

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

SHAWN DUANE BERKSTRESSER

Appellant

: No. 31 WDA 2026

Appeal from the Judgment of Sentence Entered July 22, 2025
In the Court of Common Pleas of Butler County Criminal Division at
No(s): CP-10-CR-0000186-2023

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V.

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Appellant

: No. 32 WDA 2026

Appeal from the Judgment of Sentence Entered July 22, 2025
In the Court of Common Pleas of Butler County Criminal Division at
No(s): CP-10-CR-0000188-2023

BEFORE: SULLIVAN, J., NEUMAN, J., and STEVENS, P.J.E.*

MEMORANDUM BY NEUMAN, J.:

FILED: August 26, 2026

Appellant, Shawn Duane Berkstresser, appeals in two separate cases,¹ from the aggregate judgment of sentence of 75 to 420 months' incarceration,

* Former Justice specially assigned to the Superior Court.

¹ Appellant's case at trial court docket number CP-10-CR-0000186-2023 pertained to three separate victims, J.B., S.C., and K.B. His case at trial court docket number CP-10-CR-0000188-2023 pertained to one victim, A.S. Appellant's cases were consolidated for trial. This Court *sua sponte* consolidated Appellant's appeals via order filed on February 12, 2026.

imposed after a jury convicted him of one count of indecent assault of a person less than 13 years of age (18 Pa.C.S. § 3126(a)(7)); two counts of corruption of minors (COM) (18 Pa.C.S. § 6301(a)(1)(ii)); two counts of endangering the welfare of children (EWOC) (18 Pa.C.S. § 4304(a)(1)); two counts of indecent assault of a person less than 16 years of age (18 Pa.C.S. § 3126(a)(8)); and four counts of indecent assault without consent (18 Pa.C.S. § 3126(a)(1)). On appeal, Appellant challenges the sufficiency of the evidence to sustain his convictions, as well as statements made by the prosecutor during closing arguments. After careful review, we affirm.

Appellant's convictions stemmed from evidence that he sexually abused his three step-daughters, J.B., S.C., and K.B., as well as their friend, A.S.² The trial court summarized the pertinent testimony by the victims, as follows:

At trial, the Commonwealth called ... victims [J.B.], [S.C.], [K.B.], and [A.S.].¹ Each testified to multiple, specific instances of [Appellant's] conduct that were consistent with ... expert testimony regarding grooming behavior. Further, their accounts contained overlapping similarities. For example, the victims testified to the conduct gradually developing over time. [J.B.] testified that [when she was] fifteen years old, [Appellant] began touching, rubbing, and scratching her back and legs while she was clothed. [N.T. Trial, 3/17/25, at] 92. She then testified ... the touching moved to intimate areas of her body, such as her breasts, bottom, and labia, and ... [Appellant] began placing his hands underneath her clothes. [*Id.* at] 92-93. She further testified ... [Appellant] lifted her pajama shirt during a birthday party and stated, "I'd rather see these[,] in reference to her breasts and then started touching her chest. [*Id.* at] 95. [S.C.] testified ... [Appellant] would enter the bathroom when she

² For purposes of anonymity, we note victims J.B. and K.B. do not share the same last name as Appellant.

finished showering while she was getting dressed. [*Id.* at] 145. She also testified ... [Appellant] noticed and made comments about [the victims'] bodies, such as when she shaved her legs or the type of undergarments she was wearing. [*Id.* at] 146. She further testified that while talking to [Appellant] at his desk, he would begin scratching her back and then move his hands into her waistband and underwear. [*Id.* at] 144. [K.B.] testified ... [Appellant] would often comment on her clothing, such as the length of her shorts or whether she was wearing a bra. [*Id.* at] 193. She also testified that in the evenings[, Appellant] would come into her room and sit on her bed and begin scratching her back. He would then progressively move his hands down the backs of her legs and touch her bottom, between her legs, and [her] vaginal area. [*Id.* at] 195. [A.S.] testified ... [Appellant's] conduct started with hi[s] attempting to tickle her. [N.T. Trial, 3/18/25, at] 63. Later, [Appellant] began touching her breasts, inner thighs, and bottom when tickling her. [*Id.* at] 63. Here, each victim testified to [Appellant's] conduct escalating and becoming increasingly inappropriate over time.

