NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DEMETRIUS PARKER	:	
Appellant	:	No. 2957 EDA 2024

Appeal from the Judgment of Sentence Entered August 7, 2024
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0005150-2022

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DEMETRIUS PARKER	:	
Appellant	:	No. 2958 EDA 2024

Appeal from the Judgment of Sentence Entered August 7, 2024
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0000724-2023

BEFORE: DUBOW, J., NICHOLS, J., and MURRAY, J.

MEMORANDUM BY NICHOLS, J.: **FILED NOVEMBER 19, 2026**

Appellant Demetrius Parker appeals from the judgments of sentence imposed after a jury found him guilty of a series of firearm and drug charges.[1] Appellant seeks to vacate the judgment of sentence on the basis of insufficient

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[1] At Appellant's request, this Court consolidated Appellant's appeals from two separate trial court dockets. ***See*** Order, 3/24/25.

evidence and contends that evidence obtained from a search of his home should have been suppressed. After careful consideration, we affirm.

Under docket number CP-23-CR-5150-2022 (Case 1), Appellant was charged with possession of firearms prohibited, receiving stolen property, and possession of a controlled substance with intent to deliver.[2] Under docket number CP-23-CR-724-2023 (Case 2), Appellant was charged with two counts each of possession of firearms prohibited, conspiracy to possess prohibited firearms; firearms not to be carried without a license; and illegal sale of firearms.[3] ***See*** Trial Ct. Op., 1/22/25, at 1-5. The trial court set forth the factual and procedural history as follows:

> On October 6, 2022[,] Appellant [] was arrested and charged in two cases because 1) Appellant and Co-Defendant Dyshon Lucas [(Co-Defendant Lucas),] on August 30, 2022[,] sold firearms to a[] confidential informant at the Jackpot convenience store owned by Co-Defendant [] Lucas located at 23 Garrett Road, Upper Darby, Delaware County, Pennsylvania. . . and 2) the execution [on October 6, 2022] of multiple search warrants for Appellant [], his home located at 723 Mason Avenue in Drexel Hill, Delaware County, Pennsylvania, and his red Jeep Cherokee. . .
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> On November 16, 2022. . .a preliminary hearing was held on [Case 1] and on December 14, 2022, Appellant [] was arraigned. On Feb[ruary] 6, 2023[,] in Case [2], a preliminary hearing was held and on March 15, 2023[,] Appellant [] was arraigned.
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> * * *
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> On September 13, 2023[,] the Commonwealth filed a motion to consolidate the cases; following a hearing, on November 21,

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[2] 18 Pa.C.S. §§ 6105(a)(1) and 3925(a), respectively.

[3] 18 Pa.C.S. §§ 6105(a)(1), 903, 1606(a)(1), and 6111(a)(1), respectively.

> 2023[,] the motion to consolidate was granted. On November 30, 2023[,] Appellant [] filed a motion for reconsideration . . . [and] consolidation[,] and on January 5, 2024[,] the motion was denied.
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> On October 12, 2023[,] in Case [1], Appellant [] filed a motion to suppress the evidence sized on October 6, 2022[,] when police executed the search warrants. On November 16, 2023[,] a hearing on the motion was held. On January 11, 2024[,] the motion to suppress was denied. [Prior to trial, the trial court bifurcated the charges in Case 2.]
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> On January 29, 2024[,] Appellant's [] jury trial commenced.
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> * * *
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> [At] trial, the Commonwealth elicited testimony from several witnesses and presented a voluminous amount of evidence to the jury[,] including reports, voice recordings, and physical exhibits. . . . The jury [found that] the Commonwealth proved beyond a reasonable doubt Appellant [] *inter alia* engaged in a conspiracy with Co-Defendant [] Lucas to sell firearms, illegally sold firearms to a confidential informant, possessed firearms without a license and is a person prohibited from possessing firearms, received stolen property (a firearm), [and] possessed methamphetamine with the intent to deliver.

