

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
STEPHON THOMAS	:	No. 722 EDA 2025

Appeal from the Order Entered February 21, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0003993-2024

BEFORE: DUBOW, J., KUNSELMAN, J., and SULLIVAN, J.

OPINION BY KUNSELMAN, J.:

FILED SEPTEMBER 16, 2026

The Commonwealth appeals from the order granting Stephon Thomas' motion to suppress a handgun that Thomas abandoned during an interaction with police. The record supports the suppression court's factual findings, and the law supports the conclusion that Thomas was seized when he abandoned the gun. We therefore affirm.

Police arrested Thomas on May 16, 2024, and charged him with violating the Uniform Firearms Act. The charges were held for court. On July 12, 2024, Thomas moved to suppress physical evidence, indicating that a search was conducted without a warrant or probable cause, that he was arrested without probable cause or a lawfully issued warrant, and that he was stopped and frisked without reasonable suspicion. Omnibus Motion, 7/12/24.

The suppression court initially heard the motion on December 13, 2024. The Commonwealth presented testimony from two police officers, a property

receipt, and a video recording. Officer Zachary Stout testified that when he was setting up narcotics surveillance on May 16, 2024, he saw a man (identified as Thomas) adjusting a rectangular object near his hip; Officer Stout alerted other officers. Officer Jared Ross testified that he received the alert and saw Thomas walking. When Thomas “began to pick up the pace,” Officer Ross stopped the patrol vehicle and stepped out “to try to engage him in a mere encounter” and ask for identification. N.T., 12/13/24, at 32. Officer Ross explained that Thomas then “bladed his body away from” him. ***Id.*** Officer Ross testified that Thomas then “dipped behind a vehicle” and then fled. ***Id.*** at 32–33.

The Commonwealth introduced Officer Ross’ body-worn camera video into evidence. The video includes no sound for the first minute. It begins with Officer Ross driving his unmarked police vehicle, his left hand holding a radio and his right hand on the steering wheel. At 4 seconds, the video shows Officer Ross stopping the vehicle and opening the door. By 6 seconds, Officer Ross is out of the police vehicle. At 7 seconds, Officer Ross closes the door with his right hand. The video then shows the street as Officer Ross steps around the front of the vehicle. Thomas is first visible at 10 seconds, as Officer Ross is walking around the front of the police vehicle; Thomas is behind another car (marked “Atlas”), facing away from Officer Ross. At 11 seconds, Thomas begins to dip down. Thomas is fully dipped down across the Atlas car from Officer Ross at 12 seconds, while Officer Ross continues to approach Thomas. At 13 seconds, Thomas begins to stand back up; this is the earliest

point in the video where Officer Ross' gun is visible, held in his right hand and pointed chest-high across the Atlas car towards Thomas. By 15 seconds, Officer Ross is running after Thomas. The audio begins at the one-minute mark.

Asked about the video, Officer Ross stated that he held his radio in his left hand and his service weapon in his right hand. N.T., 12/13/24, at 36, 38.

Q. Now, Officer, in that video, we saw that you did have your service weapon in your hand. When you initially approached [Thomas], was it down at your side, or was it pointed at him?

A. Initially, not knowing exactly where he was, it was pointed up, then as he started running, it was down by my side.

Q. Okay. And why did you pull your service weapon at that point in time?

A. I don't know [Thomas'] history. I don't know what he was reaching for. I don't know where he is at this point, so I pulled it out for my protection. And, then, as he started to run, obviously, I put it back down.

Id. at 38–39.

At the hearing, the suppression court announced its findings of fact on the record:

THE COURT: . . . On May 16th, 2024, around 5:45 p.m., Police Officer Zachary Stout was setting up surveillance, and he saw somebody who he said was in a gray sweatshirt with black pants walk past the car, or right in front of the car, and he saw what he thought was a rectangular-shaped bulge that was moving around as if it was an unholstered gun, on or about the 1800 block -- between 18 and 17 -- on Hunting Park.

He followed to see where this person went and saw that he went down Smedley Street on the 3900 block of North Smedley. And he got on the radio and said, "A guy with a gun -- I think he may have a gun. Keep eyes on him."

Along came, answering the radio call, Officer Ross. [Officer Ross went] down Smedley Street, got out of the car, and said to [Thomas], "Yo, buddy" -- something like that -- "do you have ID?"