The victims also testified about incidents where [Appellant] threatened the family dynamic or imposed punishments when they did not acquiesce to his conduct. For example, [J.B.] testified ... [Appellant's] behavior repeatedly made her uncomfortable, but ... she was worried about his potential reaction if she expressed her discomfort. In a particular instance, [J.B.] attempted to walk away from [Appellant] after he pinched her nipples, and [Appellant] countered by asking her if it really bothered her. [N.T. Trial, 3/17/25, at] 98-99. [J.B.] testified ... she was afraid [Appellant] would become mad if she denied him access to her body or expressed her discomfort. She felt she needed to keep the peace because he would often lose his temper, use silent treatment, or restrict their ability to leave the house or participate in social activities. [J.B.] further testified ... she did not disclose the behavior because she felt embarrassed and shameful and did not want her family to suffer the consequences. [*Id.* at] 98. [S.C.] testified ... [Appellant] pulled her by the waistband of her clothing when she attempted to move away from him while he was touching her groin area. [S.C.] also testified ... she was afraid to tell [Appellant] not to touch her because she was afraid to upset him. [*Id.* at] 154. She also testified ... [Appellant] would yell or scream when he was upset and would often make the household uncomfortable and feel "like [they were] walking on eggshells." [*Id.*] ... Similarly, [K.B.] testified ... [Appellant] once gave her the

silent treatment for a week after she refused to allow him to touch her. [*Id.* at] 196. [K.B.] also testified to an instance wherein, after [Appellant] learned ... she disclosed his conduct to her then-boyfriend, he forced her to write a letter stating ... she was at fault, ... [Appellant] did nothing wrong, and apologizing for hurting the family and jeopardizing the household. [*Id.* at] 211.

The victims also described how [Appellant] attempted to normalize and desensitize them to his behavior, such as making comments about their intimate parts in a casual, conversational manner. For example, [J.B.] testified that, after lifting her shirt, [Appellant] told her ... her nipples were “too pretty” to be pierced. [*Id.* at] 99. The victims also testified ... [Appellant] would question them if they were wearing more clothing than he thought appropriate. [*Id.* at] 134, 160. [J.B.] testified ... when she wore additional clothing, [Appellant] would say, “if we are not letting him see us naked, then we are letting other people see us naked,” and that such behavior was unacceptable. [*Id.* at] 103. Furthermore, the victims testified ... it was completely normal for [Appellant] to walk into the bathroom while they were bathing, despite having additional bathrooms in the house. [S.C.] testified ... if she wanted privacy, she was made to feel like she was hiding something from [Appellant]. [*Id.* at] 160. These incidents also frequently occurred simultaneously with ordinary activities, such as having a casual conversation, scrolling on a cellphone, or watching television. [*Id.* at] 144, 196. At trial, the testimony of the victims was corroborated by [Appellant]’s “daytimer,”^[3] wherein he described many of these incidents in detail, often describing occasions where he would touch the victims, remove their clothing, and massage them, allegedly to alleviate pain, treat skin conditions, and examine their bodies.

Trial Court Opinion and Order (TCOO), 12/22/25, at 3-6 (some citations to the record omitted).

³ Over the approximately five-year period Appellant abused the victims, he “kept a daily log of his activities. A majority of the log was kept digitally and was referred to as the ‘daytimer.’” Appellant’s Brief at 11 (citations omitted). During the investigation by police, they “received the electronic ‘daytimer’ log on a USB and viewed the contents....” *Id.* at 12.