Trial Ct. Op., 1/22/25, at 1-3, 7-8 (footnotes omitted and some formatting altered). The jury found Appellant guilty of possession of two counts each of possession of a firearm prohibited and conspiracy to possess a prohibited firearm. ***See id.*** at 3. The trial court imposed an aggregate sentence for both cases of fifteen to thirty years' incarceration, to be followed by seven years' probation. ***See id.*** at 5.

Appellant filed post-sentence motions for both Case 1 and Case 2. ***See id.*** at 5. Therein, *inter alia*, Appellant asked for reconsideration of the motion to suppress on the basis that his trial counsel had "provided such obvious ineffective assistance of counsel" for failing to file a timely motion to suppress.

See Post-Sentence Mot., 8/15/24, at 21. The trial court denied all post-sentence motions on October 7, 2024. ***See*** Trial Ct. Op., 1/22/25, at 5.

Appellant filed a timely notice of appeal and both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant presents two issues for our review:

> 1. Whether the Commonwealth presented sufficient evidence to sustain convictions for receiving stolen property and the firearm-related conspiracy charges where it offered no evidence that [Appellant] knew or believed that a firearm was stolen and failed to prove any agreement between [Appellant] and another person beyond a mere buyer-seller relationship.
> 2. Whether the trial court erred in denying [Appellant]'s motion to suppress where the search warrant for his residence lacked probable cause, was overbroad, relied on stale information, and failed to establish a nexus between the alleged criminal activity and the home; and whether, if trial counsel failed to preserve this claim, the error constituted apparent and extraordinary ineffectiveness warranting review under ***Commonwealth v. Holmes*** [,79 A.3d 562 (Pa. 2013)].

Appellant's Brief at 5 (some formatting altered).

As a preliminary matter, we note that Appellant raises three claims, not two, as the allegation of ineffective assistance of trial counsel is an issue the Court must analyze separately from the sufficiency of the evidence and whether evidence should be suppressed.

Sufficiency of Evidence

In his first claim, Appellant argues that the Commonwealth introduced insufficient evidence to establish that he received stolen property or conspired with Co-Defendant Lucas to illegally sell firearms. ***See*** Appellant's Brief at 22-25. Because the Commonwealth "introduced only hearsay testimony that one

firearm was reported stolen" and "presented no ownership or non-permission evidence and no evidence that [Appellant] knew or believed the firearm was stolen," Appellant contends, the Commonwealth failed to establish the sufficient *mens rea* element of intent required under 18 Pa.C.S. § 3925. ***Id*.** at 23-25.

Specifically, Appellant argues that "the Commonwealth cannot prove the most basic element of [a receiving stolen property charge]: that the property belonged to another and was possessed by [Appellant] without the true owner's permission." ***Id***. at 23. Appellant asserts that the only evidence about the ownership of the firearm was police testimony that the gun had been reported stolen, and that this fell short of demonstrating the requisite elements of receiving a stolen firearm. ***See id.*** Further, Appellant argues that the Commonwealth failed to establish that he had "guilty knowledge" that he possessed a stolen firearm because mere possession of a stolen item is insufficient to establish or permit an inference of guilty knowledge. ***See id***. at 24-25 (citing ***Commonwealth v. Robinson***, 128 A.3d 261, 265, 267 (Pa. Super. 2015) (*en banc*) (citations omitted)).

The Commonwealth argues that its evidence established that the firearm recovered was stolen around July 1, 2022, from Arkansas, and that the testimony of Appellant's paramour and housemate, Ms. Rhonda Richardson, regarding her own knowledge of the firearm, supported a reasonable inference of Appellant's guilt. ***See*** Cmwlth.'s Brief at 17.

In reviewing a sufficiency of the evidence claim, this Court determines whether the evidence admitted at trial, and the reasonable inferences drawn therefrom, are sufficient to support each element of the offense when viewed in a light most favorable to the verdict winner. ***See Commonwealth v. Hopkins***, 747 A.2d 910, 913 (Pa. Super. 2000). We need only address the elements of the crime specifically challenged by the appellant. ***See Commonwealth v. Cain***, 906 A.2d 1242, 1244 (Pa. Super. 2006). This Court may not reweigh evidence or substitute its judgment for that of the finder of fact. ***See Hopkins***, 747 A.2d at 913. We evaluate the entire trial record and all evidence received in the aggregate, "not as fragments isolated from the totality of the evidence." ***Id.*** at 914 (citations omitted). If the factfinder could reasonably have determined, based on the evidence adduced, that all necessary elements of the crime were established, then the evidence will be deemed sufficient to support the charges. ***See id*.**

