NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
BENJAMIN J. BANKS	:	
Appellant	:	No. 1532 MDA 2025

Appeal from the Judgment of Sentence Entered October 7, 2025
In the Court of Common Pleas of Luzerne County Criminal Division at
No(s): CP-40-MD-0002862-2024

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
BENJAMIN JUNIOR BANKS	:	
Appellant	:	No. 1533 MDA 2025

Appeal from the Judgment of Sentence Entered October 7, 2025
In the Court of Common Pleas of Luzerne County Criminal Division at
No(s): CP-40-MD-0004473-2025

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

MEMORANDUM BY MURRAY, J.: **FILED: NOVEMBER 13, 2026**

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* Retired Senior Judge assigned to the Superior Court.

Benjamin J. Banks (Appellant) appeals from the judgments of sentence[1] entered following his conviction by the trial court of two counts of indirect criminal contempt (ICC).[2] After careful review, we affirm.

Appellant's convictions arose from his two separate violations of a no-contact Protection From Abuse Act (PFA)[3] order protecting A.C. (the victim). The original PFA order, entered on April 11, 2024, prohibited Appellant from striking the victim (the no-hit PFA order). The trial court entered an amended PFA order on May 30, 2024, which prohibited Appellant from contacting the victim from May 30, 2024, until April 11, 2027 (the no-contact PFA order).

At the ICC hearing,

> [t]he trial court heard evidence [regarding Appellant's] two violations of the [no-contact] PFA order[:] … violation #2[,] which occurred] on September 18, 2024[,] and violation #3[, which occurred on] on September 29, 2025.[FN1]
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> [FN1] Violation [#1] was dismissed by agreement on May 30, 2024.
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> Regarding the September 18, 2024[,] violation, the victim testified that [Appellant] came to her home[;] "[h]e was angry[;] and he was outside. I had the door locked. [Appellant] threw things at the house and initially broke the back door to get in—he eventually got in the house." "He threatened to kill me and just a whole bunch of other angry things." [N.T., 10/7/25, at] 8.

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[1] On November 14, 2025, this Court *sua sponte* consolidated the appeals for disposition.

[2] 23 Pa.C.S.A. § 6114(a).

[3] 23 Pa.C.S.A. §§ 6101-6122.

> [Appellant's] response to this testimony was: "I don't remember that one." "Q. You don't remember that one at all? A. No, I have no recollection." ***Id.*** at [] 21.
>
> Regarding violation #3, on September 29, 2025, the victim testified that [Appellant] hit her on the back of the head, and on the chin. She testified she went in [an] ambulance after that. ***Id.*** at [] 19. [Appellant] stated[,] as to that incident, [that] he and the victim were arguing. ***Id.*** at [] 21. A review of his testimony indicates that he did not agree with the testimony of the victim that he hit her.

Trial Court Opinion, 3/5/26, at 4-5 (footnote, renumbered, in original).

Relevant to this appeal, at the close of trial, the trial court stated the following:

> I do find [Appellant] guilty on both counts. Violation three by his own admission, yes, a verbal altercation. Violation number two **I find that the preponderance of the evidence – the burden of proof was met** with regard to violation[s] number two and three, so I will make a finding of guilty on both counts two and three.

Id. at 5 (quoting N.T., 10/7/25, at 27) (emphasis added).

On that same day, the trial court sentenced Appellant to three months' incarceration as to violation #2, and a concurrent term of three months' incarceration as to violation #3. Appellant timely filed notices of appeal at each docket number. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

> 1. Whether the trial court committed reversible error by applying the preponderance of the evidence standard[,] rather than the constitutionally … required beyond a reasonable doubt standard[,] when finding [Appellant] guilty of [ICC as to] both violations … of [the PFA] order?

> 2. Whether the evidence was insufficient as a matter of law to sustain [Appellant's] convictions for Violation #2 (September 18, 2024) and Violation #3 (September 29, 2025), where the Commonwealth failed to prove beyond a reasonable doubt that [Appellant] acted with wrongful intent to violate the PFA order[,] when [the victim] testified that she regularly permitted [Appellant] to stay at the residence, keep his belongings there, and that she and [Appellant] believed that the PFA case had been dismissed after missing a court hearing?

Appellant's Brief at 2.

