

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DANIEL ENRIQUEZ PEREZ	:	
	:	
Appellant	:	No. 1847 EDA 2025

Appeal from the Judgment of Sentence Entered May 30, 2025
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0002392-2024

BEFORE: PANELLA, P.J.E., STABILE, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED SEPTEMBER 14, 2026**

Daniel Enriquez Perez appeals from the judgment of sentence entered in the Court of Common Pleas of Bucks County, after he was sentenced to eight to twenty years' incarceration, with credit for time served, for his conviction for possession, use, manufacture, control, sale, or transfer of a firearm by a prohibited person, in violation of 18 Pa.C.S. § 6105(a)(1). Perez challenges the denial of his motion to suppress his admission to police that he owned the firearm at issue and challenges the discretionary aspects of his sentence. We affirm Perez's conviction but vacate his judgment of sentence and remand for resentencing.

* Retired Senior Judge assigned to the Superior Court.

The facts underlying this case were developed at the hearing on Perez's motion to suppress evidence, held on January 3, 2025, which facts the suppression court found as follows:

1. On November 26, 2023[,], at approximately 12:02 a.m., Officer Deslyn Nurse of the Hilltown Township Police Department responded to a radio dispatch call regarding a person sitting on the ground between his vehicle and the gas pump at the Sunoco gas station located at 1501 Bethlehem Pike, Hilltown Township, Bucks County, Pennsylvania.
2. [Officer] Nurse testified credibly at the hearing on January 3, 2025.
3. The Sunoco gas station has a convenience store attached to it.
4. Upon arrival at the Sunoco, [Officer] Nurse found an individual sitting, or hunched over, between the door of a black Chevy Equinox and the gasoline pumps.
5. [Officer] Nurse called out to the individual, later identified as Perez, but received no response.
6. [Officer] Nurse approached Perez and tapped him a couple of times, asking him if he was okay or whether he needed help. [Officer] Nurse testified Perez responded[,], "No, I lost my car key and got stuck."
7. Perez stood and repeated that he was looking for his keys[,], which [Officer] Nurse could see were in his hand. [Officer] Nurse also noticed that Perez was not steady on his feet.
8. [Officer] Nurse asked Perez to stand at the rear of the vehicle and he complied.
9. [Officer] Nurse observed that Perez had an altered state of mind as evidenced by his slurred speech, eyes closing and opening like he was "dipping out," and the fact that he was leaning over while standing.

10. [Officer] Nurse requested a driver's license and Perez attempted to reach into the vehicle and attempted to open the glove box but "dipped out again."
11. Eventually Perez found his wallet on his person and handed [Officer] Nurse a bank card.
12. [Officer] Nurse saw an [identification] card in the wallet and pointed it out to Perez[,] who took the [identification] card from his wallet and gave it to [Officer] Nurse.
13. The [identification] card Perez produced was an expired New York [identification] card[,] which [Officer] Nurse ran through the [Pennsylvania Department of Transportation data] system and determined that Perez did not have a valid driver's license.
14. [Officer] Nurse advised Perez that he was not permitted to drive the vehicle and [Officer Nurse] allowed him to call his girlfriend to come pick [Perez] up.
15. Shortly after [Officer] Nurse arrived on scene, [Sergeant Timothy Murphy] arrived as backup.
16. [Sergeant] Murphy testified credibly at the hearing on January 3, 2025.
17. When [Sergeant] Murphy arrived on scene[,] he spoke briefly with [Officer] Nurse[,] then went inside the convenience store to speak with the store clerk.
18. [Sergeant] Murphy testified the store clerk told him: (1) Perez came into the convenience store and went to the restroom; (2) Perez remained in the restroom for approximately forty-five minutes; (3) Perez left the restroom and went back outside toward his vehicle; (4) other customers came into the store and reported to the clerk that Perez was on the ground outside of his vehicle between his vehicle and the gas pumps.
19. After speaking with the store clerk, [Sergeant] Murphy went outside and spoke with [Officer] Nurse[.]
20. Using his mobile data terminal [in his police vehicle], [Sergeant] Murphy [searched] Perez's information and discovered that [Perez] had a suspended [driver's] license,

and he noticed that Perez did not have a concealed carry permit.

21. On cross examination, [Sergeant] Murphy testified that[,] when a person's information is [searched] through the mobile data terminal, the information that automatically populates includes whether the individual has been issued a concealed carry permit, and Perez's information showed he did not have such a license.
22. [Sergeant] Murphy then walked around the passenger side of Perez's vehicle, looked into the vehicle and saw a firearm on the center console in front of the gear shift.
23. The firearm was in an open cubby area just under the radio, and [Sergeant] Murphy could see that it was a Ruger with a magazine inserted.
24. Because the driver's door was open, and Perez was between the open door and [Officer] Nurse, [Sergeant] Murphy walked around the front of the car and placed himself between the open door and Perez.
25. [Sergeant] Murphy indicated to [Officer] Nurse that there was a firearm in the vehicle.
26. [Sergeant] Murphy testified that he placed Perez in handcuffs for his and [Officer] Nurse's safety and asked Perez whose gun was in the vehicle[,] to which Perez answered[,] "It's mine."
27. Neither [Sergeant] Murphy nor [Officer] Nurse advised Perez of his **Miranda**¹ rights before [Sergeant] Murphy asked whose gun was in the vehicle.
28. [Sergeant] Murphy and [Officer] Nurse took Perez into custody by placing him in the back of [Officer] Nurse's police vehicle, called for a duty tow truck to remove the vehicle, then retrieved the firearm from the vehicle and removed the magazine which contained six bullets.

