IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0007766-2022
VS.	:	
IKEE JOHNSON	:	2801 EDA 2024

OPINION

WOELPPER, DONNA, J.

Ikee Johnson ("Defendant") has appealed the Court's judgment of conviction and sentence. The Court submits the following Opinion in accordance with the requirements of Pa.R.A.P. 1925, and for the reasons set forth herein, recommends that its judgment be affirmed in part, and vacated and remanded in part.

I. PROCEDURAL AND FACTUAL HISTORY

On November 20, 2023, Defendant litigated a motion to suppress physical evidence, contending that police illegally stopped and searched him in violation of the United States and Pennsylvania Constitutions.[1] At the hearing, the Commonwealth presented the testimony of Philadelphia Police Officer Rasheen Knox. Officer Knox testified that on October 12, 2023, he and his partner, Officer Ramuno, were patrolling the 25th Police District[2] in Philadelphia; the

[1] More specifically, Defendant contended that police searched his shoulder bag and seized a firearm from it without a warrant, consent, reasonable suspicion or probable cause. (See N.T. 11/08/23 at 5).

[2] Officer Knox had been assigned to the 25th District for the duration of his seven-year career as a police officer. He described the 25th District as "violent," having "a lot of homicides, gun violence…shootings, robberies, a lot of open air narcotics sales on multiple corners, it's just a very busy district." (See N.T. 11/08/23 at 6-8).

officers were in full police uniform and patrolling in a marked vehicle.[3] At approximately 4:18 p.m., they were patrolling in the vicinity of Ella and Ontario Streets, an extraordinarily high-crime intersection replete with gun violence.[4] At said time and location, the officers observed Defendant and several other males standing on the corner; Defendant was carrying a baby in a baby carrier strapped to his chest and a bag over his shoulder. Officer Knox exited his vehicle and engaged the males, as he regularly did,[5] by asking, "[W]hat's going on, guys, any guns or anything out here" to which multiple males said "no." Officer Knox asked if he could check, and some of the males lifted their shirts to display their waistbands. (N.T. 11/08/23 at 6-12, 15-16).

Officer Knox testified that, at that point, one of the males who was carrying a bag (not Defendant), approached and handed him the bag, stating, "[H]ey, you can check." Accordingly, Officer Knox looked in the bag and saw no contraband. As he was talking with this male, Defendant approached from the side and volunteered his own bag for inspection; Defendant held it out to Officer Knox and said, "[I]t's just weed in the bag." Officer Knox said, "[O]kay," and as soon as Defendant handed him the bag, he immediately felt a firearm:

> [H]e was still holding onto the bag so I actually grabbed the bag and his hand at the same time and I could easily feel his hand was like trembling, shaking … [and] I could actually feel like a gun in

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[3] Officer Ramuno was operating the vehicle. (See N.T. 11/08/23 at 25).

[4] Officer Knox described the particular area of Ella and Ontario Streets as one of the "major problem areas" in the district, with frequent shootings and homicides, and many people selling narcotics out in the open. Additionally, Officer Knox noted that of the 100-plus gun arrests he had made in the 25th District, 50 of them occurred directly at or adjacent to the intersection of Ella and Ontario Streets. (See N.T. 11/08/23 at 9).

[5] Officer Knox testified, "I usually engage with most of the corners when I'm on patrol, engage with a lot of guys, get familiar with their faces or whatever the case may be, just make conversation with them, you know, just sometimes I just say hi." (N.T. 11/08/23 at 11-12).

> there, and when I say feel a gun, I mean when I grabbed the bag I could easily feel the trigger well on the firearm.

(N.T. 11/08/23 at 12-13).

Officer Knox testified that, given the presence of a baby on Defendant's person, he discreetly signaled to his partner to let him know that Defendant had a firearm.[6] Office Knox and his partner then gently removed the baby from the carrier and detained Defendant; during that detention, they determined that Defendant did not have a license to carry a firearm. Officer Knox then inventoried Defendant's bag, which contained a loaded, nine-millimeter handgun, 27 containers of cocaine, 15 containers of crack cocaine, 2 containers of marijuana, and $150 in U.S. currency. Each of the above items was secured via property receipt, and Defendant was taken into custody. (See N.T. 11/08/23 at 14-15, 21-22).

