

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
BRANDON BER COREY-MCCOY	:	
	:	
Appellant	:	No. 1503 EDA 2025
	:	

Appeal from the Judgment of Sentence Entered April 30, 2025
 In the Court of Common Pleas of Delaware County Criminal Division at
 No(s): CP-23-CR-0004821-2023

BEFORE: McLAUGHLIN, J., SULLIVAN, J., and FORD ELLIOTT, P.J.E.*

OPINION BY FORD ELLIOTT, P.J.E.: **FILED SEPTEMBER 23, 2026**

Appellant, Brandon Ber Corey-McCoy, appeals from the judgment of sentence imposed by the Court of Common Pleas of Delaware County after a jury found him guilty of attempted murder, assault of a law enforcement officer by discharge of a firearm, aggravated assault, attempted burglary, and firearms not to be carried without a license.¹ Appellant challenges the trial court's ruling on the scope of cross-examination of a Commonwealth witness, the sufficiency of evidence for most of his convictions, and the discretionary aspects of his sentence. Upon careful review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 901(a)/2502(a), 2702.1(a), 2702(a)(1), 901(a)/3502(a)(1)(ii), and 6106(a)(1), respectively.

On September 22, 2023, Appellant attempted to break into an occupied residence. **See** N.T. Trial, 2/4/25, at 15-16, 23. When responding police officers arrived, Appellant fired multiple shots at an officer, who injured himself while falling to avoid the gunshots, before fleeing the scene. **See id.** at 48-51. Appellant was apprehended shortly thereafter. **See id.** at 149-51. That same day, Appellant was charged with eleven counts of violating the Crimes Code, and all charges were held for trial following a preliminary hearing. **See** Bills of Information, 9/22/23; N.T. Preliminary Hearing, 10/11/23, at 71-72. On February 3, 2025, the Commonwealth proceeded on six counts, including the five above-reference offenses and resisting arrest,² in a four-day jury trial. **See** N.T. Trial, 2/3/25, at 8-11.

The evidence at trial established that, on September 22, 2023, Alex Rogan was home with his grandmother at 118 Terrace Avenue (“Terrace Avenue”) in Upper Darby, Pennsylvania. **See** N.T. Trial, 2/4/25, at 6-7.³ At approximately 1:00 a.m., Rogan received a notification from his Blink camera system⁴ which showed an individual trying to get into the back of his home.

² 18 Pa.C.S. § 5104.

³ The residence on Terrace Avenue is a two-story, four-bedroom house, and when facing the property from the street, has a side-yard on the left, a driveway on the right leading to a detached garage, and a backyard with a public park behind it. **See** N.T. Trial, 2/4/25, at 7. On September 22, 2023, there were two vehicles parked in tandem in the driveway. **See id.** at 13.

⁴ The Blink camera system senses motion and sends the user a notification to their cellphone. **See** N.T. Trial, 2/4/25, at 14. The notification shows a video and then the user can open the Blink application (“Blink App”), to watch a live feed. **See id.**

See id. at 14-15. Rogan opened his Blink application on his cellular phone and observed an individual, wearing a hoodie and jeans, banging on the back door of the home, and trying to get in. **See id.** at 15. Then, Rogan grabbed his rifle and called 911 dispatch. **See id.** at 16.

Rogan testified that he continued to observe the individual via the Blink camera system and spoke to a 911 dispatcher. **See** N.T. Trial, 2/4/25, at 16-17; Commonwealth Trial Exhibit C-14 (911 Call). Shortly after Rogan called 911, police arrived at his home in the front driveway. **See** N.T. Trial, 2/4/25, at 18. Rogan noted that the Blink camera showed that the individual switched from trying to get into Rogan's house to hiding from the police. **See id.** at 17-19.⁵ The 911 dispatcher instructed Rogan to unarm himself and get his grandmother, then proceed to the front door of his house with his hands up. **See id.** at 25. Ultimately, Rogan and his grandmother were removed from the house. **See id.** at 26.

Bill Green, a police detective from the Upper Darby Township Police Department, testified about the incident. **See** N.T. Trial, 2/4/25, at 37. At the time, Green was an officer in a marked patrol unit, and he was on duty when he responded to the 911 dispatch for Terrace Avenue. **See id.** He testified that the 911 call "originally went out as a prowler in a backyard lurking

⁵ At trial, the Commonwealth entered into evidence two clips of the Blink camera system videos and played them for the jury. **See** N.T. Trial, 2/4/25, at 26; Commonwealth Trial Exhibits C-15 (Blink Camera Footage 1) and C-16 (Blink Camera Footage 2).

around.” ***Id.*** at 39. However, as Officer Green drove closer to the address, the 911 call escalated and he heard a firearm was involved. ***See id.*** at 39-40.

Officer Green detailed that he was in full patrol uniform with police patches on both shoulders. ***See*** N.T. Trial, 2/4/25, at 42. He had a police duty belt on with his firearm, two pairs of handcuffs, and a radio on his shoulder, along with a baton and yellow taser on the front of his vest. ***See id.***; Commonwealth Trial Exhibit C-22 (Green Patrol Uniform Photograph). When he pulled in front of the residence, Officer Green exited his police vehicle and used a flashlight mounted on his firearm to search for the individual. ***See id.*** at 45-46. Officer Green then cleared both vehicles in the driveway and moved to the backyard without any cover due to the escalating call. ***See id.*** at 48.

The 911 dispatch informed Officer Green that the individual was breaking a window on the side of the house. ***See*** N.T. Trial, 2/4/25, at 48. At trial, Officer Green identified the individual as Appellant. ***See id.*** at 49-51 (stating Appellant was about 5’11” and wearing a dark hooded jacket, a blue surgical mask, and a t-shirt with a light abstract logo). As Officer Green moved toward the rear of the residence, without cover, Appellant leaned around the corner and immediately shot at him. ***See id.*** at 49. Officer Green noted that Appellant had a tactical advantage because he remained concealed behind the corner of the residence and waited until Officer Green was out in the open before firing. ***See id.***

According to Officer Green, Appellant fired at least three to four gunshots at him. ***See*** N.T. Trial, 2/4/25, at 50. Although Officer Green was

able to reach cover alongside the residence, he fell and injured himself in the process. **See id.** He explained that he was bleeding and having difficulty walking, so he decided to disengage from the gunfight and retreat to the street. **See id.** Officer Green confirmed that he was not hit by the gunshots, but sustained injuries to his knee, back, and hand while fleeing. **See id.** at 51. As a result of his injuries, Officer Green was out of work for nearly a year and, at the time of trial, was still in “intense pain.” **Id.** at 52. Officer Green further testified that he was wearing a body-worn camera during the incident and the Commonwealth played the video for the jury. **See id.** at 56-62; Commonwealth Trial Exhibit C-32 (Officer Green Body-worn Camera Footage).

Mark Dehoratious, a patrol sergeant of the Upper Darby Township Police Department, testified that he responded to the 911 dispatch on Terrace Avenue. **See** N.T. Trial, 2/4/25, at 73, 76. He confirmed that he was wearing his police uniform, a radio on his shoulder, and a standard duty belt with his firearm, handcuffs, and keys visible. **See id.** at 73, 77. When he arrived and exited his police vehicle, he heard several gunshots. **See id.** Briefly ducking, the sergeant drew his firearm and moved toward the driveway where he observed two officers, one being Officer Green. **See id.** at 77.

Sergeant Dehoratious started covering the officers exiting the driveway with his firearm and, afterwards, the three men hid behind the rear of a parked car. **See** N.T. Trial, 2/4/25, at 77. Then, Sergeant Dehoratious spoke to Officer Green, “who had visible injuries to his hand and his knee,” and stated to the sergeant that “he was in a face-to-face shootout in the back of the house.”

Id. at 77-78. Sergeant Dehoratious immediately requested the assistance of a Pennsylvania State Police (“PSP”) helicopter as well as other police departments to search for the shooter. **See id.** at 78. As more officers responded to the scene, they created a perimeter across multiple streets to prevent anyone from entering or exiting. **See id.** at 79.