For the offense of receiving stolen property involving firearms, the Commonwealth must prove the defendant possessed the firearm with "guilty knowledge," meaning the defendant knew or believed the gun was probably stolen. ***Commonwealth v. Dunlap***, 505 A.2d 255, 257 (Pa. Super. 1985), (citations omitted). Mere possession of a stolen firearm is insufficient, on its own, to establish the *mens rea* element of intent. ***Commonwealth v. Robinson***, 128 A.3d 261, 268 (Pa. Super. 2015) (*en banc*). Instead, the Commonwealth must introduce additional evidence—whether direct or

circumstantial—to show the defendant knew or had reason to believe the gun was stolen. ***See id***.

A person is guilty of receiving stolen property if that person intentionally received, retained, or disposed of movable property of another, knowing that it has been stolen, or believing it has likely been stolen. ***See Commonwealth v. Riley***, 302 A.3d 112, 115-16 (Pa. Super. 2023). The crime has three elements: 1) intentionally taking possession of another person's movable property, 2) knowing or believing it has been stolen, and 3) an intent to deprive the rightful owner of their property permanently. ***See id.***; ***see also Robinson***, 128 A.3d at 265.

Circumstantial evidence of guilty knowledge as contemplated in the receiving stolen property offense may include, *inter alia*, "the place or manner of possession . . .the defendant's conduct or statements at the time of arrest . . . a false explanation for the possession . . . or any other evidence connecting the defendant to the crime." ***Id***. at 268 (citations omitted). Courts may also consider whether a defendant was prohibited from possessing firearms in reviewing for guilty intent. ***See Commonwealth v. Arias***, 286 A.3d 341, 351 (Pa. Super. 2022). Furthermore, the guilty knowledge element of this offense, "can be shown **entirely** through circumstantial evidence. While it is clear that mere possession without more is insufficient to show that the defendant knew or should have known that the property was stolen, other facts can make the inference of guilty knowledge reasonable, even

compelling." ***Commonwealth v. Carson***, 592 A.2d 1318, 1321 (Pa. Super. 1991) (emphasis added).

Here, the trial court noted that "[t]he jury heard and saw evidence demonstrating from whom [the firearm] was stolen and when it was reported stolen . . . [and] how the firearm was stored, concealed[,] and hidden in a backpack in a closet in Appellant []'s bedroom." Trial Ct. Op, 1/22/25, at 29-30; ***see also*** N.T., Trial, 1/31/24, at 101-03. The trial court concluded that the Commonwealth's evidence demonstrated Appellant, at minimum, should have known, or actually did know, the firearm was stolen. Trial Ct. Op, 1/22/25, at 28-29. Thus, the evidence, viewed in the aggregate, "was sufficient for the jury" to conclude that the Commonwealth had proved, beyond a reasonable doubt, that Appellant had guilty knowledge and, further, was guilty of receiving stolen property. ***Id***.

The firearm recovered from Appellant's closet was recorded as stolen in the National Crime Information Center (NCIC) database, meaning it could not be legally transferred between individuals. ***See*** N.T., Trial, 1/31/25, at 9. Consequently, this evidence established that Appellant was not the rightful owner of the firearm recovered from his closet during the search of his home. Further, Ms. Richardson testified she had a license to carry, a safe inside which to store her firearm, and that her own gun, a Taurus 9-millimeter pistol, was legally purchased and in her purse at the time of the search warrant execution because she was planning on bringing it out with her that day. ***See*** N.T., Trial, 1/31/24, at 102; ***see also*** Trial Ct. Op., 1/22/25, at 12. She disavowed

any knowledge or ownership of the gun stored in the backpack inside the closet. ***See*** N.T., Trial, 1/31/24, at 104.