[Thomas] had on a gray sweatshirt with a pretty bright -- not bright, it's black and white, but a distinct emblem, and he's also wearing a black leather jacket and black pants, which was not mentioned by the first officer. But the officer, Officer Ross, said to him, "Yo" -- you know, "Yo, buddy," or "Hello," or whatever he said, basically saying, "I want" -- you know, "Do you have ID?" And, at that point on the body-worn cam, we see [Thomas] walk over to the wheel well of a car, on the other side of the car, bend down, and, at that point, you see Officer Ross move his gun as if he's getting ready to point it, and that's when you see [Thomas] take off. You cannot hear anything at that point. There's no audio.

A chase ensued. [Thomas] was captured, for lack of a better term. Another officer drove up the other -- wrong way and kind of pinned him in, and he was captured, and, then, [Officer Ross went] to the wheel well and took the gun out.

Interestingly, [at 57 seconds into the video] there is another person with a gray sweatshirt and black pants walking down Smedley, but on the other side of Smedley, but walking down.

N.T., Suppression Hearing, 12/13/24, at 64–65 (paragraph numbers omitted, edited for tense and clarity).

The suppression court announced its conclusion that Officer Ross' interaction with Thomas began as a mere encounter, during which Officer Ross was allowed to ask for Thomas' identification. ***Id.*** at 65–66 ("He's allowed to talk to, observe, and he starts out by doing that."). The court reasoned that the mere encounter became an investigative detention when Thomas dipped down; this provided reasonable suspicion for Officer Ross to pursue Thomas. ***Id.*** at 66–72. Discussing the suppression court's ruling, defense counsel asked about credibility findings for the officers who testified. The suppression

court was unsure about Officer Stout but stated: "I didn't make a finding of no credibility on Police Officer Ross. I didn't really find him to be incredible." N.T., Suppression Hearing, 12/13/24, at 74. The suppression court therefore denied Thomas' motion to suppress.

On December 19, 2024, Thomas moved for reconsideration, recounting the evidence from the hearing and requesting that the suppression court either grant suppression or hold another hearing. Motion for Reconsideration, 12/19/24, at 4. The Commonwealth opposed reconsideration, also reciting the evidence, arguing that the court applied the law correctly, and noting that Thomas "presented no new evidence that was unavailable to [the defense] on" the day of the hearing. Brief in Opposition, 1/23/25, at 10.

The suppression court heard Thomas' reconsideration motion on January 29, 2025. The court advised that it wanted to see the video again and hear additional testimony from Officer Ross. N.T., 1/29/25, at 3-4. The court indicated that it was "not sure of certain facts," specifically due to the beginning of the video being silent. ***Id.*** at 8, 14-16.

The suppression court heard argument on reconsideration on February 21, 2025. Thomas presented a detailed reconsideration argument based on the video and testimony from the hearing. N.T., 2/21/25, at 17-42. The Commonwealth responded. ***Id.*** at 43-53. After receiving more argument, the suppression court articulated amended findings of fact. Notably, the court found that Officer Ross held his gun when he approached Thomas and did not find that Officer Ross asked Thomas to see identification:

Answering the radio call came Officer Ross in an unmarked police car. He was out of uniform. He was alone. [He turned] down Smedley Street in the middle of the street, closed the door and [had a] body worn cam.

However, we don't know what he actually said because the audio had not turned on yet. It doesn't turn on until the [second] minute. We do know that we can see that he was in the middle of the street in the traffic lane, stopped the car, closed the door, approached with his gun out -- not pointed but out by his side in his hand. . . .

[Officer Ross] testified that he asked for ID. And as you can see on the body cam, his gun was at his side, although you cannot hear him. At that point, [Thomas] then dipped down by the wheel well [of the "Atlas" car] and runs. I cannot hear what Officer Ross was saying.

Id. at 74–75 (paragraph numbers omitted, tense altered).

Concluding that the police interaction with Thomas was an unlawful detention, the suppression court granted Thomas' motion to suppress.

The Commonwealth timely appealed, certifying that the suppression order terminates or substantially handicaps the prosecution. The Commonwealth and the suppression court complied with Pennsylvania Rule of Appellate Procedure 1925.

The Commonwealth presents one issue for review:

Did the lower court err by suppressing the gun [Thomas] voluntarily abandoned underneath a parked car, where the interaction between [Thomas] and the officer prior to the abandonment was not an investigative detention and thus did not need to be supported by any level of suspicion?

Commonwealth's Brief at 6.