Officer Andrew Jones, a patrol officer and member of the Special Weapons and Tactics (“SWAT”) team of Haverford Township, testified. **See** N.T. Trial, 2/4/25, at 102-03. He said he received a call and responded to Terrace Avenue to clear the back of the property. **See id.** at 104. Once the SWAT team began checking the backyard, Officer Jones testified that another officer found a handgun on the left side corner of the backyard. **See id.** at 105 (stating handgun was “near mulch” and “there were basement [] doors.”) The SWAT team reported their findings to their supervisors and stayed with the evidence while other officers continued searching. **See id.** at 105-06. Officer Jones also testified that he observed “numerous shell casings” and informed his patrol supervisors. **Id.** at 108.

Corporal Ian Lloyd, a PSP helicopter pilot, testified that he arrived by helicopter, at approximately 2:48 a.m., to help locate the shooter. **See** N.T. Trial, 2/4/25, at 113-15.⁶ Corporal Lloyd used 911 to call on scene, locate the perimeter, and identify the residence on Terrace Avenue. **See id.** at 116.

⁶ Corporal Llyod was the tactical flight officer for the incident and assisted the pilot-in command. **See** N.T. Trial, 2/4/25, at 115.

Then, he developed a systematic approach to search the area, which involved using a forward-looking infrared (“FLIR”) camera to search for a heat source. **See id.** at 116-17. Within seven minutes, Corporal Llyod identified a heat source under a swing set, in a backyard near 215 Wadas Avenue (“Wadas Avenue”) and informed law enforcement on the ground. **See id.** at 118-19, 158.⁷

Philip Stephans, a sergeant for Yeadon Borough, was on the scene and received the PSP helicopter transmission that Appellant was found at Wadas Avenue. **See** N.T. Trial, 2/4/25, at 135, 140, 158. Sergeant Stephans and his team went to Wadas Avenue and found Appellant laying down with his arms tucked into his pants under the swing set. **See id.** at 146. Then, Sergeant Stephans instructed Appellant to put his arms out by his side and Appellant did not comply. **See id.** The police team surrounded Appellant, took his hands out of his pants, and placed them in handcuffs. **See id.** at 147. After determining that Wadas Avenue was an additional crime scene, the police recovered a white pair of shoes, a cigarette pack, a baseball cap, a water bottle, a black glove, and a blue surgical mask. **See id.** at 181-82; **see also** Commonwealth Trial Exhibit C-32 (Wadas Avenue Backyard Photograph).

Officer Wilson of the Upper Darby Township Police Department transported Appellant to the township police station. **See** N.T. Trial, 2/4/25,

⁷ The Wadas Avenue was six houses north of Terrace Avenue. **See** N.T. Trial, 2/4/25, at 158.

at 212-16. At the police station, Officer Wilson collected clothing from Appellant including a latex glove, a dark-green jacket, and a black t-shirt with a white logo. **See id.** at 217-19; Commonwealth Trial Exhibits C-35 (Latex Glove Photograph), C-36 (Green Jacket Photograph), and C-37 (Black Shirt Photograph).

Detective Kevin Finnegan of the Upper Darby Police Department swabbed Appellant's hand for gun residue after he was transferred to the police department. **See** N.T. Trial, 2/4/25, at 183, 186. He also obtained a buccal swab for Appellant for a later DNA comparison. **See id.** at 189. Later, Detective Finnegan also received information that Appellant was not licensed to carry a firearm. **See id.** at 190-91; Commonwealth Trial Exhibit C-34 (Certificate of Non-Licensure).

Detective Robert Marvil of the Upper Darby Police Department testified that he arrived at the residence on Terrace Avenue and was assigned to crime scene and evidence processing. **See** N.T. Trial, 2/4/25, at 233-34. After photographing the Terrace Avenue and Wadas Avenue crime scenes, Detective Marvil began collecting the evidence. **See id.** at 240-46. He explained that, as he was collecting the evidence, he put on "six or seven" pairs of black latex gloves so that he would have a fresh pair of gloves for each piece of evidence. **See id.** at 246-48.

On cross-examination, defense counsel inquired about the collection process that Detective Marvil used for the evidence. **See** N.T. Trial, 2/4/25, at 287-90. The Commonwealth objected twice for speculation, which the trial

court sustained. **See id.** at 288-89. After Detective Marvil's testimony ended, defense counsel objected to the Commonwealth's objection for speculation. **See id.** at 295-96.

Detective James Reardon, a certified fingerprint examiner employed by the Delaware County District Attorney Office, also testified. **See** N.T. Trial, 2/5/25, at 6; Commonwealth Trial Exhibit C-64 (Crime Scene Report). He received a firearm with six live rounds in it, three brass casings, three silver casings, and two projectiles. **See** N.T. Trial, 2/5/25, at 11. Detective Reardon swabbed all the evidence received and processed the items for possible collection of fingerprints. **See id.** at 16-20. He concluded that no fingerprints were found on the evidence. **See id.** at 21. However, Detective Reardon also explained that a glove would "wipe off any suitable fingerprints or wash off fingerprints where they wouldn't be suitable to identify a known print." **Id.** at 22.

Albert Lattanzi, a forensic scientist employed with the PSP, testified regarding his analysis of gunshot residue ("GSR") evidence in his report prepared during the investigation. **See** N.T. Trial, 2/5/25, at 102-04 (confirming Lattanzi as expert in GSR analysis); Commonwealth Trial Exhibit C-72 (Trace Evidence Report).⁸ Lattanzi explained that GSR particles will

⁸ Lieutenant William Sminkui of the Upper Darby Police Department testified that he personally collected the GSR samples from the evidence collected and used a GSR kit. **See** N.T. Trial, 2/5/25, at 28, 37-41. Then the GSR kit was transported to the Regional Crime Lab in Lima, Pennsylvania ("Lima Regional Crime Lab"). **See id.** at 41-42.

remain on an object until they are removed, however the particles can be removed easily with another item such as clothing or through washing. **See** N.T. Trial, 2/5/25, at 105-06. He detailed that he analyzes GSR samples with a GSR kit, which is comprised of aluminum stubs with an inch-wide disc with adhesive on it. **See id.** at 106. The adhesive is then analyzed for particles that are consistent with GSR, which are called characteristic particles. **See id.** at 107.

Lattanzi's analysis of the GSR kit collected from Appellant revealed characteristic GSR particles on swabs taken from Appellant's right hand back and left palm. **See** N.T. Trial, 2/5/25, at 112. Lattanzi testified that these results were consistent with Appellant having discharged a firearm, having been near the firearm when it discharged, or contacting a surface containing GSR. **See id.** He further explained that each of these scenarios were likely to account for positive GSR results. **See id.** Positive GSR results were also obtained from swabs taken from Appellant's jacket and gloves and the same conclusions applied to these items. **See id.** at 113-14. On cross-examination, Lattanzi acknowledged that GSR tests cannot determine how or when the residue was deposited on Appellant or the clothing items. **See id.** at 116.

