

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
MAJ TOURNEY,	:	
	:	
Appellant	:	No. 2837 EDA 2024

Appeal from the Judgment of Sentence Entered October 2, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0004796-2023

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

MEMORANDUM BY DUBOW, J.:

FILED SEPTEMBER 30, 2026

Appellant, Maj Tourney, appeals from the October 2, 2024 judgment of sentence of four years' reporting probation entered by the Philadelphia Court of Common Pleas following his conviction for Firearms Not to be Carried Without a License and Carrying Firearms on Public Streets in Philadelphia.¹ Appellant challenges the suppression court's denial of his motion to suppress physical evidence. After careful review, we affirm the judgment of sentence.

The following factual and procedural history is relevant to this appeal. On June 20, 2023, at approximately 9:08 PM, Philadelphia police officer Paul Moore and his partner, police officer Robert Heeney, were traveling in the area of the 1700 block of West Lehigh Avenue in a marked patrol car when they

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 6106 (A)(1), 6108.

observed Appellant standing on the sidewalk with the handle of a firearm “printing through his t-shirt.” N.T. Hr’g, 7/18/24, at 11. Officer Heeney stopped the car and Officer Moore asked Appellant “if he had a permit to carry.” **Id.** Appellant responded, “Carry what?” **Id.** Officer Moore replied, “What’s in the front?” **Id.** Appellant began to reach in his left pocket and stated, “My keys.” **Id.** Officer Moore asked again, “No, what’s in the front?” **Id.** Appellant said, “I don’t want no trouble, I’m sorry officer.” Exh. C-8 (body camera video) at .18-.20. Officer Moore questioned Appellant, “do you have a permit or not?” **Id.** at .20-.21. Appellant replied, “I’m not carrying anything.” **Id.** at .21-.23. Officer Moore exited the vehicle, and Appellant began to walk away and put his left arm in front of his body. Officer Moore commanded Appellant not to run, approached him, and grabbed a firearm out of Appellant’s front waistband. Officer Moore again asked Appellant if he had a permit to carry. Appellant told Officer Moore that he had it in his vehicle, and that it was not on his person. Officer Moore conducted a National Crime Information Center (“NCIC”) search and learned that Appellant did not have a license to carry a firearm. Officer Moore arrested Appellant and charged Appellant with Firearms Not to be Carried Without a License and Carrying Firearms on Public Streets in Philadelphia.

On September 25, 2023, Appellant filed an Omnibus Pre-Trial Motion in which he sought, *inter alia*, to suppress the firearm. The court held a suppression hearing on July 18, 2024. The Commonwealth presented testimony from Officer Moore, who testified in accordance with the above-

stated facts. Additionally, Officer Moore testified that he has been a police officer for seven years on the same assignment in the 22nd District, he has made over 150 arrests, he has made at least five firearms arrests in a two-block span of the area where he arrested Appellant, he has made a few dozen arrests in the same area, and the area is violent with numerous shootings and has a police car assigned there around the clock due to gun violence. Officer Moore further testified that since he has been a Philadelphia police officer he has encountered "more than 50, maybe more than 100" individuals who have lawfully carried firearms and has "never had somebody that lawfully carried a gun tell me that he wasn't carrying anything when I asked them if they had a permit when I could clearly see he had a gun." N.T. Hr'g at 19-20. Officer Moore explained that he has encountered "at least 20" people who have said that they're not carrying anything when they are clearly carrying a firearm "and they all ended in arrests" because they did not have a license to carry. ***Id.*** at 20. In addition to Officer Moore's testimony, the Commonwealth also showed the court and the court admitted into evidence Officer Moore's body-worn camera footage of his encounter with and arrest of Appellant.

Appellant testified on his own behalf. Appellant stated that he did not understand Officer Moore's questions and that his responses came from confusion. He also testified that when Officer Moore questioned him, he was in the middle of recording a podcast on his phone and did not want to engage with a police officer, and that he turned around and walked away. Appellant denied placing his left arm in front of his body.

At the end of the suppression hearing, the suppression court denied the motion. Appellant immediately proceeded to a stipulated bench trial, where the court convicted him of both offenses and sentenced him to four years of reporting probation.

Appellant timely appealed. Both Appellant and the court complied with Pa.R.A.P. 1925.

