

[J-54-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 75 MAP 2019
	:	
Appellee	:	Appeal from the Order of the
	:	Superior Court at No. 226 MDA
	:	2018 dated January 8, 2019,
v.	:	Reargument Denied March 13,
	:	2019. Affirming the Judgment of
	:	Sentence of the York County Court
MITCHELL GREGORY PECK, JR.,	:	of Common Pleas, Criminal Division,
	:	at No. CP-67-CR-880-2017 dated
Appellant	:	September 1, 2017
	:	
	:	ARGUED: May 27, 2020

OPINION

JUSTICE DONOHUE

DECIDED: December 22, 2020

Mitchell Gregory Peck, Jr. (“Peck”) was convicted of drug delivery resulting in death pursuant to Section 2506 of the Crimes Code, 18 Pa.C.S. § 2506 (“DDRD”), and sentenced to twenty to forty years of imprisonment. In this appeal, we consider the interplay between the territorial application of the Crimes Code, including in particular Section 102, 18 Pa.C.S. § 102, and the sufficiency of the evidence to support a conviction. Specific to this appeal, we address whether Peck’s conviction was supported by sufficient evidence where the drug delivery occurred in Maryland and the resulting death occurred in Pennsylvania. For the reasons that follow, we conclude that while the Commonwealth had subject matter jurisdiction to prosecute Peck for DDRD, it could not present evidence

to support his conviction. We therefore reverse the Superior Court's decision to the contrary and vacate Peck's judgment of sentence.

I. Factual and Procedural Background

On the evening of December 9, 2014, James Hunt returned home from work and spoke with his son Kevin before going to bed. The next morning, Mr. Hunt left for work without seeing Kevin. When he returned that evening, he noticed that the door to Kevin's room was locked. After unlocking the door, Mr. Hunt discovered Kevin's lifeless body on the floor. Emergency services were called and Pennsylvania State Trooper Thomas Grothey responded to the Hunt residence. In Kevin's bedroom, Trooper Grothey found a "rock" of heroin on the nightstand and Kevin's cell phone on the floor, near Kevin's body. On the cell phone were text messages between Kevin and Peck. These messages included an exchange indicating that the prior evening, Kevin met Peck at a High's convenience store, approximately ten miles south of Pennsylvania's border in Maryland, where Peck sold the rock of heroin to Kevin. Messages between the two men between 11:36 and 11:47 p.m. reveal that during that time Kevin ingested the heroin and thanked Peck for it.

Peck was subsequently arrested and charged with two crimes. In Count One, the Commonwealth charged Peck with delivery of a controlled substance pursuant to Section 780-113(a)(30) of the Controlled Substance, Drug, Device and Cosmetic Act ("the Drug Act"), 35 P.S. § 780-113(a)(30). In Count Two, Peck was charged with DDRD, which is defined in the Crimes Code as follows:

§ 2506. Drug delivery resulting in death

(a) Offense defined.--A person commits a felony of the first degree if the person intentionally administers, dispenses,

delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the Act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

18 Pa.C.S. § 2506(a). Sections 13(a)(14) and (30) of the Drug Act, specifically referenced in the DDRD statute, provide the following:

§ 780-113. Prohibited acts; penalties

(a) The following acts and the causing thereof **within the Commonwealth** are hereby prohibited:

(14) The administration, dispensing, delivery, gift or prescription of any controlled substance by any practitioner or professional assistant under the practitioner's direction and supervision unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.

* * *

(30) Except as authorized by this Act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this Act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

35 P.S. § 780-113(a)(14), (30) (emphasis added).

Prior to the commencement of trial, Peck sought dismissal of Count One on the basis that because Section 780-113(a)(30) requires that the drug delivery must occur “within the Commonwealth,” the trial court lacked subject matter jurisdiction over a drug delivery that the parties agreed occurred in Maryland. The Commonwealth conceded this