The Commonwealth established that the police sent the recovered evidence to the Lima Regional Crime Lab to be swabbed for potential DNA evidence. **See** N.T. Trial, 2/5/25, at 83-95. Britinni Andoloro, a forensic DNA scientist from the PSP Forensic DNA Division, testified that she received the buccal collection from Appellant and ten other items for DNA analysis. **See id.**

at 127-29, 134; Commonwealth Trial Exhibit C-73 (DNA Report). She was unable to obtain sufficient DNA from the swabs collected from the live rounds, cartridge casings, and the back-door handle analysis. **See** N.T. Trial, 2/5/25, at 136. However, the DNA profile obtained from the firearm, glove, and face mask matched Appellant's buccal sample DNA. **See id.**

The remaining items, including the magazine and rounds, a cut piece from the face mask, the magazine plate, and a pair of disposable gloves, contained a mixture of DNA profiles. **See** N.T. Trial, 2/5/25, at 138-45. Andoloro explained that DNA analysis identifies the DNA profiles present on an item but cannot determine how, when, or where the DNA was deposited. **See id.** at 153. She further testified that DNA may be transferred from one item to another, resulting in the same DNA profile corresponding with samples recovered on multiple items. **See id.**

Detective Louis Grandizio, an expert in firearms and toolmark identification, testified that he examined ballistic evidence recovered from the crime scene. **See** N.T. Trial, 2/5/25, at 169-73 (stating he is a firearm examiner with the Delaware County Criminal Investigation Division); Commonwealth Trial Exhibit C-70 (Ballistic Report). He testified that he used an impact discharge test, which determines whether the firearm was accidentally fired or triggered. **See** N.T. Trial, 2/5/25, at 178-79. Detective Grandizio concluded that the firearm that was recovered from Terrace Avenue would not discharge from an impact, instead requiring force to pull the trigger. **See id.** at 179. He also examined Officer Green's firearm and magazine. **See**

id. Based on his examination of the two firearms, Detective Grandizio concluded that four of the fired cartridge cases came from the firearm recovered at Terrace Avenue and three came from Officer Green's firearm. **See id.** at 182-84.

On February 7, 2025, the jury found Appellant guilty of attempted murder, assault of a law enforcement officer, aggravated assault, criminal attempt to commit burglary, and firearms not to be carried without a license. **See** N.T. Trial, 2/7/25, at 5-8; Verdict, 2/7/25, at 1-2 (unpaginated). However, the jury was unable to reach a unanimous verdict as to resisting arrest, and the trial court declared a mistrial on that count. **See** N.T. Trial, 2/7/25, at 9. Afterwards, sentencing was deferred for the preparation of a presentence investigation ("PSI") report. **See id.** at 10.

On April 8, 2025, at the sentencing hearing, the Commonwealth withdrew the resisting arrest count. **See** N.T. Sentencing Hearing, 4/28/25, at 4. Then, Officer Green gave a victim impact statement explaining the ramifications of Appellant's actions. **See id.** at 4-15. The trial court heard oral argument from defense counsel and the Commonwealth for Appellant's sentence recommendation. **See id.** at 15-20. Appellant made a brief statement thanking his family, the trial court, and defense counsel. **See id.** at 21. Afterwards, the trial court acknowledged that it considered two letters offered in support of Appellant, sentencing memoranda from both parties, the victim impact statement, and the recommendations of the Pennsylvania Sentencing Guidelines. **See id.** at 22.

Appellant was sentenced to twenty to forty years' for assault on a law enforcement officer, ten to twenty years of incarceration for attempted murder, ten to twenty years' for attempted burglary, and three and one-half to seven years' for his firearms not to be carried without a license conviction. **See** Order (imposition of sentence), 4/28/25; N.T. Sentencing Hearing, 4/28/25, at 21.⁹ The trial court ordered that each of these sentences run

⁹ The imposed sentences were within the aggravated range for attempted murder and above the aggravated range for attempted burglary and firearms not to be carried without a license. Further, for assault of law enforcement officer conviction, Appellant was sentenced to the mandatory minimum term of imprisonment. **See** 42 Pa.C.S. § 9719.1 (setting a mandatory minimum term of "not less than 20 years" for a conviction under 18 Pa.C.S. § 2702.1(a)). We note that Appellant's aggravated assault conviction merged with his conviction for attempted murder for sentencing purposes. **See** N.T. Sentencing Hearing, 4/28/25, at 21-23; **Commonwealth v. Anderson**, 650 A.2d 20, 24 (Pa. 1994) (holding aggravated assault under 18 Pa.C.S. 2702.1(a) merges with attempted murder for sentencing purposes).

For assault of a law enforcement officer, the mandatory minimum term is two hundred and forty months' imprisonment. **See** 18 Pa.C.S. § 9719.1; Guideline Sentence Form (7th ed., amend. 6), 5/7/25, at 1 (noting Appellant's "mitigated" and "standard" ranges for a minimum term were "240" months)).

For attempted murder, the recommended standard range is ninety months to one hundred and eight months' imprisonment, plus or minus twelve months for mitigating and aggravating circumstances. **See** Guideline Sentence Form (7th ed., amend. 6), 5/7/25, at 2 (noting Appellant's prior record score is two and the offense gravity score of thirteen); **see also** 204 Pa. Code § 303.15 (7th ed., amend. 6) (setting the offense gravity score of thirteen for attempted murder); 204 Pa. Code § 303.17(b) (7th ed., amend. 6) (applicable sentencing matrix for an offense involving the use of a deadly weapon).

For attempted burglary in an occupied residence, the recommended standard range is twenty-one to twenty-seven months' imprisonment, and the aggravated range is up to thirty-six months. **See** Guideline Sentence Form (*Footnote Continued Next Page*)

consecutively for an aggregate sentence of forty-three and one-half to eighty-seven years' imprisonment. **See** Order, 4/28/25, at 1; N.T. Sentencing Hearing, 4/28/25, at 23.

Appellant filed a timely motion for reconsideration of sentence, and the trial court denied his motion. **See** Motion for Reconsideration, 5/8/25; Order (denying Appellant's motion for reconsideration), 5/19/25. Then, Appellant filed a timely notice of appeal, and he and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925. **See** Notice of Appeal, 6/11/25; Rule 1925(b) Order, 7/18/24; Rule 1925(b) Statement, 8/8/24; Trial Court Opinion, 10/1/25.

Appellant raises the following questions for our review:

- I. Whether the trial court erred and abused its discretion by sustaining the Commonwealth's objection to defense cross-examination of Detective Robert Marvil regarding his testimony about best evidence collection practices and evidence contamination when such answers would not be

(7th ed., amend. 6), 5/7/25, at 3 (noting Appellant's prior record score of two and the offense gravity score of eight); **see also** 204 Pa. Code § 303.15 (7th ed., amend. 6) (setting the offense gravity score of eight for attempted burglary); 204 Pa. Code § 303.17(a) (7th ed., amend. 6) (applicable sentencing matrix for an offense involving the possession of a deadly weapon).

For firearms not to be carried without a license, the recommended standard range is twenty-four to thirty-six months' imprisonment, and the aggravated range is up to forty-eight months. **See** Guideline Sentence Form (7th ed., amend. 6), 5/7/25, at 4 (noting Appellant's prior record score of two and the offense gravity score of nine); **see also** 204 Pa. Code § 303.15 (7th ed., amend. 6) (setting the offense gravity score of nine for firearms not to be carried without a license where the possessed firearm was loaded); 204 Pa. Code § 303.16(a) (7th ed., amend. 6) (applicable basic sentencing matrix).

speculative and are based on the training and experience of the detective as introduced into evidence during the Commonwealth's direct examination of this same witness[,] all in violation of [Appellant's] due process rights under the United States and Pennsylvania Constitutions?

- II. Whether evidence presented at trial was insufficient to establish the crimes of attempted murder, assault of [a] law enforcement officer by discharging of a firearm, aggravated assault, attempted burglary, and carrying a firearm without a license because the Commonwealth failed to prove beyond a reasonable doubt the identity of the individual who committed these crimes and the evidence does not prove beyond a reasonable doubt that [Appellant] is the unidentified man whose actions led to the crimes charged in this matter?
- III. Whether the evidence present at trial was insufficient to sustain a guilty verdict for attempted murder where the Commonwealth failed to prove beyond a reasonable doubt that [Appellant] possessed a specific intent to kill Officer Green?
- IV. Whether the evidence was insufficient to sustain a guilty verdict for assault of [a] law enforcement officer by discharge of a firearm where the Commonwealth failed to prove beyond a reasonable doubt that [Appellant] knew the individual was a law enforcement officer at the time of the exchange of gunfire?
- V. Whether the evidence presented at trial was insufficient to sustain a guilty verdict for attempted burglary where the Commonwealth failed to prove beyond a reasonable doubt that [Appellant] took a substantial step towards entering the residence on [Terrace] Avenue or that [Appellant] intended to commit a crime within the residence on [Terrace] Avenue?
- VI. Whether the evidence presented at trial was insufficient to sustain a guilty verdict for carrying a firearm without a license where the Commonwealth failed to prove beyond a reasonable doubt that [Appellant] carried a firearm concealed on his person?
- VII. Whether the trial court erred as a matter of law and violated the discretionary aspect[s] of sentencing, specifically the

requirements of 42 Pa.C.S. §[]9721(b) of the Sentencing Code, in that the trial court's decision to impose statutory maximum consecutive sentences raises the aggregate sentence to a *de facto* life sentence causing the sentence to be excessive without justification and where the trial court did not place sufficient reasons on the record for sentences in the aggravated range for attempted burglary and carrying a concealed firearm without a license?

