NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KEN SANTOS HERNANDEZ	:	
	:	
Appellant	:	No. 1538 EDA 2025

Appeal from the Judgment of Sentence Entered June 5, 2025
In the Court of Common Pleas of Chester County Criminal Division at
No(s): CP-15-CR-0004083-2024

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KENNETH SANTOS-HERNANDEZ	:	
	:	
Appellant	:	No. 1539 EDA 2025

Appeal from the Judgment of Sentence Entered June 5, 2025
In the Court of Common Pleas of Chester County Criminal Division at
No(s): CP-15-CR-0000006-2025

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KENNETH SANTOS-HERNANDEZ	:	
	:	
Appellant	:	No. 1540 EDA 2025

Appeal from the Judgment of Sentence Entered June 5, 2025
In the Court of Common Pleas of Chester County Criminal Division at
No(s): CP-15-CR-0000007-2025

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA

v.	:	
KENNETH WARREN SANTOS HERNANDEZ	:	
Appellant	:	No. 1541 EDA 2025

Appeal from the Judgment of Sentence Entered June 5, 2025
In the Court of Common Pleas of Chester County Criminal Division at
No(s): CP-15-CR-0000036-2025

BEFORE: OLSON, J., STABILE, J., and KUNSELMAN, J.

MEMORANDUM BY OLSON, J.: **FILED NOVEMBER 12, 2026**

Appellant, Kenneth Warren Santos Hernandez, appeals from the judgment of sentence entered on June 5, 2025, as made final by the denial of Appellant's post-sentence motion on June 25, 2025. We affirm.

The trial court ably summarized the underlying facts and procedural posture of this case:

> On October 25, 2023, [A.G.] (hereinafter "the victim") presented herself at the Uwchlan Township Police Department to report receiving harassing messages from Appellant on Facebook. Appellant had been previously charged in October [] 2019 for harassing the same victim and was under the supervision of the Chester County Office of Adult Probation and Parole.
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> . . .
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> [Following Appellant's arrest,] Appellant refused representation and Christopher Nelson, Esquire, was appointed as stand-by counsel.
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> . . .

> On June [5], 2025, Appellant entered into a negotiated guilty plea agreement resolving this matter and three additional pending cases: (1) CP-15-CR-0000006-2025 ("CR-0006-2025")[fn.1] (2) CP-15-CR-0000007-2025 ("CR-0007-2025"),[fn.2] and [(3)] CP-15-CR-0000036-2025 ("CR-0036-2025").[fn.3] Appellant agreed to the following facts supporting his guilty plea to one count of possessing an instrument of crime [("PIC")] (18 Pa.C.S.A § 907(a)) [in the case at bar]:
>
> > Over a time period from August 29[, 2023] through October 28[, 2023, Appellant] possessed a phone through which he illegally sent nude images of himself to his former girlfriend [A.G.,] who lives in Uwchlan Township, Chester County[,] by Facebook Messenger.
>
> [N.T. Guilty Plea Hearing, 6/5/25, at 2].
>
> > [fn.1] Appellant was charged with simple assault (18 Pa.C.S.A § 2701(a)(1)), harassment (18 Pa.C.S.A § 2709(a)(1)), and disorderly conduct/engaged in fighting (18 Pa.C.S.A § 5503(a)(1)) against R.S.
> >
> > [fn.2] Appellant was charged with aggravated assault (18 Pa.C.S.A § 2702(a)(1)), two counts of criminal mischief-damaged property (18 Pa.C.S.A § 3305(a)(5)), and resisting arrest (18 Pa.C.S.A § 5104), disarming law enforcement officer (18 Pa.C.S.A. § 5104.1(a)(2)), and flight to avoid apprehension (18 Pa.C.S.A. § 5126(a)) for an incident with the prior victim R.S.
> >
> > [fn.3] Appellant was charged with aggravated assault (18 Pa.C.S.A § 2702(a)(1)), [PIC] (18 Pa.C.S.A § 907(a)), simple assault (18 Pa.C.S.A § 2701(a)(1)), and recklessly endangering another person (18 Pa.C.S.A § 2705) against B.H. and responding officers.
>
> The [trial] court accepted the negotiated plea agreement and sentenced Appellant to 18 to 36 months of state incarceration to run concurrently to Appellant's Berks County sentence docketed at CP-23-CR-3631-2021.
>
> On June [13], 2025, Appellant filed a [timely] post-sentence motion titled "Motion Challenging Validity of Guilty Plea" in all

> four cases. . . . In his post-sentence motion, Appellant challenged the legality and voluntariness of his guilty plea. . . . [The trial court] denied the post sentence motion on June 25, 2025.

Trial Court Opinion, 8/13/25, at 2-3 (some capitalization omitted).

