

2026 PA Super 240

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ANDRE SMITH	:	
	:	
	:	
Appellant	:	No. 1395 EDA 2025

Appeal from the Judgment of Sentence Entered December 19, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0003343-2024

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

OPINION BY FORD ELLIOTT, P.J.E.: **FILED OCTOBER 27, 2026**

Appellant, Andre Smith, appeals from the judgment of sentence imposed on his convictions of possessing a firearm by a prohibited person, possessing a firearm with an altered manufacturer's number, carrying a firearm without a license, and carrying a firearm on public streets or public property in Philadelphia.¹ He challenges the court's denial of his pretrial motion to suppress and the discretionary aspects of his sentence. We affirm.

The trial court accurately summarized the evidence presented at the stipulated trial, as follows:

On April 19, 2024, at approximately 8:00 P.M. Philadelphia Police Officers, Timothy Carroll, Paul Moore, and Officer Struble were conducting a routine patrol in an unmarked patrol car as a part of the "5 Squad" within the 22nd District. [N.T. Suppression, 10/18/24, 7]. Officer Carroll testified that he [] spent almost all of

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 6105(a)(1), 6110(a), 6106(a)(1) and 6108, respectively.

his twelve years as a Philadelphia Police Officer assigned to the 22nd District. Officer Carroll stated that during that time he [] responded to hundreds of crimes involving firearms. [*Id.*, 13]. Officer Carroll also testified that he [had] extensive experience with firearms due to always carrying his service weapon while on duty and personal ownership of a separate firearm that he carries while off duty. [*Id.*, 12].

At approximately 8:00 P.M. the officers' patrol took them to the 1100 block of Lehigh Avenue where they encountered Appellant, Andre Smith, walking down the sidewalk in the direction of the officers' patrol car. [N.T. Suppression, 10/18/24, 15-16]. Despite the time of day, Officer Carroll stated that the 1100 block of Lehigh Avenue has streetlights illuminating the block so they could see clearly. [*Id.*, 15, 27]. Officer Carroll stated that he was seated in the rear passenger seat of the patrol car and observed Appellant "walking in the middle of the sidewalk [and] immediately observed what I know to be a firearm in his front waist - right side waistband." [*Id.*, 18-19]. Officer Carroll clarified that he did not see the metal of the firearm but rather saw the imprint of what he knew to be a firearm "based on training, observation, me carrying a firearm every day of my life, all of those experiences" [*Id.*, 29, 38-39].

After observing Appellant, [the] officers made a U-turn during which time Officer Carroll stated he never lost sight of Appellant. [N.T. Suppression, 10/18/24, 20]. As [the] officers were making the U-turn Officer Carroll observed Appellant "look in our direction[] and immediately stiffen his right arm in front of his body, like in front of his right side, as his left arm is still swing[ing] freely ... like you're walking normal." *Id.* The officers then made another U-turn in order to be on the same side of the street as Appellant and parked in the bike lane. *Id.*

Based on the officers' observation[,], Officer Moore asked Appellant if he had a permit to carry and Appellant responded that he "doesn't have nothing." [N.T. Suppression, 10/18/24, 21, 33]. Officer Struble and Officer Carroll then exited their patrol car and again asked Appellant if he had a permit to carry and Appellant again responded that he "had nothing." *Id.* Based on Officer Carroll's observation of the firearm, Appellant's stiffening his arm [when the] officers viewed the bulge, and [Appellant] responding that he didn't have anything[, the] officers believed Appellant to be lying. The officers then approached Appellant and "Officer Struble frisk[ed] the object that we believed to be a firearm and

removed from that exact position ... a 9-millimeter Smith & Wesson M&P 9 Shield firearm.” ***Id.*** After recovering the firearm[, the] officers noted that the serial number was “scratched off [and] not fully legible.” [N.T. Suppression, 10/18/24, 26; Commonwealth Exhibit C-4B.]

Trial Court Opinion, 8/28/25, 2-4.