Appellant's Brief at 4-6 (roman numeral prompts added and unnecessary capitalizations omitted).

I. Admissibility of Evidence

Appellant, in his first issue, argues that the trial court abused its discretion when it sustained the Commonwealth's objections for speculation to defense counsel's cross-examination of Detective Robert Marvil regarding his use of multiple sets of gloves in the evidence collection process, which Appellant characterizes as a violation of his constitutional right to confrontation. **See** Appellant's Brief at 29-33. We agree with the Commonwealth that Appellant has waived this argument. **See** Appellee's Brief at 16-19.¹⁰

During the cross-examination of Detective Marvil, defense counsel posed a hypothetical question: "And if somebody was to wear one pair of gloves and touch three different pieces of evidence, what effect would that

¹⁰ We note the trial court did not find Appellant's admissibility of evidence issue waived. **See** Trial Court Opinion, 10/1/25, at 7-8. However, it "is well[-]settled that where the result is correct, an appellate court may affirm a [trial] court's decision on any ground without regard to the ground relied upon by the [trial] court itself." **Commonwealth v. Lehman**, 275 A.3d 513, 520 n. 5 (Pa. Super. 2022) (quotation omitted).

have on the evidence itself?” N.T. Trial, 2/5/25, at 288. The Commonwealth objected, arguing that the question was speculative and the trial court sustained the objection. **See id.** Five questions later, defense counsel asked, “So[,] if anybody does it any other way, they’re going to transfer evidence from —” **Id.** at 299. The Commonwealth objected again on speculation grounds and the trial court sustained the objection. **See id.**

At that time, defense counsel neither made an effort to respond to the court’s act of sustaining the objections, nor made a proffer as to the value of the testimony sought. **See** N.T. Trial, 2/5/25, at 288-89.¹¹ At the conclusion of the testimony for the day, defense counsel again raised the issue about the scope of the cross-examination of Detective Marvil, but did not place specific grounds for the objection to the questioning on the record, stating:

I want to reserve, I suppose, an objection to an objection. I asked specifically about his experience, Detective Marvil’s experience, if he knew a thing, and there was an objection there.

...

The objection came to a question where I asked about the process, his process of putting on the multiple gloves and whether or not it would cause contamination. It was an objection, I believe as to speculation. Your Honor granted it...But I want to preserve that. I disagree, obviously with that.

Id. at 295-96.

¹¹ If the ruling excludes evidence, the moving party must inform the court of the substance of the evidence by an offer of proof, unless the substance was apparent from the context. Pa.R.E. 103(a)(2).

Appellant waived any confrontation claim, or any related grounds for opposing the trial court's rulings on the Commonwealth's objections, because he did not raise his Confrontation Clause argument at trial or state any specific grounds for this "objection to an objection." **See Commonwealth v. Reed**, 347 A.3d 795, 807 (Pa. 2025) ("[D]efendant may not raise a new theory of relief that he did not present to trial court."). Issues not raised before the trial court are waived and cannot be raised for time on appeal. **See** Pa.R.A.P. 302(a); **Commonwealth v. Strunk**, 953 A.2d 577, 579 (Pa. Super. 2008) (stating trial courts "must be given the opportunity to correct errors at the time they are made;" "Even issues of constitutional dimension cannot be raised for the first time on appeal"). Here, the record demonstrates that Appellant's defense counsel did not offer any proof of substantive evidence that counsel sought through its proposed questions or object based on the Confrontation Clause. Instead, defense counsel merely disagreed with the trial court but offered no argument as to why. **See** N.T. Trial 2/5/25, at 295-96. Accordingly, we find Appellant has waived his first issue.

II.-IV. Sufficiency of Evidence

In issues two through six, Appellant challenges the sufficiency of evidence sustaining all his convictions but aggravated assault. **See** Appellant's Brief at 33-45. "A challenge to the sufficiency of evidence presents a question of law, and as such, the standard of review is *de novo* and the scope of review is plenary." **See Commonwealth v. Headly**, 242 A.3d 940, 943 (Pa. Super. 2020). Additionally:

We assess the evidence and all reasonable inferences drawn therefrom in the light most favorable to the verdict-winner. We must determine whether there is sufficient evidence to enable the fact-finder to have found every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for that of the factfinder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered.

Commonwealth v. Bowens, 265 A.3d 730, 740-41 (Pa. Super. 2021) (citation omitted).

II. Identity

Appellant, in his second issue, argues that the Commonwealth failed to establish his identity as the perpetrator of the shooting. **See** Appellant's Brief at 33-36.

"A victim's in-court testimony, identifying the defendant as the perpetrator of a crime, is by itself sufficient to establish the identity element of that crime." ***Commonwealth v. Johnson***, 180 A.3d 474, 478 (Pa. Super. 2018) (citations omitted).

[E]vidence of identification need not be positive and certain to sustain a conviction. Although common items of clothing and general physical characteristics are usually insufficient to support a conviction, such evidence can be used as other circumstances to establish the identity of a perpetrator. Out-of-court identifications are relevant to our review of sufficiency of the

evidence claims, particularly when they are given without hesitation shortly after the crime while memories were fresh. Given additional evidentiary circumstances, any indefiniteness and uncertainty in the identification testimony goes to its weight.

Commonwealth v. Orr, 38 A.3d 868, 874 (Pa. Super. 2011) (*en banc*) (citations omitted).

Appellant asserts that there is no additional in-court testimony that independently identifies him as the perpetrator. **See** Appellant's Brief at 35. He thus reasons that the Commonwealth only relied on circumstantial evidence including ballistic evidence, gunshot residue, and DNA evidence to prove his identity as the perpetrator, which Appellant contends failed to establish that he was the individual who fired the weapon or committed the charged offenses. **See id.** Accordingly, he argues that the evidence does not establish beyond a reasonable doubt his identity as the armed intruder and all his convictions must fail. **See id.** We disagree.

Upon review, we find that the Commonwealth presented sufficient evidence to establish Appellant's identity as the perpetrator. **See Bowens**, 265 A.3d at 740-41. Officer Green testified that Appellant was the individual with whom he engaged in the shoot-out. **See** N.T. Trial, 2/4/25, at 49; **Johnson**, 180 A.3d at 478. Additionally, the Commonwealth introduced surveillance video footage from Terrace Avenue, which allowed the jury to see the perpetrator, his actions, and his clothing. **See** N.T. Trial, 2/4/25, at 26; **Orr**, 38 A.3d at 874. Officer Green testified that the individual he observed shooting at him matched the person in the clothing depicted in the surveillance

footage. **See id.** at 50. Police subsequently recovered, near the location where Appellant was apprehended, a blue surgical mask and glove consistent with those worn by the individual shown in the surveillance video, and the mask matched the one described with Roger's 911 description of Appellant . **See id.** at 181-82.

In addition, Appellant's DNA was found on the firearm and glove recovered from the backyard at Terrace Avenue and forensic evidence established that the fired cartridge casings fired from that gun were recovered from the same location. **See** N.T. Trial, 2/4/25, at 105-08. Further, GSR was also detected on Appellant's hands and clothing, supporting the inference that he recently discharged a firearm. **See** N.T. Trial, 2/5/25, at 112. We conclude that, viewed in the light most favorable to the Commonwealth as the verdict winner, this evidence permitted the jury to conclude beyond a reasonable doubt that the individual depicted in the surveillance footage was Appellant. **See Bowens**, 265 A.3d at 740-41. Therefore, Appellant's second issue is meritless.