The Commonwealth also played footage from Officer Knox's body-worn camera, which depicted the above events on video. More specifically, among other things, the video depicted: Defendant approaching Officer Knox and volunteering his bag for inspection; Officer Knox feeling the bag and immediately signaling to his partner that Defendant had a firearm; and the officers removing the baby before detaining Defendant. (See N.T. 11/08/23 at 19-23; Exhibit C-5).

Following argument by the parties, the Court held the matter under advisement. On December 20, 2023, the Court issued its ruling on the record denying Defendant's motion. (See N.T. 12/20/23 at 3-6). On February 20, 2024, Defendant proceeded to a stipulated bench trial before the Court, which found him guilty of persons not to possess firearms[7] ("§ 6105"), carrying

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[6] Officer Knox explained that he was "try[ing] to avoid a violent altercation because of the baby in there." (See N.T. 11/08/23 at 14, 21-22).

[7] 18 Pa.C.S. § 6105.

firearms without a license[8] ("§ 6106"), and carrying firearms on public streets in Philadelphia[9] ("§ 6108").

Sentencing was deferred pending a presentence investigation ("PSI"). On August 20, 2024, upon consideration of the PSI report and all relevant facts and circumstances of this case, the Court sentenced Defendant to 11½ to 23 months', immediate parole to house arrest for his conviction under § 6106, and to concurrent terms of 6 and 5 years' probation for his convictions under § 6105 and § 6108, respectively.

On August 29, 2024, Defendant filed a post-sentence motion seeking a ruling on his May 1, 2024 "Motion for Judgment of Acquittal on Charge Under Section 6105."[10] On September 25, 2024, the Court entered an order denying Defendant's motion.

On October 10, 2024, Defendant filed a notice of appeal to the Superior Court. On the same date, the Court ordered Defendant to file a Pa.R.A.P. 1925(b) statement of matters complained of on appeal. Following an extension of time granted by the Court, Defendant timely filed his Rule 1925(b) statement on December 18, 2024.

II. ISSUES ON APPEAL

Defendant asserts the following claims in his Rule 1925(b) Statement:

> a. the trial court erred in denying suppression of a firearm, and any/and all other evidence sought to be introduced by the Commonwealth recovered from [Defendant] subsequent to his illegal stop, search and arrest, as they were the fruit of a stop and frisk unsupported by reasonable suspicion and an arrest without probable cause in violation of Article I, Section 8 of

[8] 18 Pa.C.S. § 6106.

[9] 18 Pa.C.S. § 6108.

[10] In his Motion for Judgment of Acquittal, Defendant contended that his conviction under § 6105 was in violation of the 2nd and 14th Amendments to the U.S. Constitution, pursuant to New York State Rifle and Pistol Association v. Bruen, 597 U.S. 1 (2022).

the Pennsylvania State Constitution, and the Fourth and Fourteenth Amendment[s] of the United States Constitution.

b. the trial court erred in convicting [Defendant] of 18 Pa. C.S. Section 6105; the trial court erred in:

1. denying [Defendant]'s Motion for Judgment of Acquittal On Charge Under [Section] 6105 via [Defendant]'s Post Sentence Motion, because that statute, facially and as applied, violates the Second and Fourteenth Amendment[s] to the U.S. Constitution; and

2. denying [Defendant]'s Post Sentence Motion For a Ruling on Section 6105 Motion, as Section 6105, facially and as applied, violates the Second and Fourteenth Amendment[s] to the U.S. Constitution.

(Defendant's Rule 1925(b) Statement, ¶ 4).

III. DISCUSSION

1. Motion to Suppress

Defendant claims that police illegally stopped and searched him in violation of the United States and Pennsylvania Constitutions. The record refutes this claim.

When evaluating the denial of a suppression motion, the reviewing court must consider all of the prosecution's evidence, as well as any evidence for the defense which, when fairly read in the context of the record as a whole, remains uncontradicted. In the Interest of D.M., 727 A.2d 556, 557 (Pa. 1999); Commonwealth v. Lagana, 537 A.2d 1351, 1353 (1988). The record must be viewed in the light most favorable to the prevailing party. Commonwealth v. Rickabaugh, 706 A.2d 826, 833 (Pa. Super. 1997). Where the suppression court's factual findings are supported by the record, a reviewing court may reverse only if the suppression court's legal conclusions are erroneous and there is no other legitimate basis for admitting the challenged evidence. Commonwealth v. Laatsch, 661 A.2d 1365, 1367 (Pa. 1995) (citing

Commonwealth v. O'Shea, 567 A.2d 1023, 1028 (Pa. 1989)). A reviewing court also must view "the Commonwealth's evidence, not as a layperson, but through the eyes of a trained police officer." Commonwealth v. Dutrieville, 932 A.2d 240, 242 (Pa. Super. 2007).