Appellant was charged with the four firearms offenses mentioned above. His trial was held on October 18, 2024. Prior to trial, he litigated a motion to suppress the firearm on the ground that the pedestrian stop was not supported by reasonable suspicion. ***See*** N.T. Suppression, 10/18/24, 5, 52-55. Officer Carroll testified at the suppression hearing and the Commonwealth also introduced photographs of the firearm recovered from Appellant as well as the police property receipt for the firearm. ***See id.***, 6-26. Appellant introduced short excerpts from the officer’s body camera video and the notes of testimony from the preliminary hearing. ***See id.***, 30, 42, 45. At the conclusion of the hearing the suppression court made the following findings of fact, which were consistent with Officer Carroll’s testimony:

[O]n April 19, 2024, Officer Carroll, who has been a police officer - I believe he testified to 12 years working in the 22nd District. It was approximately 8:00 at night. He was working with his partners, Officer Struble and Officer Moore. Officer Carroll was in the rear of the vehicle. [Officer Carroll] has carried a firearm as part of his employment every single day and testified that he always carries a firearm when he is off duty. Therefore, he is familiar with firearms or intimately familiar with firearms. Plus, he had training through the police department. He [had] also responded to hundreds of firearms types of cases specific to the 22nd District.

This day, he’s in an unmarked car but he’s in full uniform. He approaches -- well, he’s in the back passenger seat of a vehicle [when Appellant] is walking down the street in the direction of the

police vehicle, and Officer Carroll saw hidden, slash, concealed on [Appellant] what he knew to be the imprint of a firearm, based upon his experience. He testified further that [the imprint] was obvious to him when the defendant was walking in the same direction – walking towards him. As they did a U-turn, the firearm was not noticeable. It was not obvious to him from the rear. They turn around and they face him again. It was obvious to him it was an imprint of a firearm. The Court also notes that on the body-worn camera, Officer Carroll says to the defendant like – I believe it was Officer Carroll's voice – "You could see it from a mile away." He says that directly to [Appellant] at the time he was stopping him.

The officer – whether it was Officer Moore or Struble or Carroll first is irrelevant for this Court's findings. One of them, while still in the vehicle, says to [Appellant], "Do you have a license to carry a firearm?" [Appellant] answers, "I don't have anything." That can be interpreted to mean I don't have a firearm or I don't have a license to carry. Either way, if the question is, "Do you have a license to carry," the normal interpretation of the answer would be [in the negative] because he's saying, "I don't have anything."

He says that[,] not once, but twice. When he says it the first time, the officers have every reason to believe he's lying to them because Officer Carroll has seen what he knows to be the imprint of a firearm. Out of the vehicle, they ask him again, "Do you have a license to carry?" The answer is, "I don't have anything."

N.T. Suppression, 10/18/24, 58-60. Based on its factual findings, the court made the following conclusions of law:

At that time, the officers certainly have reasonable suspicion to frisk [Appellant] because he's being evasive and/or lying to them, and the officer knows that he's seen the imprint of a firearm. Could that have been a fake and pretend gun? Certainly, but the officers have every reason at that point to frisk [...] to frisk Mr. Smith.

Obviously, at that point, the firearm is recovered.

So[,] for those reasons, the motion to suppress the recovered gun is denied. I reserve the right to supplement my findings of fact and conclusions of law, if the time comes.

[...]

I'm also going to add to my findings of fact that when the officer stood up with his own firearm on, this Court could see what was obvious to me was the imprint of a firearm underneath his sweatshirt.

Id., 60-62.²

After his motion to suppress was denied, Appellant elected to proceed with a stipulated trial. **See** N.T. Trial, 10/18/24, 61. After the court conducted a jury waiver colloquy with Appellant, **see id.**, 62-66, the Commonwealth moved the notes of testimony from the suppression hearing and its exhibits into the trial record. **See id.**, 67-68. Then, by stipulation with the defense, the Commonwealth entered into the record the test fire report for the firearm recovered from Appellant demonstrating that the firearm was operable and informed the court that Appellant had a prior conviction for aggravated assault, graded as a felony of the second degree, which made him ineligible to possess a firearm. **See id.**, 68. Appellant moved his exhibits from the suppression hearing into the trial record. **See id.** The court found Appellant guilty of all charges.³ **See id.**, 69.

² While testifying at the suppression hearing, Officer Carroll was wearing his personal firearm underneath his top. At one point during his testimony defense counsel asked the officer to stand up, and the court noted that it could see the outline of the gun through the officer's jacket. **See** N.T. Suppression, 10/18/24, 28-29, 61-62.

³ The court specifically noted the following evidence: "I did see the photograph of the gun itself, and it was obvious to me that an attempt had been made to scratch out or somehow otherwise manipulate the serial number. I'm not saying that [Appellant] personally did that, but he was possessing a firearm that had that obliteration[.]" N.T. Trial, 10/18/24, 69.