III. Attempted Murder

Appellant, in his third issue, argues that the evidence presented at trial was insufficient to sustain a guilty verdict for attempted murder because the Commonwealth failed to prove beyond a reasonable doubt that he possessed a specific intent to kill Officer Green. **See** Appellant's Brief at 37-39.

A criminal attempt occurs when a person, "with intent to commit a specific crime, he does any act which constitutes a substantial step toward the

commission of that crime.” 18 Pa.C.S. § 901(a). “[I]f a person takes a substantial step toward the commission of a killing, with the specific intent in mind to commit such an act, he may be convicted of attempted murder.” **Commonwealth v. Tucker**, 143 A.3d 955, 964 (Pa. Super. 2016) (internal citation omitted); **see also** 18 Pa.C.S. § 2502(a). Further, “[t]he Commonwealth may establish the *mens rea* required for first-degree murder, specific intent to kill, solely from circumstantial evidence.” **Tucker**, 143 A.3d at 964 (citation omitted).

Relevant to this case, the deadly weapon presumption provides that the specific intent to kill can be presumed from the defendant’s use of a deadly weapon on a vital organ. **See Commonwealth v. Newton**, 318 A.3d 133, 140 (Pa. Super. 2024) (“A factfinder may presume the intent to kill ‘based on the accused’s use of a deadly weapon on a vital part of the victim’s body,’ or in the ‘general area in which vital organs are located.’”) (citations omitted). Our Supreme Court has rejected the notion that the deadly-weapon/vital-body-part presumption cannot arise unless a vital organ has been struck. In **Commonwealth v. Padgett**, 348 A.2d 87 (Pa. 1975), our Supreme Court noted:

we are not persuaded that it must be shown that the bullet fired from a revolver, a deadly weapon, initially entered a vital organ before the inference of specific intent to kill can arise. The firing of a bullet in the general area in which vital organs are located can in and of itself be sufficient to prove specific intent to kill beyond a reasonable doubt.

Id. at 88; **see also Commonwealth v. Jackson**, 392 A.2d 1366, 1368 (Pa. 1978) (adopting **Padgett's** analysis on this point); **Commonwealth v. Manley**, 985 A.2d 256, 272 (Pa. Super. 2009) (same and noting that a defendant's "poor aim does not constitute a lack of malice").

Appellant contends that the Commonwealth failed to prove specific intent and that the deadly weapon presumption does not apply here because Officer Green's injuries were a result of his fall, not gunfire. **See** Appellant's Brief at 38. He relies heavily on **Commonwealth v. Predmore**, 199 A.3d 925 (Pa. Super. 2018) (*en banc*). **See id.** In that case, an *en banc* panel of our Court found that the evidence was insufficient to sustain a charge of attempted murder because the defendant did not shoot a vital organ but instead shot a victim's lower leg and there was no verbal indication of defendant's specific intent to kill. **See Predmore**, 199 A.3d at 934. Appellant argues that, like **Predmore**, he did not shoot a vital organ, and the Commonwealth did not proffer any evidence that Appellant verbally indicated, directly or indirectly, an intent to kill Officer Green. **See** Appellant's Brief at 38-39. Therefore, since the deadly-weapon/vital-body-part presumption did not apply in **Predmore**, and the Commonwealth provided no circumstantial evidence here to establish the *mens rea* needed for attempted murder, his attempted murder conviction must fail. **See id.** at 39. We disagree.

First, Appellant's contention that the deadly weapon presumption does not apply is unavailing. **See** Appellant's Brief at 38. It is well-settled law in Pennsylvania that the firing of bullets towards a vital organ can be alone

sufficient to prove specific intent to kill. **See Padgett**, 348 A.2d 87 at 88. Officer Green testified that Appellant fired the first bullet at his head. **See** N.T. Trial, 2/4/25, at 49. In fact, the bullet passed close enough to Officer Green's head that he heard the bullet "whiz by." **See id.** Our Court has held that the head is vital body part, therefore the jury could infer specific intent to kill from Appellant's use of the firearm directed at Officer Green. **See Commonwealth v. Talbert**, 129 A.3d 536, 543 (Pa. Super. 2015) (noting that the head is a vital part of the body). Thus, the deadly weapon presumption applies here. **See Newton**, 318 A.3d at 140.

Moreover, we find the surrounding circumstances supported the inference of specific intent. **See Tucker**, 143 A.3d at 964. Appellant concealed himself until Officer Green left his cover and then, when Officer Green was out in the open, he began shooting. **See** N.T. Trial, 2/4/25, at 49. Then, Appellant fired two to three more shots after the first shot apparently missed, rather than just fleeing or abandoning the encounter after the initial missed shot. **See id.** at 50. Therefore, the jury could reasonably infer from the delayed timing of the attack, and Appellant's repeated attempts to shoot Officer Green, that Appellant intended to kill him rather than merely frighten or wound him. **See Bowens**, 265 A.3d at 740-41.

Further, Appellant's reliance on **Predmore** is misplaced. In **Predmore**, the victim was shot twice in the lower legs, and there was no evidence that the defendant aimed or attempted to strike a vital area of the body. **See Predmore**, 199 A.3d at 931-32. On that basis, we distinguished **Predmore**

from the above-quoted portion of our Supreme Court in ***Padgett*** and our treatment of ***Padgett*** in ***Manley***. ***See Predmore***, 199 A.3d at 933-34. Here, by contrast, Officer Green testified that Appellant first fired towards his head, a vital part of the body, and then continued firing at him. ***See*** N.T. Trial, 2/4/25, at 49-50. Thus, unlike in ***Predmore***, the evidence permitted this jury to infer that Appellant intended to inflict a fatal injury. ***See Predmore***, 199 A.3d at 931-34. Accordingly, we find the evidence viewed in the light most favorable to the Commonwealth as the verdict winner, was sufficient to permit the jury to conclude that Appellant possessed the specific intent to kill Officer Green. ***See Bowens***, 265 A.3d at 740-41. Accordingly, Appellant's third issue is meritless.

IV. Assault of a Law Enforcement Officer

Appellant, in issue four, argues that the evidence was insufficient to sustain a guilty verdict for assault of a law enforcement officer by discharge of a firearm because the Commonwealth failed to prove beyond a reasonable doubt that he knew the individual he was firing at, Officer Green, was a law enforcement officer at the time of the exchange of gunfire. ***See*** Appellant's Brief at 39-41.

"A person commits a felony of the first degree who attempts to cause or intentionally or knowingly causes bodily injury to a law enforcement officer, while in the performance of duty and with knowledge that the victim is a law enforcement officer, by discharging a firearm." 18 Pa.C.S. § 2702.1(a)(1). The statute requires proof of the following elements:

(1) the defendant attempted to cause, or intentionally or knowingly caused, bodily injury[;] (2) the victim was a law enforcement officer acting in the performance of his duty[;] (3) the defendant had knowledge the victim was a law enforcement officer[;] and (4) in attempting to cause, or intentionally or knowingly causing such bodily injury, the defendant discharged a firearm.

Commonwealth v. Landis, 48 A.3d 432, 445 (Pa. Super. 2012) (*en banc*) (citation omitted).

Appellant specifically argues that the Commonwealth failed to prove the third prong of **Landis**, that he knew that Officer Green was a law enforcement officer. **See** Appellant's Brief at 40; **Landis**, 48 A.3d at 445. He contends that the evidence demonstrated the incident occurred in the early morning hours in a dark, unilluminated area, and that Officer Green arrived without activating the lights or sirens from his police vehicle. **See** Appellant's Brief at 40. Appellant further emphasizes that neither Officer Green nor the other police officers announced their presence as law enforcement before or after the gunfire. **See id.** at 40-41. Although the officers wore uniforms and had radios, Appellant argues there was no evidence that he could visually or auditorily identify them before both parties were taking cover. **See id.** Thus, Appellant maintains the Commonwealth relied on speculation, rather than proof beyond a reasonable doubt, to establish the knowledge prong of this offense and his conviction must fail. **See id.** at 41. We disagree.

