NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ANGELO LOPEZ	:	
Appellant	:	No. 1 EDA 2026

Appeal from the Judgment of Sentence Entered October 17, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0006179-2023

BEFORE: BOWES, J., OLSON, J., and McLAUGHLIN, J.

MEMORANDUM BY McLAUGHLIN, J.: **FILED OCTOBER 29, 2026**

Angelo Lopez appeals from the judgment of sentence entered following his convictions for persons not to possess firearms, recklessly endangering another person ("REAP"), and simple assault.[1] Lopez's counsel filed a petition to withdraw as counsel and a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967). As discussed below, we find one of the issues raised in the ***Anders*** brief—whether the evidence was sufficient to support the REAP conviction—is not frivolous. Further, our review of the record uncovered other non-frivolous claims—whether Lopez had notice of the subsection of the simple assault statute under which he was charged and convicted such that the trial court had jurisdiction over that charge, and if a subsection was

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[1] 18 Pa.C.S.A. §§ 6105(a)(1), 2705, and 2701(a), respectively.

charged, whether the evidence supports the conviction. Accordingly, we deny counsel's petition to withdraw and order counsel to file an advocate's brief.

The trial court summarized the evidence admitted at trial as follows:

> At trial, [Chanell] Gadson testified that on March 11, 2023, [Lopez] came to her residence banging loudly on her door. When she opened it, [Lopez] placed a black gun directly in her face and demanded to know the whereabouts of his daughter. She testified that she was frightened and that her grandchildren were inside the residence at the time. After she told [Lopez] that his daughter was not there, he responded[,] "[Y]ou're lucky, you're lucky."
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> Ms. Gadson further testified that [Lopez] returned a second time, again banging on the door while holding the firearm and kicking the screen door, causing damage. She described [Lopez] as waving the firearm he had in his hand up and down. Ms. Gadson contacted the police and went back with her grandchildren to a room furthest from the door because she feared he would begin shooting.
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> The Commonwealth introduced the [recording of the 9-1-1 call] placed by Ms. Gadson reporting that a man with a gun was at her door. The Commonwealth also presented the testimony of the responding officer on March 11, 2023, Officer Pineda.[2] Officer Pineda testified that he responded to the scene and described Ms. Gadson as frightened and distraught. The incident report prepared by Officer Pineda was also admitted into evidence.
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> The Commonwealth further presented the testimony of Police Officer Freddie Killian (hereinafter "Officer Killian"), who testified that on March 14, 2023, he and his partner were assigned to serve an aggravated assault warrant for [Lopez] arising from Ms. Gadson's report that [Lopez] had pointed a firearm at her. Officer Killian testified that they went to [Lopez's] residence . . . and made contact with him at the door. After a brief exchange, [Lopez] closed the door on the officers and barricaded himself inside the residence by placing a metal object behind the door to prevent the

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[2] Officer Pineda's first name is not in the record.

> officers' entry. [Lopez] remained barricaded inside for approximately two hours, requiring the assistance of SWAT. Ultimately, [Lopez] exited from an adjacent property and was taken into custody.
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> . . .
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> The Commonwealth also introduced certified records establishing [Lopez's] prior conviction prohibiting him from possessing a firearm pursuant to 18 Pa.C.S. § 6105.

Trial Ct. Op., filed Feb. 17, 2026, at 5-6 (footnotes with citations to record omitted).

After a bench trial, Lopez was found guilty of the above offenses. He was sentenced in October 2024 to six to 12 years' incarceration for persons not to possess firearms. The court imposed no further penalty for the REAP and simple assault convictions. Lopez filed a post-sentence motion, which the trial court denied. The court later granted Lopez's May 2025 Post-Conviction Relief Act petition and reinstated Lopez's direct appeal rights *nunc pro tunc*. This timely appeal followed.

Counsel filed with this Court an ***Anders*** brief and a petition to withdraw as counsel, asserting that the appeal is wholly frivolous. Lopez did not respond to counsel's ***Anders*** brief.

Before we address the substance of the ***Anders*** brief, we must first determine whether counsel's request to withdraw meets certain procedural requirements. ***See Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa.Super. 2007) (*en banc*). An ***Anders*** brief that accompanies counsel's petition to withdraw must:

> (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous.

Commonwealth v. Santiago, 978 A.2d 349, 361 (Pa. 2009).

Counsel must also provide a copy of the ***Anders*** brief to the client, and a letter that advises the client of the right to "(1) retain new counsel to pursue the appeal; (2) proceed *pro se* on appeal; or (3) raise any points that the appellant deems worthy of the court[']s attention in addition to the points raised by counsel in the ***Anders*** brief." ***Commonwealth v. Orellana***, 86 A.3d 877, 880 (Pa.Super. 2014) (citation omitted) (alteration in ***Orellana***). If counsel has satisfied these requirements, we then conduct "a full examination" of the record "to decide whether the case is wholly frivolous." ***Commonwealth v. Dempster***, 187 A.3d 266, 271 (Pa.Super. 2018) (*en banc*) (quoting ***Anders***, 386 U.S. at 744) (emphasis removed).