Appellant first argues that the trial court improperly convicted Appellant based upon the preponderance of the evidence, rather than by the required standard of proof beyond a reasonable doubt. Appellant's Brief at 9. Appellant claims "the record unambiguously reflects that the trial court applied the wrong standard of proof when rendering its verdicts." ***Id.*** at 11. In support, Appellant cites the portion of the transcript, provided *supra*, wherein the trial court stated that "the preponderance of the evidence — the burden of proof was met with regard to" violations #2 and #3. ***Id.*** (quoting N.T., 10/7/25, at 27). Appellant argues that this application of the incorrect legal standard by the trial court, as fact finder, is *per se* reversible error. ***Id.***

Appellant further argues that the trial court's "*post-hoc* characterization of its statement as a 'misspeaking' is not supported by the record." ***Id.*** Appellant disputes the trial court's statement, in its opinion, that the court's on-the-record statement indicated it self-corrected the error. ***Id.*** at 12. According to Appellant,

> [t]he trial court's statement, "Violation number two I find that the preponderance of the evidence — the burden of proof was met with regard to violation number two and three," is a single, continuous declaration in which the court expressly identified the preponderance of the evidence as the standard it was applying. The trailing phrase[,] "the burden of proof was met" is, at best, an ambiguous completion of the sentence and cannot reasonably be construed as a retraction of the standard the court had just articulated. A mid-sentence ambiguity does not constitute a "correction" sufficient to cure the constitutional deficiency in the standard applied….

Id.

Appellant further disagrees with the trial court's conclusion that Appellant waived the issue. ***Id.*** Appellant argues that the

> trial court's application of the wrong standard of proof was embedded in the announcement of its finding of guilt, leaving defense counsel no opportunity to cure the error before [Appellant's] constitutional right to be convicted only upon proof beyond a reasonable doubt had already been violated.

Id.

As this Court has long recognized,

> [a] trial court's finding of contempt will not be disturbed absent an abuse of discretion. ***Commonwealth v. Baker***, 564 Pa. 192, 198, 766 A.2d 328, 331 (2001). An appellate court cannot find an abuse of discretion merely for an error of judgment unless, in reaching a conclusion, the trial court overrides or misapplies the law or its judgment is manifestly unreasonable. ***Id.***

Commonwealth v. Ashton, 824 A.2d 1198, 1202 (Pa. Super. 2003).

As our Supreme Cour has long recognized,

> the function of a standard of proof is to instruct the factfinder as to the level of confidence that society believes he should have in the correctness of his conclusion; furthermore, different standards of proof reflect differences in how society believes the risk of error should be distributed as between the litigants. Thus, the most

> stringent standard -- beyond a reasonable doubt -- is applicable in criminal trials due to the gravity of the private interests affected….

Commonwealth v. Maldonado, 838 A.2d 710, 715 (Pa. 2003)

Appellant claims the trial court applied the wrong legal standard, *i.e.*, proof by a preponderance of the evidence, rather than the required standard for a criminal proceeding of proof beyond a reasonable doubt. Our review, however, discloses that the trial court merely misspoke when it referred to the "preponderance of the evidence" in announcing its verdict. Prior to this misstatement, the trial court indicated its awareness that this was a criminal proceeding when it stated, "I do find [Appellant] guilty on both counts." N.T., 10/7/25, at 27. The trial court further demonstrated its awareness that Appellant's proceedings were criminal in nature, when it immediately sentenced Appellant to jail for his PFA violations. ***See id.*** at 29. The trial court additionally notified Appellant of his right to file a post-sentence motion. ***Id.*** at 29-30.

In its Pa.R.A.P. 1925(a) opinion, the trial court explained that it misspoke when announcing its verdict:

> Although the trial court initially stated, "preponderance of the evidence," the court did state immediately afterwords *in the same sentence* "the burden of proof was met." [The trial c]ourt attempted to immediately correct [its] misspeaking of the words "preponderance of the evidence" ….

Trial Court Opinion, 3/5/26, at 5 (emphasis in original; punctuation modified). The trial court additionally pointed out that Appellant's counsel lodged no

objection to this statement, thereby evidencing counsel's understanding that the trial court made a misstatement, rather than an error of law. ***Id.***

In its opinion, the trial court has made clear that, notwithstanding its misstatement relative to the Commonwealth's burden of proof, it nevertheless applied the appropriate "beyond a reasonable doubt standard" in assessing the evidence presented at trial. ***See id.*** at 6 ("[W]hen all of the testimony is considered, the proof does satisfy the 'beyond a reasonable doubt standard.'"). Our review confirms that the trial court applied the appropriate legal standard in finding Appellant guilty of two counts of ICC. ***See id.*** Appellant's first issue merits no relief.

