need not be absolutely incompatible with the defendant's innocence; rather, the question of any doubt is for the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.

***Commonwealth v. Muhammad***, 335 A.3d 1047, 1051 (Pa. 2025) (citation omitted). Further, "the finder 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. Gary***, 332 A.3d 118, 124 (Pa. Super. 2025) (citation omitted).

Loitering is defined in Section 5506 of our Crimes Code:

Whoever at night time maliciously loiters or maliciously prowls around a dwelling house or any other place used wholly or in part for living or dwelling purposes, belonging to or occupied by another, is guilty of a misdemeanor of the third degree.

18 Pa.C.S.A. § 5506.

This Court has delineated the elements of Loitering as follows:

To constitute the crime of [L]oitering ...[,], there must be the concurrence of the following elements and circumstances: (1) there must be a loitering and prowling; (2) **it must be done maliciously**;<sup>6</sup> (3) the act must occur around a dwelling house or other place used wholly or in part for dwelling or living purposes; (4) the place so used must belong or be occupied by another; (5) it must be done at nighttime.

**Commonwealth v. Bulicki**, 518 A.2d 577, 578 n.2 (Pa. Super. 1986) (citation omitted; emphasis and footnote added). “‘Malicious,’ as used in [Section 5506], means an intent to do a wrongful act or having as its purpose injury to the privacy, person, or property of another.” **Commonwealth v. Belz**, 441 A.2d 410, 411 (Pa. Super. 1982) (citations omitted); **see also Commonwealth v. Duncan**, 321 A.2d 917, 908 (Pa. 1974) (same).

Regarding the legislative purpose of Section 5506, our Supreme Court explained in **Duncan** that “[t]he statute ... was obviously designed to alleviate the danger to human life and quiet enjoyment of one’s dwelling which is presented by the nighttime loitering or prowling of malicious-minded individuals.” **Duncan**, 321 A.2d at 919. In **Belz, supra**, this Court stated that Section 5506

is intended to punish not only those persons who at night are bent on peeping into the private affairs of citizens in their dwellings, but also those persons who are found at or near dwellings without

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<sup>6</sup> In the instant appeal, the only element of Loitering Appellant challenges is the *mens rea*.

lawful purpose or reason and whose presence can only be explained in some preparation for or attempt at illegality or crime.

**Id.** at 411 (citations omitted).

It is well established that because “intent is a subjective frame of mind, it is ... difficult of direct proof. Intent can be proven by direct or circumstantial evidence; it may be inferred from acts or conduct or from the attendant circumstances.” **Commonwealth v. Padilla-Vargas**, 204 A.3d 971, 975 (Pa. Super. 2019) (citations, quotation marks, and brackets omitted). Further, “[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” **Gary**, 332 A.3d at 124 (citation omitted); **see also Commonwealth v. Sebolka**, 205 A.3d 329, 337 (Pa. Super. 2019) (stating that the fact that “the evidence establishing a defendant’s participation in a crime is circumstantial does not preclude a conviction where the evidence[,], coupled with the reasonable inferences drawn therefrom[,], overcomes the presumption of innocence.” (citation omitted)).

Instantly, Appellant contends that

the Commonwealth failed to show that [Appellant] intended to do a “wrongful act” or possessed the intent to cause “injury to the privacy, person, or property of another.” The evidence merely showed that [Appellant] was peering over fences into the common areas of the [Properties,] but failed to demonstrate that [Appellant] intended to commit any unlawful act in those areas.

Appellant’s Brief at 9 (quoting **Belz**, 441 A.2d at 411). According to Appellant, his “merely peering into the [P]roperties ... is simply insufficient to establish

an intent to commit a 'wrongful act' or to cause injury to the privacy, person, or property of another.'" **Id.** (citation omitted).

Appellant further asserts the undisputed fact that he "attempted to open the rear door to the Trianon's lobby" is insufficient to "establish maliciousness." **Id.** Appellant points out that his "uncontradicted testimony was that he merely intended to ride through the [Trianon] building[,] as opposed to committing a 'wrongful act' or 'injury to the privacy, person, or property of another.'" **Id.** (citing N.T. 5/6/25, at 31-32); **see also id.** at 7 (Appellant asserting he "wished to merely see the inside of the Trianon's lobby.").

The Commonwealth counters that Appellant's sufficiency challenge lacks merit because it proved the *mens rea* of Loitering beyond a reasonable doubt. Commonwealth's Brief at 7.