We note this Court has not previously addressed the sufficiency of evidence regarding the knowledge element of assault of a law enforcement officer. Our published decisions involving this offense have instead focused on

whether the Commonwealth established the requisite intent to assault a law enforcement officer. **See Landis**, 48 A.3d at 447 (stating evidence supported reasonable inference that Appellant intended to fire a bullet at officers by discharging firearm at officers); **Commonwealth v. Martuscelli**, 54 A.3d 940, 949 (Pa. Super. 2012) (finding Commonwealth provided sufficient evidence for assault of a law enforcement officer when officers positioned themselves in a line by Appellant, Appellant illuminated officers with light, shot at them, and asked how many police officers he shot thereby showing intention); **Interest of J.C.N.**, 332 A.3d 1286, 1292 (Pa. Super. 2025) (holding juvenile spitting at officer constituted sufficient evidence for the intent element for attempt to assault law enforcement officer under separate subpart in 18 Pa.C.S. § 2702.1(a)(2)). Nevertheless, in reviewing challenges to the sufficiency of evidence, we have consistently recognized that the Commonwealth may sustain its burden through wholly circumstantial evidence. **See Bowens**, 265 A.3d at 740-41.

Although this Court has not specifically considered in a prior opinion what circumstantial evidence is sufficient to establish the knowledge element of assault of a law enforcement officer, our decisions in other criminal offenses and the Crimes Code provide useful guideposts. In **Landis**, our Court relied on 18 Pa.C.S. § 302(b)(1) to define the necessary *mens rea* for intent to assault a law enforcement officer. **See Landis**, 48 A.3d at 446. Because **Landis** looked to the Crimes Code definition of intent to interpret the *mens rea* required under Section 2702.1(a), we likewise look to the Crimes Code's

definition of “knowingly” to define the knowledge element of the same offense.

Section 302(b)(2) provides:

(2) A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct would cause such a result.

18 Pa.C.S. § 302(b)(2).

Moreover, this Court has consistently recognized that knowledge, like other culpable mental states, may be established through circumstantial evidence. **See Commonwealth v. Gomez**, 224 A.3d 1095, 1100 (Pa. Super. 2019) (finding knowledge element of theft by receiving stolen property can be inferred by circumstantial evidence); **Commonwealth v. Newton**, 994 A.2d 1127, 1132 (Pa. Super. 2010) (“Guilty knowledge (like all culpable mental states) may be proved by circumstantial evidence.”). Likewise, in **Commonwealth v. Robinson**, 128 A.3d 261 (Pa. Super. 2015) (*en banc*), this Court interpreted the knowledge element of theft by receiving stolen property by applying the Crimes Code definition of “knowingly” under 18 Pa.C.S. § 302(b)(2). **See id.** at 265.¹² There, we explained that a person

¹² To be convicted of theft by receiving stolen property, the Commonwealth must establish three elements: “(1) intentionally acquiring possession of the movable property of another; (2) with the knowledge or belief that the
(Footnote Continued Next Page)

possesses the requisite knowledge when he is “aware” of a relevant fact. **See id.** Further, the Commonwealth may rely on circumstantial evidence from which the fact-finder may reasonably infer the defendant’s awareness of the fact. **See id.** at 268 (recognizing that guilty knowledge may be inferred from circumstantial evidence, including the defendant’s conduct, statements, and other evidence connecting defendant to the crime).

Applying these principles, we conclude that the Commonwealth may establish the knowledge element of Section 2702.1(a)(1) through circumstantial evidence. Relevant factors may include, among other evidence, whether the officers announced their presence, whether they wore uniforms or displayed badges, whether marked police vehicles were visible or deployed lights or sirens, the defendant’s conduct or statements at the time of the incident, or any other evidence connecting the defendant to awareness of the victim’s law enforcement status. **See Robinson**, 128 A.3d at 268. Therefore, we must determine whether the Commonwealth presented sufficient evidence that Appellant knew the fact that Officer Green was a law enforcement officer. **See** 18 Pa.C.S. § 302(b)(2).

First, contrary to Appellant’s assertion that he could neither see nor hear Officer Green, the Commonwealth presented ample evidence from which the jury could reasonably infer otherwise. Officer Green testified at trial that he

property was probably stolen; and (3) the intent to deprive permanently.” **Robinson**, 128 A.3d at 265; **see also** 18 Pa.C.S. § 3925(a).

was wearing a full patrol uniform. **See** N.T. Trial, 2/4/5, at 42. The Commonwealth also introduced photographs depicting Officer Green's uniform on the day of the incident. **See id.**; Commonwealth Trial Exhibit C-22.

Moreover, Officer Green testified that the radio on his shoulder broadcasted out loud during the incident and that "everybody in [the courtroom] could hear it if [the radio] went off." N.T. Trial, 2/4/25, at 43. Thus, Appellant's contention that there was no auditory evidence of Officer Green is unpersuasive. **See** Appellant's Brief at 41. Importantly, Officer Green stated that he and Appellant made eye-contact when he stepped into the open **before** Appellant began shooting. **See** N.T. Trial, 2/4/25, at 68.

The surveillance video and witness testimony also supported the jury's findings. Rogan testified, and the surveillance video demonstrated, that marked police vehicles arrived at the scene before Appellant fired his weapon. Moreover, the video showed that once police arrived at the residence, Appellant ceased attempting to enter the home and instead concealed himself in the yard. **See id.** at 18-19; Commonwealth Trial Exhibits C-15 & C-16.

Viewed in its totality, the Commonwealth's evidence permitted the jury to reasonably infer that Appellant was aware that Officer Green was a law enforcement officer. Officer Green was dressed in a full patrol uniform, his shoulder radio was broadcasting audibly at the time of the shooting incident, Appellant and Officer Green made eye contact before Appellant first fired, and Appellant concealed himself upon the officers' arrival. **See Newton**, 994 A.2d at 1132. Taken together, these circumstances constituted sufficient

circumstantial evidence from which the jury could reasonably infer, beyond a reasonable doubt, that Appellant acted “knowingly” with respect to the attendant circumstances that Officer was a law enforcement officer. **See** 18 Pa.C.S. § 302(b)(2); **Bowens**, 265 A.3d at 740-41. Accordingly, Appellant’s fourth issue is meritless.

V. Attempted Burglary

In issue five, Appellant argues that the evidence presented at trial was insufficient to sustain a guilty verdict for attempted burglary because the Commonwealth failed to prove, beyond a reasonable doubt, that he took a substantial step towards entering the residence or that he intended to commit a crime within the residence. **See** Appellant’s Brief at 41-43.

“A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.” 18 Pa.C.S. § 901(a). Under the subsection charged in this case, the Commonwealth needed to prove that Appellant attempted to enter Rogan’s home with the intent to both enter an occupied structure and to commit a crime therein. **See** 18 Pa.C.S. § 3502(a)(1)(ii). “Intent may be proved by direct evidence or inferred from circumstantial evidence.” **Commonwealth v. Galindes**, 786 A.2d 1004, 1009 (Pa. Super. 2001) (citation omitted).

Appellant contends that, under **Commonwealth v. Wilamowski**, 633 A.2d 141, 142 (Pa. 1993), intent to commit a crime inside a structure may not be presumed merely because a defendant attempts to force entry, and

that the Commonwealth failed to present additional evidence here to establish a requisite criminal attempt of burglary. **See** Appellant's Brief at 41-42. Appellant maintains that, unlike the defendant in **Wilamowski**, he neither entered nor broke into the residence. **See id.** at 42. Rather, he alleges that the evidence established only that he was seen in the yard, later returned, and banged on the door. **See id.** at 42-43 ("Rogan never says the intruder was successful in breaking the window or gaining access to the kitchen.").