At the conclusion of trial, the jury convicted Appellant of the above-stated offenses.⁴ On July 22, 2025, the court sentenced Appellant to an aggregate term of 75 to 420 months' incarceration. He filed a timely post-sentence motion, which the court denied on December 22, 2025. Appellant then filed timely notices of appeal at each docket number, and he and the court complied with Pa.R.A.P. 1925. Herein, Appellant states two issues for our review:

1. Whether the evidence was insufficient to sustain Appellant's convictions for indecent assault, [COM], and [EWOC]?
2. Whether the trial court abused its discretion in denying a new trial in the "interests of justice" based on the prosecutor's improper closing argument[,], which shifted the burden on [Appellant] and made an impermissible appeal to community standards?

Appellant's Brief at 6.⁵

⁴ Specifically, Appellant was convicted of three counts of indecent assault, one count of COM, and one count of EWOC against K.B.; two counts of indecent assault, one count of COM, and one count of EWOC against J.B.; one count of indecent assault against S.C.; and one count of indecent assault against A.S.

⁵ We note in the hard-copy brief filed by Appellant, he states only two issues for our review, but in his electronically-filed brief, Appellant includes a third issue challenging whether he should have been sentenced under the 7th or 8th Edition of the Pennsylvania Sentencing Guidelines. **See** Appellant's Electronically-Filed Brief at 6. However, Appellant presents no argument on this issue in either his electronically-filed or hard-copy brief. Thus, this issue is waived. **See Commonwealth v. Hardy**, 918 A.2d 766, 771 (Pa. Super. 2007) ("The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities. ... [W]hen defects in a brief impede our ability to conduct meaningful appellate review, we may dismiss the appeal entirely or find certain issues to be waived.").

In Appellant's first issue, he challenges the sufficiency of the evidence to sustain his convictions. Initially, we observe that,

[w]hether the evidence was sufficient to sustain the charge presents a question of law. Our standard of review is *de novo*, and our scope of review is plenary. In conducting our inquiry, we examine[,]

whether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict-winner, [is] sufficient to establish all elements of the offense beyond a reasonable doubt. We may not weigh the evidence or substitute our judgment for that of the fact-finder. Additionally, the evidence at trial need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant's guilt unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. When evaluating the credibility and weight of the evidence, the fact-finder is free to believe all, part or none of the evidence. For purposes of our review under these principles, we must review the entire record and consider all of the evidence introduced.

Commonwealth v. Rojas-Rolon, 256 A.3d 432, 436 (Pa. Super. 2021) (cleaned up).

Here, we conclude Appellant has waived his sufficiency claim for our review. In his Rule 1925(b) statement, Appellant simply averred "the Commonwealth presented insufficient evidence to sustain the charges[.]" Rule 1925(b) Statement, 1/29/26, at 1 (single page). It is well-settled that,

[i]n order to preserve a challenge to the sufficiency of the evidence on appeal, an appellant's Rule 1925(b) statement must state with specificity the element or elements upon which the appellant alleges that the evidence was insufficient. ***Commonwealth v. Gibbs***, 981 A.2d 274, 281 (Pa. Super. 2009).... "Such specificity is of particular importance in cases

where, as here, the appellant was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt.” **Id.** ... (citation omitted).

Commonwealth v. Garland, 63 A.3d 339, 344 (Pa. Super. 2013).

In this case, Appellant was convicted of committing five different offenses against four separate victims, with each of those offenses having unique elements. Nevertheless, Appellant failed to identify in his Rule 1925(b) statement which convictions, and elements thereof, he is challenging. Thus, we are compelled to deem his sufficiency claim waived. **See id.** (concluding Garland waived his sufficiency claim where he “not only failed to specify which elements he was challenging in his Rule 1925(b) statement, he also failed to specify which conviction he was challenging”).

We also observe that, although Appellant claims he is challenging the sufficiency of the evidence to sustain his indecent assault, COM, and EWOC convictions, he presents no developed argument concerning his convictions for COM or EWOC. Instead, Appellant argues the evidence was insufficient to sustain his indecent assault convictions, and then cursorily states, “because the evidence fails to sustain the indecent assault convictions, it likewise cannot support the derivative offenses.” Appellant’s Brief at 28. Appellant’s failure to develop any meaningful argument concerning his COM and EWOC convictions waives his sufficiency claim regarding those offenses on this basis, as well. **See Hardy**, 918 A.2d at 771.

