**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| BRIAN PHILIP BENNETT | : | |
| Appellant | : | No. 72 MDA 2026 |

Appeal from the PCRA Order Entered December 8, 2025
In the Court of Common Pleas of Franklin County
Criminal Division at No(s): CP-28-CR-0000782-2018

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| v. | : | |
| BRIAN PHILLIP BENNETT | : | |
| Appellant | : | No. 73 MDA 2026 |

Appeal from the PCRA Order Entered December 8, 2025
In the Court of Common Pleas of Franklin County
Criminal Division at No(s): CP-28-CR-0001927-2018

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY PANELLA, P.J.E.: **FILED: NOVEMBER 19, 2026**

Brian Phillip Bennett appeals *pro se* from the order of the Court of Common Pleas of Franklin County denying his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. Bennett raises claims of ineffective assistance of trial counsel and other trial court errors. After careful review, we affirm.

Bennett was convicted of involuntary manslaughter and related charges in connection with the tragic death of L.S., the three-year-old daughter of his girlfriend, Brittany Higgins, caused by L.S. ingesting methamphetamine and buprenorphine. Higgins pled *nolo contendere* to third degree murder and was sentenced to ten to twenty years imprisonment in exchange for testifying against Bennett. Bennett stood trial with a co-defendant, Thomas Stephen Keogh, who was accused of acting as the supplier for the distributors who ultimately sold and delivered the drugs that led to L.S.'s death.

The eight-day joint jury trial commenced on September 7, 2021. The Commonwealth called over twenty witnesses, which consisted of law enforcement officers, medical and toxicology experts, and charged co-defendants, including Higgins. The numerous witnesses established Bennett's possession of methamphetamine, the cause of L.S.'s death being the presence of methamphetamine and buprenorphine in her system, the condition of L.S.'s body, and Bennett's involvement with the care of L.S., up to and on the day of her death on January 6, 2018.

On September 16, 2021, the jury rendered its verdict. At docket number 782-2018, Bennett was found guilty of involuntary manslaughter (18 Pa.C.S.A. § 2504(a)), two counts of endangering the welfare of a child (18 Pa.C.S.A. § 4304(a)(1)), and possession of drug paraphernalia (35 P.S. § 780-

113(a)(32)).[1] At docket number 1927-2018, Bennett was convicted of delivery of a controlled substance (35 P.S. § 780-113(a)(30)) and criminal use of a communication facility (18 Pa.C.S.A. § 7512(a)). On November 10, 2021, Bennett was sentenced to an aggregate term of fifteen to thirty years' incarceration. He filed timely post-sentence motions which were denied.

Bennett timely appealed and this Court affirmed his judgment of sentence on January 6, 2023. ***See Commonwealth v. Bennett***, 292 A.3d 1081 (Pa. Super. filed Jan. 6, 2023) (unpublished memorandum). On December 29, 2023, the Pennsylvania Supreme Court denied Bennett's petition for allowance of appeal. ***See Commonwealth v. Bennett***, 310 A.3d 719 (Pa. 2023). Ninety days later, on March 28, 2024, his judgment of sentence became final. ***See*** 42 Pa.C.S.A. § 9545(b)(3).

On July 26, 2024, Bennett timely filed a *pro se* PCRA petition. The PCRA court appointed counsel and directed counsel to file an amended petition. However, before an amended counseled petition was filed, Bennett requested to proceed *pro se*. On October 10, 2024, the PCRA court conducted a ***Grazier***[2] hearing and found that Bennett knowingly, voluntarily, and intelligently waived his right to PCRA counsel. The Commonwealth filed a response to

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[1] Bennett was acquitted of third-degree murder (18 Pa.C.S.A. § 2502(c)), and drug delivery resulting in death (18 Pa.C.S.A. § 2506(a)).

[2] ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998).

Bennett's *pro se* PCRA petition. On February 28, 2025, upon Bennett's request, the PCRA court appointed new counsel.

On August 12, 2025, newly appointed PCRA counsel filed a ***Turner***/***Finley***[3] no merit letter and a petition to withdraw. On November 14, 2025, the PCRA court issued an order, with an accompanying opinion, granting counsel's petition to withdraw and provided notification of its intent to dismiss Bennett's PCRA petition without a hearing pursuant to Pennsylvania Rule of Criminal Procedure 907. Bennett filed a response and on December 8, 2025, the PCRA court entered an order dismissing Bennett's PCRA petition.