¹ **See *Miranda v. Arizona***, 384 U.S. 436 (1966).

Order and Trial Court Opinion, 1/23/25, at 2-4 (footnote omitted; parentheses added). In response to Perez's motion for clarification, the court explained that it found that Perez was not in custody when police asked about the firearm where the limited questions had the purpose of protecting Sergeant Murphy's, Officer Nurse's, and the public's safety. **See** Amendment to Decision and Order, 4/7/25.

The trial court set forth the relevant procedural history of this case as follows:

[O]n June 20, 2024, Perez was charged with[:] (1) [possession of a firearm by a prohibited individual]; (2) receiving stolen property; and (3) firearms not to be carried without a license.^[2] On December 12, 2024, Perez filed [an] omnibus pre-trial motion[], which included a motion to suppress and a motion to sever Count III of the information. Perez also filed a motion to dismiss Count I of the information. On January 3, 2025, [the court] held an evidentiary hearing on [Perez]'s pre-trial motions. On January 21, 2025, [the court] issued a decision and order denying Perez's pre-trial motions and scheduled trial for February 24, 2025. On February 21, 2025, trial was continued to April 7, 2025. On April 7, 2025, Count I of the information was severed from the other two charges and [the court] proceeded to trial [only] on Count I. **See** [N.T. Trial, 4/7/25, at 4].

At trial, the parties stipulated to Perez's prior record and conviction of an offense in New York[,], which rendered him a person prohibited by law from possessing, using, or controlling a firearm in the Commonwealth of Pennsylvania. **See** [*id.* at] 100; **see also** Exhibit C-2.

On April 8, 2025, the jury found Perez guilty on Count I and [the trial court] deferred sentencing until May 30, 2025. Count II and III were scheduled for trial beginning on May 30, 2025.

² **See** 18 Pa.C.S. §§ 6105(a)(1), 3925(a), and 6106(a)(1), respectively.

On May 30, 2025, [the trial court] sentenced Perez on Count I to not less than eight [] years, nor more than twenty [] years in a state correctional institute with credit for time served from November 26, 2023, through December 8, 2023; and for April 8, 2025, through May 30, 2025—a total of 64 days.^[3] On that same date, the Commonwealth [*nolle prossed*] Counts II and III of the information.

* * *

On June 9, 2025, Perez filed a motion for reconsideration of sentence[, which the court denied on June 13, 2025.] On July 11, 2025, Perez filed his [timely⁴] notice of appeal to the Superior

³ As Perez was convicted of violating Section 6105(a)(1), as a felony of the first degree, where the recovered gun was loaded and his possession or control of the firearm was within his reach, his conviction had an offense gravity score of eleven. **See** 204 Pa. Code § 303.15 (offense list; 7th ed., amend. 6). At trial, the parties stipulated that Perez had prior convictions for attempted murder and robbery in the first degree in a 1993 criminal matter in New York, and that was the only prior criminal record discussed at the sentencing hearing. **See** Trial Exhibit C-2 (Stipulation) (reflecting guilty plea to attempted murder under New York Penal Law 110-125.25 01 and robbery under New York Penal Law 160.15 02, for incident on December 14, 1993); **see** N.T. Sentencing Hearing, 5/30/25, 16. Based on the prior New York convictions, Perez had a prior record score of four. **See** 204 Pa. Code § 303.5 (providing that only most serious offense in prior judicial proceeding shall be counted in calculation of prior record score, even if multiple offenses committed) (7th ed., amend. 6); 204 Pa. Code § 303.7(a)(1) (providing for prior record score of four for attempted murder) (7th ed., amend. 6); 204 Pa. Code § 303.8(f)(1) ("An out-of-state ... conviction ... is scored as a conviction for the current equivalent Pennsylvania offense."). Properly applying the Sentencing Guidelines' basic sentencing matrix for the Section 6105(a)(1) conviction with a prior record score of four yields a minimum sentence guideline recommendation of sixty to seventy-eight months' incarceration, plus or minus twelve months for aggravating or mitigating circumstances. **See** 204 Pa. Code § 303.16(a) (basic sentencing matrix; 7th ed., amend. 6). The sentence at issue thus reflected an upward deviation from the applicable range recommended by the Sentencing Guidelines.

⁴ **See Commonwealth v. Shamberger**, 788 A.2d 408, 410 n.2 (Pa. Super. 2001) (*en banc*) (noting that appeal properly lies from judgment of sentence made final by denial of post-sentence motions in criminal action).

Court[. Thereafter, Perez and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925(b).]