In any event, even if we liberally construed Appellant’s Rule 1925(b) statement as preserving a challenge to his indecent assault convictions — as

that claim was raised in Appellant's post-sentence motion and addressed by the trial court in its opinion denying it — we would agree with the court that no relief is due on this issue. Appellant was convicted of multiple counts of indecent assault under 18 Pa.C.S. § 3126, which states, in pertinent part:

(a) Offense defined.--A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

(1) the person does so without the complainant's consent;

(7) the complainant is less than 13 years of age; or

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

18 Pa.C.S. §§ 3126(a)(1), (a)(7), and (a)(8). The term "indecent contact" is defined as "[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person." 18 Pa.C.S. § 3101. Our Supreme Court has stressed "the definition of 'indecent contact,' as written, expresses two distinct concepts which must be proven: first, the touching of a sexual or other intimate part of the person, and, second, such touching being for the purpose of arousing or gratifying sexual desire." **Commonwealth v. Gamby**, 283 A.3d 298, 314 n.17 (Pa. 2022) (citing 18 Pa.C.S. § 3101).

According to Appellant, the Commonwealth failed to prove the second prong of the “indecent contact” element, or that he “touched his stepdaughters for the purpose of arousing or gratifying sexual desire in any person.” Appellant’s Brief at 16.⁶ He stresses there was no testimony by any victim that his conduct escalated from briefly touching their intimate parts to “kiss[ing], lick[ing], or bit[ing]” them, *id.* at 22, or to any other “sexual acts” such as “penetrating [their] vagina, anus, and/or mouth[s].” *Id.* at 24. Appellant also points out the victims did not testify he “touch[ed] himself, [took] his clothes off, or remove[d] their clothes.” *Id.* at 27. Thus, Appellant contends the evidence was insufficient to prove he touched the victims for the purpose of sexual gratification, and his indecent assault convictions must be reversed.

In rejecting Appellant’s claim, the trial court first observed:

Intimate body parts include both sexual body parts and “a[] body part that is personal and private, and which the person ordinarily

⁶ Appellant essentially admits he touched the victims’ “sexual or other intimate parts[,]” thereby meeting the first prong of “indecent contact” under section 3101. **See** Appellant’s Brief at 20 (“Appellant’s stepdaughters testified [to] what arguably[] is considered ‘indecent contact.’”); *id.* at 22 (stating J.B. “described indecent contact, however, the touching alone is insufficient to sustain a conviction”); *id.* at 24 (admitting S.C.’s testimony “arguably fits the definition of indecent contact”); *id.* at 27 (contending K.B. “did not testify to any conduct by Appellant that indicated the purpose of the contact was for sexual gratification”); *id.* at 31 (claiming A.S.’s “testimony clearly establishes that the contact was not undertaken for the purpose of sexual gratification by either [] Appellant or [A.S.]”). Appellant insists, however, there was no evidence that his touching the victims was “for the purpose of sexual gratification” in order to meet the second prong of proving “indecent contact.” *Id.* at 20.

allows to be touched only by people with whom the person has a close personal relationship, and one which is commonly associated with sexual relations or intimacy.” ... **Gamby**, 283 A.3d [at] 313-14 ... [(footnote omitted)]. Whether the touching of sexual or intimate body parts occurred for the purpose of arousing or gratifying sexual desire is determined by the nature and way a particular body part is touched. **Id.** at 315 (reasoning that “whether a part of the body was kissed, stroked, slapped, or poked ... speak[s] to whether the touching was for sexual gratification”). Significantly, contact with intimate parts of the body for sexual arousal, gratification, or desire encompasses “purposeful invasion[s] of one’s personal dignity, while not sweeping in casual expressions of affection[.]” **Id.** at 309.

TCOO at 8.