While Appellant relies on ***Robinson***, we note that this authority is distinguishable from the facts here for a significant reason: in ***Robinson***, the Commonwealth presented no evidence that would support a guilty knowledge inference, other than the mere possession of a stolen firearm. ***See Robinson***, 128 A.3d 261, 269. Here, the Commonwealth relied on both the firearm's stolen status and Ms. Richardson's testimony, in addition to Appellant's possession or constructive possessive of the firearm. Further, a factfinder may consider a defendant's status as a person prohibited from possessing firearms as a factor supporting that the defendant knew, or had reason to believe, that the firearm was stolen. ***See*** 18 Pa.C.S. § 3925(a); ***see also Commonwealth v. Bowens***, 265 A.3d 730, 744 (Pa. Super. 2021).

In sum, we discern no error in the trial court's finding that the evidence supported the jury's determination that the Commonwealth had proffered sufficient evidence establishing the requisite guilty knowledge *mens rea.* As noted, our review of a sufficiency of evidence claim requires us to examine the "totality of the circumstances" to determine whether the trier of fact could have found each element of the offense was proved beyond a reasonable doubt. ***See id; see also Hopkins***, 747 A.2d at 913.

Here, the Commonwealth's evidence demonstrated the gun was stolen and the two adults sharing the searched bedroom both denied knowledge of the gun's existence. Ms. Richardson's testimony described her own typical

practice in storing her separate, legally-purchased firearm in her safe. As noted, circumstantial evidence, including "any other evidence connecting defendant to the crime" is permissible to establish guilty knowledge. ***See Robinson***, 128 A.3d at 268. The jury was free to determine that Ms. Richardson's testimony supported the inference that the gun and contraband were not hers; the extent to which this inference connected Appellant, instead, to the stashed firearm and contraband was, then, up to the jury to consider. ***See id.***

The jury was also free to deduce, if the gun was in his possession or constructive possession, that Appellant—a person prohibited from controlling a firearm—had the requisite guilty knowledge. ***See*** 18 Pa.C.S. § 3925(a); ***see also Bowens***, 265 A.3d at 746 (finding it could be reasonably inferred that an appellant, as a person prohibited from possessing a firearm, "was unable to obtain any firearm legally, and would have to resort to illegitimate means and product streams to procure a firearm") (citations omitted)). Accordingly, as a person prohibited, there is no way for Appellant to have obtained a gun legally. It was, therefore, reasonable for the jury here to conclude that Appellant had guilty knowledge regarding the gun's origin or status. ***See id***.

Because the jury could reasonably have found all necessary elements of the crime of receiving a stolen firearm, we find that the record reflects that the Commonwealth had proffered sufficient evidence for this charge, and we

affirm the conviction. ***See Hopkins***, 747 A.2d at 913-14; ***see also Dunlap***, 505 A.2d at 245; ***Robinson***, 128 A.3d at 265; ***Riley***, 302 A.3d at 115-16.

We note that, while Appellant refers primarily to the August 22, 2024 firearm sale in his argument that the Commonwealth failed to prove the elements of a receiving stolen property charge, he also states the conspiracy charges were not supported by sufficient evidence for the same reasons—namely because, he alleges, there is a lack of evidence as to shared criminal intent between him and any other party. ***See*** Appellant's Brief at 27-35.

As for the contraband police discovered during the August 30, 2024 search warrant execution, because the search warrant did not cover drugs, the officers "immediately stopped the search" upon finding methamphetamine in the basement. ***See*** Trial Ct. Op., 1/22/25, at 21; ***see also*** N.T., Trial, 1/31/24 at 27, where Officer John News of the Upper Darby Police Department testified, "So when I observed what I believed to be methamphetamine through my training experience, obviously[,] I know it's an illegal substance, so at that point[,] we have to stop the search. We can't seize that at that time because it's not on the search warrant. So we stopped. . ." ***See also*** N.T., Trial, 107, 115 (Ms. Richardson's testimony, in which she disavows knowledge and association with the methamphetamine, and denies any association between the contraband and her children.). Further, Officer News testified,

> If you move the [basement] ceiling tile, there was a black bag that was above the [] tile. Within that black back, there was a United States passport, a birth certificate, a social security card. . . all in

> the name of [] [Appellant] . . . If you remove [a] tabletop [in the basement] . . . [inside an old wash tub] was a large Ziploc bag, which contained a hard crystal like substance. There were new and unused packaging. There were three digital scales[,] and all contained a residue from a hard crystal [like] substance. And there was a metal sifter.