point and the trial court dismissed the charge. See N.T., 7/17/2017, at 5-6. At the conclusion of trial, a jury found Peck guilty of DDRD and the trial court sentenced him to a term of twenty to forty years of imprisonment. As to the conviction under Count Two, in its Rule 1925(a) opinion, the trial court rejected Peck's contention that the Commonwealth had not proven a "violation of section 13(a)(14) or (30) of the [Drug] Act," as required by the DDRD statute. The trial court ruled that because the resulting death is an element of the offense of DDRD, "the location of the delivery of the heroin did not affect Count 2." Rule 1925(a) Opinion, 3/18/2018, at 2. Moreover, the trial court held that Peck's delivery of heroin was a violation of Maryland law (MD Code, Criminal Law §5-602, 5-402, 5-101), and, had the delivery occurred in Pennsylvania, it would have also violated Pennsylvania's Drug Act. *Id.* As such, the trial court concluded that just because the drug delivery occurred in Maryland, any determination that the evidence was insufficient to find him guilty of DDRD "was absurd, and would lead to a result the Legislature did not intend." *Id.*

In his appeal to the Superior Court, Peck renewed his argument that because the drug delivery occurred in Maryland, the evidence was insufficient to support his conviction for DDRD. In so arguing, Peck distinguished this claim from one challenging the trial court's jurisdiction over the charge. *Commonwealth v. Peck*, 202 A.3d 739, 743 (Pa. Super. 2019), *reargument denied* (Mar. 13, 2019), *appeal granted in part*, 218 A.3d 374 (Pa. 2019). The Superior Court disagreed. It first pronounced that DDRD consists of "two principal elements: (i) [i]ntentionally administering, dispensing, delivering, giving, prescribing, selling or distributing any controlled substance or counterfeit controlled substance and (ii) death caused by ('resulting from') the use of that drug[.]" *Id.* at 744 (quoting *Commonwealth v. Kakhankham*, 132 A.3d 986, 991-92 (Pa. Super. 2015)). The

Superior Court then turned to Section 102 of the Crimes Code, entitled “Territorial applicability.” It focused on subsections (a)(1) and (c), which state as follows:

§ 102. Territorial applicability

(a) General rule.--Except as otherwise provided in this section, a person may be convicted under the law of this Commonwealth of an offense committed by his own conduct or the conduct of another for which he is legally accountable if either:

(1) the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth[.]

* * *

(c) Homicide.--When the offense is homicide or homicide of an unborn child, either the death of the victim, including an unborn child, or the bodily impact causing death constitutes a “result” within the meaning of paragraph (a)(1) of this section, and if the body of a homicide victim, including an unborn child, is found within this Commonwealth, it is presumed that such result occurred within this Commonwealth.

Id. (quoting 18 Pa.C.S. § 102(a)(1), (c)). The intermediate appellate court reasoned that “Section 102 clearly establishes that acts occurring outside of Pennsylvania may be subject to criminal prosecution in Pennsylvania” and that “[c]ontrary to Peck’s assertion, an analysis of Section 102 is critical to determine whether (1) the trial court properly exercised subject matter jurisdiction to convict him of an offense under Section 2506, and (2) the evidence presented was sufficient to sustain the conviction based on Decedent’s death in Pennsylvania.” *Id.* at 744-45 (internal citations omitted). The court explained that:

[h]ere, the Commonwealth presented evidence that (1) although the conduct, i.e., the delivery, occurred in Maryland, it was in violation of [the Drug Act], (2) a death resulted from the delivery, and (3) [Peck] acted recklessly when causing Decedent’s death. Therefore, even if the trial court lacked jurisdiction to convict [Peck] of the delivery under Section 102,

the Commonwealth still established the sufficiency of the evidence of a drug delivery resulting in death. Accordingly, we find no merit to [Peck's] sufficiency of the evidence challenge based solely on the fact that the predicate drug delivery occurred outside Pennsylvania.

Id. at 745 (internal citations omitted).

We granted Peck's petition seeking allowance of appeal to consider the following questions:

1. Where the [DDRD] statute explicitly applies only to deliveries occurring "in violation of section 13(a)(14) or (30) of" [the Drug Act], is violation of the Drug Act an essential element of drug delivery resulting in death?
2. Where a drug delivery occurs wholly in another state, can that delivery violate the Drug Act, which explicitly applies only to deliveries occurring "within the Commonwealth?"
3. If a violation of the Drug Act is an element of [DDRD] and an out-of-state delivery does not violate the Drug Act, did the Superior Court err in affirming [Peck's] [DDRD] conviction based on a delivery occurring wholly in Maryland?