In his second issue, Appellant challenges the sufficiency of the evidence underlying his convictions. Appellant's Brief at 14. Appellant argues that the Commonwealth failed to prove that Appellant acted with the wrongful intent necessary to sustain his two convictions of ICC. ***Id.*** at 16. Appellant claims that "[t]he evidence that defeats the element of wrongful intent is not supplied by the defense; it comes directly from the testimony of [the victim,] the protected party herself." ***Id.*** According to Appellant, the victim testified that because she and Appellant missed a prior court date, they both believed the PFA case had been thrown out. ***Id.*** at 17. Appellant quotes the following testimony from the victim:

> We both missed [the] last hearing with [the court], and we were both under the assumption that it got thrown out. So, yes, [Appellant] was at the residence a few times. He would stay the night when he had nowhere to go. As far as [our] living situation,

> [Appellant's] mail gets sent back to the post office. My mom doesn't allow his mail. And currently today[,] he's not there.

Id. (quoting N.T., 10/7/25, at 10-11).

Appellant claims that the victim's testimony established that the victim did not believe that a PFA order was in effect. ***Id.*** Appellant argues,

> [w]here both parties to a PFA order reasonably believe the order has been dismissed, the predicate for a finding of wrongful intent is undermined. A defendant cannot be said to have acted with the intent to violate an order that both he and the protected party believed no longer existed.

Id. Appellant compares this case to the circumstances presented in ***Commonwealth v. Padilla***, 885 A.2d 994 (Pa. Super. 2005), wherein this Court held that notice of the prohibited conduct, and the risk of criminal penalty, is a prerequisite to a finding of criminal intent. Appellant's Brief at 18 (citing ***Padilla***, 885 A.2d at 997). According to Appellant, in the instant case, the victim shared Appellant's belief that the PFA proceedings had concluded. ***Id.*** Appellant recognizes the trial court's reliance on the docketed PFA orders as evidence of notice, but argues that such evidence does not overcome the testimony of the victim regarding their shared belief that no PFA order was in effect. ***Id.***

Appellant recognizes that on cross-examination, he testified as follows:

> Q. [The Commonwealth:] Do you understand you have a [PFA] order against you, correct?
>
> A. [Appellant:] Yes, I do.

Id. at 19 (quoting N.T., 10/7/25, at 24). However, Appellant argues,

> this exchange was conducted entirely in the present tense and in the context of a courtroom proceeding on the day of the contempt hearing, after [] Appellant had been arrested … and brought before the court to answer for the alleged violations. This acknowledgment establishes nothing more than Appellant's awareness of the [PFA] order as of October 7, 2025. It does not establish what he knew, understood, or believed on September 18, 2024, or September 29, 2025, at the time of the alleged violations….

Id. Appellant claims that when coupled with the victim's testimony, "this temporally ambiguous acknowledgment cannot carry the weight the Commonwealth must place upon it to establish wrongful intent beyond a reasonable doubt under ***Padilla*** and its progeny." ***Id.*** at 20.

Appellant also points to evidence that the victim regularly permitted Appellant to be at her residence. ***Id.*** Appellant asserts that the evidence demonstrates their shared belief that no PFA order was in effect. ***Id.*** Appellant challenges the trial court's failure to "meaningfully engage with its significance to the wrongful intent analysis." ***Id.*** at 21.

Finally, Appellant argues that the evidence of the September 29, 2025, violation (violation #3) is, independently, insufficient to establish his wrongful intent beyond a reasonable doubt. ***Id.*** In support, Appellant points out that the "encounter" took place near a Citgo gas station, on a public street. ***Id.*** at 22. Appellant claims the evidence showed that the encounter began as an ordinary conversation that, without more, failed to establish that Appellant sought out the victim or initiated contact with her for the purpose of violating the PFA order. ***Id.***

Appellant's issue challenges the sufficiency of the Commonwealth's evidence to prove the charge of ICC beyond a reasonable doubt. A claim challenging the sufficiency of the evidence is 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 reviewing such a challenge,

> we must determine whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the fact finder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. Finally, the trier 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. Felder, 176 A.3d 331, 333-34 (Pa. Super. 2017) (citations and quotation marks omitted).

This Court has repeatedly stated, "The purpose of the PFA Act is to protect victims of domestic violence from those who perpetrate such abuse, with the primary goal of advance prevention of physical and sexual abuse." ***Commonwealth v. Lambert***, 147 A.3d 1221, 1226 (Pa. Super. 2016) (citation and quotation marks omitted). "Where a PFA order is involved, an [ICC] charge is designed to seek punishment for violation of the protective order." ***Commonwealth v. Jackson***, 10 A.3d 341, 346 (Pa. Super. 2010) (citation and quotation marks omitted).

"A charge of [ICC] consists of a claim that a violation of an order or decree of court occurred outside the presence of the court." ***Commonwealth v. Brumbaugh***, 932 A.2d 108, 109 (Pa. Super. 2007) (capitalization modified).