On December 19, 2024, the court imposed concurrent terms of imprisonment of five to ten years on the convictions under 18 Pa.C.S. §§ 6105 and 6110.2, and a concurrent term of seven years' probation on the conviction under 18 Pa.C.S. § 6106. **See** N.T. Sentencing, 12/19/24, 20-21; Order of Sentence, 12/19/24, 1. The court imposed no further punishment on the conviction under 18 Pa.C.S. § 6108. **See id.** On December 29, 2024, Appellant filed a timely post-sentence motion seeking reconsideration of his sentence on multiple grounds, including, *inter alia*: "the sentence was disproportionate to the conduct; the Court did not give careful consideration to all relevant factors; the Court relied on improper factors not supported by the evidence; [and] the Court considered [Appellant's] prior convictions which were already considered in his prior record score[.]" **See** Post-Sentence Motion, 12/29/24, 1. The trial court denied the post-sentence motion by written order filed on April 29, 2025. **See** Order, 4/29/25.

Appellant filed a timely notice of appeal on May 28, 2025. **See** Notice of Appeal, 5/28/25. The court ordered Appellant to file a concise statement of errors complained of on appeal. **See** Order Under Rule 1925(b), 6/3/25; Pa.R.A.P. 1925(b)(1). Appellant complied with that order asserting two claims: (1) the court erred by denying the motion to suppress; and (2) the court erred at sentencing by relying on facts not supported in the evidence, "specifically[,]" the unproven allegations that [Appellant] had previously shot someone and unlawfully carried firearms." **See** Statement of Errors Complained of on Appeal, 6/23/25.

Appellant raises the following questions for our review:

1. Did the trial court err in denying Appellant's motion to suppress?
2. Did the trial court abuse its discretion when it considered facts not in evidence when imposing sentence?

See Appellant's Brief, 4 (rephrased).

In his first claim, Appellant challenges the trial court's denial of his motion to suppress because, in his view, the Commonwealth "did not meet its burden [...] as police detained and frisked [him] without reasonable suspicion." Appellant's Brief, 9. Noting the three levels of interaction between law enforcement and individuals, Appellant argues that the "initial question from inside the [police] vehicle constituted only a mere encounter," but that the "interaction became an investigative detention the moment officers exited their vehicle, ran up from behind [him], and physically initiated a pat-down." *Id.*, 9-10. Citing our Supreme Court's decision in ***Commonwealth v. Hicks***, 208 A.3d 916, 936 (Pa. 2019), he contends that since "carrying a firearm may be lawful, officers must possess additional, particularized facts indicating illegality or criminal conduct before initiating a detention." Appellant's Brief, 10. He then argues that the police did not have reasonable suspicion that he "was engaged in criminal activity" because when "they called out to him [from the unmarked car, he] continued walking" and when "they approached and immediately initiated a frisk, [he] stiffened his arm and stated he had nothing." *Id.*, 10-11. Appellant alleges, "[a]t most, [his acts] constitute[d] equivocal conduct equally consistent with innocent behavior as with

wrongdoing, and such equivocal behavior cannot justify an investigative detention.” ***Id.***, 11.

Appellant also asserts that the police officers did not “possess reasonable suspicion that [he] was armed and dangerous so as to justify a frisk.” Appellants Brief, 11. He argues that the Commonwealth “cannot satisfy th[e] standard [for a frisk] where the only articulated basis for the frisk was an apparent firearm outline,” because, “under ***Hicks***, the possibility that a person possesses a firearm does not, standing alone, suggest criminality or danger.” ***Id.***

On appeal from an order denying a motion to suppress, we apply the following standard of review:

[We are] 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, we are bound by those findings and may reverse only if the [suppression] court’s legal conclusions are erroneous. ... [T]he suppression court’s legal conclusions are not binding on the 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 [suppression court] are subject to our plenary review.

Commonwealth v. Patterson, 304 A.3d 1245, 1249 (Pa. Super. 2023) (citation and quotation marks omitted). In addition, it “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.***

Cephus, 208 A.3d 1096, 1098 (Pa. Super. 2019) (quoting **Commonwealth v. Gallagher**, 896 A.2d 583, 585 (Pa. Super. 2006)).