Appellant further asserts that the broken window was caused by a police officer's gunfire rather than by any act on his part and therefore did not demonstrate unlawful entry. **See** Appellant's Brief at 43.¹³ He also argues that, although the Commonwealth need not prove the specific crime Appellant intended to commit inside the residence, it was nevertheless required to establish criminal intent from the totality of the circumstances. **See id.** He contends that, unlike in **Commonwealth v. Alston**, 651 A.2d 1092 (Pa. 1994), there was no evidence that he entered the residence, possessed burglary tools, made statements revealing criminal intent, or otherwise engaged in conduct from which the necessary intent for burglary could reasonably be inferred. **See id.** Accordingly, Appellant maintains that the

¹³ The Commonwealth did not rely on the broken kitchen window to prove that Appellant attempted to burglarize the Terrace Avenue residence. **See** Appellee's Brief at 37-39. In fact, during the trial, Detective Marvil confirmed that there was a projectile strike from the shootout between Appellant and Officer Green that broke the residence window. **See** N.T. Trial, 2/5/25, at 251. Moreover, Detective Marvil admitted the projectile fragment was more likely from Officer Green's firearm and not Appellant's firearm. **See id.** at 287.

evidence was insufficient to prove his conviction of attempted burglary. **See id.** We disagree.

First, in **Alston** the defendant was challenging the sufficiency of evidence for a burglary conviction, rather than an attempted burglary conviction, and, here, the Commonwealth did not need to prove that Appellant entered the residence for merely sustaining an attempted burglary conviction. **See Alston**, 651 A.2d at 1095. Appellant's contention that there are specific elements that the Commonwealth must prove for attempted burglary is misplaced, as our Court has held that such convictions are based on the totality of the circumstances. **See id.** at 1094. Further, Appellant's reliance on **Wilamowski** is unpersuasive. **See** Appellant's Brief at 41-42. In **Wilamowski**, the defendant kicked in a person's garage door and fled from the scene. **See Wilamowski**, 633 A.3d 141 at 376. Our Supreme Court explained that "there was no additional evidence to establish that he possessed an intent to commit a crime inside. [The defendant] broke the door and apparently walked away from it without any showing that he entered the structure or attempted to enter." **Id.** at 380. In contrast to **Wilamowski**, here, the Commonwealth provided additional circumstantial evidence supporting the inference that Appellant intended to commit a crime inside the residence.

We find the facts of this case are similar to the facts in **Galindes**, where the defendants came to the victim's back door at 4:30 a.m. and were making loud kicking and banging noises. **See Galindes**, 786 A.2d at 1010. The victim

heard and watched the defendants try and kick his back door. **See id.** However, once the victim made his presence known, the defendants attempted to flee down an alleyway, while shooting at the victim. **See id.** Our Court explained that the circumstances such as the knock at the back door at nighttime, the fleeing, and shooting at the victim, allowed the trial court to reasonably infer the defendants' intent to commit a crime. **See id.** (stating "the circumstances surrounding the incident, the late hour, the knock at the front door, the kicking of the back door, the fleeing when confronted and then firing shots, all allowed the trial court to reasonably infer [] Galindes possessed the intent to commit a crime").

Here, surveillance video showed that Appellant banged on the back door and kitchen windows of Rogan's home at approximately 1:00 a.m. **See** N.T. Trial, 2/4/25, at 17; Commonwealth Trial Exhibits C-15 & C-16. Rogan also testified that he heard Appellant banging on his door and kitchen windows. **Compare** N.T. Trial, 2/4/25, at 15, **with Galindes**, 786 A.3d at 1010. Moreover, Appellant entered Rogan's backyard, in the middle of the night, wearing dark clothing with a mask to cover his face and obscure his identity and he wore gloves and possessed a firearm that he was not licensed to possess, which we discuss in greater detail below, and Appellant ultimately abandoned that incriminating evidence at the scene when he fled. **Compare** N.T. Trial, 2/4/25, at 15, 50-51 **with Galindes**, 786 A.3d at 1010. Prior to fleeing, Appellant hid in the backyard, and upon the arrival of the police

officers, he engaged in a shootout with Officer Green. **Compare** N.T. Trial, 2/4/25, at 32, 50 **with Galindes**, 786 A.3d at 1010.

Accordingly, viewing the evidence in the light most favorable to the Commonwealth, the totality of the circumstances permitted the jury to reasonably infer that Appellant attempted to enter Rogan's home and intended to commit a crime inside the Terrace Avenue residence. Therefore, the evidence was sufficient to sustain Appellant's attempted burglary conviction. **See Bowens**, 265 A.3d at 740-41. Appellant's fifth issue is meritless.

VI. Carrying Firearm without a License

In issue six, Appellant argues that the evidence presented at trial was insufficient to sustain his conviction of carrying a firearm without a license because the Commonwealth failed to prove beyond a reasonable doubt that he carried a firearm concealed on his person. **See** Appellant's Brief at 44-45.

To convict a defendant of carrying a firearm without a license, the Commonwealth must prove that: (1) the weapon was a firearm; (2) the firearm was unlicensed; and (3) where the firearm was concealed on or about the defendant's person, it was outside his home or place of business. **See Commonwealth v. Parker**, 847 A.2d 745, 750 (Pa. Super. 2004); 18 Pa.C.S. § 6106(a)(1). Further, our Court has "consistently held that it is for the finder of fact to determine under the totality of the circumstances whether the defendant concealed a firearm on or about his person." **Commonwealth v. Montgomery**, 234 A.3d 523, 535 (Pa. 2020). Moreover, one carries a concealed firearm on or about his person when he "carries the firearm in such

a manner as to hide the firearm from ordinary observation; absolute invisibility to others is not required.” ***Id.*** at 536.

As stated above, Appellant argues that there is no evidence that he carried a firearm concealed on his person. ***See*** Appellant’s Brief at 44. He contends that no witness testified to seeing him remove a firearm from a place of concealment or observed a firearm concealed on his person. ***See id.*** at 44-45. Appellant further asserts that the firearm was recovered in the backyard of Terrace Avenue rather than on his person or at Wadas Avenue, where he was apprehended. ***See id.*** at 45. Because the record allegedly contains no direct or circumstantial evidence that the firearm was concealed, Appellant maintains that the evidence was insufficient to support his conviction for carrying a firearm without a license. ***See id.*** We disagree.

Here, Rogan testified that Appellant repeatedly banged on the back door and windows of his residence while surveillance footage captured his movements. ***See*** N.T. Trial, 2/4/25, at 15. While Rogan did not see Appellant with a firearm, Appellant fired multiple shots at Officer Green using a firearm that was later determined to have Appellant’s DNA on it. ***See id.*** at 50; N.T. Trial, 2/5/25, at 136. The jury viewed the surveillance footage and body camera footage from Officer Green and was able to make its own determination regarding whether the firearm was concealed on or about Appellant’s person. ***See*** Commonwealth Trial Exhibits C-15, C-16, & C-32; ***Montgomery***, 234 A.3d at 535. From this evidence, the jury could reasonably infer that Appellant possessed the firearm while attempting to enter the

residence and that it had been concealed from ordinary observation until he removed it before he began firing the gun at Officer Green. **See *Montgomery***, 234 A.3d at 536. Upon review of the record and in the light most favorable to the Commonwealth, we find the evidence was sufficient to support the jury's finding that Appellant carried a concealed firearm without a license. **See *Bowens***, 265 A.3d at 740-41. Accordingly, we find Appellant's sixth issue meritless.

VII. Discretionary Aspects of Sentence

Finally, Appellant's seventh issue challenges the discretionary aspects of his sentence. **See** Appellant's Brief at 45-49. "The right to appellate review of the discretionary aspects of a sentence is not absolute, and must be considered a petition for permission to appeal." ***Commonwealth v. Buterbaugh***, 91 A.3d 1247, 1265 (Pa. Super. 2015) (*en banc*). Since Appellant 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, 42 Pa.C.S.[] § 9781(b).

