

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
PATRICK TIMOTHY KEARNEY	:	
	:	
Appellant	:	No. 1316 WDA 2025

Appeal from the PCRA Order Entered September 25, 2025
In the Court of Common Pleas of Mercer County
Criminal Division at No: CP-43-CR-0000810-2018

BEFORE: STABILE, J., LANE, J., and BENDER, P.J.E.

MEMORANDUM BY STABILE, J.:

FILED: OCTOBER 1, 2026

Appellant, Patrick Thomas Kearney, appeals from the September 25, 2025, order imposed by the Court of Common Pleas of Mercer County dismissing Appellant's petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46.¹ Upon review, we affirm.

On February 21, 2020, following a four-day jury trial, Appellant was found guilty of rape², involuntary deviate sexual intercourse³, sexual assault⁴, strangulation⁵, indecent assault (M2)⁶, indecent assault (M1)⁷, and

¹ Appellant filed a second, related appeal challenging the court's denial of his post-conviction request for DNA testing. **See** 1246 WDA 2025.

² 18 Pa.C.S.A. § 3121(a)(1).

³ 18 Pa.C.S.A. § 3123(a)(1).

⁴ 18 Pa.C.S.A. § 3124.1.

⁵ 18 Pa.C.S.A. § 2718(a)(1).

⁶ 18 Pa.C.S.A. § 3126(a)(2).

⁷ 18 Pa.C.S.A. § 3126(a)(1).

aggravated indecent assault⁸. Sentencing was deferred for an assessment by the Sexual Offenders Assessment Board ("SOAB") as to whether Appellant should be classified as a sexually violent predator. On July 2, 2020, Appellant was sentenced to an aggregate 15½ to 33 years of incarceration, followed by nine years of probation. This Court affirmed Appellant's judgment of sentence. ***See Commonwealth v. Kearney***, 1015 WDA 2020, 2021 WL 4207008 (Pa. Super. filed Sept. 16, 2021) (unpublished memorandum). Our Supreme Court denied allowance of appeal on March 16, 2022.

On March 15, 2023, Appellant filed a *pro se* PCRA petition. Victor Heutsche, Esquire, was appointed as PCRA counsel. On July 20, 2023, Attorney Heutsche filed a motion to withdraw as counsel with an accompanying ***Turner/Finley***⁹ no-merit letter. The PCRA court denied counsel's motion and he was granted leave to file an amended PCRA petition within 30 days. Attorney Heutsche filed a second motion to withdraw with an accompanying ***Turner/Finley*** no-merit letter on October 23, 2023. On October 27, 2023, the PCRA court entered a Pa.R.Crim.P. 907 notice to dismiss Appellant's PCRA petition without a hearing and granted counsel's motion to withdraw.

On November 17, 2023, the PCRA court granted Appellant a 45-day extension to file an amended PCRA petition. Appellant filed a *pro se* amended

⁸ 18 Pa.C.S.A. § 3125(a)(2).

⁹ ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988).

PCRA petition on January 11, 2024. Randall T. Hetrick, Esquire, was appointed as PCRA counsel. Appellant filed a counseled amended PCRA petition on November 14, 2024. Thereafter, an evidentiary hearing was scheduled for January 27, 2025.

On the day of the scheduled hearing, the PCRA court entered an order which granted Appellant's request to proceed *pro se* and appointed Attorney Hetrick as standby-by counsel. The evidentiary hearing was continued until September 4, 2025. The PCRA court also directed Appellant to file "a refined and more orderly list of issues raised." Order, 1/27/25. On February 14, 2025, and March 10, 2025, Appellant filed amended PCRA petitions.

An evidentiary hearing was held on September 4 and 8, 2025. At the conclusion, the PCRA court took the matter under advisement. On September 25, 2025, the PCRA court dismissed Appellant's PCRA petition. This appeal followed. Appellant presents the following issues for our review:

1. Did the PCRA court commit an error of law in that by saying the defense counsel testified credibly in regards of attacking the credibility of [the victim, C.F.T.]?
2. Did the PCRA court commit an error of law in that by saying the defense counsel testified credibly in regards of attacking the credibility of [M.K.]?
3. Did the PCRA court commit an error of law or abuse of discretion in that by saying the defense counsel testified credibly in regards of attacking the credibility of Barbara Kerr?
4. Did the PCRA court commit an error of law or abuse of discretion by saying the defense counsel acted in a reasonable strategic, rational manner by not objecting to the Commonwealth's use of preemptory strikes based on gender

resulting in an impartial jury in which 3 of the jurors knew the victims?