Trial Court Opinion, 10/10/25, at 3-5 (footnotes and unnecessary capitalization omitted; paragraph breaks and parentheses added).

On appeal, Perez presents the following questions for our review:

1. Where Sergeant Murphy questioned Mr. Perez about a firearm observed in his vehicle as he was in handcuffs being escorted to a police vehicle by two uniformed officers, did the trial court err in denying suppression of his statements given without ***Miranda*** warnings?
2. Did the trial court abuse its discretion in imposing a manifestly excessive sentence where the court double-counted factors already contemplated by the sentencing guidelines, failed to consider Mr. Perez's rehabilitative needs, and solely considered the seriousness of the offense charged?

See Appellant's Brief at 5.

In his first issue, Perez challenges the denial of his motion to suppress his verbal admission to police that the firearm in the vehicle was his.⁵ **See**

⁵ Perez does not challenge the admission of the firearm in his statement of questions involved in his brief and thus we do not address that issue. **See** Pa.R.A.P. 2116(a) (appellate courts only review questions preserved in statement of questions involved); **see also Commonwealth v. Kennedy**, 151 A.3d 1117, 1122 n.12 (Pa. Super. 2016). In any event, police observed the unsecured firearm in plain view in the vehicle, in an opening under the radio, while positioned outside of the vehicle at the gas station, thus there was no need to obtain a search warrant to recover the firearm. **See Commonwealth v. Hawkins-Davenport**, 352 A.3d 92, 110-11 (Pa. 2026) (holding seizure of unsecured firearm from vehicle valid where officer observed weapon through open car window in plain view on passenger seat during lawful vehicle stop); **see also Commonwealth v. Brown**, 23 A.3d 544, 557 (Pa. Super. 2011) (*en banc*) (stating "where police officers observe incriminating-looking contraband in plain view in a vehicle from a lawful vantage-point, the lack of advance notice and opportunity to obtain a warrant (Footnote Continued Next Page)

id. at 15-28. Specifically, Perez maintains that he was under arrest but not yet notified of his **Miranda** warnings when he admitted ownership in response to questioning. **See id.** at 18. Perez relies on the trial court's findings to support the conclusion that he was under arrest when police discovered the firearm. **See id.** In developing his argument, Perez emphasizes that the court explicitly found that Sergeant Murphy was aware that Perez did not have a valid permit to carry a firearm at the time he observed the weapon. **See id.** Perez also supports his claim by stressing that the trial court concluded that the facts established that probable cause existed to support Perez's prompt arrest at that time that police observed the firearm. **See id.**

Perez asserts that, at a minimum, he was subjected to the functional equivalent of an arrest at the time Sergeant Murphy questioned him about the firearm, where Sergeant Murphy—immediately after seeing the firearm—approached Perez from behind and grabbed his left arm and, with the assistance of Officer Nurse, placed Perez in handcuffs. **See id.** Perez points out that he was handcuffed, flanked, and escorted by two uniformed officers away from his vehicle and toward Officer Nurse's police vehicle, to be transported away, at which point police asked about his ownership of the firearm. **See id.** 18-19. Perez claims that a reasonable person under these circumstances would not feel free to leave and thus police effectuated an

provides the officers with a lawful right of access to seize the object in question").

arrest. **See id.** at 20. Perez maintains that “the lack of explanation or assurance that he was not under arrest” is another “crucial factor” in the totality-of-the-circumstances analysis. **See id.** at 21. Similarly, Perez identifies the police failure to inform him of why he was handcuffed as another important factor to consider. **See id.** at 22.

Relatedly, Perez argues that the facts surrounding his detention and the police questioning amounted to custodial interrogation, thereby requiring **Miranda** protections. **See id.** at 23-24. Perez complains that, under the circumstances, the police question about the firearm’s ownership was likely to evoke an incriminating response, especially where Perez was the sole occupant in the vehicle and police knew Perez did not possess a valid license to carry a concealed firearm prior to seeing the firearm and asking about it. **See id.** at 25-26. Moreover, Perez maintains that this Court should reject the trial court’s reasoning regarding officer safety, which Perez alleges, “ignores decades of decisional law making clear that the subjective intent of the police officer is irrelevant to the interrogation inquiry,” especially where he suggests that the question was still likely to elicit an incriminating response. **See id.** at 27-28.

On appeal, the Commonwealth concedes that Perez was subjected to questioning that was likely to elicit an incriminating response, thereby allegedly satisfying the interrogation prong of Perez’s argument, but nevertheless maintains that Perez was never under custodial arrest, thereby

conclusively defeating Perez's claim that ***Miranda*** applies. ***See*** Appellee's Brief at 12.

In our review, we disagree with the Commonwealth's concession on interrogation and further conclude that Perez was not under custodial arrest when questioned, as discussed below.

Our standard of review of the denial of a suppression motion is well-settled:

An appellate court's standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, the appellate court is bound by those findings and may reverse only if the court's legal conclusions are erroneous. Where the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to plenary review.