Bennett timely appealed.[4] He filed a court ordered concise statement of errors complained of on appeal, and the PCRA court filed a statement referring this Court to the reasons stated in its November 14, 2025, opinion. ***See*** Pa.R.A.P. 1925(a)-(b); 1925(a) Statement, 2/16/26.

Bennett raises the following issues on appeal.

> 1. Did the trial court err in denying Bennett's ineffective assistance of councel (sic) (IAC) claim(s) agianst (sic) trial counsel for failing to object to the prosecution[']s closing arguments?
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> 2. Did the trial court err in denying Bennett's claim of prosecutorial/judicial misconduct when the star witness testified differently during trial than during previous recorded police

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[3] ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

[4] Initially, Bennett only filed one notice of appeal containing two docket numbers. This Court directed Bennett to file two amended notices of appeal, one for each docket number, pursuant to ***Commonwealth v. Walker***, 185A.3d 969 (Pa. 2018). The Court *sua sponte* consolidated both appeals.

> interrogation(s)? The prosecutor failed to address incorrect testimony that was intended to enflame the passions of the jury as per ***Glossip***[ ***v. Oklahoma***, 604 U.S. 226 (2025)] and instead responded by stating that these statements were previously consulted by the Commonwealth to satisfy the "Commonwealth's need to make certain their witness testified truthfully pursuant to their cooperation agreements".
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> 3. Was Bennett denied his right to adequate and competent counsel as guarenteed (sic) by the Constitution of Pennsylvania and the Pennsylvania Supreme Court that entitles him to competent appella[te] counsel? Bennett's court appointed PCRA counsel was clearly incompetent in presenting meritorious issues as represented in ***Commonwealth v. Bradley***, 261 A.3d 381 (Pa. 2021).

Appellant's Brief, at 3 (prefixes and unnecessary capitalization omitted).

"Our standard of review of the denial of a PCRA petition is limited to examining whether the evidence of record supports the court's determination and whether its decision is free of legal error." ***Commonwealth v. Smith***, 121 A.3d 1049, 1052 (Pa. Super. 2015) (citation omitted).

In his PCRA petition, Bennett raised claims of ineffective assistance of counsel.

> [T]o establish a claim of ineffective assistance of counsel, a defendant must show, by a preponderance of the evidence, ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. The burden is on the defendant to prove all three of the following prongs: (1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

***Commonwealth v. Colon***, 230 A.3d 368, 374 (Pa. Super. 2020) (citation omitted).

"[A] claim has arguable merit where the factual averments, if accurate, could establish cause for relief. Whether the facts rise to the level of arguable merit is a legal determination." ***Id.*** "Failure to satisfy any of the three prongs is fatal to the claim." ***Commonwealth v. Thomas***, 270 A.3d 1221, 1226 (Pa. Super. 2022) (citation omitted). Moreover, "[b]oilerplate allegations of ineffectiveness do not establish a defendant's burden of establishing [his right to] relief." ***Colon***, 230 A.3d at 374 (citation omitted).

In his first issue, Bennett argues that the Commonwealth repeatedly appealed to the jurors' emotions and made comments throughout trial whose sole effect was to enflame the passions of the jury. ***See*** Appellant's Brief, at 4. Bennett alleges that the Commonwealth made repeated comments about how angry the prosecution was over the death of a three-year-old and showed the jury pictures of the victim for extended periods of time. ***See id.*** Additionally, Bennett argues that the prosecutor continued to inflame the passions of the jury by proclaiming that Bennett was a murderer. ***See id.*** at 5-6. According to Bennett, trial counsel's failure to object to the prosecutor's statements was ineffective assistance of counsel. The Commonwealth argues that Bennett's underlying claim does not have arguable merit because the prosecutor's comments only amounted to oratorical flair and were supported

by evidence. ***See*** Appellee's Brief, at 17-18. We agree with the Commonwealth.

When considering an allegation that a prosecutor's statements constituted prosecutorial misconduct we have explained:

> Every unwise or irrelevant remark made in the course of a trial by a judge, a witness, or counsel does not compel the grant of a new trial. Rather, the focus is on what if any effects the comments had on the jury. A new trial is required when the effect of the District Attorney's comments would be to prejudice the jury, forming in their minds fixed bias and hostility towards the defendant so that they could not weigh the evidence objectively and render a true verdict.