5. Did the PCRA court commit an error of law or an abuse of discretion in that by saying defense counsel acted in a strategic, reasonable, rational basis by not addressing the issue to the jury about the Troopers stealing [Appellant's] spare set of keys out of his backpack he was wearing during the arrest and not listing them on the inventory sheet[?]
6. Did the PCRA court commit an error of law or an abuse of discretion by saying [Appellant] provided no evidence in regard to his truck being "wired up" with surveillance equipment by the Troopers?
7. Did the PCRA court commit an error of law or an abuse of discretion by saying [Appellant's] testimonies were not credible because they were so detailed in nature?
8. Did the PCRA court commit an error of law or an abuse of discretion in finding that [Appellant] provided his time card, a picture of his back, a picture of his headboard, along with a list of exculpatory evidence to the trial counsel irrelevant because it was [cumulative] in pointing out holes and inconsistencies in the [victims'] stories, as well as, the errors made by the defense counsel?

Appellant's Brief, at 6-9 (suggested answers omitted).

We review an order denying a petition for collateral relief to determine whether the PCRA court's decision is supported by the evidence of record and free of legal error. **See e.g., Commonwealth v. Albrecht**, 994 A.2d 1091, 1093 (Pa. 2010). "The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." **Commonwealth v. Hernandez**, 79 A.3d 649, 651 (Pa. Super. 2013). "The scope of our review is limited to the findings of the PCRA court and the evidence of record, which we view in the light most favorable to the party who prevailed before that

court.” ***Commonwealth v. Small***, 238 A.3d 1267, 1280 (Pa. 2020) (internal citations omitted).

In issues one, two, three, and seven, Appellant challenges the PCRA court’s credibility determinations, particularly regarding trial counsel’s testimony at the evidentiary hearing. However, in his appellate brief, Appellant’s argument on these issues focuses on the fact that the jury did not believe his version of events, and instead, believed the victim. “The most significant factor in this issue is that the [victim’s] testimony is inconsistent and factually false.” Appellant’s Brief, at 17. Appellant’s argument on these issues consists of citing certain portions of C.F.T. and M.K.’s testimonies and stating that they were lying or that their testimony was inconsistent with the evidence, *i.e.*, his version of events. ***See id.***, at 17-26.

“[W]e must defer to the PCRA court’s . . . credibility determinations, which are supported by the record.” ***Commonwealth v. Spatz***, 84 A.3d 294, 319 (Pa. 2014). This is because “[t]he PCRA court, and not the appellate courts, has personally observed the demeanor of the witnesses, and . . . when a PCRA hearing is held, we expect the PCRA court to make necessary credibility determinations.” ***Id.*** (citing ***Commonwealth v. Johnson***, 966 A.2d 523, 532 (Pa. 2009) (quotation marks omitted). Trial counsel cross-examined C.F.T. and M.K. extensively on the inconsistencies in their own testimony, as well as any perceived inconsistency with Appellant’s version of events. Moreover, trial counsel testified at the evidentiary hearing regarding

these issues, which the PCRA court found credible. **See** Findings of Facts, Analysis, Law, and Order, 9/25/25, at 24 (our pagination). Appellant failed to overcome this deferential standard; therefore, no relief is due.

Appellant's fourth issue challenges the PCRA court's finding that trial counsel had a reasonable, strategic decision not to object to the Commonwealth's use of preemptory strikes based on gender.¹⁰ The PCRA court denied relief noting that Appellant failed to present any evidence to support his claim:

With regard to **Batson**^[11, 12] challenges, [Appellant] presented no evidence regarding the gender of the overall jury panel, or the gender of any potential juror stricken by the Commonwealth. Further, trial counsel credibly testified she noted no signs of a **Batson** violation on behalf of the Commonwealth and believed the make-up of the jury was favorable to [Appellant]. There is no suggestion [that] the Commonwealth exercised preemptory challenges bas[ed] on gender and the [trial court] noted no such pattern at the time of trial.

