

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY HEMPHILL,	:	
	:	
Appellant	:	No. 479 EDA 2013

Appeal from the Judgment of Sentence January 31, 2013,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-CR-0005209-2012

BEFORE: GANTMAN, DONOHUE and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED DECEMBER 11, 2013

Anthony Hemphill ("Hemphill") appeals from the judgment of sentence entered following his convictions of carrying a firearm without a license, carrying a firearm on the public streets of Philadelphia, and resisting arrest.¹ On appeal, Hemphill challenges only his conviction of carrying a firearm without a license. After careful review, we affirm.

In June 2011, Officer Phillip Lang responded to a radio call for a police officer at 17th and Clearfield Streets in North Philadelphia. When he arrived at this location, he was approached by 17-year-old Angel Garcia. Mr. Garcia told Officer Lang that he had just been robbed at gunpoint for his motorized scooter. Mr. Garcia got into Officer Lang's patrol car and the two men drove around the area looking for the stolen scooter. After approximately ten

¹ 18 Pa.C.S.A. §§ 6106(a)(1), 6108, 5104.

minutes, Officer Lang heard the sound of an engine and observed Hemphill driving a purple motorized scooter up the street. Hemphill looked over his shoulder at Officer Lang's patrol car and then maneuvered the scooter up a driveway and between two parked cars. Officer Lang drove past Hemphill, made a U-turn and exited his vehicle. He then observed Hemphill, in between the parked cars with a gun in his left hand. Officer Lang ordered Hemphill to drop the gun. Hemphill dropped the scooter and threw the gun into a nearby garage. Officer Lang apprehended Hemphill but could not handcuff him because of a malfunction in his handcuffs. Backup officers soon arrived, and as one of them attempted to handcuff Hemphill, he broke free and knocked the officer to the ground. The officers struggled with Hemphill, ultimately tasing him multiple times before being able to subdue him and take him into custody.

At the conclusion of a bench trial, Hemphill was convicted of the offenses set forth above and received a cumulative sentence of two to four years of incarceration and two years of probation. Hemphill timely filed this appeal, in which he raises only one issue for our review:

Was not the evidence insufficient as a matter of law to sustain [Hemphill's] conviction for [carrying a firearm without a license], where there was insufficient evidence that [he] 'concealed' a firearm, as required by statute?

Appellant's Brief at 3.

“In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense.” ***Commonwealth v. Cox***, 72 A.3d 719, 721 (Pa. Super. 2013). When performing a review of the sufficiency of the evidence, this Court may not reweigh the evidence or substitute our own judgment for that of the fact finder. ***Id.***

The crime at issue is defined as follows:

§ 6106. Firearms not to be carried without a license

- (a) Offense defined.— (1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

18 Pa.C.S.A. § 6106(a)(1). Hemphill argues that the evidence was insufficient to establish that he concealed the weapon on or about his person. Appellant’s Brief at 9. We do not agree. At trial, Officer Lang testified that when he observed Hemphill before Hemphill entered the driveway, he did not see a gun in Hemphill’s hands. N.T., 12/12/12, at 39. He further testified that it was only after he drove past Hemphill in the driveway, exited his police cruiser and approached Hemphill on foot that he

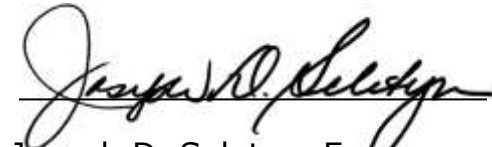
observed a handgun. **Id.** at 26-28. Furthermore, Officer Lang stated that although it was night, there was sufficient ambient light so that he had no problem seeing the gun in Hemphill's hands. **Id.** at 29. Considering this testimony in the light most favorable to the Commonwealth, as we must, we conclude that it allows the reasonable inference that Hemphill had concealed the firearm on his person when Officer Lang first observed him and had retrieved it from wherever it had been concealed by the time Officer Lang approached him on foot.

In support of his position, Hemphill contends that no such inference may be drawn because Officer Lang "did not lose sight of [him] the entire time and did not see him reach into his pockets or pull out the gun from any location on his person." Appellant's Brief at 10. This statement is unsupported by the record. Officer Lang did not testify that he never lost sight of Hemphill. Moreover, it is reasonable to infer that he lost sight of Hemphill when he drove past Hemphill before exiting his vehicle, and that Hemphill retrieved the gun during that period of time. Hemphill also points to **Commonwealth v. Williams**, 346 A.2d 308 (Pa. Super. 1976), in support of his position. In **Williams**, this Court reversed a conviction under 18 Pa.C.S.A. § 6106(a)(1) because although the defendant was observed shooting and carrying a gun openly in public, there was no evidence that he attempted to conceal the weapon on himself. **Id.** at 310. More to the point, in **Williams**, there was no testimony that anyone observed the defendant

retrieve the gun from a concealed location on his body or place the gun into a concealed location on his body. In contrast, in the present case, Officer Lang's testimony as discussed above supports a finding that Hemphill concealed the weapon on his person. Hemphill's reliance on this case is therefore unavailing.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/11/2013