Commonwealth v. Walls, 206 A.3d 537, 539 (Pa. Super. 2019) (citation, brackets, and ellipsis omitted). Further, the scope of review for a suppression challenge "is limited to the record available to the suppression court." ***Id.*** at 540. Moreover, "[i]t is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given

their testimony.” ***Commonwealth v. Baker***, 946 A.2d 691, 693 (Pa. Super. 2008) (citation and quotation marks omitted).

Both the Constitution of the United States⁶ and Pennsylvania Constitution⁷ protect citizens from unreasonable police searches and seizures. ***See Commonwealth v. Brame***, 239 A.3d 1119, 1127 (Pa. Super. 2020) (noting that Pennsylvania Constitution provides broader protection from unreasonable searches and seizures than Constitution of United States). Under the relevant constitutional provisions, there are generally three recognized categories of police-citizen interactions—mere encounters, investigative detentions, and custodial detentions:

⁶ The Fourth Amendment to the Constitution of the United States provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. Amend. IV.

⁷ Article I, Section 8 of the Pennsylvania Constitution states:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. Art. I, § 8.

The first of these, a “mere encounter” (or request for information), which need not be supported by any level of suspicion, [] carries no official compulsion to stop or to respond. The second, an “investigative detention” must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Commonwealth v. Baldwin, 147 A.3d 1200, 1202 (Pa. Super. 2016) (citation omitted).

During a mere encounter, police officers may ask for identification without escalating the interaction into an investigative detention. ***See Commonwealth v. Au***, 42 A.3d 1002, 1009 (Pa. 2012) (finding arresting officer’s request for identification did not transform encounter into investigatory detention); ***cf. Commonwealth v. Cost***, 224 A.3d 641, 651 (Pa. 2020) (finding police retention of identification is material and substantial escalating factor in totality assessment).

Investigative detentions are evaluated under the objective standard of whether the detainee would feel free to leave under the totality of the circumstances:

In evaluating the circumstances, the focus is directed toward whether, by means of physical force or show of authority, the citizen-subject’s movement has in some way been restrained. In making this determination, courts must apply the totality-of-the-circumstances approach, with no single factor dictating the ultimate conclusion as to whether a seizure has occurred.

Commonwealth v. Smith, 172 A.3d 26, 32 (Pa. Super. 2017); ***see id.*** at 33 (“An officer may stop and briefly detain a person for investigatory purposes when that officer has reasonable suspicion, based on specific and articulable

facts, that criminal activity may be afoot. The fundamental inquiry is an objective one, namely, whether the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate.”) (citations, quotation marks, and brackets omitted).

Courts also rely on the totality of the circumstances test in assessing if there was sufficient reasonable suspicion to support an investigative detention, which test considers changing and developing circumstances that may give rise to additional reasonable suspicion, as follows:

To maintain constitutional validity, an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such a suspicion. The asserted grounds for an investigative detention must be evaluated under the totality of the circumstances. So long as the initial detention is lawful, nothing precludes a police officer from acting upon the fortuitous discovery of evidence suggesting a different crime than that initially suspected[.] However, an unjustified seizure immediately violates the Fourth Amendment rights of the suspect, taints the evidence recovered thereby, and subjects that evidence to the exclusionary rule.

Commonwealth v. Hicks, 208 A.3d 916, 927-28 (Pa. 2019) (citations and quotation marks omitted).

In turn, “reasonable suspicion” is defined as follows:

The officer must articulate specific observations which, in conjunction with reasonable inferences derived from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot. In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. In making this determination, we must give due weight to the specific reasonable

inferences the police officer is entitled to draw from the facts in light of his experience. Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Commonwealth v. Harris, 176 A.3d 1009, 1021 (Pa. Super. 2017) (citation, brackets, and ellipses omitted).

Under certain circumstances, police officers, for their safety, may handcuff individuals during an investigative detention without converting the interaction into an arrest. ***See Commonwealth v. Rosas***, 875 A.2d 341, 348 (Pa. Super. 2005). Further, a police officer's statement to the detainee that the detainee is "not under arrest is not conclusive on whether an arrest was actually effectuated." ***Smith***, 172 A.3d at 32 (citation and quotation marks omitted). Moreover, a panel of this Court recently held that, while conducting an investigative detention concerning a person's concealed possession of a firearm, police officers may quickly resolve concerns about the detainee's lawful possession of the gun, including asking questions to that end prior to the issuance of ***Miranda*** warnings. ***See Commonwealth v. Toliver***, 355 A.3d 920, 944 (Pa. Super. 2026).

Nevertheless, investigative detentions may evolve into custodial detentions when considering the totality of the circumstances, including the following relevant factors:

The numerous factors used to determine whether a detention has evolved into an arrest include the cause for the detention, the detention's length, the detention's location, whether the suspect was transported against his or her will, whether physical restraints

were used, whether the police used or threatened force, and the character of the investigative methods used to confirm or dispel the suspicions of police.

Commonwealth v. Spence, 290 A.3d 301, 314 (Pa. Super. 2023) (citation omitted). “A custodial detention occurs when the nature, duration and conditions of an investigative detention become so coercive as to be, practically speaking, the functional equivalent of an arrest[, which] requires that the police have probable cause to believe that the [detainee] has committed or is committing a crime.” ***Commonwealth v. Dix***, 207 A.3d 383, 388 (Pa. Super. 2019) (citations, quotation marks, and brackets omitted).