As explained by the Pennsylvania Supreme Court:

...Fourth Amendment jurisprudence has led to the development of three categories of interactions between citizens and the police. The first of these is a “mere encounter” (or request for information) which need not be supported by any level of suspicion, but carries[]no official compulsion to stop or to respond. The second, an “investigative detention” must be supported by a 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. Ellis, 662 A.2d 1043, 1047–48 (Pa. 1995) (citations and footnote omitted).

In considering whether a seizure occurred, or whether a reasonable person would feel free to leave, courts may examine, *inter alia*, the following circumstances:

the number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer’s demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked. Otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Commonwealth v. Beasley, 761 A.2d 621, 624-25 (Pa. Super. 2000) (citation omitted). Further, “[w]ith respect to the show of authority needed for a detention, the circumstances must present some level of coercion, beyond the officer’s mere employment, that conveys a demand for compliance

or threat of tangible consequences from refusal.” ***Commonwealth v. Luczki***, 212 A.3d 530, 544 (Pa. Super. 2019).

Appellant does not forward any argument that the initial question from an officer sitting inside the car was anything other than a mere encounter, requiring no level of suspicion. **See** Appellant’s Brief, 9. Notably, the police did not activate lights or sirens on their unmarked car and brought the car to a stop in the street near to Appellant on the sidewalk but not blocking his path. **See** N.T. Suppression, 10/18/24, 21-22. The officers were all in uniform but did not exit the car before one of them asked Appellant if he had a license to carry the firearm. **See id.**, 21, 60. We find that the first question to Appellant and his answer, as well as the observations made by Officer Carroll from the car when passing by Appellant, arose within a mere encounter before any seizure of Appellant was initiated. **See *Commonwealth v. Joyner***, 348 A.3d 230, 237 (Pa. Super. 2025) (finding that police interaction was a mere encounter and did not escalate into an investigatory detention when one officer asked Joyner, “do you have a gun” and “are you sure” where the encounter occurred on a public street and the officers first approached Joyner without sirens or lights activated, did not leave their vehicle, and did not brandish their weapons).

Appellant argues, instead, that he was seized when the “officers exited their vehicle, ran up from behind [him], and physically initiated a pat-down.” Appellant’s Brief, 9-10. We disagree with Appellant that merely exiting the unmarked car in a location behind Appellant, given the direction he was

walking, constituted a seizure, and Appellant has provided no legal basis for finding that it did. The testimony from the suppression hearing confirms that, after the officers exited the car, they asked Appellant a second time from behind Appellant whether he had a license to carry and he again said he did not have anything. **See** N.T. Suppression, 10/18/26, 21-22; **see also** ***Commonwealth v. Downey***, 39 A.3d 401, 405 (Pa. Super. 2012) (holding that mere encounter did not escalate to investigatory detention where the officer “stopped when he was five feet away to ask [Downey] some questions,” and there was no indication that he blocked Appellant or restricted his movement).

Only after asking Appellant a second time whether he had a permit for the firearm did the officers run a short distance to catch up to him. **See** N.T. Suppression, 10/18/26, 22. We find that this short pursuit followed immediately by the officers blocking any further progress by Appellant and frisking the area where the firearm was located constituted a seizure requiring reasonable suspicion. **See *Commonwealth v. Matos***, 672 A.2d 769, 774 (Pa. 1996) (courts in this Commonwealth “take a *reasonable* and *objective* approach to determining whether, in fact, the subject being pursued [by police officers] felt free to leave” or was thereby seized by police conduct short of actual apprehension) (emphasis in original).

Critical to our inquiry, therefore, is the quantum of information known to the officers at the time they subjected Appellant to an investigative detention by impeding his progress and frisking him. **See *Commonwealth v.***

Mackey, 177 A.3d 221, 228 (Pa. Super. 2017) (explaining that police must have reasonable suspicion at the moment of detention; information developed after a police-citizen encounter moves from consensual to coercive cannot be used to justify the detention). “[A]n investigative detention must be supported by a reasonable suspicion.” **Ellis**, 662 A.2d at 1047 (quotation marks omitted). “Reasonable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.” **Commonwealth v. Milburn**, 191 A.3d 891, 898 (Pa. Super. 2018) (quotation marks and citation omitted). Reasonable suspicion exists where the police are able “to point to ‘specific and articulable facts’” that lead them “to suspect criminal activity is afoot.” **Commonwealth v. Butler**, 194 A.3d 145, 148 (Pa. Super. 2018) (citation omitted). A court must consider the totality of the circumstances and give due weight “to the specific, reasonable inferences drawn from the facts in light of the officer’s experience.” **Id.** (citation omitted).