Appellant filed a timely notice of appeal. On October 15, 2025, this Court issued an order directing the trial court to "determine [] Appellant's eligibility for court-appointed counsel." ***See*** Order, 10/15/25, at 1. On remand, the trial court determined that Appellant was eligible for counsel and appointed current counsel ("Appellate Counsel") to represent Appellant on appeal. Appellate Counsel filed a brief with this Court, raising the following claim:

> Did the trial court abuse its discretion denying Appellant's *pro se* motion challenging [the] validity of [the] guilty plea?

Appellant's Brief at 2.

Appellant pleaded guilty to PIC.[1] This plea was based upon Appellant's admission that he "possessed a [cell] phone through which he illegally sent

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[1] PIC is defined as follows:

> (a) Criminal instruments generally.--A person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally.
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> . . .
>
> (d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
>
> "Instrument of crime." Any of the following:

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nude images of himself to his former girlfriend [A.G.,] . . . by Facebook messenger." ***See*** N.T. Guilty Plea Hearing, 6/5/25, at 1.

On appeal, Appellant claims that this plea was not knowingly, intelligently, and voluntarily entered because "the evidence is legally insufficient to establish that the cell phone qualifies as an instrument of crime under the possessing instruments of crime statute."[2] Appellant's Brief at 25.

. . .

> (1) Anything specially made or specially adapted for criminal use.
>
> (2) Anything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.

18 Pa.C.S.A. § 907.

[2] Within Appellant's brief to this Court, Appellant summarily declares that he "did not understand the nature of the charge to which he was pleading" because "[t]here was no on-the-record colloquy explaining the elements of" PIC. Appellant's Brief at 23. Appellant has provided this Court with no cogent argument supporting this claim. Therefore, this particular claim is waived on appeal. ***Commonwealth v. Leatherby***, 116 A.3d 73, 83 (Pa. Super. 2015) (holding: a claim is waived where the appellant "fails to [expound] upon [the] claim in the argument section of [the] brief"). Moreover, Appellant did not raise this claim in his post-sentence motion. ***See*** Appellant's Post-Sentence Motion, 6/13/25, at 1-4. Thus, Appellant's claim is waived for this independent reason. ***See Commonwealth v. Rush***, 959 A.2d 945, 949 (Pa. Super. 2008) ("a request to withdraw a guilty plea on the grounds that it was involuntary is one of the claims that must be raised by motion in the trial court in order to be reviewed on direct appeal"). Finally, during the guilty plea colloquy, Appellant specifically informed the trial court that he "understand[s] the elements of the crimes" to which he was pleading guilty. ***See*** N.T. Gulty Plea Hearing, 6/5/25, at 8-9. Therefore, even if Appellant preserved the claim on appeal, the claim is meritless, as "a defendant may not challenge his guilty

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In support of his claim, Appellant cites to our opinion in ***Commonwealth v. Williams***, 808 A.2d 213 (Pa. Super. 2002), where we held that a "walkie-talkie" did not constitute an instrument of crime because the walkie-talkie was "not used in the crime itself, but used only to facilitate the crime." ***See Commonwealth v. Williams***, 808 A.2d 213, 215 (Pa. Super. 2002). According to Appellant:

> The present case mirrors [***Williams***]. Appellant is alleged to have used a cell phone via Facebook Messenger to send nude images to his former girlfriend. The phone was the means of transmission, but it was not the instrument of the underlying act itself. Just as the walkie-talkie merely coordinated and enabled the drug sales without being the tool that effected the sales, the cell phone here merely enabled the sending of the images; it did not constitute the images themselves or the act of producing them. . . . If the images had been sent through the mail, the envelope or the postal service would not be considered an instrument of crime.

Appellant's Brief at 24-25.

In an earlier case involving Appellant, this Court rejected Appellant's identical argument. In ***Commonwealth v. Hernandez***, ___ A.3d ___, 2026 WL 2184909 (Pa. Super. 2026),[3] Appellant was convicted of stalking,

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plea by asserting that he lied while under oath." ***Commonwealth v. Pollard***, 832 A.2d 517, 523 (Pa. Super. 2003); ***see also Commonwealth v. Kapellusch***, 323 A.3d 837, 848 (Pa. Super. 2024) ("[a] defendant is bound by statements made during a plea colloquy and a defendant may not later offer reasons for withdrawing the plea that contradicts the statements he made when he pled").

[3] Appellant filed his brief to this Court on July 15, 2026. This Court issued the ***Hernandez*** opinion two weeks later, on July 29, 2026. ***See Hernandez***, 2026 WL 2184909.

harassment, and PIC, involving a different victim. As in the case at bar, the "instrument of crime" supporting Appellant's PIC conviction was his cell phone and his conviction was partly based upon the fact that Appellant sent the victim "nude photos of himself" from his cell phone. ***Id.*** at *1.