Commonwealth v. Peck, 218 A.3d 374 (Pa. 2019). These issues require interpretation of the relevant statutes. Statutory interpretation is a question of law and therefore our standard of review is de novo and our scope of review is plenary. *Commonwealth v. Hall*, 80 A.3d 1204, 1211 (Pa. 2013).

II. The Arguments of the Parties

Peck's argument is straightforward. In his view, the Superior Court essentially ignored the opening language of Section 780-113(a) of the Drug Act, which prohibits "[t]he following acts and the causing thereof **within the Commonwealth**[" Peck's Brief at 20. Peck argues that the bolded language creates an "unmistakable geographic restriction" on the reach of the Drug Act, as the acts prohibited in Section 780-113(a) must occur

within the Commonwealth of Pennsylvania. *Id.* Because the delivery of drugs in this case occurred in Maryland, Peck argues that the delivery does not constitute a violation of Section 780-113(a) and thus does not constitute evidence in support of his conviction. *Id.* at 22-23.

In the Commonwealth's view, separating the delivery of the controlled substance from the resulting death "negates" the crime of DDRD. Commonwealth's Brief at 33. It reasons that because the death "triggers" the crime of drug delivery resulting in death, the location of the body controls who has jurisdiction to prosecute, and therefore, because Kevin Hunt's body was found in Pennsylvania, it is immaterial where the delivery occurred. *Id.* Echoing the Superior Court's decision, the Commonwealth points to Section 102 of the Crimes Code and contends that the gravamen of it "is that when at least one element of a criminal offense occurs in Pennsylvania, a defendant's out-of-state conduct can be used to satisfy an element of the offense and a defendant can be held criminally liable under Pennsylvania law." *Id.* at 34-35.¹

On this point, Peck stresses that Section 2506 requires a violation of Section 780-113(a) of the Drug Act **and** a resulting death, and there can be no violation where the drug delivery occurs in Maryland – for the plain reason that Section 780-113(a) limits its

¹ To illustrate this point, the Commonwealth discusses a case in which a defendant was convicted of stalking, which requires a course of conduct, where the acts that constituted the course of conduct occurred in Pennsylvania, Connecticut, Maine and New Hampshire. The trial court dismissed the stalking charges, ruling that acts occurring in other states could not be considered and pointed out that only one act of stalking occurred in Pennsylvania. The Superior Court reversed, holding that because Section 102 also looks to the result of proscribed conduct, the Crimes Code did not require all of the acts that constituted the course of conduct of stalking occur in Pennsylvania. Commonwealth's Brief at 34-35 (discussing *Commonwealth v. Giusto*, 810 A.2d 123, 125-27 (Pa. Super. 2002)).

applicability to events occurring “within the Commonwealth.” *Id.* at 10. Peck agrees that Section 102 of the Crimes Code provided the Commonwealth with subject matter jurisdiction to prosecute crimes related to the decedent’s death even though the delivery occurred outside of the Commonwealth, but points out that for this same reason (the delivery occurring outside of the Commonwealth), the Commonwealth cannot possibly prove that he violated Section 780-113(a). To this end, Peck suggests that the Commonwealth could have sought an involuntary manslaughter conviction (which does not require a violation of the Drug Act), but instead chose a charge that carries the territorial restriction inherent in Section 780-113(a) of the Drug Act and which, under the facts presented here, cannot be satisfied. *Id.* at 12.

III. Analysis

Peck presents a challenge to the sufficiency of the evidence to support his conviction of DDRD. When reviewing a claim challenging the sufficiency of the evidence to support a conviction, an appellate court must determine whether the evidence admitted at trial, as well as all reasonable inferences derived therefrom, viewed in favor of the Commonwealth, supports the jury's finding of all of the elements of the offense beyond a reasonable doubt. *Commonwealth v. Le*, 208 A.3d 960, 969 (Pa. 2019).