Protections under ***Miranda*** apply once police subject the detainee to custodial interrogation. ***See Commonwealth v. Kunkle***, 79 A.3d 1173, 1179 (Pa. Super. 2013) (stating “The ***Miranda*** safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.”) (citations and brackets omitted). Nevertheless, “[i]t is simply not custody plus ‘questioning’ as such which calls for ***Miranda*** safe[]guards, but custody plus police conduct calculated to, expected to, or likely to, evoke admission.” ***Commonwealth v. Hankins***, 439 A.2d 142, 144 (Pa. Super. 1981).

Recently, the Pennsylvania Supreme Court held that when a firearm was recovered in plain view from a lawfully stopped vehicle, the defendant’s statements that he did not have a license to carry the firearm recovered, which he made at the time of the recovery, were not subject to suppression. ***See Commonwealth v. Hawkins-Davenport***, 352 A.3d 92, 110-11 (Pa. 2026).

In our review of that appeal, which determination the Pennsylvania Supreme Court affirmed, we found ***Miranda*** was not implicated and stated that an officer's observation of "a firearm in plain sight and within reach of the driver during a lawful traffic stop, [permits] the officer [to] remove that firearm from the vehicle **before ascertaining whether the driver has a license to carry the gun** so that the officer **may proceed with the traffic stop** safely." ***Commonwealth v. Hawkins-Davenport***, 319 A.3d 537, 550 (Pa. Super. 2024) (emphases added).

In its Rule 1925(a) opinion, the trial court assessed Perez's motion to suppress his statement confessing ownership of the firearm as follows:

Here, Sergeant Murphy's question, "[W]hose gun is this[?]," occurred immediately after he discovered the loaded firearm and secured Perez in handcuffs, but before Perez was placed in Officer Nurse's patrol vehicle. The question was not part of an investigatory interrogation designed to elicit an incriminating statement; rather, it was a limited, safety-related question asked to assess ownership. Accordingly, [the court] properly denied the [m]otion to [s]uppress.

Trial Court Opinion, 10/10/25, at 9.

After our review of the record, including the video admitted at the suppression hearing, we find that the trial court's rulings are supported by the record. ***See Walls***, 206 A.3d at 539. In reaching our conclusion, we reject the Commonwealth's concession that the police question about the firearm's ownership amounted to interrogation under ***Miranda***, where the totality of the circumstances in this case showed that question's purpose was securing officer safety when facing a time sensitive threat—an unsecured, possibly

loaded, firearm with no known owner—where police initially arrived on scene in response to a request for aid for the driver of the vehicle, that driver returned or attempted to return to the area where the gun was located multiple times, and where asking about the firearm’s ownership was commensurate with securing it appropriately in the interests of safety. **See *Hankins*, 439 A.2d at 144; see also *Hawkins-Davenport*, 352 A.3d at 110-11.** Indeed, if Perez had refused to answer about the ownership, answered that he was unaware of the firearm, or answered that he did not own or possess the firearm, additional safety-related questions would have been relevant regarding the unsecured gun’s rightful ownership to ensure its proper securing. In any event, Pennsylvania courts recognize that law enforcement concerns may exist simultaneously with safety concerns and the existence of both simultaneously does not eviscerate the applicability of the objectively reasonable safety purposes motivating police questioning. **See *Commonwealth v. Gindraw*, 297 A.3d 848, 852 (Pa. Super. 2023) (noting “an officer may come upon what appears to be a stalled vehicle and decide to investigate if assistance is needed; however, the investigation may show that a crime is being committed within the vehicle. Therefore, from the point of view of the officer, he . . . must be prepared for either eventuality as the vehicle is approached. Accordingly, the officer may have law enforcement concerns, even when the officer has an objectively reasonable basis for performing a community caretaking function. To conclude otherwise would ignore**

the multifaceted nature of police work and force police officers to let down their guard and unnecessarily expose themselves to dangerous conditions.") (citation and quotation marks omitted; dual emphases and original ellipsis in ***Gindraw***).

Further, in addition to concluding that the police questioning did not amount to interrogation, we agree with the suppression court's conclusion that Perez was not in custody for ***Miranda*** purposes such that his detention amounted to a functional arrest. Indeed, under the totality of the circumstances, immediately upon discovering the firearm, police secured Perez's person and prevented his access to the firearm by placing him in handcuffs and removing him from the firearm's location. The immediacy with which police acted to control Perez's movement and access to the unsecured firearm, in direct response to observing that perceived threat, further supports the suppression court's finding that officer safety, and public safety, motivated that specific police action of placing Perez in handcuffs and restricting his access to the firearm, especially where Perez attempted earlier during the police encounter to return to the vehicle where the gun was located. While the use of handcuffs is a relevant factor in the totality of circumstances test in assessing whether police functionally arrested Perez, we conclude that, here, the immediacy of the police response in implementing restraints on Perez's freedom, the threat to officer and public safety that the unsecured firearm posed, and the simultaneous timing of the police question about ownership, combine to require the conclusion that Perez's brief detention did

not escalate into the functional equivalent of an arrest for **Miranda** purposes. **See Toliver**, 355 A.3d at 944; **see also Rosas**, 875 A.2d at 348.