"The Fourth Amendment of the U.S. Constitution and Article I, Section 8 of [Pennsylvania's] state constitution protect citizens from unreasonable searches and seizures." Commonwealth v. McAdoo, 46 A.3d 781, 784 (Pa. Super. 2012). Pennsylvania courts have consistently identified varying categories of police interaction:

> To secure the right of citizens to be free from unreasonable search and seizure, courts in Pennsylvania require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens to the extent those interactions compromise individual liberty. For this purpose, courts in Pennsylvania have defined three types of police interaction: a mere encounter, an investigative detention, and a custodial detention. A mere encounter is characterized by limited police presence, and police conduct and questions that are not suggestive of coercion. Such encounters do not obligate the citizen to stop or respond and, consequently, need not be supported by any level of suspicion. Thus, the hallmark of a mere encounter is that the subject is free to decline to interact with the police or to answer questions, and is also free to leave at any time.
>
> If, however, a police presence becomes too intrusive, the interaction must be deemed an investigative detention or seizure. An investigative detention, by implication, carries an official compulsion to stop and respond. Since this interaction has elements of official compulsion it must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such suspicion. Finally, an arrest or custodial detention must be supported by probable cause to believe the person is engaged in criminal activity.

Commonwealth v. Hampton, 204 A.3d 452, 456-457 (Pa. Super. 2019) (citations omitted).[11]

[11] "In evaluating the level of interaction, courts conduct an objective examination of the totality of the surrounding circumstances." Commonwealth v. Lyles, 97 A.3d 298, 302 (Pa. 2014).

Applying the foregoing principles, Defendant's motion was properly denied. Officer Knox and his partner were on routine patrol when they approached the intersection of Ella and Ontario Streets -- an extremely violent intersection where Officer Knox personally had made 50 gun arrests. Upon exiting their vehicle, the officers engaged the males on the corner as they commonly did, asking if anyone had guns. After some of the males lifted their shirts to display a lack of weapons, one of the males approached Officer Knox and volunteered his bag for inspection. As Officer Knox was engaged with that male, Defendant, who was carrying a shoulder bag and a baby in a carrier, also approached the officer and volunteered his bag, claiming only to have weed inside. When Officer Knox accepted the bag from Defendant, he immediately felt the distinct shape of the trigger well of a firearm, along with Defendant's hand trembling and shaking. Officer Knox and his partner then gently removed the baby for safety and detained Defendant; upon determining that Defendant did not have a gun permit, they confiscated the loaded firearm, as well as various quantities of drugs and cash from the bag, and placed Defendant under arrest.

The actions of the police in this case were entirely lawful and did not exceed a mere encounter. It is well settled that police may approach an individual and ask if he is carrying a firearm without any level of suspicion. See Commonwealth v. Coleman, 19 A.3d 1111, 1116 (Pa. Super. 2011) (holding that officer was engaged in a mere encounter when he approached the defendant and asked him if he had a gun); Commonwealth v. Young, 162 A.3d 524, 529 (Pa. Super. 2017) (officers asking defendant what he was doing and if he had anything on his person that could harm them did not exceed a mere encounter); see also Florida v. Bostick, 501 U.S. 429, 434, (1991) (police can approach people at random, ask questions, and seek consent to search) (collecting cases).

Here, Officer Knox did not require any level of suspicion in order to approach the males and ask if anyone had guns. Moreover, nor did the officer ask to search Defendant's bag, and thus, this case does not fall under the consent-to-search line of cases.[12] Rather, Defendant voluntarily approached Officer Knox without prompting and offered his bag without being asked. As such, there was no constitutional violation in this case. Accordingly, Defendant's motion was properly denied.

2. Defendant's Conviction for Persons Not to Possess Firearms

Defendant also claims that his conviction under § 6105 must be set aside because it is in violation of the 2nd and 14th Amendments to the U.S. Constitution, pursuant New York State Rifle and Pistol Association v. Bruen, 597 U.S. 1 (2022). Upon careful review of recent Pennsylvania case law interpreting Bruen and its progeny, the Court is constrained to agree.