Here, the suppression court explained its reasoning with respect to Appellant’s primary claim that the police officers did not have reasonable suspicion when they initiated the investigative detention, as follows:

While “a police officer may not infer criminal activity merely from an individual’s possession of a concealed firearm in public[,]” carrying a firearm without a license is a crime and a police officer’s knowledge of this criminal activity may give reasonable suspicion to conduct a frisk. Officer Carroll and Officer Struble did not stop nor frisk Appellant until after they asked Appellant twice if he had a license to carry a firearm and Appellant responded that he had nothing.

Based on their observation of a firearm on Appellant's person, which Officer Carroll stated "could be seen from a mile away[,," the officers] believed Appellant possessed a firearm. Due to that observation of the imprint of a firearm, Appellant stiffening his right arm, and Appellant's response to [the] officers' questioning about being licensed to carry a firearm[, the] officers had reasonable suspicion of criminal activity which justified frisking Appellant.

Trial Court Opinion, 8/28/25, 6-7 (brackets, footnotes and citations omitted).

Upon review, we conclude that the suppression court's factual findings are supported by the evidence of record, and thus, we are bound by those findings. **Patterson**, 304 A.3d at 1249. We also agree with the suppression court's conclusion that the police officers had reasonable suspicion to stop Appellant for unlawful possession of a firearm when two of the officers attempted to physically stop him after exiting the car. In **Hicks**, our Supreme ruled that "there simply is no justification for the conclusion that the mere possession of a firearm, where it lawfully may be carried, is alone suggestive of criminal activity." **Hicks**, 208 A.3d at 937. There must be some additional factor supporting an officer's belief that the possession of the firearm is unlawful. **See Commonwealth v. Toliver**, 355 A.3d 920, 940 (Pa. Super. 2026) ("[w]here a suspect – as a driver or passenger – during a lawful car stop has been caught in a lie concerning the presence of a firearm on or about their person, we find that the lie, by itself, is adequate to support reasonable suspicion permitting an investigative detention").

As the suppression court noted, the factors additional to the officer's observation that Appellant possessed a firearm were that: (1) he stated he

did not “have anything” when lawfully asked whether he had a license to carry a firearm before any officer had exited the car; and (2) that he was trying to hide the firearm by stiffening his arm against it. Both factors evidenced Appellant’s intent to hide from police officers that he was carrying a firearm, and thereby support the officers’ reasonable belief that Appellant’s possession of the firearm was unlawful. **See Toliver**, 355 A.3d at 940. Appellant’s apparent lie about carrying a firearm was enough to support reasonable suspicion, *id.*, and his attempt to hide the firearm from the police provided additional direct support for the officers’ reasonable belief that his possession of the firearm was unlawful. We have found reasonable suspicion with similar levels of direct support for an officer’s belief that possession of a firearm was unlawful. **See Commonwealth v. Foglia**, 979 A.2d 357, 361 (Pa. Super. 2009) (*en banc*) (concluding that Foglia’s touching of the area on his body where officer suspected he was carrying a gun provided support for the officer’s belief that Foglia was carrying a firearm); **Joyner**, 348 A.3d at 238 (finding that officer had reasonable suspicion to believe that Joyner’s apparent possession of a firearm was unlawful where he had seen Joyner walking “strangely” in a high-crime area with a “square-shaped” object that based on experience the officer believed was a firearm, and Joyner interacted briefly with officers before running); **Commonwealth v. Rice**, 304 A.3d 1255, 1262-63 (Pa. Super. 2023) (reversing suppression and concluding that officer had reasonable suspicion to conduct investigative detention where, in high crime

area, the officer saw an “L” shaped bulge in the appellee’s waistband, and appellee walked away when police asked him to “come here” before running).