Applying these legal concepts to the instant case, the trial court found the evidence sufficient to prove Appellant touched the victims for the purpose of arousing or gratifying sexual desire, explaining:

Instantly, [Appellant] argues that the evidence presented was not sufficient to establish that his conduct was for the purpose of arousing sexual desire or sexual gratification, averring that his conduct was not for a sexual motive because the instances of touching never occurred while the victims were unclothed, [or] escalated to vaginal penetration, sexual intercourse, or ejaculation. The court finds this argument without merit. Although throughout his testimony[, Appellant] repeatedly denied that the way he touched the victims was with a sexual intent or for the purpose of arousal, the testimony of the victims and [Appellant’s] consistent daytimer entries establish ... [Appellant] engaged in a consistent pattern of inappropriate touching of the victims’ intimate body parts for the purpose of arousing sexual desire. Throughout his daytimer, [Appellant] wrote in detail how and in what way he touched the victims in intimate ways and derived pleasure from doing so. For example, [Appellant] writes, “[e]nded up spending almost an hour rubbing [K.B.]’s back and legs. No idea where the time went. She won’t take off her shirt or bra because she is cold though her rash is everywhere. ... She likes being scratched lightly as it helps the itch but not tickled, scratched, or rubbed.” Commonwealth Ex. 7.26:2155. [Appellant] also frequently describes how the victims are dressed,

if and how much of their bodies he can see without or under their clothes, and how they look in their clothes. For example, [Appellant] notes "rubbing [a cream] on [S.C.'s] back and neck. Her and [K.B.] have been naked except panties most of the afternoon while [S.C.] has a white tank on that is fully see-through with see-through panties, but she always wants her back and neck rubbed because she is constantly tight and sore." Commonwealth Ex. 7.32:2134, **see also** Commonwealth Ex. 7.33:2205 ("[S.C.] home, she has been going to work braless showing off her sweaty boobs."). Moreover, [Appellant] frequently describes and comments on not just the victims' appearance and bodies, but on personal or intimate areas, such as their breasts, nipples, and labia. For example, [Appellant] writes, "[s]howing [his wife] vagina-shaped pictures and explaining to her how they are all different. She hasn't been much exposed to the differences, I guess, even to the point of noticing differences between hers and the girls' though the girls talk about it and compare theirs to [wife's]. [S.C.'s] is thin and small while [J.B.'s] is a little fuller but with a much larger inner labia than [S.C.] has. [K.B.] has both a very full outer labia as well as a very large and elongated inner labia like [wife] has." Commonwealth Ex. 7.38:1934.

Furthermore, the victims' testimony and many of these entries describe interactions that are inherently sexual in nature or detail the touching of body parts that are routinely associated with sexual relations or intimacy. For example, [J.B.] testified ... [Appellant] would "reach his hand down or into my pants if I was wearing shorts, and he would take my vagina in his fingers." [N.T.] Trial[, 3/17/25, at] 114-15. [Appellant] would also "move [her shorts] to the side or go ... through the front" to touch her vagina. **Id.** [Appellant's] daytimer describes incidents where he flicked and pinched the victims' nipples. Commonwealth Ex. 7.24:2006. [Appellant] also frequently described the victims' appearance or clothing in a sexual manner, writing, "[J.B.] is modeling her homecoming dress[,] it is a barely there number ... making it impossible to wear a bra." Commonwealth Ex. 7.21:1724. [Appellant] also writes, "[K.B.] tried on her dress with her shoes and she is a stunning, statuesque creature that towers over her sisters and looks too fabulous for a 13 year old." **Id.** The same entry also states, "[J.B.] went back to a loose sweater, but with no bra. Oddly with that shirt, her nipples show through all the time." **Id.** [Appellant] also continually writes about rubbing the victims, stating, "[m]ade it about 25 minutes of helping and listening to her before starting to rub her legs and

thighs. She didn't move or complain but I could only reach her right leg and between. That continued for a good 15 minutes without me stopping. I was getting sleepy, but mesmerized by the rubbing." Commonwealth Ex. 7.16.2250.