Here, the ***Anders*** brief provides a procedural and factual history of the case, with citations to the record, discusses issues arguably supporting the appeal, and explains why counsel concludes those issues are frivolous. ***Anders*** Br. at 8-16. Counsel has supplied Lopez with a copy of his ***Anders*** brief and a letter advising him that he may raise any additional issues before this Court *pro se* or with private counsel. ***See*** Motion to Withdraw as Counsel, filed 2/23/2026, at ¶ 3; Let. From Trial Counsel to Lopez, filed February 23, 2026. Accordingly, counsel has complied with the technical requirements for

withdrawal under ***Anders***. We will therefore address the issues counsel has identified.

Counsel's ***Anders*** brief identifies three possible issues that could arguably support the appeal: the sufficiency of the evidence regarding the firearm and REAP convictions, the weight of the evidence regarding the firearm and REAP convictions, and the legality of the sentence. ***Anders*** Br. at 12-16.[3]

Counsel maintains that a sufficiency challenge to the persons not to possess firearms and REAP convictions would be frivolous because the testimony established that Lopez pointed a gun at Gadson's face, he was prohibited from owning a gun, and he put her at risk of death or serious bodily injury.

Our standard of review of a sufficiency of the evidence claim is *de novo*, and our scope of review is plenary. ***Commonwealth v. Mikitiuk***, 213 A.3d 290, 300 (Pa.Super. 2019). When reviewing a challenge to the sufficiency of the evidence, we "must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt." ***Commonwealth v. Feliciano***, 67 A.3d 19, 23 (Pa.Super. 2013) (*en banc*) (citation omitted). "Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been

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[3] We have reordered the issues for ease of discussion.

established beyond a reasonable doubt, the sufficiency of the evidence claim must fail." ***Id.*** (citation omitted).

The charge of persons not to possess firearms requires the Commonwealth to prove that the defendant possessed a firearm and was legally prohibited from doing so. ***See*** 18 Pa.C.S.A. § 6105. Testimony of a single witness can support a conviction. ***See Commonwealth v. Antidormi***, 84 A.3d 736, 757 (Pa.Super. 2014).

The trial court concluded the evidence supported the firearm conviction:

> The certified records admitted at trial established that [Lopez] was legally prohibited from possessing a firearm. Thus, the only contested element is possession of a firearm.
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> The evidence presented at trial was sufficient to establish that [Lopez] possessed a firearm. Ms. Gadson testified unequivocally that [Lopez] placed a black handgun directly in her face while angrily demanding information. She described the object as a gun, observed it at extremely close range, and witnessed [Lopez] wave it while threatening her. Her testimony was corroborated by her contemporaneous 9-1-1 call reporting a man with a gun at her door and by the responding officer's testimony describing her frightened and distraught demeanor. Additionally, the Commonwealth introduced video messages recorded by [Lopez] depicting him in front of Ms. Gadson's residence making threats to shoot up the house. This evidence reinforced the credibility of Ms. Gadson's account and demonstrated [Lopez's] presence and hostile intent at the scene.
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> The absence of the firearm's recovery does not render the evidence insufficient. ***See e.g., Commonwealth v. Antidormi***, 84 A.3d 736, 756-57 (Pa. Super. 2014) (holding that witness testimony was sufficient to establish possession under § 6105, and that credibility determinations are solely within the province of the fact-finder). The Superior Court has made clear that the testimony of a single witness, if believed by the fact-finder, is sufficient. ***See***

> ***Commonwealth v. Johnson***, 180 A.3d 474, 479 (Pa. Super. 2018) (emphasis omitted) ("a solitary witness's testimony may establish every element of a crime, assuming that it speaks to each element, directly and/or by rational inference."). As in ***Antidormi***, where the jury was free to credit one witness's testimony regarding firearm possession despite contradictory accounts, th[e c]ourt, sitting as fact-finder, was entitled to credit Ms. Gadson's testimony.

Trial Ct. Op. at 8-9.

We find no reasonable basis in fact or law on which to challenge this conviction. Any challenge to the sufficiency of the evidence to support the conviction for persons not to possess firearms would be frivolous.

A person is guilty of REAP if "he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury." 18 Pa.C.S.A. § 2705. The *mens rea* for REAP is a "conscious disregard of a known risk of death or great bodily harm to another person." ***Commonwealth v. Murray***, 350 A.3d 258, 263 (Pa.Super. 2025) (cleaned up). "To sustain a conviction for REAP, 'the Commonwealth must prove that the defendant had an actual present ability to inflict harm and not merely the apparent ability to do so. Danger, not merely the apprehension of danger, must be created.'" ***Commonwealth v. Headley***, 242 A.3d 940, 944 (Pa.Super. 2020) (quoting ***Commonwealth v. Hopkins***, 747 A.2d 910, 915-16 (Pa.Super. 2000)).