Appellant’s argument to the contrary is not persuasive, as he excludes one significant circumstance that the court specifically found as fact and imposed a different order of events than was testified to by Officer Carroll. By doing so, he ignored the key factors that differentiate his case from **Hicks**. Appellant posits that he said nothing in response to the first officer’s question, at a point when even he agrees the confrontation was a mere encounter. **See** Appellant’s Brief, 10-11. The suppression court found, however, fully consistent with Officer Carroll’s testimony, that one of the officer’s asked from inside the unmarked car: “Do you have a license to carry a firearm?” [Appellant answered,] ‘I don’t have anything.’” N.T. Suppression, 10/18/24, 60. Appellant’s argument omitting this fact, therefore, is contrary to the standard of review.⁴

Significantly, the suppression court also explained the importance of this particular finding. Officer Carroll saw the shape of a firearm at Appellant’s

⁴ Appellant also asserts that the stiffening of his arm took place after the officers exited the car and just prior to, or at the same time as, the frisk. **See** Appellant’s Brief, 10-11. This, too, violates the standard of review under which we may only consider the evidence presented by the motion winner at the hearing. **See Patterson**, 304 A.3d at 1249. Officer Carroll testified that he saw Appellant “stiffen his right arm in front of his body, like in front of his right side, as his left arm is still swing[ing] freely” when the officers passed by him for the second time, which was prior to the second U-turn that was prior to actually stopping the car and speaking with Appellant. **See** N.T. Suppression, 10/18/24, 20. Therefore, the observation of Appellant’s attempt to conceal the firearm from the view of the uniformed officers in the car was properly weighed in the totality of the circumstances supporting reasonable suspicion.

right waistband, a shape he well knew from personal and professional experience, and, as the suppression court found, “was obvious to him it was an imprint of a firearm.” ***Id.***, 13, 18-19, 59. Appellant’s claim that he did not have anything in response to the officer’s question could be “interpreted to mean I don’t have a firearm or I don’t have a license to carry.” N.T. Suppression, 10/18/24, 60. We agree with the suppression court’s conclusion. As stated above, Appellant’s apparent lie about possessing the gun was alone sufficient to provide reasonable suspicion. ***See Tolliver***, 355 A.3d at 940. Even if the officers had interpreted his denial to be limited to possessing a permit to carry the firearm, then that too would have provided, at least, reasonable suspicion that Appellant’s apparent possession of a firearm was unlawful; it would have conceded unlawful concealment of the apparent firearm. ***See Commonwealth v. Saunders***, 326 A.3d 888, 898 (Pa. 2024) (officer saw what “he was very certain was a gun under Saunders’s seat,” for which Saunders “admitted he did not have a license” and thus, “[a]t a minimum, the totality of the[] circumstances[, which included a car stop in a high-crime area and an attempt to conceal the firearm,] established probable cause to believe Saunders was in violation of two provisions of the Uniform Firearms Act”).

Appellant also contends, on the same improperly truncated factual basis that the police only saw the imprint of a firearm before the investigative detention and the officers did not have reasonable suspicion to believe he was armed and dangerous to justify the frisk. ***See*** Appellant’s Brief, 11. To the

extent that Appellant argues that the ruling in **Hicks** implies that his mere possession of the firearm did not by itself suggest dangerousness, he is incorrect for two reasons. First, as discussed above, Appellant lied about his possession of a firearm and attempted to hide it from the view of uniformed police officers, distinguishing the ruling in **Hicks**. Second, **Hicks** addresses the circumstances required to permit a detention based on possession of a firearm. **See Hicks**, 208 A.3d at 936–37. **Hicks** did not preclude police officers from frisking a suspect whom they have lawfully detained when they reasonably believe him to be in possession of a gun. **See id.** at 934 (stressing that the decision “is confined to the antecedent justification” for an investigative stop and declining to offer an opinion “as to whether a police officer who has effectuated a lawful investigative detention may treat the suspect’s possession of a firearm as *per se* authorization to ‘frisk’ the detainee”); **see also Commonwealth v. Graham**, 353 A.3d 225, 232 (Pa. Super. 2026) (“the outcome in **Hicks** turned on the validity of the initial detention”).

As established, the officers here had ample reason to believe Appellant was armed, and they were in the process of lawfully detaining him. Therefore, the officers were permitted to frisk Appellant to ensure their safety during the investigative stop. **See Pennsylvania v. Mimms**, 434 U.S. 106, 111–12 (1977) (where officer lawfully stopped Mimms for investigation of a traffic offense and upon ordering him out of the car noticed a bulge in Mimms’ jacket, the officer was permitted to frisk him; “[t]he bulge in the jacket permitted the