N.T., Trial, 1/31/24, at 26.

The trial court determined the Commonwealth presented sufficient evidence from which the jury could reasonably conclude the contraband was Appellant's:

> . . . [T]he jury heard evidence the controlled substance [] was found in the basement. . . the Commonwealth presented evidence of a 'go bag' [] found concealed in the [basement] ceiling . . . containing identification, important documents, money . . . the Commonwealth presented evidence the other people, including [] Richardson and the five children, in the residence[,] also had access to the basement. The jury was free to accept as fact that Appellant [] possessed the methamphetamine and having all of this testimony and evidence, the jury believed Appellant [] possessed the methamphetamine. . .

Trial Ct. Op., 1/22/25 at 39-40.

Challenging the sufficiency of the evidence for the conspiracy convictions, Appellant contends that the Commonwealth failed to prove an agreement between Appellant and any other individual to commit a firearm offense or drug transaction, a necessary element of a conspiracy offense. ***See*** Appellant's Brief at 33.

The Commonwealth, in response, notes the evidence that Appellant and Co-Defendant Lucas associated prior to the sale of the firearm, during the planning of the time and location of the sale, and during the sale itself. ***See***

Cmwlth.'s Brief at 26-27. Appellant "both brought the firearms to the sale and collected the money from the sale." ***Id***. at 27.

In evaluating a sufficiency of the evidence claim pertaining to a conspiracy charge, we note that a conspiracy offense is defined as follows:

> **(a) Definition of conspiracy**.--A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
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> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
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> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S. § 903(a).

To sustain a conviction for criminal conspiracy, the Commonwealth must establish the defendant entered into an agreement with another person to commit or aid in an unlawful act, that the parties had a shared criminal intent, and that an overt act was done in furtherance of the conspiracy. ***See Commonwealth v. Wellman***, 344 A.3d 13, 19 (Pa. Super. 2025). The "essence" of a criminal conspiracy—that is, what distinguishes this crime from accomplice liability—is the agreement made between the co-conspirators. ***Id***., citing ***Commonwealth v. Murphy***, 844 A.2d 1228, 1238 (Pa. 2004). It is essential that co-conspirators have a shared criminal intent. ***See id***.

Here, the trial court reasoned that:

> Appellant [] was neither charged nor convicted of conspiracy with [] Richardson or the confidential informant; he was charged and

> convicted of conspiring with Co-Defendant [] Lucas to illegally possess and sell firearms.
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> * * *
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> Appellant [] suggests the evidence shows Lucas merely acted as a buyer's agent and not a conspirator. . . . [However,] Lucas pled guilty to [two] counts conspiracy to the sales of firearms and [two] counts of conspiracy to possession of firearms prohibited. . . . The evidence demonstrated [that Appellant and Co-Defendant Lucas] together they coordinated the transaction, they met by design[,] and plan[ned] and scheduled their meeting. . .
>
> They were cousins, and the reason for the encounter was for the confidential informant to purchase the Glock and the AR15 style rifle. These facts wove a web of evidence linking Appellant [] and Co-[D]efendant [] Lucas in the conspiracy, and the evidence proved beyond a reasonable doubt the existence of an agreement between co-[d]efendant [] and Appellant [], and shared a criminal intent – the "*sine qua non*" – to illegally possess and sell the firearms.

Trial Ct. Op., 1/22/25, at 31, 34-36 (some formatting altered).

The trial court also noted that, after Appellant arrived at Jackpot, he parked where Co-Defendant Lucas told him to park, talked with Lucas, and accepted money the confidential informant had given Lucas for the firearm. ***See id***. at 35. As the trial court states, the entire reason for this meeting was for the confidential informant to purchase the Glock and AR15 style rifle. ***See id***. at 36. Thus, the trial court concludes, it was apparent there was a shared criminal intent, as required by statute. ***See id***. Further,

> [T]here were several overt acts made in furtherance of the conspiracy." ***Id***. For example, the trial court notes Co-Defendant [] Lucas arranging and confirming the sale with Appellant []; the nonverbal communication between them outside of the Jackpot store, the verbal communication between them when the confidential informant and Co-Defendant [] Lucas approached

> Appellant [], [and] the transfer of the money from [] Lucas to Appellant[.]