In ordinary social interactions, the breasts, buttocks, nipples, inner thighs, and labia are personal and private body parts. Indeed, a person does not usually touch or caress another person's breasts, buttocks, nipples, inner thighs, or vaginal area outside of personal, intimate, or medical relationships. Significantly, [Appellant] argues that because his conduct never escalated into intercourse, it did not rise to the level of sexual gratification. However, [Appellant] fails to acknowledge ... the indecent assault statute does not require sexual contact of a specific type; it merely requires touching of an intimate area with the intent of arousing sexual desire or gratification. 18 Pa.C.S.[] § 3126.

[Appellant] further argues ... his conduct was not for the purpose of sexual gratification because the victims testified ... he did not seem aroused when the incidents occurred. The court finds this argument equally meritless. Although the victims testified ... [Appellant] did not seem aroused or verbally ask them to gratify him sexually, they also testified ... they were too distracted by their own discomfort to notice if [Appellant] was aroused. [N.T.] Trial[, 3/17/25, at] 175. Furthermore, each victim testified to [Appellant's] touching of their intimate body parts in a manner that offended their sense of personal dignity and privacy and made them feel violated. [*Id.* at] 94, 145, 153, 174, 175. Although [Appellant] labors to normalize his conduct, the nature of his behavior cannot be justified as harmless expressions of affection.

Considering the evidence in the light most favorable to the Commonwealth, this court finds ... the evidence was sufficient for the jury to conclude ... [Appellant] engaged in touching of the victims' sexual or intimate body parts for the purpose of arousing or gratifying sexual desire....

TCOO at 8-11 (some formatting altered; unnecessary capitalization omitted).

Even had Appellant not waived his sufficiency claim for our review, we would agree with the trial court that the evidence was sufficient for the jury

to find, beyond a reasonable doubt, that Appellant touched the victims for the purpose of arousing or gratifying sexual desires. Although Appellant attempts to highlight portions of the victims' testimony which support his argument his touching was not for sexual purposes, **see** Appellant's Brief at 21-31, this Court's obligation is to consider the totality of the evidence, and all reasonable inferences stemming therefrom, in the light most favorable to the Commonwealth as the verdict winner. Under this standard, the jury could reasonably infer Appellant's touching of the victims was for sexual arousal or gratification. Thus, the evidence was sufficient to sustain his indecent assault convictions.

In Appellant's second issue, he contends he is entitled to a new trial because the prosecutor made two improper statements during its closing argument. Initially, we note that in reviewing a claim of improper prosecutorial comments, our standard of review "is whether the trial court abused its discretion." **Commonwealth v. Hall**, 701 A.2d 190, 198 (Pa. 1997). Additionally,

with specific reference to a claim of prosecutorial misconduct in a closing statement, it is well settled that any challenged prosecutorial comment must not be viewed in isolation, but rather must be considered in the context in which it was offered. Our review of a prosecutor's comment and an allegation of prosecutorial misconduct requires us to evaluate whether a defendant received a fair trial, not a perfect trial. Thus, it is well settled that statements made by the prosecutor to the jury during closing argument will not form the basis for granting a new trial unless the unavoidable effect of such comments would be to prejudice the jury, forming in their minds fixed bias and hostility

toward the defendant so they could not weigh the evidence objectively and render a true verdict. The appellate courts have recognized that not every unwise remark by an attorney amounts to misconduct or warrants the grant of a new trial. Additionally, like the defense, the prosecution is accorded reasonable latitude, may employ oratorical flair in arguing its version of the case to the jury, and may advance arguments supported by the evidence or use inferences that can reasonably be derived therefrom.

Moreover, the prosecutor is permitted to fairly respond to points made in the defense's closing, and therefore, a proper examination of a prosecutor's comments in closing requires review of the arguments advanced by the defense in summation.

Commonwealth v. Jaynes, 135 A.3d 606, 615 (Pa. Super. 2016) (cleaned up).