Thus, pointing an "unloaded gun, without more, does not constitute REAP." ***Commonwealth v. Reynolds***, 835 A.2d 720, 728 (Pa.Super. 2003). On the other hand, evidence that the gun was loaded may "provide[] a

sufficient basis on which a factfinder may conclude that a defendant proceeded with conscious disregard for the safety of others, and that he had the present ability to inflict great bodily harm or death." ***Hopkins***, 747 A.2d at 916. Even in cases where the firearm was unloaded "the surrounding circumstances may be sufficient to sustain a conviction of REAP" if they establish that the defendant "engage[d] in conduct which place[d] or may [have] place[d] another person in danger of death or serious bodily injury." ***Reynolds***, 835 A.2d at 727-28.

The trial court concluded the evidence supported the REAP conviction:

> Here, the evidence demonstrated that [Lopez] placed a firearm directly against Ms. Gadson's face while angrily demanding information. He returned a second time still armed, banging on the door and kicking it. This conduct occurred at extremely close range and while other individuals, including Ms. Gadson's grandchildren, were inside the residence. [Lopez] also threatened her twice that he was going to shoot up her residence and that she was "lucky." [P]ointing a firearm at another person at close proximity constitutes conduct that inherently creates a risk of death or serious bodily injury. The inherent lethality of a firearm, coupled with [Lopez's] aggressive demeanor, his threats, and the proximity of the weapon to Ms. Gadson's face, established an actual present ability to inflict serious bodily injury or death. A firearm aimed at a person's head at close distance is not a speculative danger - it is an immediate and concrete one. ***See, e.g., Commonwealth v. Shaw***, 203 A.3d 281, 284-86 (Pa.Super. 2019) (holding the evidence was sufficient to sustain a REAP conviction where the defendant fired a weapon into his porch ceiling, despite uncertainty as to whether the weapon was a BB gun or handgun and despite the firearm not being recovered; the court concluded that the conduct created an actual danger of serious bodily injury because the projectile could have ricocheted toward a nearby witness hiding behind her

> vehicle or struck another person in the surrounding residential neighborhood).
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> Accordingly, the evidence demonstrated that [Lopez's] conduct placed Ms. Gadson in actual danger. The fact that no shots were fired does not negate the substantial risk created by pointing a firearm at close range while making threats to shoot the place up.

Trial Ct. Op. at 9-10.

We do not agree that a sufficiency challenge to the REAP conviction is frivolous. There is a non-frivolous argument that although the evidence may have shown that Lopez had the "apparent ability to inflict harm," it did not establish beyond a reasonable doubt that he had the "actual ability to do so." The case on which the trial court and counsel rely to reject the challenge to the REAP conviction, ***Shaw***, is materially different. There, this Court found the evidence supported a REAP conviction because the defendant fired a handgun into his porch ceiling while a witness was "mere feet away." ***Commonwealth v. Shaw***, 203 A.3d 281, 286 (Pa.Super. 2019). Here, defense counsel has cited no evidence that the gun was loaded or that Lopez fired it, and our review has uncovered none.

The Commonwealth relies on ***Reynolds***, 835 A.2d at 729-30, to argue that "the evidence established all elements of REAP."[4] Com.'s Br. at 8. In ***Reynolds***, the defendant was "in a bar where other patrons and employees were present," and a "bouncer removed [the defendant] from the bar upon learning that he had a gun." 835 A.2d at 729. The defendant "pointed a gun

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[4] Of course, the issue presented when defense counsel files an ***Anders*** brief is frivolousness, not mere lack of merit.

at [someone's] forehead . . ., [another person] tackled both men onto the ground and the three of them fought for the gun," and a "bystander stepped on the arm holding the gun." ***Id.*** This Court concluded that "[t]he circumstances were such that someone else with a gun could have retaliated" and "the surrounding circumstances were such that [the defendant] created an actual danger by pointing the gun, whether or not it was actually loaded and capable of firing." ***Id.*** at 729-30.

Here, we are not dealing with a melee in a bar or some other set of circumstances in which, whether or not Lopez's gun was loaded, a third party could have retaliated, such that the defendant's conduct placed or may have placed others in danger. The facts here are distinguishable enough from ***Reynolds*** that we cannot, on the strength of that decision, declare the sufficiency claim utterly frivolous. Although a sufficiency challenge may ultimately fail on the merits, we conclude that counsel has not established, based on the case law provided, that the claim is frivolous.[5]

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[5] Courts have stated that:

> [The] lack of merit in an appeal is not the legal equivalent of frivolity. ***Anders*** "appears to rest narrowly on the distinction between complete frivolity and absence of merit. The latter is not enough to support either a request by counsel to withdraw, nor the granting of such a request by the court." ABA Project on Standards for Criminal Justice, Standards Relating to the Defense Function § 8.3, Commentary at 297 (Approved Draft, 1971).