¹⁰ We presume, based on the language used by Appellant, that he is making a claim of ineffective assistance of counsel ("IAC"). However, Appellant does not explicitly state that he is making an IAC claim, nor does he set forth the relevant standard of review for such a claim. Thus, we will not develop Appellant's argument for him and will address the claim as presented. **See, e.g., Commonwealth v. Gould**, 912 A.2d 869, 873 (Pa. Super. 2006) ("The court will not become the counsel for appellant, and will not, therefore, consider issues ... which are not fully developed in the brief.") (citation omitted).

¹¹ **Batson v. Kentucky**, 476 U.S. 79 (1986).

¹² The Supreme Court of the United States extended **Batson** to include claims of intentional discrimination of prospective jurors based on gender. **See J.E.B. v. Alabama ex rel. T.B.**, 511 U.S. 127 (1994).

With regard to [Appellant's] allegations three jurors had knowledge of [Appellant] and should have been dismissed, there is no basis for relief. Two of the three jurors included in [Appellant's] allegations were in fact excused. The third juror indicated [that she had been the victim's 6th grade teacher and] it had been over ten years since she had seen the victim . . . and she did not recognize the victim's name. [The trial court] engaged in a colloquy with the potential juror and was more than satisfied the juror would be fair and impartial.

Findings of Fact, Analysis, Law, and Order, 9/25/25, at 26.

To raise a **Batson** claim,

First, the defendant must make a *prima facie* showing that the circumstances give rise to an inference that the prosecutor struck one or more prospective jurors on account of [gender]; second, if the *prima facie* showing is made, the burden shifts to the prosecutor to articulate a [gender]-neutral explanation for striking the juror(s) at issue; and third, the trial court must then make the ultimate determination of whether the defense has carried its burden of proving purposeful discrimination.

* * * *

. . . Pennsylvania law also requires that a defendant must make a record specifically identifying (1) the race or gender of all venirepersons in the jury pools, (2) the race or gender of all venirepersons remaining after challenges for cause, (3) the race or gender of those removed by the prosecutor, and (4) the race or gender of the jurors who served and the race or gender of jurors acceptable to the Commonwealth who were stricken by the defense.

Commonwealth v. Murray, 248 A.3d 557, 567-68 (Pa. Super. 2021). "The defendant does not satisfy **Batson's** first step of *prima facie* evidence merely by showing that the prosecutor used a number of strikes against venirepersons of one [gender]." **Id.** at 568.

The totality of Appellant's argument on this issue is as follows:

The PCRA court abused its discretion saying the trial counsel acted in a reasonable, rational, strategic manner by not objecting to the use of the Commonwealth's preemptory strikes based on gender, which falls under **Batson**. This resulted in a jury panel that was made up of 9 women, 3 men, and a female alternate, in which 3 of the female jurors proceeded past jury selection into the trial despite personally knowing the alleged victims. This along with irrelevant photographs clearly prejudiced the jury against [Appellant].

Appellant's Brief, at 29.

We agree with the trial court that Appellant failed to demonstrate that the Commonwealth exercised preemptory challenges based solely on gender. As Appellant's brief argument demonstrates, Appellant fell far short of carrying his burden of demonstrating a **Batson** violation. Moreover, we also conclude that Appellant has waived this issue due to Appellant's failure to develop the argument or cite to relevant legal authority. "It is beyond cavil that, where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived." **Viall v. Garvin**, 318 A.3d 905, 925 (Pa. Super. 2024) (citing **B.S.G. v. DMC**, 255 A.3d 528, 535 (Pa. Super. 2021)). We find this issue waived.

Appellant's fifth issue challenges the PCRA court's finding that trial counsel had a reasonable, strategic decision not to introduce testimony that officers "stole" Appellant's spare key to his motorcycle when he was

arrested.¹³ However, in his appellate brief, Appellant appears to contest the validity of a search warrant. The totality of Appellant's argument on this issue is as follows:

The PCRA abused its discretion by saying trial counsel acted in a reasonable, rational, strategic manner in not advising the jury about the spare set of keys the Troopers stole out of [Appellant's] backpack during the initial arrest. By not listing them as items on the inventory list, along with not getting the bedding tested at the lab made that search warrant invalid and illegal. Everything found as a result of that initial search was in fact fruit of the poisonous tree, therefore making it an illegal search and seizure which violates [Appellant's] constitutional 4th amendment.