Appellant first contends the prosecutor erred by stating Appellant "could have brought all of the people that he listed for the trooper;^[7] they weren't here. He didn't have to, but he could have." N.T. Trial, 3/20/25, at 210. Defense counsel immediately objected to this statement and argued, at a sidebar, that the prosecutor had impermissibly shifted the burden of proof to Appellant. ***Id.*** at 211. The court and the parties agreed the prosecutor would make it clear to the jury that Appellant had no burden to produce evidence or witnesses, and if defense counsel was "not satisfied" with the prosecutor's clarification, he could "ask for another sidebar, and [the court would] address it again." ***Id.*** at 212. The prosecutor then stated the following to the jury:

⁷ It is not clear from this portion of the record who Appellant discussed with the trooper or the context of what they would have testified to, had he called them at trial. Notably, Appellant offers no explanation in this regard. We decline to scour the record to discern these details, where they are not pertinent to our disposition of his claim.

[The Prosecutor:] I want to make it very clear that [Appellant] did not have to bring anyone in. The burden is all mine; I told you that at the beginning. We can't hold it against him that he didn't bring anyone in. The judge is going to tell you that[,] too. At no point does he have to.

Id. Defense counsel did not further object or ask for another sidebar, thereby indicating he was satisfied with the prosecutor's clarification that she bore the burden of proof in the case.

In rejecting Appellant's argument that a new trial is warranted based on the prosecutor's remark, the trial court stated:

Clearly, this court immediately addressed the prosecution's statement and defense counsel's objection. Both the [prosecutor] and this court made it exceptionally clear that [Appellant] had no burden whatsoever and that the presumption of innocence stayed with him unless and until the Commonwealth met its burden of proving his guilt beyond a reasonable doubt. After additional clarification from the [prosecutor] and an extensive and thorough instruction on the burden of proof, this court was satisfied that any possibility of prejudice was cured by its closing charges and instructions. The statement therefore did not prevent a true and fair verdict.

TCOO at 12-13 (unnecessary capitalization omitted).

We discern no abuse of discretion by the trial court. The prosecutor immediately clarified that the burden of proof rested with the Commonwealth, Appellant had no burden to call any witnesses, and the jury could not hold it against Appellant that he chose not to do so. This explanation by the prosecutor cured any prejudice Appellant suffered from the prosecutor's initial comments. Notably, Appellant did not ask for any further curative measures. Thus, a new trial is not warranted.

Next, Appellant takes issue with the following statements by the prosecutor:

[The Prosecutor:] You as the jury have a very important job. We talked about this at jury selection, and we talked about it on Monday in openings, and we're going to talk about it a little bit more now, and then I promise I will shut up. You have an obligation to apply all of the facts that you heard to the law. You swore an oath to do that. You also have an obligation to decide what you as community members are willing to accept. You're obligated to determine what you decide is touching intimate parts of the body for sexual gratification, what you as members of this community are willing to say is not okay to occur in the community that you all live, that your kids live in, that your grandkids live in, that your friends live in, that their kids live in, that their grandkids live in. What standard do you as jurors want to set for this community?

N.T. Trial, 3/20/25, at 215.

Appellant contends the prosecutor's comments improperly asked the jury to "send a message" to the community with its verdict, which is impermissible under decisions by the Pennsylvania Supreme Court, including, *inter alia*, **Commonwealth v. DeJesus**, 860 A.2d 102, 119 (Pa. 2009) (holding "penalty phase arguments requesting that the jury send a message with its verdict are prejudicial *per se*"), and **Commonwealth v. Patton**, 985 A.2d 1283, 1287 (Pa. 2009) ("[The Pennsylvania Supreme Court] has stridently condemned prosecutorial statements urging a criminal jury to 'send a message' to the community or the criminal justice system.").