Trial Ct. Op., 1/22/25, at 36.

After our review of the record, we agree that the jury reasonably concluded, based on the trial record, that the Commonwealth presented sufficient evidence to sustain all elements of a conspiracy charge. ***See Wellman***, 344 A.3d 13, 18. Appellant's argument as to insufficiency of evidence linking Appellant to the methamphetamine and contraband lacks merit for the same reason as above: the jury heard testimony from Richardson as well as law enforcement officers and was free to determine whether this evidence supported an inference of Appellant's guilt. ***See Carson*** 592 A.2d at 1321-22. While Appellant argues he was merely present and associated with the proposed unlawful act, the jury was free to reasonably conclude that there was evidence showing the elements of conspiracy—including shared criminal intent—between Appellant and Co-Defendant Lucas. ***See*** Appellant's Brief at 25-26; ***see also*** 18 Pa.C.S. § 903(a); ***Murphy***, 844 A.2d at 1238.

Suppression

In Appellant's suppression claim, he argues that the search warrant was "unsupported by probable cause, was facially overbroad, relied on stale information, and failed to establish the constitutionally required nexus between the alleged street-level transaction and the residence." Appellant's Brief at 36.

The Commonwealth urges that we find Appellant's suppression argument waived because he failed to file a motion to suppress until almost

eleven months after his arraignment and nine months after receiving discovery. ***See*** Commonwealth's Brief at 27.

Pennsylvania Rule of Criminal Procedure 579(A) requires an omnibus pretrial motion to be filed and served within 30 days after arraignment. The exceptions to this timely filing requirement are when an opportunity to file earlier did not exist, where the defendant or defense attorney was not aware of the grounds for the motion, or when the time for filing had been extended by the court, for cause, shown under Rule 579. ***See*** Pa.R.Crim.P. 579. Under Rule of Criminal Procedure 581(B), unless the opportunity did not previously exist or the interests of justice require otherwise, a suppression motion must be contained in the omnibus pretrial motion. ***See*** Pa.R.Crim.P. 581(B). If a motion to suppress is not timely filed, the Court shall deem the issue of suppression of such evidence waived. ***See id.*** (providing that "[i]f timely motion is not made hereunder, the issue of suppression of such evidence shall be deemed to be waived").

Here, the trial court states,

> This court considered Pa.R.Crim.P 579[,] requiring the omnibus motion be filed within 30 days following arraignment. This court recognized an approximate [ten] month time period is on its face [in] violat[ion] of the rule but also considered often times the facts and circumstances concerning suppression issues are not readily known and may come to light during discovery. . . [However,] the evidence of the search warrant and its contents were available to and known by [Appellant] from the inception of this case. . . . Additionally, there were several court listings for this case[,] and Appellant [] never raised the issue of suppression[,] nor did [he] request any extension of time to file the motion. As a result, the

> reason this court denied the motion was Appellant's [] inexcusable Rule 579 violation.

Trial Ct. Op., 1/22/25, at 44.[4]

After our review of the record, we find none of the above-mentioned exceptions in Rule 581(B) apply. Accordingly, Appellant has waived his suppression argument. ***See*** Pa.R.Crim P. 579, 581.

Ineffective Assistance under *Holmes*

Finally, Appellant contends it is "obvious," based on the record, that the defense's trial counsel "made errors" in his case, so, to the extent the trial court deemed the suppression claim waived based on trial counsel's alleged failures, this case presents precisely the type of exceptional circumstances contemplated in ***Commonwealth v. Holmes***. ***See Commonwealth v. Holmes***, 79 A.3d 562 (Pa. 2013); ***see*** Appellant's Brief at 59-60.