> To establish [ICC], the Commonwealth must prove: 1) the order was sufficiently definite, clear, and specific to the contemnor as to leave no doubt of the conduct prohibited; 2) the contemnor had notice of the order; 3) the act constituting the violation must have been volitional; and 4) the contemnor must have acted with wrongful intent.

Commonwealth v. Boyer, 282 A.3d 1161, 1172 (Pa. Super. 2022) (citations omitted).

As to notice, "the Commonwealth must demonstrate beyond a reasonable doubt that, at the time of the violation, the defendant had actual knowledge of the PFA order, regardless of how the defendant gained this knowledge." ***Commonwealth v. Stevenson***, 283 A.3d 196, 199 (Pa. 2022). A defendant may obtain notice "(1) by service of the PFA order; (2) verbally from anyone; or (3) by other scenarios that can establish that the defendant had knowledge of the order." ***Id.*** at 206.

"Wrongful intent can be imputed by virtue of the substantial certainty that by choosing an action, the defendant would know he would be in violation of the PFA Order." ***Shaner v. Harriman***, 189 A.3d 1088, 1092 (Pa. Super. 2018) (citing ***Brumbaugh***, 932 A.2d at 111).

Instantly, the evidence presented at trial, viewed in a light most favorable to the Commonwealth as the verdict winner, established the

following. The victim testified that she had a PFA order against Appellant that originally was a "no hit" prohibition, "and then it got amended to a no contact" PFA order. N.T., 10/7/25, at 5-6. The trial court took judicial notice of the docket indicating that the original PFA order was issued on April 11, 2024, and set to expire on April 11, 2027. ***Id.*** at 6-7. The trial court additionally took judicial notice that "**Appellant appeared personally**" at the May 30, 2024, hearing, at which time the prior "no hit" prohibition was changed to a "no contact PFA[.]" ***Id.*** (emphasis added). Thus, the evidence is uncontroverted that Appellant had notice of the PFA order.

The victim testified that as part of her PFA order, Appellant was evicted and excluded from her home. ***Id.*** at 7. Notwithstanding the PFA order, the victim testified that on September 18, 2024, at 12:30 p.m., Appellant came to her home (violation #2). ***Id.*** at 7-8. The victim testified that Appellant "was angry, and he was outside. I had the door locked. He threw things at the house and initially broke the back door to get in." ***Id.*** According to the victim, once Appellant entered the residence, he "threatened to kill me and just a whole bunch of other angry things." ***Id.*** at 8. The victim telephoned the police and reported the incident. ***Id.***

Larksville Police Sergeant Craig Cebrick (Sgt. Cebrick) testified that he was dispatched to the victim's home on September 18, 2024, at 1:42 p.m. ***Id.*** at 12. According to Sgt. Cebrick, when he arrived at the residence, the victim "appeared distraught and upset." ***Id.***

Regarding the incident on September 29, 2025 (violation #3), the victim testified that she was in the area of 94 South Pennsylvania Avenue, in Larksville, at approximately 10:00 p.m. ***Id.*** at 14-15. The victim testified that she saw Appellant, who then spoke to her. ***Id.*** at 14. However, as the victim walked away,

> [Appellant] kept following me, and he was angry, and I asked him to leave me alone multiple times. I wasn't rude. I asked him nicely to please leave me alone. He proceeded by trying to hit me on his bike, and then I called the cops again.

Id. The victim testified that Appellant left the area before police arrived at the scene. ***Id.*** The victim later clarified that Appellant was on foot at the time of the incident, and not on a bicycle. ***Id.*** at 21.

Larksville Police Officer Justin Pierzga (Officer Pierzga) testified that on September 29, 2025, at around 10:27 p.m., he was dispatched to the area, at which time the victim reported to him Appellant's PFA order violation. ***Id.*** at 16-17. According to Officer Pierzga, the victim "told me that she was hit in the back of the head, although I could not see any injuries of that, but she did say she was also struck in the face." ***Id.*** at 17. Officer Pierzga testified that the victim was transported from the scene via ambulance. ***Id.***

Appellant testified that he did not recall the September 18, 2024, incident. ***Id.*** at 21. Regarding the September 29, 2025, incident, Appellant claimed that the following transpired:

> We was both having a good time. We had a disagreement about something. We started arguing. We've had an altercation. We both split up for like two hours. [The victim] ran back up to me

> on Main Street and started arguing again[,] telling me that I was going to jail for this….
>
> She followed me from Main Street all the way around the corner past Citgo [gas station]. That is where I jumped the gate by the [] old folks home because I was not trying to argue with her and she was on the phone with the police lying after two hours. So yes, I did hop the gate and then try to get out of there to avoid her saying I did this and I did that, because I know where that was going to lead me, which technically here I am again….