officer to conclude that Mimms was armed and thus posed a serious and present danger to the safety of the officer”); **Foglia**, 979 A.2d at 361 (“[s]ince the criminal activity in question involved possession of a firearm and since [a]ppellant’s act of patting his waistband bolstered [the officer’s] reasonable belief that [a]ppellant actually had a gun in his pants, [the officer] was constitutionally permitted to conduct a patdown search of [a]ppellant’s waistband”). In addition, the officers’ detection of Appellant’s apparent lie as to the existence of the gun on his person supported a finding of dangerousness permitting them to frisk the area they believed him to be carrying the gun. **See Toliver**, 55 A.3d at 941 (concluding that “where a police officer discovers that a passenger during a car stop is armed with a firearm and that same passenger had lied to the officer about the presence of the firearm, common sense dictates that the passenger has exhibited the requisite dangerousness for a frisk”) (footnote omitted). As our Supreme Court recently reiterated, “our constitutional safeguards’ against unreasonable searches and seizures do not require an officer to gamble with his life.” **Commonwealth v. Hawkins-Davenport**, 352 A.3d 92, 105 (Pa. 2026). (quotation marks, brackets, and citation omitted). We therefore conclude that upon instigating an investigative detention at night based upon the reasonable suspicion of unlawful possession of a firearm, the officers could, for their safety, lawfully frisk the area in which they believed Appellant was carrying a firearm. The suppression court properly denied Appellant’s motion.

In his second issue, Appellant argues that the sentencing court abused its discretion by imposing a manifestly excessive sentence – notably, a sentence that fell below the relevant mitigated range recommended by the Pennsylvania Sentencing Guidelines – when it “relied on facts which were not in evidence in imposing” sentence.⁵ **See** Appellant’s Brief, 8. Specifically, he alleges that the sentencing court “considered the unproven allegations that [he] had previously shot someone and unlawfully carried firearms” based upon the prosecutor’s argument at sentencing concerning the underlying allegations of Appellant’s prior conviction of aggravated assault in 2011. **See id.** 12.

Discretionary sentencing claims are not appealable as of right. **Commonwealth v. Leatherby**, 116 A.3d 73, 83 (Pa. Super. 2015).

Rather, an appellant challenging the sentencing court’s discretion must invoke this Court’s jurisdiction by[:] (1) filing a timely notice of appeal; (2) properly preserving the issue at sentencing or in a motion to reconsider and modify the sentence; (3) complying with Pa.R.A.P. 2119(f), which requires a separate section of the brief setting forth a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence; and (4) presenting a substantial question that the sentence appealed from is not appropriate under the Sentencing

⁵ We note that the court ordered the sentence terms to run concurrently and the sentence on the lead charge, possessing a firearm by a prohibited person, was below the mitigated range recommended by the Sentencing Guidelines. **See** N.T. 12/19/24, 5 (court stating, without objection, that the guideline ranges for Appellant’s conviction of violating 18 Pa.C.S. § 6105 was 72 to 84 months plus or minus 9 months for the aggravated or mitigated range); 20 (court imposes term of incarceration of 60 to 120 months for violating 18 Pa.C.S. § 6105). We note further that the sentencing court had reviewed a pre-sentence investigation report and a mental health evaluation prior to sentencing. **See** N.T. Sentencing, 12/19/24, 4.

Code, 42 Pa.C.S. § 9781(b), or sentencing norms. An appellant must satisfy all four requirements.

Commonwealth v. Miller, 275 A.3d 530, 534 (Pa. Super. 2022) (citations omitted).

We find that Appellant did not satisfy the second requirement of preserving the claim before the sentencing court, because he did not raise his complaint with sufficient specificity to provide the court with an opportunity to reconsider its sentence on the ground raised in this appeal. Appellant had essentially three opportunities to raise either an objection to the evidence or to the sentencing court's reliance on the evidence, two at the time of sentencing and one with his post-sentence motion. ***See Commonwealth v. Perzel***, 291 A.3d 38, 47 (Pa. Super. 2023) (stating that "[i]ssues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion," if not already presented to the court at the sentencing proceeding). Appellant did not object when the prosecutor stated the underlying allegations of his prior conviction for aggravated assault and argued that they refuted Appellant's principal claim for mitigation that he only carried a gun out of fear of being shot. ***See*** N.T. Sentencing, 12/19/24, 13. He thereby waived any evidence admission claim.⁶ Appellant again failed to object when the court

⁶ While discretionary sentencing claims and evidence admission claims are both reviewed under an abuse of discretion standard, distinct issue preservation requirements apply. Discretionary sentencing claims, unlike evidence admission claims, can be raised for the first time in a timely post-sentence motion for appellate preservation purposes. ***See Commonwealth v. Mastromarino***, 2 A.3d 581, 585 (Pa. Super. 2010) (stating that, pursuant