Commonwealth v. Harper, 273 A.3d 1089, 1096 (Pa. Super. 2022) (citing ***Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010) (citation and brackets omitted)). "Only if the appeal satisfies these requirements may

we proceed to decide the substantive merits of Appellant's claim." ***Commonwealth v. Luketic***, 162 A.3d 1149, 1159-60 (Pa. Super. 2017).

Instantly, Appellant has met the first three requirements. ***See Harper***, 273 A.3d at 1096. He filed a timely appeal to this Court, preserved this issue for our review in his motion for reconsideration of sentence, and included a Rule 2119(f) statement in his brief. ***See*** Notice of Appeal, 6/11/25; Motion for Reconsideration, 5/8/25, at ¶ 5-9; Appellant's Brief at 10-11. We now turn to whether Appellant has raised a substantial question.

"The determination of whether a particular case raises a substantial question is to be evaluated on a case-by-case basis." ***Commonwealth v. Antidormi***, 84 A.3d 736, 759 (Pa. Super. 2014). This Court will not look beyond the statement of questions involved and the prefatory Rule 2119(f) statement to determine whether a substantial question exists. ***See Commonwealth v. Reid***, 323 A.3d 26, 30 (Pa. Super. 2024) (citation omitted). "A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Commonwealth v. Lawrence***, 313 A.3d 265, 285 (Pa. Super. 2024) (citation omitted).

Appellant states he has presented a substantial question because "the court imposed an excessive sentence and failed to comply [with 42 Pa.C.S. § 9721(b)] by not stating factors beyond those already contemplated by the guidelines to support the imposition of aggravated range sentences raises a

substantial question.” Appellant’s Brief at 27-28 (citing ***Commonwealth v. Coulverson***, 34 A.3d 135 (Pa. Super. 2011)). This Court has held that sentencing outside the aggravated range recommended by the Sentencing Guidelines without sufficient justification from the sentencing court and sentencing within the aggravated range in the absence of a statement reasons for an aggravated range sentence raises a substantial question. ***See, e.g., Commonwealth v. McLaine***, 150 A.3d 70, 76 (Pa. Super. 2016); ***Commonwealth v. Griffin***, 804 A.2d 1, 8 (Pa. Super. 2002). Moreover, we have found that a substantial question is raised when “the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level in the light of the criminal conduct at issue in the case.” ***Commonwealth v. Austin***, 66 A.3d 798, 808-09 (Pa. Super. 2013) (citation omitted). Therefore, Appellant has presented a substantial question, and we will address the merits of the issue.

Our standard of review challenging discretionary aspects of sentencing is well-settled:

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. Shugars, 895 A.2d 1270, 1275 (Pa. Super. 2006) (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) (quoting ***Commonwealth v. Ward***, 568 A.2d 1242, 1243 (Pa. 1990)). When we conduct the merits analysis of a challenge to the discretionary aspects of a sentence, we are guided by the statutory requirements of 42 Pa.C.S. § 9781(c)-(d). ***See Commonwealth v. Zeigler***, 112 A.3d 656, 661 (Pa. Super. 2015). Subsection 9781(c) provides:

The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:

- (1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
- (2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
- (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.

In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.

42 Pa.C.S. § 9781(c).

Here, Subsections 9781(c)(2)-(3) apply, as the trial court sentenced Appellant at the top of the aggravated range for attempted murder and outside of the Sentencing Guidelines’ recommended aggravated range for attempted burglary and firearms to be carried without a license, and he contends that both departures from the recommended standard guideline

ranges were clearly unreasonable. **See** 42 Pa.C.S. § 9781(c)(2)-(3). 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).

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). 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. § 9721(b). Further, the sentencing court is required to consider the circumstances of the offense and the character of the defendant, paying particular attention to the defendant’s prior criminal record, age, personal characteristics, and potential for rehabilitation. **See Commonwealth v. Torres**, 303 A.3d 1058, 1065 (Pa. Super. 2023) (citation omitted).

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); **Commonwealth v. Mitchell**, 883 A.2d

1096, 1107 (Pa. Super. 2005). “The requirement that the court provide a contemporaneous written statement is satisfied when the judge states his reasons for the sentence on the record and in the defendant’s presence.” ***Commonwealth v. Durazo***, 210 A.3d 316, 321 (Pa. Super. 2019) (quotation marks and citation omitted).

Appellant specifically avers that the trial court did not comply with 42 Pa.C.S. § 9721(b) because it failed to “state reasons other than those already considered in the calculation of the Guidelines when sentencing [Appellant] outside of the aggravated range through imposition of statutory maximum consecutive sentences.” Appellant’s Brief at 48-49. He contends the trial court only stated that the sentences were aggravated due to the “depravity of the crime” and “the fact that [Officer Green] was on-duty.” ***Id.*** at 49. Therefore, since the trial court imposed statutory maximum consecutive sentences and failed to state reasonable grounds for deviation, Appellant argues that his sentence should be vacated. ***See id.*** We disagree.

At the sentencing hearing, the trial court cited the Commonwealth’s recommendation, the nature and seriousness of the offense, as well as Appellant’s age and family circumstances in accordance with Section 9721(b). ***See*** N.T. Sentencing Hearing, 4/28/25, at 22; 18 Pa.C.S. § 9721(b). Moreover, the record demonstrates that the trial court considered letters of support offered by Appellant, sentencing memoranda filed by both parties, the victim impact statement of Officer Green, and the recommendations of the

Sentencing Guidelines. **See** N.T. Sentencing Hearing, 4/28/25, at 17-19, 22; **Torres**, 303 A.3d at 1065. Further, the trial court explained at the hearing:

I have chosen to go into the...aggravated range, due to the depravity of the crime and the fact that the police officer was doing his job responding to a citizen's request for help as that he felt a person was – well, he knew a person was determined to break into his home.

We must protect those that would – are willing to respond to that, their request for help. The permanent injury suffered by the police officer, both physical and emotional. The evil act, the lying in wait, the lying in wait to kill the victim.

Each crime is separate and distinct. You showed a complete indifference to the value of human life, and you really have shown no remorse whatsoever. So[,] for those reasons, I have gone into the aggravating range, which would bring a sentence of 43.5 years as a minimum to a maximum of 87 years.

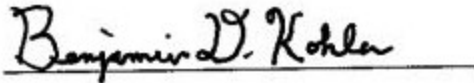
N.T. Sentencing Hearing, 4/28/25, at 22-23.

We find that the record shows that there is nothing unreasonable about Appellant's aggravated sentences or the combined scheme of consecutive imprisonment terms because the trial court put on the record its reasoning and the stated reasons reflected aspects not already factored into the recommendations of the Sentencing Guidelines, including a lack of remorse on Appellant's part and the indifference shown by his depraved act of lying in wait for Officer Green to move out without cover before Appellant first fired a shot at the officer. **See Durazo**, 210 A.3d at 321; **Walls**, 926 A.2d at 964; **see also Commonwealth v. Bullock**, 170 A.3d 1109, 1127 (stating lack of remorse is a persuasive factor for aggravating sentence). Although Appellant contends that the trial court gave undue weight to Appellant's aggravating

factors, we will not re-weigh the trial court's consideration of the relevant sentencing factors on appeal. **Commonwealth v. Kurtz**, 294 A.3d 509, 536 (Pa. Super. 2023) (citations omitted). Therefore, we find no abuse of discretion by the trial court. **See Shugars**, 895 A.2d at 1275.¹⁴ Accordingly, Appellant is not entitled to relief on his seventh issue.

Judgment of sentence affirmed.

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: 9/23/2026

¹⁴ Further, the trial court's acknowledgment of the existence of the PSI permits us to presume the court was aware of and properly weighed the statutory sentencing factors. **See** N.T. Trial, 2/7/25, at 9; **Commonwealth v. Bonner**, 135 A.3d 592, 605 (Pa. Super. 2016) ("Where a [PSI] exist[s], we presume that the [trial court] was aware of relevant information regarding the defendant's character and weighed these considerations along with mitigating statutory factors.")