Jurisdiction

As a threshold matter, we observe that the suppression court initially denied suppression, then granted reconsideration, held another hearing, and ultimately reversed its ruling more than 30 days later. We will assess *sua sponte* whether the suppression court had jurisdiction to enter the order granting suppression. **See *Commonwealth v. James***, 69 A.3d 180, 184 (Pa. 2013).¹

Two provisions frame our analysis. First, by rule, an order denying a defendant's suppression motion is generally final, with an exception for newly available evidence:

If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing herein shall prevent a defendant from opposing such evidence at trial upon any ground except its suppressibility.

Pa.R.Crim.P. 581(J). Under this rule, "the suppression court's denial of suppression is final and binding at the conclusion of the suppression hearing," and the exception for newly available evidence is "very limited." ***In re L.J.***, 79 A.3d 1073, 1084 (Pa. 2013). Such finality is important for trial strategy. ***Commonwealth v. Padilla***, 923 A.2d 1189, 1194 (Pa. Super. 2007) (citing ***Commonwealth v. Metzger***, 634 A.2d 228, 233 (Pa. Super. 1993)).

¹ We thank counsel for their additional advocacy and briefs on this issue.

Second, by statute, courts have authority to modify orders within 30 days of their entry:

Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.

42 Pa.C.S. § 5505. Importantly, Section 5505 reflects a trial court's ability to modify *final* orders within 30 days, but there is no 30-day limit for a trial court to modify *interlocutory* orders. ***Commonwealth v. Nicodemus***, 636 A.2d 1118, 1120 (Pa. Super. 1993) (citing ***Commonwealth v. Baker***, 507 A.2d 872 (Pa. Super. 1986), and ***Commonwealth v. McMillan***, 545 A.2d 301 (Pa. Super. 1988)). In a criminal case, an interlocutory order is one that does not dispose of all charges filed at a single docket number. ***See Commonwealth v. Cross***, 317 A.3d 655, 657–58 (Pa. Super. 2024) (holding a sentence order to be interlocutory when other charges in the same docket remained pending).

In ***James***, these two provisions guided the jurisdictional analysis of the reconsideration and reversal of a suppression ruling. There, the suppression court held a hearing and ordered evidence to be suppressed. ***James***, 69 A.3d at 182. The Commonwealth moved for reconsideration within 30 days, but the court did not grant the motion until more than 30 days after its initial order. ***Id.*** at 182, 184. After a subsequent hearing, the suppression court denied the defendant's motion to suppress. ***Id.*** at 182. The defendant appealed, this Court reversed, and the Commonwealth petitioned for review.

On review in **James**, the Supreme Court *sua sponte* addressed whether the suppression court had jurisdiction to reconsider its order more than 30 days after the entry of the order. **Id.** at 184. The defendant argued that the suppression court lost jurisdiction to modify its order after 30 days because a suppression order is “final, conclusive, and binding at trial” under Rule 581(J). **Id.** at 184–85 (citing **Padilla**, 923 A.2d at 1194). The Supreme Court, however, credited a “more nuanced view” that an order granting suppression is interlocutory; such an order is “final” only for the Commonwealth’s ability to appeal. **Id.** (citing Pa.R.A.P. 311(d)). Because the first order was interlocutory, Section 5505 did not limit the suppression court’s jurisdiction to reconsider its ruling. **Id.** at 186.

Here, as in **James**, there is no jurisdictional defect that would render the suppression court’s second order to be a legal nullity. The initial pre-trial order on the motion to suppress evidence was interlocutory because it did not resolve all the charges against Thomas. **Cross**, 317 A.3d at 657. Thus, Section 5505 did not impose a 30-day limit for the suppression court to reconsider and modify its initial order. **James**, 69 A.3d at 186. Likewise, Rule 581(J)’s directive that a denial of suppression is “final, conclusive, and binding” applies to an interlocutory order “for purposes of appeal only.” **Id.** at 184–85. The rule itself does not mention jurisdiction, and we will not infer that the rule limits jurisdiction.

Therefore, the suppression court had jurisdiction to grant Thomas’ motion for reconsideration, hold a second suppression hearing, and enter an

order granting suppression more than 30 days after its initial order. We do not endorse this procedure, as an order denying suppression is final under Rule 581(J), and it does not appear that Thomas showed any newly available evidence for the exception to apply. However, any noncompliance with Rule 581(J) goes beyond the jurisdictional matter that we may review *sua sponte*. The Commonwealth did not preserve any challenge to the procedure in this case. We thus address the merits of the order suppressing the firearm.