In any event, police awareness of Perez's non-licensure status when asking about his ownership of the gun did not invalidate the safety and ownership concerns that remained, as discussed above, including the possibility that Perez would provide a valid license in response to the question, notwithstanding police records or that there was another passenger with a concealed carry license. **See Toliver**, 355 A.3d at 944; **see also** 18 Pa.C.S. § 6122(a) ("When carrying a firearm concealed on or about one's person or in a vehicle, an individual licensed to carry a firearm shall, upon lawful demand of a law enforcement officer, produce the license for inspection. Failure to produce such license either at the time of arrest or at the preliminary hearing shall create a rebuttable presumption of non[-]licensure."). Accordingly, we conclude that Perez is due no relief on his first issue on appeal.

In his second issue, Perez challenges the discretionary aspects of his sentence. Appellate review of the discretionary aspects of a sentence must be considered a petition for permission to appeal to this Court. **See Commonwealth v. Buterbaugh**, 91 A.3d 1247, 1265 (Pa. Super. 2014) (*en banc*). Since Perez is challenging the discretionary aspects of sentencing, he must invoke this Court's jurisdiction by satisfying a four-part test:

(1) whether appellant has filed a timely notice of appeal, **see** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, **see** Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, [**see**] Pa.R.A.P. 2119(f); and (4) whether there is

a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, [**see**] 42 Pa.C.S.[] § 9781(b).

Commonwealth v. Brown, 249 A.3d 1206, 1210 (Pa. Super. 2021), quoting ***Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010).

Here, Perez timely filed his appeal, and his sentencing issue was preserved in his post-sentence motion. **See** Notice of Appeal, 7/11/25; Post-Sentence Motion, 6/9/25. Also, Perez’s brief contains a Rule 2119(f) statement. **See** Appellant’s Brief at 11-14. Accordingly, we discern whether Perez presents a substantial question for our review.

In his Rule 2119(f) statement, Perez alleges that he received an excessive sentence where the sentencing court failed to consider or sentence Perez pursuant to his rehabilitative needs, including by neglecting testimony offered by defense witnesses at the sentencing hearing regarding Perez’s tumultuous upbringing and that Perez battled drug and alcohol addiction. **See *id.*** at 12. Further, Perez submits that the trial court impermissibly double-counted certain factors in imposing his aggravated-range sentence—including the fact that Perez possessed a loaded firearm after being convicted of an enumerated disqualifying offense—which allegedly double-counted the elements of the offense, the grading of the offense, and the applicable sentencing guidelines. **See *id.*** at 13. Moreover, Perez asserts that the trial court failed to consider his mitigating factors—his upbringing and addictions—in sentencing him to an excessive term in the aggravated range recommended by the Sentencing Guidelines. **See *id.*** at 12-13. Also, Perez alleges that the

court sentenced him exclusively based on the seriousness of his offense. **See *id.*** at 13-14.

We conclude that each of these claims raises a substantial question for our review. **See *Commonwealth v. Schroat***, 272 A.3d 523, 527 (Pa. Super. 2022) (recognizing substantial question raised where appellant asserted that sentencing court imposed excessive sentence and failed to consider relevant sentencing factors including rehabilitative needs)⁸; **see also *Commonwealth v. Watson***, 228 A.3d 928, 936 (Pa. Super. 2020) (noting “a claim that the court double-counted factors already considered in the sentencing guidelines raises a substantial question”); ***Commonwealth v. Raven***, 97 A.3d 1244, 1253 (Pa. Super. 2014) (stating “an excessive sentence claim—in conjunction with an assertion that the court failed to consider mitigating factors—raises a substantial question”); ***Commonwealth v. Macias***, 968 A.2d 773, 776 (Pa. Super. 2009) (noting “averment that the court sentenced based solely on the seriousness of the offense and failed to consider all relevant factors [has been found to] raise[] a substantial question”).

In his appellate brief, Perez asserts that the sentencing court gave impermissible “short shrift” to his rehabilitative needs, in violation of ***Schroat***, as follows:

⁸ ***Cf. Commonwealth v. Cannon***, 954 A.2d 1222, 1229 (Pa. Super. 2008) (finding limited claim that trial court failed to consider defendant’s rehabilitative needs, age, and educational background did not present substantial question).

In the instant case, the trial court devoted exactly one sentence of a lengthy sentencing proceeding toward Mr. Perez's rehabilitative needs, stating as follows:

I have to consider your need for rehabilitation, and I am considering your need for rehabilitation when imposing this sentence.