In Bruen, and as further clarified in United States v. Rahimi, 602 U.S. 680 (2024), the United States Supreme Court held that, in order to curtail someone's constitutional right to bear arms, the government must affirmatively prove that its restriction is part of the "historical tradition" of firearms regulation at the time of the founding (18th century), or a contemporary analog to such a tradition, i.e., it need not comprise the exact same regulatory tradition. See Rahimi, 602 U.S. 680, 692 ("The law must comport with the principles underlying the Second Amendment, but it need not be a 'dead ringer' or 'historical twin.'") (quoting Bruen, 602 U.S. at 30) (emphasis deleted in Rahimi).

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[12] See, e.g., Commonwealth v. Boswell, 721 A.2d 336, 339-340 (Pa. 1998) (police may approach individuals and request consent to search their baggage; "[i]t is only when the officer, by means of physical force, or by displaying or asserting authority, restrains the liberty of the citizen that a 'seizure' occurs.") (citing Terry v. Ohio, Terry v. Ohio, 392 U.S. 1, 20, n. 16 (1968)). Thus, even if Officer Knox had requested to search Defendant's bag -- and he did not -- his actions were not coercive and such consent would have been valid. Cf. Commonwealth v. Boswell, 721 A.2d at 340-342 (collecting cases).

Here, citing his prior disqualifying conviction of PWID, Defendant contends that there is no historical tradition for preventing non-violent felons (e.g., those convicted of PWID) from carrying a firearm for self-defense. The Commonwealth, conversely, has not filed a response to Defendant's motion, and thus has not proffered, much less demonstrated, anything to sustain its burden of proving that restricting the right to bear arms based on a prior, non-violent conviction comports with the historical tradition of firearms regulation.

Recently, the Superior Court addressed this precise issue in Commonwealth v. Anderson, No. 1370 EDA 2022, 2024 WL 5205507 (Mem. Op.)[13] (Pa. Super. filed December 24, 2024), where the Court vacated the defendant's conviction under § 6105 based on his prior conviction for PWID. More specifically, after comprehensively reviewing Bruen and Rahimi, the Anderson Court ruled as follows:

> Anderson, citing several United States Courts of Appeals decisions, including Range v. Att'y Gen. United States of America, 69 F.4th 96 (3d Cir. 2023), vacated and remanded, Garland v. Range, 144 S.Ct. 2706 (2024) (remanding to the Third Circuit for consideration in light of Rahimi), argues there is no historical tradition "supporting a per se prohibition of firearm possession for persons convicted of certain offenses." Anderson's Brief at 13. He argues that his conviction for persons not to possess is based on his prior conviction for possession of a controlled substance with intent to deliver, which has no "contemplation of whether ... the offender ... poses a threat of physical violence to another." Id. at 15. He maintains that because the statute deprives him of his right to bear arms, "[i]n order for this regulation to withstand the standards set forth in Bruen and Rahimi, the Commonwealth must demonstrate that [section] 6105[,] as applied to those convicted [of PWID], is consistent with this Nation's historical tradition of firearm regulation." Id.
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> The Commonwealth, for its part, does not address Anderson's Rahimi-based arguments. We observe that despite the Supreme Court's decision in Rahimi being issued during the

[13] See Pa.R.A.P. 126(b)(1)-(2) (effective May 1, 2019, Rule 126 permits non-precedential decisions of the Superior Court to be cited for their persuasive value).

pendency of this appeal, and notwithstanding Anderson's express reliance on that case in his argument, nor the fact that the Commonwealth petitioned for and received a sixty-day extension to respond to Anderson's brief, the Commonwealth nevertheless failed to cite Rahimi or attempt to justify, based on a constitutional text and history analysis, the statute at issue regulating arms-bearing conduct. Instead, the Commonwealth, in its two-and-a-half-page brief, principally relies on McIntyre[14] for the proposition that felons are not included in "the people" for purposes of Second Amendment analysis, and cursorily asserts a link between drug trafficking and violence.[15]