Appellant's Brief, at 29-30.

We find the issue as presented waived for failure to develop the argument or cite to relevant legal authority. ***Viall, supra***. We further find that Appellant waived any challenge to the validity of the search warrant because it was not raised before the trial court. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the trial court are waived and cannot be raised for the first time on appeal."); ***Commonwealth v. Bloomer***, 327 A.3d 1282, 1286 (Pa. Super. 2024).

Appellant's sixth issue challenges the PCRA court's finding that Appellant failed to provide evidence that Pennsylvania State Troopers "wired" his truck

¹³ Again, Appellant appears to raise an IAC claim. However, he does not explicitly raise an IAC claim, nor does he provide the standard of review or relevant authority. Therefore, we will address the claim as presented in the brief. ***See Gould, supra***.

with surveillance equipment. The totality of Appellant's argument on this issue is as follows:

The PCRA court abused its discretion in saying the trial counsel acted in a reasonable, rational, strategic manner in not questioning the Troopers regarding how they rigged [Appellant's] truck with surveillance equipment without a warrant. This again violates [Appellant's] constitutional 4th Amendment. This would have demonstrated to the jury the complete lack and disregard of the constitution by the Troopers, as well as their unprofessionalism. This would not have incited the jury to believe some "police conspiracy," rather they would have seen the video [Appellant] presented to the trial counsel as evidence which could not have been denied.

Appellant's Brief, at 30.¹⁴

We first find this issue waived for failure to develop the argument or cite to relevant legal authority. **Viall, supra**. Regardless, Appellant claimed that he provided trial counsel with a video showing his vehicle starting while Appellant was standing 100 meters away holding the only set of keys to the vehicle. Trial counsel testified at the evidentiary hearing that she viewed the video, but chose not to explore that line of questioning with the troopers:

It was not explored because quite honestly [Appellant was] making allegations that there were tracking mechanisms and things in [his] truck that I believe a jury would find to be very incredible, and I didn't want them to view [him] and [his] mental health in a negative light in that regard. Further, it was not at all relevant as to whether or not the sexual acts with [C.F.T.] and [M.K.] were consensual. But I did not think if we presented

¹⁴ In the appellate brief, Appellant appears to raise an IAC claim. However, he does not explicitly raise an IAC claim, nor does he provide the standard of review or relevant authority. Therefore, we will address the claim as presented in the brief. **See Gould, supra**.

evidence of a police conspiracy against [Appellant] that a jury would look kindly upon [him] and [his] credibility.

N.T. Evidentiary Hearing, 9/4/25, at 191. On this issue, Appellant testified:

THE COURT: So other than your allegation that the truck started when you had the keys in your hand, what other evidence do you have – did you ever find the GPS tracker on the start block?

[APPELLANT]: I should have. No, I didn't, Your Honor.

THE COURT: Did you find recoding equipment in the dashboard vents?

[APPELLANT]: I didn't take my truck apart. I should have taken it to a mechanic. I'm not very inclined with vehicles. I was working, trying to get through this.

THE COURT: What evidence do you have that there was recordings done of discussions in your truck?

[APPELLANT]: I showed [trial counsel] the video.

THE COURT: So the evidence is the video that the truck started when you were holding the only set of keys 100 meters away?

[APPELLANT]: Yes, Your Honor.

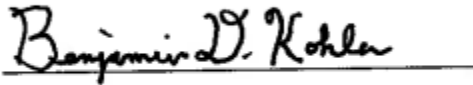
Id. at 97. The PCRA court noted that Appellant did not introduce the alleged video into evidence during the evidentiary hearing. **See** Findings of Fact, 9/25/25, at 12. Because the PCRA court did not find Appellant credible, and he failed to present the alleged video, the PCRA court dismissed the claim. We find no error.

In Appellant's eighth issue, he argues that the PCRA court abused its discretion by finding various pieces of evidence that he wanted to present at

trial were “irrelevant” because the evidence was cumulative. We were unable to locate any argument on this issue within the appellate brief; therefore, it is waived for lack of development. ***Viall, supra.***

Order 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: 10/1/2026