N.T. [Sentencing Hearing,] 5/30/25, [at] 21. In its [o]pinion, the trial court merely reproduced its comments made during the sentencing hearing without further analysis or explanation. [] The trial court never acknowledged the testimony of witnesses offered by the defense at sentencing regarding Mr. Perez's background and rehabilitative needs. The trial court never acknowledged the testimony of Elijah Irizarry, Mr. Perez's nephew, who testified that Mr. Perez was a positive influence and a valuable resource for him growing up. The trial court never acknowledged the testimony of Jessica Irizarry, Mr. Perez's partner, that Mr. Perez supported her through her own substantial medical issues and supported her children. The trial court never acknowledged Mr. Perez's testimony that he had a tumultuous upbringing and battled addiction for many years.

Appellant's Brief at 29-30 (some citations omitted). Further, Perez submits that the court relied on impermissible aggravating sentencing factors, including: (1) his prior conviction which is already an element of his present conviction; (2) the fact that the firearm was within Perez's reach, which was already a factor in upgrading the offense from a felony of the second degree to a felony of the first degree, **see** 18 Pa.C.S. § 6105(a.1)(1.1)(i)(B); and (3) the fact that the firearm was loaded, which already increased the offense gravity score by 1, thereby increasing the applicable sentencing guidelines, which the court estimated was a change from 60 to 72 months' incarceration in the standard range to 72 to 90 months' incarceration in the standard range, **see** 204 Pa. Code. §§ 303.15, 303.16(a). **See** Appellant's Brief at 33-34. After our review, we agree that relief is due.

Our well-settled standard of review for challenges to the discretionary aspects of sentencing is as follows:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias[,] or ill[-]will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Lawrence, 313 A.3d 265, 285 (Pa. Super. 2024) (citation omitted). The rationale for the broad discretion and deference in this standard is that the sentencing court is “in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it.” **Commonwealth v. Walls**, 926 A.2d 957, 961 (Pa. 2007) (citation and quotation marks omitted).

Where the sentencing court sentences the defendant outside the sentencing guidelines, as here,⁹ this Court “shall vacate the sentence and

⁹ We observe that the court applied the wrong standard guideline range in stating that the applicable “minimum sentence in the standard range [is] six to seven and a half years,” N.T. Sentencing Hearing, 5/30/25, at 22, where the correct standard range is sixty to seventy-eight months’ incarceration, plus or minus twelve months for aggravating and mitigating circumstances. **See supra** at n.3. Nevertheless, the court correctly determined that the imposed sentence was in the aggravated range. To the extent the court applied the incorrect sentencing guidelines, that claim is unreviewable as an unpreserved challenge to the discretionary aspects of sentence. **See Commonwealth v. McAllister**, 2026 Pa. Super. LEXIS 406, 622 EDA 2025, at *40 (Pa. Super. 2026) (citing **Commonwealth v. Johnson**, 758 A.2d 1214, 1216 (Pa. Super. 2000) (stating “A challenge to the calculation of the Sentencing Guidelines raises a question of the discretionary aspects of a (Footnote Continued Next Page)

remand the case to the sentencing court with instructions” if it finds the sentence is “unreasonable.” 42 Pa.C.S. § 9781(c)(3). “In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.”

Id. A sentence is unreasonable if it was imposed “without express or implicit consideration” of the requirements outlined in Section 9721(b). ***Walls***, 926 A.2d at 964; 42 Pa.C.S. § 9721(b).

Also, in reviewing the record, this Court considers:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
- (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
- (3) The findings upon which the sentence was based.
- (4) The guidelines promulgated by the commission.

42 Pa.C.S. § 9781(d).

In imposing a sentence, the sentencing court shall consider “the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.” 42 Pa.C.S. § 9721(b). The sentencing court is required to consider the circumstances of the offense and the character of the defendant,

defendant’s sentence.”); ***see id.*** at *43 (citing ***Commonwealth v. Cartrette***, 83 A.3d 1030, 1043 (Pa. Super. 2013) (*en banc*) (noting discretionary sentencing claim is waived where not preserved in post-sentence motion or at sentencing)). Accordingly, we will not review that substantive claim in this appeal. However, on remand, we remind the sentencing court of its obligation to consider the correct sentencing guidelines recommended range.

paying particular attention to the defendant's prior criminal record, age, personal characteristics, and potential for rehabilitation. **See *Commonwealth v. Summers***, 245 A.3d 686, 693 (Pa. Super. 2021). Although they must be considered, the Pennsylvania Sentencing Guidelines are not mandatory, and thus do not prohibit any sentence otherwise within the statutory maximum. **See *Commonwealth v. Sheller***, 961 A.2d 187, 190 (Pa. Super. 2008).

Where a sentencing court places disproportionate emphasis on the seriousness of the offense and fails to adequately consider the defendant's personal history or rehabilitative needs, we have vacated the sentence and remanded for resentencing. **See *Commonwealth v. Hyland***, 875 A.2d 1175, 1185 (Pa. Super. 2005) (finding sentencing court improperly focused on seriousness of offense, defendant's failed attempt to divert blame, and defendant's need for rehabilitation, and "virtually ignored" defendant's personal characteristics and life situation); ***Commonwealth v. Ritchey***, 779 A.2d 1183, 1187 (Pa. Super. 2001) (concluding remand for resentencing necessary where court improperly focused on seriousness of crime, did not have benefit of pre-sentence investigation report, and did not adequately consider defendant's character or other mitigating circumstances and rehabilitative needs).