Suppression

When this Court reviews an order granting suppression, “we must determine whether the record supports the [suppression] court’s factual findings and whether the legal conclusions drawn from those facts are correct.” **Commonwealth v. Carmenates**, 266 A.3d 1117, 1122–23 (Pa. Super. 2021) (*en banc*) (quoting **Commonwealth v. McCleary**, 193 A.3d 387, 390 (Pa. Super. 2018)). As to the factual findings, we remember that “[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. Ross**, 297 A.3d 787, 791 (Pa. Super. 2023) (quoting **Commonwealth v. Luczki**, 212 A.3d 530, 542 (Pa. Super. 2019)). We are “highly deferential” to the factual findings and credibility determinations of the suppression court. **Carmenates**, 266 A.3d at 1123 (citing **Commonwealth v. Batista**, 219 A.3d 1199, 1206 (Pa. Super. 2019)). If the record supports the suppression court’s factual findings, then a reviewing court “cannot and will not reweigh the evidence or substitute our credibility determinations for

those of the suppression court.” **Id.** at 1127. Put differently, “we will not disturb a suppression court’s credibility determinations absent a clear and manifest error.” **Commonwealth v. McMaster**, 320 A.3d 85, 88 (Pa. Super. 2024) (quoting **Commonwealth v. Fudge**, 213 A.3d 321, 326 (Pa. Super. 2019)).

As to the legal conclusions of the suppression court, we afford them no deference “and review them *de novo*.” **Carmenates**, 266 A.3d at 1123. The scope of our review is the evidence presented at the suppression hearing. **Id.** at 1122–23. In a Commonwealth appeal, “we consider only the defendant’s evidence and so much of the Commonwealth’s evidence as remains uncontradicted when read in the context of the [suppression] record as a whole.” **Id.**

“Although abandoned property may normally be obtained and used for evidentiary purposes by the police, such property may not be utilized where the abandonment is coerced by unlawful police action.” **Commonwealth v. Lewis**, 343 A.3d 1016, 1038 (Pa. 2025) (quoting **Commonwealth v. Hall**, 380 A.2d 1238, 1241 (Pa. 1977)). Relevant here, the lawfulness of a police interaction depends on the classification of the encounter with the subject and whether the police possessed the required quantum of cause. We recognize three types of interactions between police officers and other individuals, each with different requirements to be lawful.

The first is a mere encounter, sometimes referred to as a consensual encounter, which does not require the officer to have any suspicion that the citizen is or has been engaged in criminal

activity. This interaction also does not compel the citizen to stop or respond to the officer. A mere encounter does not constitute a seizure, as the citizen is free to choose whether to engage with the officer and comply with any requests made or, conversely, to ignore the officer and continue on his or her way. The second type of interaction, an investigative detention, is a temporary detention of a citizen. This interaction constitutes a seizure of a person, and to be constitutionally valid police must have a reasonable suspicion that criminal activity is afoot. The third, a custodial detention, is the functional equivalent of an arrest and must be supported by probable cause. A custodial detention also constitutes a seizure.

No bright lines separate these types of interactions, but the United States Supreme Court has established an objective test by which courts may ascertain whether a seizure has occurred to elevate the interaction beyond a mere encounter. The test, often referred to as the “free to leave test,” requires the court to determine whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. Whenever a police officer accosts an individual and restrains his freedom to walk away, the officer has “seized” that person.

Commonwealth v. Luczki, 212 A.3d 530, 542 (Pa. Super. 2019) (quoting ***Commonwealth v. Adams***, 205 A.3d 1195, 1199–1200 (Pa. 2019)) (brackets omitted).

We review the circumstances of a police encounter objectively to determine whether “the suspect has in some way been restrained by physical force or show of coercive authority.” ***Id.*** at 543 (quoting ***Commonwealth v. Lyles***, 97 A.3d 298, 302 (Pa. 2014)). Notably, police officers can “merely approach a person in public and question the individual or request to see identification” without seizing the person; this interaction is a mere encounter “so long as the officers do not convey a message that compliance with their

requests is required.” ***Id.*** “A variety of factors,” however, can show that a reasonable person in the position of the subject of a police interaction would not feel free to decline the police requests and leave. ***Id.*** (quoting ***Commonwealth v. Hampton***, 204 A.3d 452, 457 (Pa. Super. 2019)). These factors include “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” ***Id.***

In sum, at a hearing to determine whether to suppress property that a defendant abandoned during an interaction with police, the Commonwealth can meet its burden by proving either of two theories. First, suppression is not warranted if the abandonment was not coerced; *i.e.*, the interaction was a mere encounter. Second, if the defendant abandoned property because he was seized, the property should not be suppressed if the police had requisite cause to support the seizure.