The first issue presents a question of statutory interpretation, as it asks whether a violation of Section 780-113(a)(14) or (30) of the Drug Act is an element of the crime of DDRD. The object of statutory interpretation is to ascertain and give effect to the intent of our General Assembly. 1 Pa.C.S. § 1921(a). The best expression of this intent is found in the plain language of a statute. *Cagey v. Commonwealth*, 179 A.3d 458, 462 (Pa. 2018). We may not disregard the plain language of a statute under the guise of an attempt

to give effect to its spirit. 1 Pa.C.S. § 1921(b); *Commonwealth v. Walls*, 926 A.2d 957, 962 (Pa. 2007). Only when the language of a statute is ambiguous may courts consider statutory factors to discern legislative intent. 1 Pa.C.S. § 1921(c); *Commonwealth v. McCoy*, 962 A.2d 1160, 1166 (Pa. 2009).

In its brief filed with this Court, the Commonwealth agrees that a “violation of [the Drug Act] is a necessary element for a conviction of DDRD.” Commonwealth’s Brief at 15. The Commonwealth then notes, however, that the “next question is, having proved a violation of 35 P.S. § 780–113(a)(14) or (30), must the Commonwealth also secure a conviction based on the violation in order to meet its burden in proving DDRD.” Commonwealth’s Brief at 20. The Commonwealth posits that the answer to this question is no, citing in support the Superior Court’s decision in *Commonwealth v. Gerald*, 47 A.3d 858 (Pa. Super. 2012). In that case, the defendant challenged his conviction for possession of a controlled substance (contraband) by an inmate, which criminalizes the possession of any amount of a controlled substance “in violation of section 13(a)(16)” of the Drug Act. *Id.* at 859 (citing 18 Pa.C.S. § 5123(a.2)). While an inmate at a correctional facility, Gerald was discovered to be in possession of 1.4 grams of marijuana. *Id.* At trial, Gerald argued successfully that in another case, *Commonwealth v. Gordon*, 897 A.2d 504 (Pa. Super. 2006), the court ruled that where an individual possesses an amount of marijuana equal to or less than the amounts described under Section 780–113(a)(31) (30 grams of marijuana), he can only be convicted of the lesser offense of possession of a small amount of marijuana (Section 31), and not the greater offense of possession of a controlled substance (Section 16). *Id.* at 509. As a result, Gerald claimed that he could only be convicted of the lesser Section 31 crime, but that crime was not a predicate

offense for 18 Pa.C.S. § 5123(a.2). *Gerald*, 47 A.3d at 861. On appeal, the Superior Court disagreed, holding that the possession of any amount of marijuana constitutes a violation of Section 780-113(a)(16), even if, per *Gordon*, the inmate cannot be ‘convicted’ of that crime.” *Id.* at 862.

In our view, the Superior Court’s decision in *Gerald* has no application in the present context. As an inmate, Gerald’s conduct in possessing a controlled substance was, in fact, a violation of Section 780-113(a)(16) even if there was no possibility of a conviction for that crime. In the present case, by contrast, the Commonwealth has not produced evidence to demonstrate that Peck has violated Section 780-113(a)(16) or (30), as it is undisputed that the drug delivery did not occur “within the Commonwealth,” as required by these statutes.

The Superior Court essentially declined to answer the question as to whether a violation of the Drug Act is a necessary element for a conviction of DDRD. Instead it quoted from its prior decision in *Commonwealth v. Kakhankham*, 132 A.3d 986 (Pa. Super. 2015), which listed the “principal elements” of DDRD as “(i) [i]ntentionally administering, dispensing, delivering, giving, prescribing, selling or distributing any controlled substance or counterfeit controlled substance and (ii) death caused by (‘resulting from’) the use of that drug.” *Peck*, 202 A.3d at 744 (quoting *Kakhankham*, 132 A.3d at 991-92). The Superior Court did not acknowledge that in *Kakhankham*, it included a footnote referencing Section 15-2506 (DDRD) of the Pennsylvania Suggested Standard Criminal Jury Instructions, which includes a violation of Section 780-113(a)(14) or (30) of the Drug Act as an element of the crime of DDRD:

The defendant has been charged with delivering drugs that resulted in the death of a person. To find the defendant guilty of this offense, you must

find that the following elements have been proven beyond a reasonable doubt:

First, that the defendant administered, dispensed, delivered, gave, prescribed, sold, or distributed a controlled substance or a counterfeit controlled substance to a person.