Id. at 21-22. On cross examination, Appellant admitted that he encountered the victim on September 29, 2025. ***Id.*** at 23.

The foregoing evidence, viewed in a light most favorable to the Commonwealth, is sufficient to sustain Appellant's convictions of ICC on September 18, 2024, and September 29, 2025. Although Appellant focuses on the victim's belief regarding the purported non-existence of the PFA order, the trial court took judicial notice of Appellant's attendance at the hearing where the PFA order was modified to a "no contact" order. N.T., 10/7/25, at 6-7. Appellant did not object to the trial court taking judicial notice of the PFA order, and he personally appeared at the hearing where the no-hit PFA order was changed to a no-contact PFA order. ***See id.*** at 6-7. Thus, the record is clear that Appellant had actual notice of the PFA order.

In addition, Appellant's claim that he lacked wrongful intent, based on *the victim's* belief that there was no PFA order in effect, does not excuse his

violations of the PFA order. Appellant was informed, at the May 30, 2024, hearing, of the existing PFA order.[4]

Appellant's wrongful intent is further evidenced by the victim's testimony regarding each incident, wherein Appellant forcibly entered her home, threatened to kill her, and physically assaulted the victim on a public street. As the trial court explained in its opinion,

> when all of the testimony is considered, the proof does satisfy the "beyond a reasonable doubt standard." The victim testified that [Appellant] broke her door to get in and threatened to kill her. That proof related to Violation #2 [(September 18, 2024)]. As to Violation #3 [(September 29, 2025)], the victim stated that [Appellant] hit her on the back of her head and chin. Thereafter, she was taken to the hospital. [Appellant's] response was he had an altercation with the victim.

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[4] Appellant's reliance on ***Padilla*** is unavailing. In ***Padilla***, the defendant was told, via a phone call, that the victim had obtained a no-contact PFA order against him. ***Padilla***, 885 A.2d at 996. Even though actual service of a PFA order was not proven, this Court was satisfied that the defendant had notice because he was informed of the PFA through a telephone conversation with a police sergeant. ***Id.***

Similarly, in ***Commonwealth v. Staton***, 38 A.3d 785 (Pa. 2012), our Supreme Court held that although the appellant did not receive personal service of the PFA, the jury was permitted to infer notice. ***Id.*** at 794-95. Specifically, the jury found that the appellant had *actual knowledge* of the PFA, based on evidence establishing that the appellant hid when the sheriff attempted service, and third-party testimony that the appellant had been informed of the existence of the PFA. ***Id.*** The Supreme Court held that this finding of notice was based on the jury's credibility determination, and it could not disturb that finding. ***Id.*** at 795.

Here, the trial court inferred actual notice based upon Appellant's attendance at the hearing where the PFA order was modified to a no-contact PFA order. Any claim of Appellant's lack of notice of the PFA order is simply not supported by the record.

> ….
>
> There was no testimony as to *when* the parties may have believed there was no PFA order in effect. Also, the victim testified that she thought the PFA was a [no-hit] PFA, which would preclude [Appellant] from engaging in conduct such as breaking her door to get into her home or threatening to kill her.
>
> **A review of the docket entries does not establish the parties did not appear for a hearing.** In fact, the docket entries show that an ICC violation was filed in May 2024, and the parties appeared on May 30, 2024, where it was agreed that Violation #1[, an earlier PFA violation,] would be dismissed after ninety (90) days if there were no further violations. **On the same day, the victim's motion to modify the PFA** [] **to a no-contact order was granted; *and*** [***Appellant***] ***was present***. On September 5, 2024, Violation #1 was dismissed because there were no further violations within the ninety-day period.
>
> It is interesting to note that thirteen (13) days after Violation #1 was dismissed, [on September 18, 2024, Appellant] appeared at the victim's home, broke into her home, and threatened to kill her.
>
> [Appellant] was aware of the upgraded May 30, 2024, no contact order when he went to the victim's home on September 18, 2024, and willfully violated that order. The victim's confusion should not work in [Appellant's] favor. The victim was protected by a PFA order, which was violated by [Appellant] on two occasions.

Trial Court Opinion, 3/5/26, at 6, 8-9 (emphasis added; punctation and capitalization modified). The trial court's analysis is supported by the evidence of record, and we agree with its sound legal conclusion. ***See id.*** Appellant's second issue merits no relief.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/13/2026