While ineffective assistance claims are generally deferred until collateral review, our Supreme Court has noted that "there may be extraordinary circumstances where a discrete claim (or claims) of trial counsel ineffectiveness is apparent from the record and meritorious to the extent that immediate consideration best serves the interests of justice." ***Holmes***, 79 A.3d at 563-64. While the trial court retains discretion to address

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[4] We note the trial court, "in an abundance of caution," reviewed Appellant's suppression motion despite finding it waived. ***See*** Trial Ct. Op., 1/22/25, at 44. The trial court found Appellant's claims that the search warrant was overbroad, stale, and lacking a nexus between the residence and the alleged criminal activity all lacked merit. ***See id.*** Because we determine that Appellant's suppression motion was waived, we need not address the merits of this claim.

ineffectiveness claims on post-sentence motions, "the presumption weighs heavily in favor of deferring such claims to collateral review." ***Commonwealth v. Knox***, 165 A.3d 925, 928 (Pa. Super. 2017). The ***Holmes*** Court delineated two exceptions possibly justifying trial stage ineffective assistance claims. ***See Holmes***, 79 A.3d at 563-64. Here, Appellant concedes the second exception, which requires a PCRA waiver, does not apply to his case; he argues only that the first exception—which holds that ineffective assistance must be both "apparent" and "meritorious"—must be considered by this Court. ***See*** Appellant's Brief at 56. Our Supreme Court subsequently added a third exception, which requires the trial court to address claims challenging trial counsel's performance where the defendant is statutorily precluded from obtaining later PCRA review. ***See Commonwealth v. Watson***, 310 A.3d 307, 311 (Pa. Super. 2024). This third exception does not apply to the instant case.

Pursuant to ***Holmes***, Appellant argues that his trial counsel made such egregious errors—most notably failing to file a timely suppression motion—that counsel's ineffective assistance was plain from the record and, therefore, the judgment must be vacated and the matter remanded for a new trial. ***See*** Appellant's Brief at 55-56.

The extraordinary circumstances contemplated in the first exception recognized in ***Holmes*** are those where "counsel's ineffectiveness is so blatant and 'so shocking to the judicial conscience' that there is no need for a hearing and the court is compelled to grant relief." ***Commonwealth v. James***, 297

A.3d 755, 761 (Pa. Super. 2023) (citations omitted). Whether an ineffectiveness claim was "meritorious and apparent from the record" as recognized in ***Holmes*** should be limited "to the rarest of circumstances," as, "otherwise, the exception would swallow the general rule of deferring ineffectiveness claims to collateral review." ***Commonwealth v. Alford***, 1052 WDA 2020, 2021 WL 2907814 at *3 (Pa. Super. filed July 9, 2021) (unpublished mem.).[5]

In considering whether Appellant has established the first exception recognized in ***Holmes***, this Court has held that a claim "is not apparent from the record if the trial court needs to schedule an evidentiary hearing to determine the merits of the claim." ***Commonwealth v. Watson***, 310 A.3d 307, 311 (Pa. Super. 2024) (citation omitted).

Here, the trial court, despite finding waiver of Appellant's motion to suppress because it was untimely filed, held a hearing on the merits of the claim "out of an abundance of caution." ***See*** Trial Ct. Op., 1/22/25, at 44. After hearing the claim, the trial court found that the search warrant was lawful and therefore Appellant's suppression motion lacked merit. ***See id***. Accordingly, even if Appellant's trial counsel had rendered ineffective assistance by failing to file a timely motion to suppress, the record fails to reflect that such a timely-filed suppression motion would have been granted. Therefore, on this record, we conclude that a meritorious argument regarding

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[5] We may cite to unpublished memorandum decisions of the Superior Court filed after May 1, 2019, for their persuasive value. ***See*** Pa.R.A.P. 126(b).

the ineffectiveness of Appellant's trial counsel was not so apparent from the record as to establish Appellant's right to direct review of the claim pursuant to the first exception in ***Holmes***. ***See Watson***, 310 A.3d at 311; ***see Holmes***, 79 A.3d at 563-64.

Finding no merit to any of Appellant's claims, we affirm the judgments of sentence.

Judgments of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/19/2026