Second, that the defendant did so intentionally, that is, that it was [his] [her] conscious object to administer, dispense, deliver, give, prescribe, sell, or distribute a controlled substance or a counterfeit controlled substance to a person.

Third, that the administration, dispense, delivery, prescription, sale, or distribution was in violation of the Controlled Substance, Drug, Device and Cosmetic Drug Act.

Fourth, that a person has died as a result of using the substance.

Kakhankham, 132 A.3d at 992 n.5 (referencing Pennsylvania Suggested Standard Criminal Jury Instructions, § 15-2506 (emphasis added)).

In deciding the first issue on appeal, we first reiterate the text of Section 2506:

§ 2506. Drug delivery resulting in death

(a) Offense defined.--A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance **in violation of section 13(a)(14) or (30) of the Drug Act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Drug Act**, and another person dies as a result of using the substance.

18 Pa.C.S. § 2506(a) (emphasis added).

We find the bolded language to be clear and unambiguous. When the defendant “intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance,” he/she must do so in a in a manner that violates Section 780-113(a)(14) or (30) of the Drug Act. Accordingly, a

violation of one of the specifically referenced provisions of the Drug Act is an element of the crime of DDRD.

Peck's second issue asks us to determine whether there can be a violation of Section 780-113(a)(14) or (30) of the Drug Act when the conduct prohibited, i.e., the drug delivery, occurs outside of Pennsylvania. Peck contends that the Drug Act may be violated only when the drug delivery occurred "within the Commonwealth." Peck's Brief at 19-20. The Superior Court found to the contrary, ruling that it found "no merit to [Peck's] sufficiency of the evidence challenge based solely on the fact that the predicate drug delivery occurred outside Pennsylvania." *Peck*, 202 A.3d at 745. The Commonwealth likewise insists that "[t]he offensive conduct is simply the 'actual, constructive or attempted transfer from one person to another' of the prohibited substance."² Commonwealth's Brief at 26 (citing *Commonwealth v. Murphy*, 844 A.2d 1228, 1233-34

² The Commonwealth cites to *Commonwealth v. Dennis*, 618 A.2d 972 (Pa. Super. 1992), in support of its contention that drug deliveries may violate Section 780-113(a) of the Drug Act even if the perpetrator was not in Pennsylvania. In *Dennis*, the defendant was one of several individuals involved in a drug distribution scheme that included deliveries to, or through, the Poconos Mountains region and/or Clearfield County in Pennsylvania. *Id.* at 973-74. The defendant was charged with criminal conspiracy and four counts of delivery of a controlled substance. *Id.* at 973. The Superior Court rejected his argument that the Commonwealth could not pursue the delivery charges because he was never in Pennsylvania and thus did not deliver drugs in Pennsylvania. *Id.* The intermediate appellate court held that his actions were "committed in furtherance of a conspiracy to distribute methamphetamine in Pennsylvania" and that the jury was "clearly satisfied that he was involved in all aspects of the drug operation." *Id.* at 977.

Dennis is easily distinguishable from the present case. The defendant there was part of a conspiracy to distribute drugs in and through Pennsylvania and was held accountable as a part of that conspiracy for the actions of other members of the conspiracy. Moreover, the conspiracy unquestionably involved the delivery of drugs "within the Commonwealth."

(Pa. 2004) (quoting *Commonwealth v. Metzger*, 372 A.2d 20, 22 (Pa. Super. 1977)).³ According to the Commonwealth, acts done “outside the jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm.” *Id.* at 33.

Section 780-113(a) states, clearly and unambiguously, that it criminalizes conduct that occurs “within the Commonwealth[.]” 35 P.S. § 780-113(a). The inclusion of this territorial limitation reveals a decision by our General Assembly that this statute applies only to conduct occurring within the geographic bounds of Pennsylvania, and thus it may be violated only by acts occurring within the Commonwealth. As such, Section 780-113(a) criminalizes a drug delivery only if it occurs “within the Commonwealth.” We must presume that the General Assembly purposefully imposed this curtailment, and we must give it effect. *Commonwealth v. Mlinarich*, 542 A.2d 1335, 1339 (Pa. 1988) (“We may not assume that the legislature intended any of its statutory language to be mere surplusage.”); *Commonwealth v. Mack Bros. Motor Car Co.*, 59 A.2d 923, 925 (Pa. 1948) (“The legislature cannot ... be deemed to intend that language used in a statute shall be superfluous and without import.”).

