

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
LUIS GOMEZ	:	
	:	
	:	
Appellant	:	No. 1965 EDA 2025

Appeal from the Judgment of Sentence Entered July 3, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0000097-2024

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY DUBOW, J.:

FILED SEPTEMBER 30, 2026

Appellant, Luis Gomez, appeals from the July 3, 2025 judgment of sentence entered in the Philadelphia Court of Common Pleas after the trial court found him guilty of one count each of Possession of Firearms Prohibited, Firearms Not to be Carried Without a License, and Carrying Firearms Public in Philadelphia.¹ He challenges the denial of his motion to suppress and the legality of his sentence. After careful review, we affirm the trial court's denial of Appellant's suppression motion and the sentence imposed for Count 1, Possession of Firearms Prohibited. We, however, vacate the convictions for counts one and two because the trial court notified this Court that before trial,

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 6105(a)(1), 6106(a)(1), and 6108.

the trial court had granted the Commonwealth's motion to *nolle pros* those charges and, thus, had erroneously convicted Appellant of those charges.

We glean the following factual and procedural history from the trial court's opinion and the certified record. In the early evening of November 28, 2023, Officers Swinarski and Lopez were on patrol in the Juniata Park area of Philadelphia. While traveling south on Coral Street in an area well-known for illicit drug sales and the abandonment of stolen vehicles, they observed a silver Honda Accord parked partially on the sidewalk, facing the wrong direction, and saw two men exit the vehicle and walk down the street. The officers ran a motor vehicle check on the license plate, which indicated the registered owner of the vehicle was the subject of an active arrest warrant for aggravated assault. The warrant described the subject as a white male, approximately 5'4" and 140 pounds, a description matching both of the men seen exiting the car.

As the officers proceeded around the corner, they saw the same two men standing on the steps of 2026 Buckius Street speaking with a woman in a doorway. The officers left the patrol car and detained the men; neither officer knew the identities of the men. Officer Swinarski approached Appellant and instructed him multiple times to stop and remove his hands from his pockets. When Appellant failed to comply, Officer Swinarski reached into Appellant's pocket to remove his hand and felt a hard, metal object consistent with a firearm. He called over Officer Lopez, who had placed the second man in the back of the patrol car, and at that point Appellant removed his hand,

and Officer Lopez recovered a firearm from Appellant's right coat pocket. Following further investigation, including the use of a mobile fingerprint scanner, the officers were able to identify Appellant and Ronaldo Diaz Torres, who was the subject of the arrest warrant.

The Commonwealth charged Appellant with the above firearm offenses. Appellant filed a motion to suppress the evidence, asserting that the warrantless stop and seizure were not supported by reasonable suspicion or probable cause in violation of his rights afforded by the Fourth Amendment of the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution.

On May 2, 2024, the suppression court held a hearing at which Officer Swinarski testified on behalf of the Commonwealth regarding the circumstances leading to Appellant's arrest. Appellant's sister, with whom Appellant and Mr. Torres had been speaking outside 2026 Buckius Street when the police officers drove up, testified for the defense. Following argument, the trial court denied the motion to suppress and *nolle prossed* counts 2 and 3 at the Commonwealth's request. N.T. Suppression Hr'g, 5/2/24, at 75, 77.

On September 5, 2024, the court held a stipulated bench trial after which the court found him guilty of all charges, including those that had been *nolle prossed*. On July 3, 2025, the court sentenced Appellant to an aggregate term of six to twelve years' incarceration for Appellant's Section 6105 conviction and no further penalty for the Section 6106 and 6108 offenses charged as counts 2 and 3.

On July 15, 2025, Appellant filed a notice of appeal. Following several extensions of time, Appellant filed his Pa.R.A.P. 1925(b) Statement on September 12, 2025. On September 22, 2025, the trial court requested a remand from this Court to correct the record, *i.e.*, to remove the convictions for counts 2 and 3 and correct its sentencing order. Before this Court acted on the remand request, the trial court filed its Rule 1925(a) Opinion on October 27, 2025.

Appellant raises the following questions for our review:

1. Did the trial court err in denying [Appellant's] motion to suppress where police stopped him without reasonable suspicion that he was the subject of an arrest warrant and the firearm recovered was the fruit of the illegal seizure?
2. Was the conviction and judgment of sentence for 18 Pa.C.S. §§ 6106, 6108 illegal where the trial court lacked authority to enter a finding of guilt or impose sentence on charges that had been formerly *nolle prossed*?

Appellant's Br. at 2.

Appellant first challenges the court's denial of his suppression motion. He argues that he "was seized without particularized suspicion that he was the subject of an arrest warrant." ***Id.*** at 9. He avers that the firearm was, therefore, "fruit of the poisonous tree" which the court should have suppressed ***Id.***

We review the suppression court's decision to deny a motion to suppress to determine "whether [its] factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct."

Commonwealth v. Milburn, 191 A.3d 891, 897 (Pa. Super. 2018) (citation omitted). “Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole.” **Commonwealth v. Freeman**, 150 A.3d 32, 34 (Pa. Super. 2016) (citation omitted). We are bound by the suppression court’s factual findings where they are supported by the record, and we “may reverse only if the court’s legal conclusions are erroneous.” **Id.** at 35. “In doing so, we do not simply comb through the record to find evidence favorable to a particular ruling. Rather, we look to the specific findings of fact made by the trial court.” **Int. of T.W.**, 261 A.3d 409, 422 (Pa. 2021) (citation and internal quotation marks omitted).