(Footnote Continued Next Page)

Regarding the weight claim, in the ***Anders*** brief counsel notes that Lopez was prohibited from possessing a gun and Gadson testified Lopez had a gun and threatened her. He further notes Gadson testified she was scared. Counsel points out that nothing in the record contradicts this testimony, and the court found her credible. He therefore concludes a challenge to the weight claim would be frivolous.

Whether a verdict was against weight of the evidence is left to the discretion of the trial court. ***Commonwealth v. Stokes***, 78 A.3d 644, 650 (Pa.Super. 2013). "Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence." ***Id.*** at 651 (citation omitted). To establish a weight claim before the trial court, the defense must show that the evidence is "so tenuous, vague and uncertain that the verdict shocks the conscience of the court." ***Commonwealth v. Sullivan***, 820 A.2d 795, 806 (Pa.Super. 2003) (citation omitted). We review the trial court's ruling on a weight claim for abuse of discretion. ***Commonwealth v. Rogers***, 259 A.3d 539, 541 (Pa.Super. 2021).

Commonwealth v. Kearns, 896 A.2d 640, 647 (Pa.Super. 2006) (quoting ***Commonwealth v. Greer***, 314 A.2d 513, 514 (Pa. 1974)). Accordingly, "[i]t may be that counsel believes that the argument advanced is unlikely to ultimately prevail. Nevertheless, this does not mean that the appeal is wholly frivolous." ***Id.***

Here, the trial court concluded it found Gadson's testimony "credible and consistent with the contemporaneous 9-1-1 call and the officers' observations and testimony" and found that "[n]othing in the record renders Ms. Gadson's testimony so tenuous, vague, or uncertain that the verdict shocks the conscience of the [c]ourt." Trial Ct. Op. at 6.

Because we conclude that the REAP challenge is not frivolous, we cannot say that the weight challenge is frivolous as to the REAP conviction. As to the other convictions, we agree that the weight claim is frivolous.

For the sentencing claim, counsel points out the sentence was consistent with the sentencing guidelines and maintains that it was not unreasonable.

"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." ***Commonwealth v. Edwards***, 194 A.3d 625, 637 (Pa.Super. 2018) (citation omitted). An abuse of discretion occurs where "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." ***Id.*** (citation omitted). In imposing a sentence, the sentencing court must 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.A. § 9721(b).

Here, the standard guideline ranges for the firearm conviction was 72 to 90 months, plus or minus 12 months. N.T., 10/17/24, at 3. The trial court had the benefit of a presentence investigation report, heard arguments from

counsel, and heard allocution from Lopez. Further, the court stated its reasons for the sentence on the record. ***Id.*** at 14-16. On this record, we find no reasonable basis on which Lopez could make a challenge to the discretionary aspects of his sentence.

Our independent review of the record has uncovered an additional non-frivolous issue for appeal. We have been unable to determine the subsection of the simple assault statute under which Lopez was charged and convicted. Every reference to simple assault we located in the certified record cites 18 Pa.C.S.A. § 2701(a), without referencing a subsection. ***See***, ***e.g.***, Information, filed 9/8/23, at 1, 2. There is therefore a non-frivolous question of whether he had formal notice of being charged under a particular subsection of simple assault and thus whether the court had subject matter jurisdiction over that charge. ***See Commonwealth v. Jones***, 929 A.2d 205, 211 (Pa. 2007) (citing ***Commonwealth v. Little***, 314 A.2d 270, 273 (Pa. 1974)) (explaining that in a criminal case, to invoke the Court of Common Pleas's subject matter jurisdiction, the Commonwealth must "confront the defendant with a formal and specific accusation of the crimes charged"). Because we cannot identify the subsection of simple assault under which Lopez was charged, we also cannot determine that a sufficiency challenge to the simple assault conviction is frivolous.

For the above reasons, we deny counsel's petition to withdraw and order counsel to file an advocate's brief within 30 days of the date of this memorandum. In addition to the above non-frivolous issues, counsel may

raise any other non-frivolous issue he may identify. The Commonwealth shall have 30 days from the filing of the advocate's brief to file its brief. Lopez may file a reply brief within 14 days thereafter.

Petition to withdraw denied. Appellant's counsel shall file an advocate's brief within 30 days from the date of this decision, the Commonwealth shall have 30 days from the filing of Appellant's brief to file a brief, and Appellant may file a reply brief within 14 days after the filing of the Commonwealth's brief. Jurisdiction retained.