The contrary position of the Superior Court and the Commonwealth is based on a misapprehension of Section 102 of the Crimes Code and its interplay with Section 780-113(a) of the Drug Act. As set forth above, Sections 102(a)(1) and (c) provide:

§ 102. Territorial applicability

(a) General rule.--Except as otherwise provided in this section, a person may be convicted under the law of this

³ In both *Murphy* and *Metzger*, the drug deliveries unquestionably occurred in Pennsylvania and thus compliance with the “within the Commonwealth” requirement in Section 780-113(a) was not in question.

Commonwealth of an offense committed by his own conduct or the conduct of another for which he is legally accountable if either:

(1) the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth[.]

* * *

(c) Homicide.--When the offense is homicide or homicide of an unborn child, either the death of the victim, including an unborn child, or the bodily impact causing death constitutes a “result” within the meaning of paragraph (a)(1) of this section, and if the body of a homicide victim, including an unborn child, is found within this Commonwealth, it is presumed that such result occurred within this Commonwealth.

18 Pa.C.S. § 102(a)(1), (c). Peck has never denied that these provisions, which speak to the territorial applicability of the Crimes Code, provided the Commonwealth with jurisdiction to prosecute him for DDRD, as the victim’s death in Pennsylvania resulting from the drug delivery constituted an element of the DDRD crime.

The Superior Court and the Commonwealth understand the scope of Section 102 to extend beyond establishing jurisdiction to prosecute. According to the Commonwealth, where at least one element of a criminal offense occurs in Pennsylvania, “a defendant’s out-of-state conduct can be used to satisfy an element of the offense.” Commonwealth’s Brief at 35. As such, the Commonwealth argues that “Defendant’s out-of-state drug delivery satisfies the violation of 35 P.S. § 780-113(a)(30) where the result of that delivery is the death of Kevin Hunt ... [and thus] Defendant’s out-of-state violation sufficiently establishes the first element of DDRD [a drug delivery in violation of the Drug Act].” *Id.* at 35-36. For these same reasons, the Superior Court concluded that the Commonwealth had no obligation to prove that Peck’s drug delivery occurred in Pennsylvania. *Peck*, 202

A.3d at 744. Both the Commonwealth and the Superior Court perceive a conflict between Section 102's territorial applicability provision (here, where the body was found) and Section 780-113(a)'s territorial limitation (the drug delivery must occur within the Commonwealth). They resolve this conflict by concluding that because the DDRD statute (18 Pa.C.S. § 2506) is located in Title 18 rather than Title 35, where the Drug Act is housed, Section 102's territorial provision must control in a DDRD case. Commonwealth's Brief at 36-37.

We discern no conflict between the two provisions. Both apply with equal force in this circumstance. Section 102 is limited to conferring jurisdiction to prosecute crimes that occur in part outside of Pennsylvania and has no application with respect to a sufficiency of the evidence analysis. Section 102 has its genesis in Section 1.03 of the Model Penal Code. The first codification of this Commonwealth's criminal laws occurred in 1860. See Penal Code of 1860, March 31, P.L. 382. That effort resulted in an incomplete codification of common law crimes and the various statutory crimes that had been created since the birth of this Commonwealth. See Pa. Legislative Journal - Senate 1633 (Sept. 12, 1972) (Statement of Sen. Hill). The law remained largely in that condition until 1972, when our General Assembly repealed the Penal Code and enacted the Crimes Code. The Crimes Code marked a substantial overhaul of our criminal laws, which was effectuated to "streamlin[e] the criminal law" and approach "the whole subject from a modern point of view, discarding the obsolete and introducing new approaches to meet present-day conditions." General Assembly for the Commonwealth of Pennsylvania, Joint State Government Commission, Proposed Crimes Code for Pennsylvania, vii-viii (1967). The Crimes Code was based substantially on the Model Penal Code, which was

published by the American Law Institute in the mid-1960s in an effort to standardize and modernize American criminal law. See generally Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 New Crim. L. Rev. 319, 319-22 (2007).