However, as noted above, McIntyre—which concerned a violent felony as the disqualifying offense, and therefore presents a stronger argument for the exclusion of felons from "the people" given the history of disarmament of violent individuals as discussed in Rahimi—is in tension with Heller,[16] insofar as Heller stated that there was a "strong presumption" that "the people" refers to the "class of persons who are part of a national community," and, accordingly, there is a strong presumption that the Second Amendment right belongs to all Americans. 554 U.S. at 579. Consistent with this conclusion, our Supreme Court has recently vacated and remanded McIntyre for reconsideration in light of Rahimi. Accordingly, McIntyre is no longer controlling legal authority.[]

Given Anderson's contention that there exists no historical analogue from which the Commonwealth can show a history or tradition of disarming those convicted of nonviolent drug offenses traceable to the time of the adoption of the Second or Fourteenth Amendments, and the Commonwealth's failure to proffer any historical evidence or even a minimal argument based on Rahimi and the constitutional text and history analysis prescribed therein, we are constrained to conclude that in this case, the Commonwealth has failed to meet its burden. See Rahimi, 602 U.S. at 691 (holding that "[w]hen the Government regulates arms-

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[14] Commonwealth v. McIntyre, 314 A.3d 828 (Pa. Super. 2024), vacated, No. 268 MAL 2024, 2024 WL 4890807 (Pa. Nov. 26, 2024).

[15] In McIntyre, the Superior Court held that felons are categorically excluded from "the people" for purposes of the right to bear arms, see id. at 843; recently, however, the Pennsylvania Supreme Court vacated said ruling and remanded for reconsideration in light of Rahimi. See Commonwealth v. McIntyre, No. 268 MAL 2024, 2024 WL 4890807 (Pa. Nov. 26, 2024).

[16] District of Columbia v. Heller, 554 U.S. 570 (2008).

> bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to justify its regulation"). Questions the Commonwealth has failed to address include the basic prerequisite of identifying an historical analogue from which to discern a tradition or principle for justifying the statute at issue here. See id. at 701. Additionally, the High Court has directed a "how and why" analysis, and, even if the "why" were established for the statute at issue, that is, even if it were shown that "laws at the founding regulated firearm use to address particular problems," see id. at 692, the Commonwealth has not addressed the "how," that is, the manner of the regulation, in this case, disarmament subject to certain statutory exemptions, is not "to an extent beyond what was done at the founding." See id.; see also 18 Pa.C.S.A. § 6105(d).
>
> For the foregoing reasons, this Court is constrained to vacate Anderson's convictions for persons not to possess. However, we affirm the remaining convictions. Because our review of the sentences shows that the trial court imposed a combination of concurrent and consecutive sentences for Anderson's several convictions, we remand for resentencing consistent with this memorandum. See Commonwealth v. Lowe, 303 A.3d 810, 816 (Pa. Super. 2023) (holding that when a disposition by an appellate court alters the sentencing scheme, the entire sentence should be vacated, and the matter remanded for resentencing).
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> Judgment of sentence affirmed in part, vacated in part. Case remanded for resentencing consistent with this memorandum. Jurisdiction relinquished.

Commonwealth v. Anderson, 2024 WL 5205507 at *6-*7 (internal footnote omitted).

Instantly, given that the predicate, disqualifying offense at bar (PWID) is the same non-violent, disqualifying offense as in Anderson -- and further considering that, as in Anderson, the Commonwealth has failed to sustain its burden of proving that restricting the right to bear arms based on a prior, non-violent conviction comports with the historical tradition of firearms regulation -- the Court is constrained to recommend that Defendant's conviction under § 6105 be vacated. Additionally, because such a disposition would alter the Court's sentencing scheme (by

reducing Defendant's term of probation from six years to five years), the Court submits that the matter should be remanded for resentencing. See Commonwealth v. Farone, 808 A.2d 580, 581, 583 (Pa. Super. 2002) (disposition that reduces the defendant's probationary term alters the sentencing scheme, requiring remand for resentencing).

IV. CONCLUSION

Based on the reasons set forth in the foregoing Opinion, Defendant's Motion to Suppress was properly denied, Defendant's convictions under §§ 6106 and 6108 should be affirmed, and his conviction under § 6105 should be vacated with the matter remanded for resentencing.

BY THE COURT:

DATE: 1/13/25

DONNA WOELPPER, J.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0007766-2022
vs.	:	
IKEE JOHNSON	:	

PROOF OF SERVICE

I hereby certify that I am this 13th day of January, 2025, serving the foregoing Opinion on the persons indicated below:

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