In this appeal, the Commonwealth maintains only the first theory, that Officer Ross’ interaction with Thomas was a mere encounter. Accordingly, we inquire only whether a reasonable person in Thomas’ position would feel free to leave, not whether Officer Ross had reasonable suspicion to detain Thomas for investigation.

The suppression court significantly relied on two factual findings in its ruling. First, Officer Ross was not credible when he testified about what he

said to Thomas.² Second, Officer Ross had his gun drawn while he approached Thomas. The record supports both findings.

As to Officer Ross' credibility, the suppression court significantly relied on the veteran officer's failure to activate his body-worn camera at the start of his interaction with Thomas. The court cited a Philadelphia police directive that requires officers to activate body-worn cameras prior to "conducting any vehicle or pedestrian investigation." The court reasoned that Officer Ross "deliberately" did not activate his camera until the interaction was under way, and this "willful failure" deprived the court of contemporaneous evidence to assess the facts. Opinion, 4/25/25, at 7, 11. The video exhibit supports the suppression court's finding that Officer Ross activated his body-worn camera only after he approached, chased, and apprehended Thomas. The court did not commit a "clear and manifest error" by choosing to discredit Officer Ross' testimony on that basis.³ **McMaster**, 320 A.3d at 88. We therefore accept the suppression court's finding that Officer Ross' testimony about what he said to Thomas was not credible.

² At the first suppression hearing, the court did not reach a conclusion on Officer Ross' credibility. "I didn't make a finding of no credibility on Police Officer Ross. I didn't really find him to be incredible." N.T., Suppression Hearing, 12/13/24, at 74. On reconsideration, the court indicated Officer Ross' credibility "is somewhat in question." N.T., Suppression Hearing, 2/21/25, at 80-81. In its Rule 1925(a) opinion, the court explained that it did not find Officer Ross' testimony to be credible. Opinion, 4/25/25, at 7-11.

³ The Commonwealth does not argue that the Philadelphia police directive was an "improper consideration[]" for the suppression court to assess credibility. **Cf. Commonwealth v. Cox**, 240 A.3d 509, 533 (Pa. 2020) (noting an exception to appellate deference to a lower court's credibility findings).

As to Officer Ross' holding his gun, the video does not show the officer's gun until the 13-second mark, after Thomas dipped down across the Atlas car. In his own testimony, however, Officer Ross stated that "initially," his service weapon "was pointed up." N.T., 12/13/24, at 38. The evidence therefore supports the suppression court's conclusion that Officer Ross pointed his gun towards Thomas before Thomas dipped down beside the Atlas car.

Based on these facts, the suppression court concluded that the police interaction was more than a mere encounter.

Although [Officer Ross] did not activate his lights or sirens, he exited his vehicle with his service weapon drawn. The evidence presented, namely the video showing a drawn service weapon and a lack of audio supporting the testimony that this was a mere encounter, demonstrated that [Thomas] was not free to leave. Consequently, this was far from a simple mere encounter.

Suppression Court Opinion, 4/25/25, at 16.

The Commonwealth argues that Thomas never saw Officer Ross' gun, as the officer testified that Thomas "bladed" his body away, and the video shows Thomas looking away and wearing a hood.⁴ However, the video does not show Thomas for six seconds after Officer Ross exited his patrol vehicle. Rather, it is reasonable to infer that Thomas bladed away from Officer Ross because Thomas saw Officer Ross' gun in those six seconds.

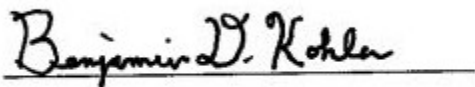
⁴ The Commonwealth additionally argues that Officer Ross' "holding the gun passively down by his side" was a reasonable action given his suspicion that Thomas had a gun in his pocket. The relevant question for suppression, however, is whether a reasonable person in Thomas' position would feel free to ignore the police officer, not whether the officer's actions are reasonable for safety.

In that six-second period, the totality of the circumstances support the suppression court's conclusion that Thomas was seized. Specifically, Officer Ross' display of a weapon, combined with the suppression court's disbelief of the officer's testimony about the nature of his questioning, constitutes a show of coercive authority that would lead a reasonable person to feel compelled to respond. **Lyles**, 97 A.3d at 302. Because the suppression court's findings of fact support the conclusion that Officer Ross seized Thomas, we affirm the grant of suppression.

Order affirmed.

Judge Dubow joins this Opinion. Judge Sullivan notes dissent.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/16/2026