The Model Penal Code's view toward modernization included transforming the concept of jurisdiction in criminal cases. In civil cases, questions of a court's jurisdiction and choice of law are independent considerations; historically, however, in criminal matters, these concepts were generally combined because of the principle that one state would not enforce the criminal laws of a sister state. MODEL PENAL CODE § 1.03 (1985) Explanatory Note; see also *Commonwealth v. Eichinger*, 915 A.2d 1122, 1132 (Pa. 2007) ("It is a basic principle of conflict of laws cases involving criminal matters that the question of jurisdiction and that of governing substantive law always receives the same answer" due to "territorial principles and the idea of sovereignty."); *Commonwealth v. Ohle*, 470 A.2d 61, 67 (Pa. 1983) (noting that in criminal cases, the issue of the court's jurisdiction traditionally is not separated from choice of law considerations). The merger of these concepts was reflected in the rule of territoriality, pursuant to which only criminal acts committed within the bounds of a state were punishable by the laws of that state. See Robert L. Evangelista, *Pennsylvania Crimes Code and Criminal Law: Law and Commentary* 2–6 (4th ed. 2019); Wayne R. LaFare, *Substantive Criminal Law* (3d ed. 2019). Traditionally in the United States, the rule of territoriality reigned in criminal matters, as it had been imported from England at the time of our nation's formation. See Pa. Legislative Journal - Senate 1633 (Sept. 12, 1972). Thus, pursuant to the territorial rule, a criminal court's jurisdiction (i.e., its authority to hear the dispute) and the application

of that state's criminal law were identical and coterminous with the territorial bounds of the state.

As part of its approach to modernize criminal law, the drafters of the Model Penal Code sought to broaden the traditional rule of territoriality. They explained that the desire for this expansion was grounded

on the premise that it is particularly desirable in a federated state to increase jurisdictional options and that if a state's assertion of jurisdiction does not result in unfairness to the person charged, the state should be accorded jurisdiction over all those who engage in conduct that affects the state's interests, the Code proposes broad jurisdictional bases, within the limits of due process.

MODEL PENAL CODE § 1.03 (1985) Explanatory Note. This led to Model Penal Code Section 1.03, titled "Territorial applicability." Notably, Section 1.03 was not drafted using the terms "jurisdiction" or "choice of law." Rather, this provision begins, "Except as otherwise provided in this Section, a person may be **convicted** under the law of this State" MODEL PENAL CODE § 1.03 (emphasis added). The drafters phrased Section 1.03 in terms of exposure to conviction as an explicit acknowledgment of the convergence of jurisdiction and choice of law in criminal matters. *Id.* at Explanatory Note (1985) ("The authority of a state to convict under its law encompasses two legal concepts: jurisdiction and application of forum law.").

The General Assembly enacted Section 1.03 of the Model Penal Code as Section 102 of the Crimes Code. Although the General Assembly changed the Model Penal Code's use of "State" to "Commonwealth" and made other minor grammatical changes,

our Section 102's substantive language mirrors the language of Section 1.03. It provides that Pennsylvania may apply its criminal law in various particular scenarios.⁴

⁴ Section 102, in its entirety, provides as follows:

§ 102. Territorial applicability

(a) General rule.--Except as otherwise provided in this section, a person may be convicted under the law of this Commonwealth of an offense committed by his own conduct or the conduct of another for which he is legally accountable if either:

- (1) the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth;
- (2) conduct occurring outside this Commonwealth is sufficient under the law of this Commonwealth to constitute an attempt to commit an offense within this Commonwealth;
- (3) conduct occurring outside this Commonwealth is sufficient under the law of this Commonwealth to constitute a conspiracy to commit an offense within this Commonwealth and an overt act in furtherance of such conspiracy occurs within this Commonwealth;
- (4) conduct occurring within this Commonwealth establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this Commonwealth;
- (5) the offense consists of the omission to perform a legal duty imposed by the law of this Commonwealth with respect to domicile, residence or a relationship to a person, thing or transaction in this Commonwealth; or
- (6) the offense is based on a statute of this Commonwealth which expressly prohibits conduct outside this Commonwealth when the conduct bears a reasonable relation to a legitimate interest of this Commonwealth and