Finally, “[i]t is within the suppression court’s sole province as factfinder to pass on the credibility of witnesses and the weight to be given their testimony.” **Commonwealth v. Clemens**, 66 A.3d 373, 378 (Pa. Super. 2013) (citation omitted). “The suppression court is free to believe all, some or none of the evidence presented at the suppression hearing.” **Commonwealth v. Byrd**, 185 A.3d 1015, 1019 (Pa. Super. 2018) (citation omitted).

An investigative detention is one of three levels of police-citizen encounters recognized under Pennsylvania law. **See Commonwealth v. Muhammad**, 289 A.3d 1078, 1087 (Pa. Super. 2023) (acknowledging, in

addition to the investigative detention, the mere encounter and custodial arrest). A **Terry**² stop, known as a “stop and frisk,” must be supported by reasonable suspicion that an individual is or was involved in criminal activity. **See Commonwealth v. Jackson**, 271 A.3d 461, 464 (Pa. Super. 2021). “In order to determine whether the police had a reasonable suspicion when they executed a **Terry** stop, the totality of the circumstances — the whole picture — must be considered.” **Id.** (citations omitted). “[I]n determining whether the officer acted reasonably[,] due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.” **Id.** (citing **Terry**, 392 U.S. at 27).

“Pursuant to **Terry**, . . . a police officer may remove an object from within a suspect’s clothing under the reasonable suspicion that the object is a weapon.” **T.W.**, 261 A.3d at 422.

To summarize, for a stop and frisk to be constitutionally sound, the following two conditions must be met:

First, the investigatory stop must be lawful. That requirement is met in an on-the street encounter . . . where the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person is armed and dangerous.

Id. at 417 (quoting **Arizona v. Johnson**, 555 U.S. 323, 326-27 (2009)).

² **Terry v. Ohio**, 392 U.S. 1 (1968).

Here, the suppression court found that based on the totality of the circumstances, the officers' stop and frisk of Appellant was reasonable:

Specifically, because police observed two individuals exiting a vehicle whose registered owner was wanted for a crime of violence. . . the officers acted with urgency to effectuate the warrant while ensuring their safety. The stop occurred at night in an area known for drug and stolen vehicle activity and Appellant matched the general description of the wanted individual. Under these facts, the officers' decision to detain both individuals to confirm their identities was objectively reasonable.

Additionally, Appellant's refusal to remove his hands from his pockets despite repeated commands to do so heightened the officers' safety concerns and constituted a furtive gesture suggestive of hiding a weapon. Officer Swinarski's limited contact to secure Appellant's hands did not amount to an impermissible frisk.

* * *

In sum, the officers' actions were objectively reasonable in light of the totality of the circumstances. Appellant's noncompliance, in combination with all the other facts and information known to the officers, provided a specific and articulable basis for an investigatory detention. The investigatory detention did not escalate into an unlawful search or seizure but rather reflected a permissible and proportionate response to a developing safety concern during a lawful **Terry** stop and frisk.

* * *

The officers' conduct was reasonable under the circumstances. They were executing an active arrest warrant for a violent offense in a secluded area, briefly detained Appellant for investigatory purposes and acted out of a legitimate concern for their safety after Appellant repeatedly failed to comply with their commands to remove his hands from his pockets. Their brief detention and inquiry fell squarely within constitutional bounds.

Suppression Ct. Op., 10/27/25, at 7 (citations omitted).

Following our review, we conclude the suppression court's findings of fact are supported by the record. The court found credible Officer Swinarski's testimony that he saw both men get out of the car and that they looked alike in height and weight. **See** N.T. Suppression Hr'g at 21-23. The court also found credible his testimony that he told Appellant to stop and remove his hands multiple times and it was only after Appellant failed to comply that Officer Swinarski reached for Appellant's hand in his pocket and brushed up against a hard metal object "consistent with a firearm." **Id.** at 9, 31-32. Pursuant to the above case law, we agree with the suppression court's legal conclusion that Officer Swinarski conducted a proper **Terry** stop and frisk supported by reasonable suspicion. Accordingly, we affirm the court's denial of Appellant's suppression motion.

In his second issue, Appellant argues that the trial court erred in finding him guilty of the Section 6106 and 6108 firearms offenses that the Commonwealth had *nolle prossed* in open court before trial due to a lack of evidence. Appellant's Br. 25-30. The Commonwealth and the trial court agree, as do we.

"Upon motion of the attorney for the Commonwealth, the court may, in open court, order a *nolle prosequi* of one or more charges[.]" Pa.R.Crim.P. 585(A). "A *nolle prosequi* is a voluntary withdrawal by a prosecuting attorney of proceedings on a particular criminal bill or information, which at any time in the future within the statute of limitations can be lifted upon appropriate motion in order to permit a revival of the original criminal bill or information."

Commonwealth v. Harrison, 355 A.3d 826, 829 n.1 (Pa. 2026) (citation omitted).

Here, there is no dispute that the Commonwealth acknowledged that it had not obtained a Firearm Identification Unit report or Certificate of Non-Licensure, evidence required to prosecute Appellant under Section 6106 and 6108, and voluntarily withdrew those charges. Since the court granted its motion to *nolle pros* without objection, those charges were no longer part of the prosecution of Appellant's case. **See** N.T. Suppression Hr'g at 77.

Accordingly, because there was no basis for the court to impose a guilty verdict or a sentence for the Section 6106 and 6108 offenses, we vacate those convictions. Although the court imposed no further sentences on those improper convictions, we nonetheless vacate the judgment of sentence and remand solely for the court to enter a new sentencing order reflecting only the sentence of six to twelve years' imposed following Appellant's conviction of Possession of a Firearm charged under Section 6105, with credit for time served.

Conviction and judgment of sentence imposed for Possession of Firearm, 18 Pa.C.S. § 6105, affirmed. Convictions for 18 Pa.C.S. §§ 6106 and 6108 violations vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/30/2026