On appeal in ***Hernandez***, Appellant claimed that the trial court erred when it denied his motion to quash the charge of PIC. This Court summarized Appellant's argument:

> Specifically, Appellant claims that the trial court erred in denying his motion because the instrument of crime in question was a cell phone. Relying on this Court's decision in [***Williams***, 808 A.2d at 213], Appellant insists that where a cell phone is used to facilitate communications, the cell phone itself is not an instrument of crime. Appellant argues that in his case, the "cell phone is not an integral part of the underlying criminal activity, and is merely just a means to facilitate communications," especially given that both Facebook and Instagram could have been accessed from a computer instead of a cell phone. Appellant suggests that declaring a cell phone as an instrument of crime would lead to an overly broad interpretation of the statute, such that a pen used to write a harassing letter would thereafter be considered an instrument of crime, as would the envelope and stamp used to mail the letter. Appellant insists that a cell phone, like an envelope and stamp, is merely a means to facilitate the communication, and is not, itself, an instrument of crime.

Id. at *3.

In a published opinion, this Court rejected Appellant's claim, reasoning:

> To convict an individual of PIC, the Commonwealth has the burden of proving two elements: (1) possession of an object that is an instrument of crime and (2) intent to use the object for a criminal purpose.

In ***Commonwealth v. Vida***, 715 A.2d 1180 (Pa. Super. 1998), this Court considered whether a paint stick that was used to write graffiti on a public lamp pole fit within the statutory definition of an instrument of a crime. This Court concluded that the paint stick was used for a criminal purpose and possessed under circumstances not manifestly appropriate for lawful uses, and therefore it constituted an instrument of crime. We noted that, because the language of the PIC statute was "so clear on its face," we would not "look beyond it to interpret what [the] appellant insist[ed was] the 'true intent' of the legislature" in crafting the statutory definition for an instrument of crime. ***Id.*** at 1184.

Four years later, in [***Williams***,] on which Appellant relies, this Court considered whether a defendant's use of a walkie-talkie to direct a police informant to a nearby house, before making a drug sale to the informant in that house, met the statutory definition of possessing an instrument of crime. This Court distinguished the case from our holding in ***Vida*** and held that "the mere use of an item to facilitate a crime does not transform the item into an instrument of crime for purposes of the PIC statute." [***Williams***, 808 A.2d at 215]. This Court explained that in ***Vida***, "the stick itself was the instrument whereby the criminal mischief (graffiti) was committed." ***Id.*** We further reasoned that:

> While recognizing that [the] appellant's walkie-talkie, under the circumstances, facilitated the illicit drugs sales, we distinguish its use from the paint stick in ***Vida***, where the stick itself was the instrument whereby the criminal mischief (graffiti) was committed. Instantly, the walkie-talkie was used during the course of the drug sales, as a truck might be used in the course of a theft to transport stolen property, to help carry out the criminal offense. We hold that the mere use of an item to facilitate a crime does not transform the item into an instrument of crime for purposes of the PIC statute.
>
> While [the] appellant's use of the walkie-talkie facilitated the narcotics sales, we conclude that the statute was not intended to include as instruments of crime equipment not used in the crime itself, but used only to facilitate the crime.

> ***Williams***, [808 A.2d at 215].
>
> . . .
>
> [W]e conclude that the cell phone used in this case was more akin to the paint stick used to commit the crime of criminal mischief in ***Vida***, than it was to the walkie-talkie used only to facilitate drug sales in ***Williams***. In ***Vida***, the paint stick was the instrument of crime used to commit the criminal mischief by defacing public property with a marking device. By contrast, in ***Williams***, the walkie-talkie was used merely to "facilitate . . . the illicit drug sales," similar to how "a truck might be used in the course of a theft to transport stolen property, to help carry out the criminal offense." ***Williams***, [808 A.2d at 215].
>
> Here, Appellant's cell phone was crime equipment used to post messages on social media applications to communicate the threats that constituted the crimes of stalking and harassment. Because the cell phone was directly used in the crimes as the means of communicating to victim, its use satisfied key elements of both stalking and harassment. ***See*** 18 Pa.C.S.A. §§ 2709(a)(4) and 2709.1(a)(2). Under these circumstances, and in light of the legislature's broad definition of "instrument of crime," we conclude that Appellant used the cell phone criminally to communicate threats to the victim, in a manner not manifestly appropriate for its lawful use. ***See*** 18 Pa.C.S.A. § 907. Accordingly, the evidence was sufficient to support Appellant's conviction for PIC.

Id. at **4-7 (footnotes, emphasis, and some quotation marks and citations omitted).

The facts and Appellant's argument in ***Hernandez*** are substantively identical to those in the case at bar. Moreover, as we are bound by our opinion in ***Hernandez***, we conclude that Appellant's claim on appeal necessarily fails, as this Court has already rejected his current claim that "the mere use of a phone to send [harassing] text messages [to the victim] did not transform the

phone into an instrument of crime according to [***Williams***]." ***See*** Appellant's Brief at 17; ***see also Commonwealth v. Taggert***, 997 A.2d 1189, 1201 n.16 (Pa. Super. 2010) (recognizing that "one three-judge panel of [the Superior] Court cannot overrule another" three-judge panel).

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/12/2026