(Footnote Continued Next Page)

noted, while rendering sentence and responding directly to Appellant's primary argument for mitigation, that Appellant had been carrying a firearm in 2011 even before he was shot in 2013 and 2020. **See id.**, 19. He thereby permitted the court to use the facts stated by the prosecutor to fashion the sentence. Then, at his third opportunity to preserve his present claim, he requested in a post-sentence motion that the court reconsider its allegedly manifestly excessive sentence because, *inter alia*, it "relied on improper factors not supported by the evidence," but did not provide any further explanation to give the sentencing court notice of which factors were problematic and had not raised at the time of sentencing any objection by which the court could determine the allegedly unproven facts. **See** Post-Sentence Motion, 12/29/24, 1. We therefore find that Appellant's post-sentence motion was impermissibly vague. **See** Pa.R.Crim.P. 720(B)(1)(a) (requiring that requests for relief in a post-sentence motion "shall be stated with specificity and particularity" including a motion to modify sentence).

to Pennsylvania Rule of Criminal Procedure 720, discretionary sentencing issues must be preserved at sentencing or in a motion to reconsider sentence). Evidentiary admission claims, on the other hand, require a timely contemporaneous and specific objection to properly preserve the challenge for appellate review. **See Commonwealth v. Spone**, 305 A.3d 602, 612 (Pa. Super. 2023) ("With respect to preserving challenges to the admission or exclusion of evidence [Pennsylvania Rule of Evidence] 103 addresses rulings on evidence and requires a contemporaneous objection in order to preserve a claim of error in the admission of evidence"). Therefore, to the extent that Appellant's claim rests on the admission of the evidence relied upon by the court, it is waived for appellate review purposes.

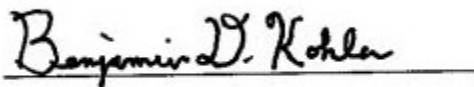
Appellant did not specify what facts were supposedly not in evidence until this case was on appeal. **See** Statement of Errors Complained of on Appeal, 6/2/25, 1 (stating that the “court erred at sentencing by relying on facts not supported by the evidence – specifically the unproven allegations that the [Appellant] had previously shot someone and unlawfully carried firearms”). This was far too late to preserve this discretionary sentencing claim. “[I]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal.” Pa.R.A.P. 302(a). “To properly preserve an issue challenging the discretionary aspects of sentencing, a defendant must object and request a remedy at sentencing, or raise the challenge in a post-sentence motion.” **Commonwealth v. Clary**, 226 A.3d 571, 579 (Pa. Super. 2020). “Absent such efforts, an objection to a discretionary aspect of a sentence is waived.” **Commonwealth v. Mann**, 820 A.2d 788, 794 (Pa. Super. 2003). More specifically, an appellate discretionary sentencing claim must be raised in a manner that would “give the sentencing judge an opportunity to reconsider or modify [the] sentence on [that] basis.” **Id.** “The purpose of requiring a party to object to a sentence *after it is imposed*, is to give the trial judge an opportunity to reconsider or modify the sentence imposed; failure to do so deprives the trial court of this chance.” **Perzel**, 291 A.3d at 48 (emphasis added).

Appellant’s failure to state his present claim with specificity in his post-sentence motion denied the sentencing court an opportunity to reconsider his sentence based on his present argument that the fact of his prior gun

possession was not properly in evidence, and therefore the issue is waived on appeal. **See Commonwealth v. Smith**, 206 A.3d 551, 567 (Pa. Super. 2019) (deeming discretionary sentencing claim waived on appeal where not properly raised and thereby denying “the sentencing court an opportunity to reconsider” sentence on grounds subsequently raised on appeal); **Mann**, 820 A.2d at 794 (finding waiver of discretionary sentencing claim where post-sentence motion did not adequately specify claim, depriving sentencing court an opportunity to reconsider on the precise basis raised on appeal). For this reason, we will not review Appellant’s unpreserved sentencing claim. **See Commonwealth v. Rosser**, 15 A.3d 1077, 1086 (Pa. Super. 2016) (*en banc*) (noting that an appellant cannot pursue alternative theories for relief for the first time on appeal).

Accordingly, we affirm the judgment of sentence.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/27/2026