***Commonwealth v. Van Horn***, 797 A.2d 983, 989 (Pa. Super. 2002) (citations omitted). Further, "[a] prosecutor is permitted fairly wide latitude in advocating for the Commonwealth, including the right to argue all fair deductions from the evidence, to respond to defense arguments, and to engage in a certain degree of oratorical flair." ***Id.***; ***see also Commonwealth v. Chamberlain***, 30 A.3d 381, 407 (Pa. 2011) ("a prosecutor must have reasonable latitude in presenting a case to the jury, and must be free to present arguments with 'logical force and vigor.'").

Here, Bennett takes issue with statements made by the prosecutor that focused on the reality that a three-year-old child had died and Bennett's role in causing the death. In particular, the prosecutor referring to Higgins stated, "[t]hey both did it as it turns out. She's convicted of murder. She's a murderer for the same activity he conducted, the murder, the two of them killed a kid." N.T., 9/16/21, at 29. This statement was made in the context of the

Commonwealth arguing to the jury that Bennett and Higgins had left out methamphetamine which L.S. ingested. ***See id.*** As the PCRA court stated, "[w]e do not believe that the Commonwealth's attorney referenced L.S.'s death in lieu of arguing about the evidence, and any references the Commonwealth did make were with evidentiary support." PCRA Court Opinion, 11/14/25, at 19. We agree. The statements made by the prosecutor were supported by the evidence and were within the realm of oratorical flair allowed. Therefore, the underlying claim does not have arguable merit and Bennett is not entitled to relief.

In his second issue, Bennett claims that the Commonwealth knowingly elicited false testimony from Higgins and his trial counsel was ineffective for failing to object. Such a claim is referred to as a ***Napue***[5] claim. "To establish a ***Napue*** violation, a defendant must show that the prosecution knowingly solicited false testimony or knowingly allowed it 'to go uncorrected when it appear[ed].'" ***Commonwealth v. Johnson***, 335 A.3d 685, 717 (Pa. 2025) (quoting ***Glossip***, 604 U.S. at 246) (alteration in original). "If the defendant makes this showing, a new trial is warranted if there is 'any reasonable likelihood' the false testimony could 'have affected the judgment of the jury.'" ***Id.*** (quoting ***Napue***, 360 U.S. at 271).

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[5] ***Napue v. Illinois***, 360 U.S. 264 (1959).

In support of his claim, Bennett points to parts of Higgins' testimony that he claims were inconsistent with her prior statements. ***See*** Appellant's Brief, at 9-12. However, Bennett fails to explain how such testimony amounted to knowingly false statements elicited by the Commonwealth.[6] There is nothing in the record which even distantly indicates that the Commonwealth *knowingly* participated in soliciting false testimony. Inconsistent statements are not necessarily false statements. The weight to be given to a witness's inconsistent statements is a matter of credibility for the jury to consider. Because Bennett failed to establish that the Commonwealth knowingly elicited false statements from Higgins, his underlying claim lacks arguable merit. Therefore, he is not entitled to relief.

In his final issue, Bennett vaguely claims that his two previous issues indicate cumulative error and, pursuant to ***Bradley***, he should be granted relief or appointed new counsel to "perfect" the issues he raised. ***See*** Appellant's Brief, at 13. We can readily understand the reason why Bennett's brief does not elaborate on this issue in light of the fact that the two previous issues do not establish any error. Moreover, the one-page argument section of Bennett's brief is rife with vague conclusory statements and does not

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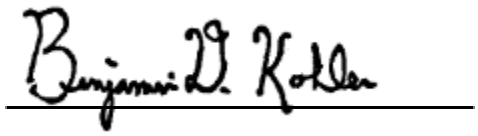
[6] Statements that the Commonwealth knows to be false typically involve information that is within the Commonwealth's first-hand knowledge, such as a witness denying the existence of a cooperation agreement with the Commonwealth when one exists. ***See Napue***, 360 U.S. at 265; ***Johnson***, 335 A.3d at 717.

contain any supporting case law. "It is well-settled that the failure to develop an adequate argument in an appellate brief may result in waiver of the claim under Pa.R.A.P. 2119." ***Commonwealth v. Taylor***, 277 A.3d 577, 590 (Pa. Super. 2022) (citation omitted). Accordingly, this issue is waived.[7]

For the foregoing reasons, we affirm.

Order affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/19/2026

[7] The issue is also meritless. When assessing whether numerous failed ineffective assistance of counsel claims amount to *cumulative* error, only claims that fail for lack of prejudice are considered. ***See Commonwealth v. Johnson***, 353 A.3d 609, 654 n.165 (Pa. 2026). Here, Bennett's two claims failed for lack of arguable merit. Therefore, Bennett cannot establish cumulative error.