[Appellant's] entering onto private property in the middle of the night, peering into the [Trianon's] pool and buildings, and attempting to open [the Trianon's] door and enter [the] building, together provide sufficient evidence to support the inference that he acted maliciously.

**Id.** Citing **Belz, supra**, the Commonwealth asserts that

[b]ecause "malicious" in this context encompasses any "intent to do a wrongful act[," Appellant's] entering of the [Properties' respective] private parking lots[,] and subsequently attempting to enter [the Trianon] building[,] establish "malicious" conduct because these acts show an intent to commit criminal trespass.

**Id.** at 7-8 (quoting **Belz**, 441 A.2d at 411). The Commonwealth emphasizes the fact that both Properties “contain signs identifying them as private property.” **Id.** at 7.

In its Rule 1925(a) opinion, the trial court determined that Appellant’s sufficiency challenge lacks merit, as the Commonwealth proved all elements of Loitering:

On September 24, 2017, at approximately 4:46 a.m., a security guard at the Trianon ... observed [Appellant] riding a motorbike around the rear area of the building. (N.T. Bench Trial, 5/6/25, at 8-10, Commonwealth Exhibit C-1). [Appellant], who was not a resident of the [Trianon], attempted to open the pedestrian door to the lobby adjoining the underground parking garage and subsequently looked through the window in the door, in addition to a separate window, to observe the lobby. (**Id.** at 9-10, Commonwealth Exhibit C-1). **[At trial, Appellant] indicated that he attempted to open the door because it was his intention to ride his motorbike through the door and into the building.** (**Id.** at 32). [Appellant] later drove to the gated door to the [Trianon’s] pool area and looked over the top of the gate. (**Id.** at 10-11, Commonwealth Exhibits C-2 and C-3). A sign stating “no trespassing” was located [in] the vicinity of the gated door. (**Id.** at 11).

Later that morning, at approximately 5[:00] a.m., security cameras captured videos of [Appellant] riding [his] motorbike through the parking lot of [] Sutton Terrace .... (**Id.** at 17, Commonwealth Exhibit C-4). The entrance to the [Sutton Terrace] parking lot contained a sign stating, “Private Property, No Trespassing, Video Surveillance.” (**Id.** at 16). [Appellant], who was not a resident at [Sutton Terrace], subsequently **looked into cars located in the parking lot.** (**Id.** at 18-21, Commonwealth Exhibit C-5). [Appellant then] drove to other portions of the [Sutton Terrace] property, including a building entrance and a garage entrance. (**Id.** at 18-21, Commonwealth Exhibits C-6, C-8).

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When viewed in a light most favorable to the Commonwealth as the verdict winner, the evidence was sufficient to establish [that Appellant] acted with malicious intent when he loitered and prowled around [the] Properties[, of] which he was not a resident. **[Appellant] roamed around the Properties in the early morning hours when they were not open for entry to the general public.** [Appellant] attempted to open the door of the [Trianon] complex in order to ride his motorbike inside and looked into multiple vehicles parked outside the condominium complex.

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**[Appellant] moved surreptitiously through the residential Properties in an apparent attempt to trespass inside ... and potentially commit [thefts] from the vehicles parked in the [parking lots of the Properties]. [Appellant] had no lawful purpose or reason to enter these Properties and his presence could only logically be explained as part of preparation for some type of criminal action. See *Belz, supra*.**

Trial Court Opinion, 3/17/26, at 3-4, 5 (emphasis added; some citations omitted; some capitalization and punctuation modified).

Our review confirms that the trial court's findings and analysis are supported by the record and its legal conclusion is sound. Like the trial court, we are guided by our decision in ***Commonwealth v. Melnyczenko***, 619 A.2d 719 (Pa. Super. 1992). Trial Court Opinion, 3/17/26, at 5 (finding that the actions of the defendant in ***Melnyczenko*** are "similar to [Appellant's] actions").

In ***Melnyczenko***, the Commonwealth presented evidence that law enforcement was tracking the defendant's movements at nighttime in a residential neighborhood. ***Melnyczenko***, 619 A.2d at 720. A police officer

situated inside an unmarked van observed the defendant, “dressed in dark clothing, walk[ing] through the back yards of four or five houses for approximately six or seven minutes.” **Id.** at 722. “[W]hen [the defendant] re-emerged, he was walking very cautiously.” **Id.** Upon observing a marked police vehicle, the defendant began to run. **Id.** at 720. Police apprehended the defendant and, during a search of his person incident to arrest, found a screwdriver, flashlight, and pry bar. **Id.** Following a jury trial, the defendant was convicted of attempted burglary, Loitering, and possession of an instrument of crime. **Id.**

On appeal in **Melnyczenko**, the defendant challenged, *inter alia*, the sufficiency of the evidence supporting his Loitering conviction, asserting the Commonwealth had failed to present any evidence that he acted maliciously. **Id.** at 721. We disagreed, holding that evidence of the defendant’s “wandering through the yards in a stealthy manner” “support[ed] the conclusion that [the defendant] was reconnoitering the area with the intent to commit a burglary.” **Id.** at 722.