Preliminarily, we observe Appellant did not object to the prosecutor's at-issue remarks the moment they were made, or at the end of the prosecutor's

closing argument. He also did not request any curative instruction by the court. We have made clear

to preserve a claim of prosecutorial misconduct in the context of a closing statement, the defendant must object and request a remedy. [***Commonwealth v. Jones***, 191 A.3d 830, 836 (Pa. Super. 2018)] (citing ***Commonwealth v. Manley***, 985 A.2d 256 (Pa. Super. 2009)). **See also *Commonwealth v. Watts***, 333 A.3d 25 (Pa. Super. ... 2024) (holding lack of a contemporaneous objection constitutes a waiver of any challenge to the prosecutor's closing remarks) (citing ***Commonwealth v. Powell***, ... 956 A.2d 406, 423 ([Pa.] 2008) (providing that the "absence of a contemporaneous objection below constitutes a waiver of [the] appellant's current claim respecting the prosecutor's closing argument"); ***Commonwealth v. Butts***, ... 434 A.2d 1216, 1219 ([Pa.] 1981) (providing that the failure to object during or after summation constitutes a waiver of prosecutorial misconduct claim)).

Commonwealth v. Rodriguez, 340 A.3d 334, 342 (Pa. Super. 2025), *appeal denied*, No. 361 MAL 2025, 2026 WL 807235 (Pa. Mar. 24, 2026).

Here, citing ***Rodriguez***, the trial court deemed Appellant's challenge to the prosecutor's comments waived. **See** TCOO at 13. In response, Appellant attempts to bootstrap this claim to his objection to the prosecutor's burden-shifting remark. Namely, Appellant insists the combined, prejudicial impact of both at-issue comments by the prosecutor warrants a new trial and, therefore, his objection to the first, burden-shifting remark was adequate to preserve both claims for our review. **See** Appellant's Brief at 43.

Appellant's argument is unconvincing. Initially, the two, at-issue remarks by the prosecutor were wholly unrelated in substance, and the second comment was made well after the first. Moreover, Appellant objected to the first comment, requested a remedy, and the prosecutor offered a clarification.

As set forth *supra*, any prejudice Appellant suffered by the first remark was therefore cured. When the prosecutor much later offered wholly different comments, which Appellant now claims were also prejudicial, he was required to object again and request a remedy. ***See Jones, supra***. Because he did not, he has waived this claim for our review.

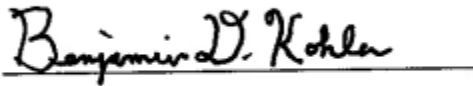
In any event, even if not waived (or even if the trial court could have still granted relief in the interests of justice despite waiver, as Appellant contends, ***see*** Appellant's Brief at 43), no relief is due. We would agree with the court that the prosecutor's statements did not rise to the level of forming, in the jurors' minds, a "fixed bias and hostility toward [Appellant] so that they could not weigh the evidence objectively." TCOO at 14 (citing ***Jones***, 191 A.3d at 835); ***see also Jaynes***, 135 A.3d at 615. The trial court reasoned:

This court notes that the phrase "send a message" is absent from the challenged remarks. Although the statements do appeal to the community, they do not suggest that the community is under attack and that the jury should respond to that attack by issuing a guilty verdict to send a message to members of the community who may consider engaging in similar conduct. ***See Commonwealth v. Hall***, 701 A.2d 190, 203 (Pa. 1997) (holding that a jury's verdict must not be based on a prosecutor's attempt "to convince the jury that a certain verdict is necessary as a form of retribution for the ills inflicted on society by a certain class of people"). The statement from the prosecution does not ask the jury to render a guilty verdict to "send a message" to the community. Rather, the remarks call for the community to set a standard and urge the jurors to consider the facts, apply the law, discharge their oaths, and come to a verdict accordingly. The [prosecutor's] comments therefore did not so prejudice the jury against [Appellant] such that they could not evaluate the evidence fairly and objectively.

TCOO at 14-15 (unnecessary capitalization omitted). We would discern no abuse of discretion in the court's rationale for denying Appellant a new trial, even had he preserved this claim for our review.

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: 8/26/2026