Here, at sentencing, without the benefit of a pre-sentence investigation report, the court placed the following reasons on the record for imposing an aggravated-range sentence on Perez:

Mr. Perez, when I'm imposing a sentence, I'm to consider the facts of the case, together with the nature and character of the [d]efendant. The facts of your case, I think as Jessica [Irizarry] had referred to, are significant. **As [the prosecutor] just said, the crime for which you were convicted, you're exactly the person that that crime is intended to apply to.**

Somebody who has a prior conviction for a violent offense, as you have, is not supposed to possess a firearm. Not only did you possess a firearm, but you had a loaded firearm in the vehicle which you were driving. **It was right by the gear shift in the console readily accessible to you by hand.** On top of that, you're in a clearly altered state of mind.

So, I'm considering all of those facts that I remember from the pretrial hearings and the trial itself, as well as I have to consider—I know that the prior convictions are included or considered by the sentencing commission when they come up with the guidelines that they come up with, **but I have to also consider those past offenses when I'm thinking about the nature and character of the [d]efendant.**

So, I'm considering all of those things. I'm considering the guidelines which, as you know, you were convicted of possession of a firearm by a person who is prohibited. It's a felony of the first degree. It has a maximum sentence of 20 years in prison and a guideline-recommended minimum sentence in the standard range of six to seven[-]and[-]a[-]half years[' incarceration] as a minimum sentence. **And I think that those guidelines in this have that right in the aggravated sense that you knew what you were doing and have no regard for the laws of Pennsylvania.**

You served a sentence for attempted murder. You had a loaded handgun at that time. You still had a loaded gun. You didn't learn your lesson from the long period of incarceration you did in the past. So, I have to consider that.

I have to consider the impact your crime has had on any victims. There were no true victims in this case in that you were by yourself at the gas station, but I have to consider the need to protect the community. That is the purpose of this statute is—**this law is to protect our community from people like you who have done these things, and now are there with loaded guns again. So, I'm considering that.**

I have to consider your need for rehabilitation, and I am considering your need for rehabilitation when imposing this sentence.

Given the facts of this case and the nature and character of the [d]efendant, need to protect the community, I believe that [the prosecutor] has it correct; that this has to be a sentence that is in the aggravated range.

Therefore, on Count 1, you're sentenced to not less than eight years nor more than [twenty] years in a state correctional institute. Counts 2 and 3 are going to be [nolle prossed]. All right. And then I will leave it to the Department of Corrections to add any other conditions onto the sentence.

N.T. Sentencing Hearing, 5/30/25, at 18-21 (emphasis added).

The trial court's Rule 1925(a) opinion offers no additional substantive reasoning or analysis. **See** Trial Court Opinion, 10/10/25, 9-12.

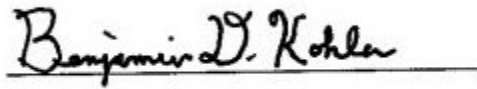
After our review, we recognize that the sentencing court considered several appropriate factors, and that, in addition to considering the seriousness of the offense, the court noted that Perez was in an altered state of mind when he committed the offense, and that the firearm was loaded and unsecured in arm's reach for Perez, thereby creating a public safety hazard, and which possession of a loaded firearm was repetitive behavior of Perez's prior conviction and showed that Perez had not changed his conduct in light of his previous term of incarceration. **See *Watson***, 228 A.3d 937 ("It is impermissible for a court to consider factors already included within the sentencing guidelines as the sole reason for increasing or decreasing a sentence to the aggravated or mitigated range. Trial courts can use information included in the guidelines to supplement other peripheral sentencing information. For example, courts can consider a defendant's prior

convictions in conjunction with past unsuccessful attempts to rehabilitate[. . .] or that the defendant's ongoing criminal record demonstrated a threat to public safety [. . .] even though the guidelines take into account those prior convictions.") (citations and quotation marks omitted). Nevertheless, we conclude that, here, the sentencing court's reasoning supporting Perez's sentence was unreasonable under the circumstances, especially without the benefit of a pre-sentence report, because the court improperly placed inordinate emphasis on the seriousness of Perez's conviction, without due consideration for Perez's personal history or rehabilitative needs, beyond the court's short vague statement about the court's duty to consider them and its acknowledgment of the existence of Perez's prior conviction, which is already an element of Perez's instant conviction. **See Hyland**, 875 A.2d at 1185; **Ritchey**, 779 A.2d at 1187.

Accordingly, pursuant to **Hyland** and **Ritchey**, we must vacate Perez's judgment of sentence and remand for resentencing. Upon remand, "[i]f, after following the required procedures, the sentencing court concludes that the sentence imposed is appropriate, it may reimpose its original sentence. If, alternatively, it determines that its original sentence is inappropriate, it shall resentence [the a]ppellant consistent with its findings on remand." **Ritchey**, 779 A.2d at 1189 (citation, quotation marks, brackets, and ellipsis omitted).

Judgment of sentence vacated. Conviction affirmed. Remanded for resentencing with instructions. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/14/2026