Also instructive is our decision in **Commonwealth v. Nash**, 436 A.2d 1014 (Pa. Super. 1981). There, police set up surveillance in response to two burglaries, both of which occurred at nighttime at a certain apartment complex. **Id.** at 1015. Both burglaries occurred on consecutive Tuesdays, at approximately 4:00 a.m. **Id.** Police established surveillance of the apartment complex on the night of the following Tuesday. **Id.** At approximately 3:40

a.m., a police officer observed the defendant, who admittedly did not reside at the apartment complex, “walking along a line of trees in the rear of one of the apartment buildings.” **Id.** The officer then revealed and identified himself, and placed the defendant under arrest for Loitering. **Id.** The defendant informed the officer that “he was looking for a place to relieve himself and that he became lost and was unable to locate his car.” **Id.**

On appeal in **Nash**, the defendant asserted that, *inter alia*, law enforcement lacked probable cause to arrest him for Loitering, since he “was not loitering or prowling nor did he act with malice.” **Id.** at 1016. This Court rejected the defendant’s claim, emphasizing that he (1) “was observed in the early morning hours walking around an apartment complex to which he was not a tenant,” **id.** (citing **Duncan, supra**); and (2) “admitted peering into the apartment windows on the night of his arrest.” **Id.** at 1016 n.1.

In the instant appeal, viewing the evidence, and all reasonable inferences to be drawn therefrom, in the light most favorable to the Commonwealth, **see Muhammad, supra**, we conclude that the evidence is sufficient to sustain the fact-finder’s determination that Appellant acted with a malicious intent under the Loitering statute. The record establishes that, in the middle of the night, Appellant (1) surreptitiously loitered and prowled around the privately owned Properties, despite the posted “no trespassing” signs; (2) peered inside unoccupied vehicles; and (3) attempted to open the Trianon’s rear door, admittedly with intent to trespass in the lobby. **See, e.g.,**

N.T., 5/6/25, at 29, 32 (Appellant confirming that he attempted to open the Trianon's rear door, as he wanted to ride his bike through the lobby); Appellant's Brief at 6 (Appellant conceding that he was the individual depicted in the Videos riding his bike through "the parking areas of the Trianon [] and Sutton Terrance," both of which "were surrounded by fences bearing 'No Trespassing' signs."). The above-described facts, viewed in their totality, were sufficient for the fact-finder to reasonably determine that Appellant possessed the requisite malicious intent to sustain his convictions of Loitering. Appellant's clearly suspicious actions at the Properties (1) revealed his "intent to do a wrongful act," **Belz**, 441 A.2d at 411; and (2) "can only be explained" as being consistent with "some preparation for or attempt at illegality or crime." **Id.** (citations omitted).

In sum, the Commonwealth presented sufficient evidence establishing that Appellant committed two counts of Loitering. **See Melnyczenko, supra; Nash, supra; see also Commonwealth v. Spain**, 245 A.3d 1101, 122 MDA 2020 (Pa. Super. filed Dec. 24, 2020) (unpublished memorandum at 17-20)<sup>7</sup> (upholding the defendant's Loitering conviction against his sufficiency challenge, based on **Melnyczenko** and its progeny, where the defendant "'violated both the letter and the spirit' of the Loitering statute, ... by peering into strangers' vehicles, wandering through neighborhood backyards, and

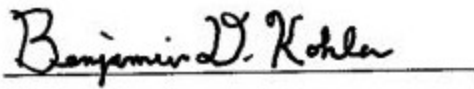
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<sup>7</sup> Pursuant to Pa.R.A.P. 126(b), non-precedential decisions filed after May 1, 2019, may be cited for their persuasive value.

lurking in [a resident's] garage and yard." (quoting ***Commonwealth v. Williams***, 574 A.2d 1161, 1165 (Pa. Super. 1990)). Appellant's sole issue merits no relief.

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: 8/28/2026