As with its Model Penal Code counterpart, in each of these instances, there is an evident balancing between this Commonwealth's interests and the rights of the accused, giving effect to the premise that "so long as due process is not offended and it is not unjust under the circumstances to subject the offender to its laws, the Commonwealth should have jurisdiction over those whose conduct affects its citizens."⁵

Cast in the history of its enactment, it is evident that Section 102 sets the limits of a criminal court's **jurisdiction** by enumerating the conduct within the Commonwealth that

the actor knows or should know that his conduct
is likely to affect that interest.

(b) Exception.--Paragraph (a)(1) of this section does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside this Commonwealth which would not constitute an offense if the result had occurred there, unless the actor intentionally or knowingly caused the result within this Commonwealth.

(c) Homicide.--When the offense is homicide or homicide of an unborn child, either the death of the victim, including an unborn child, or the bodily impact causing death constitutes a "result" within the meaning of paragraph (a)(1) of this section, and if the body of a homicide victim, including an unborn child, is found within this Commonwealth, it is presumed that such result occurred within this Commonwealth.

(d) Air space.--This Commonwealth includes the land and water and the air space above such land and water with respect to which the Commonwealth has legislative jurisdiction.

18 Pa.C.S. § 102.

⁵ We have embraced this flexible approach, allowing for the weighing of competing interests, when considering not only whether a person may be convicted under our laws, but also which forum's criminal law should apply when more than one state has a substantial connection with the Drug Activity involved. See *Commonwealth v. Eichinger*, 915 A.2d 1122, 1133 (Pa. 2007); *Commonwealth v. Sanchez*, 716 A.2d 1221, 1223-24 (Pa. 1998).

will confer jurisdiction, i.e., that is subject to conviction in Pennsylvania courts.⁶ There is no suggestion in Section 102 that its terms supplant the elements of a criminal offense. Section 102 is relevant here insofar as it establishes that Peck's conduct in Maryland that resulted in a death in Pennsylvania may be subject to prosecution in Pennsylvania under the Crimes Code. It does not, however, follow that because Section 102 provides a basis for prosecution, it also eliminates the requirement to establish a specific territorial element of the crime being prosecuted. In concluding otherwise, the Superior Court and the Commonwealth effectively created a new offense that is similar to DDRD in that it requires a drug delivery that causes death, but does not require a violation of Pennsylvania's Drug Act because the drug delivery need not occur "within the Commonwealth."

The Superior Court relied on Section 102 as the basis for its finding that the Commonwealth's evidence of a drug delivery in Maryland was sufficient to support a violation of Section 780-113(a). As explained, however, Section 102 only provides a basis for the Commonwealth to exercise jurisdiction to prosecute crimes that occur in part outside of Pennsylvania. It does not eliminate the Commonwealth's burden to produce sufficient evidence to prove every element of the crime charged beyond a reasonable doubt. It is undisputed that the drug delivery here occurred in Maryland and therefore the conclusion must follow that the evidence was insufficient to establish a violation of the Drug Act. Because the Drug Act, by its express terms, is violated only by a drug delivery

⁶ Over twenty states have enacted a version of Section 1.03, and all but Pennsylvania and Delaware have modified its terms to refer specifically to jurisdiction. See MODEL PENAL CODE § 1.03 (1985) Comment at 40. While the Delaware statute does not employ the term "jurisdictional," the Delaware General Assembly's published commentary on its cognate statute, Delaware Criminal Code Section 204, explains that "the intent of the section is to extend Delaware's criminal jurisdiction as widely as it may constitutionally extend[.]" Delaware Criminal Code with Commentary, § 204 at 10 (1973).

that occurs within Pennsylvania, and because the Commonwealth does not dispute that the drug delivery in this case took place in Maryland, the Commonwealth failed to meet its evidentiary burden.

The decision of the Superior Court is hereby reversed and the judgment of sentence is vacated.

Chief Justice Saylor and Justices Baer, Todd, Dougherty, Wecht and Mundy join the opinion.

Justice Wecht files a concurring opinion.