Appellant presents the following issue for our review:

Did police seize Appellant without reasonable suspicion in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution where police observed a concealed firearm and the officer was dissatisfied with Appellant's responses to the officer's questions, contrary to ***Terry v. Ohio***, 392 U.S. 1 (1968), and ***Commonwealth v. Hicks***, 208 A.3d 916 (Pa. 2019)?

Appellant's Br. at 2.

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. 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).

Appellant challenges the court’s denial of his suppression motion, asserting that the officers did not have reasonable suspicion to conduct an investigative detention. Appellant’s Br. at 9. Appellant asserts that the encounter between Appellant and Officer Moore escalated from a mere encounter to an investigative detention when Officer Moore exited the police car and instructed Appellant not to run. ***Id.*** at 11. Appellant argues that the events leading up to that encounter did not create a reasonable suspicion that criminal activity was afoot because merely carrying a firearm cannot be the basis for a stop. ***Id.*** at 19.

To support his arguments, Appellant cites ***Hicks***, where our Supreme Court held that a police officer may not infer criminal activity merely from an individual’s possession of a concealed firearm in public. Appellant’s Br. at 9, 17-18 (citing ***Hicks***, 208 A.3d at 936). Appellant maintains that his answers to Officer Moore were not evasive and misleading but reflected genuine confusion in response to Officer Moore’s vague and unclear questions. ***Id.*** at 23-24. Appellant further argues that his left arm movement was not suspicious because it is normal for people to move their arms when they are

walking. **Id.** at 21. In sum, Appellant argues that it was illegal for Officer Moore to stop Appellant “for the normal act of merely carrying a gun without reasonable suspicion that it is carried illegally.” **Id.** at 8.

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 detention). An investigative detention must be supported by reasonable suspicion, which exists when “there is a reasonable police belief that criminal activity is afoot.” **Commonwealth v. Melendez**, 676 A.2d 226, 228 (Pa. 1996). Reasonable suspicion “is less than a preponderance of the evidence but more than a hunch.” **Commonwealth v. Jackson**, 907 A.2d 540, 543 (Pa. Super. 2006) (citation omitted). “Reasonable suspicion must be based on specific and articulable facts, and it must be assessed based upon the totality of the circumstances viewed through the eyes of a trained police officer.” **Commonwealth v. Williams**, 980 A.2d 667, 671 (Pa. Super. 2009) (citation omitted). In addition, “we must give due weight to the specific reasonable inferences the police officer is entitled to draw from the facts in light of his experience.” **Commonwealth v. Rice**, 304 A.3d 1255, 1261 (Pa. Super. 2023) (citation omitted).

As emphasized in Appellant’s argument, **Hicks** held that police officers may not infer criminal activity from the mere possession of a concealed firearm. 208 A.3d at 936. However, while **Hicks** does not allow a police

officer to infer criminal activity solely from an individual's possession of a concealed firearm, our Supreme Court made clear that their holding does not mean that "the possession of a firearm can **never** be suspicious – it certainly can be." *Id.* at 938. Our High Court explained, "[a] police officer is entitled to view individuals' conduct in light of the probabilities that criminal activity may be afoot, and indisputably may draw certain common-sense conclusions about human behavior. Relevant contextual considerations may include factors such as a suspect's presence in a high crime area." *Id.* (internal quotation marks and citation omitted) Notably, this Court has held that a police officer has reasonable suspicion to subject an individual to an investigative detention when the officer "saw the gun protruding from [the suspect]'s pocket **and** detected [the suspect]'s lie about its presence." *Commonwealth v. Toliver*, 355 A.3d 920, 941 (Pa. Super. 2026) (emphasis added).

Here, the court found Officer Moore's testimony credible that he was a seven-year veteran of the Philadelphia Police Department who had worked in the area in question for his entire career, he has made over 150 arrests for violations of the Uniform Firearms Act ("VUFA"), the area around 1700 West Lehigh Avenue is particularly violent and has 24/7 police detail assigned, and he has had approximately 100 interactions with people who lawfully carry firearms and has never encountered someone who lawfully carried a weapon tell him that they were not carrying anything when he could clearly see a

firearm. Tr. Ct. Op., 10/5/25, at 5-6 (citing N.T. Hr'g at 8-9, 19-20). The court opined:

The totality of these circumstances - Officer Moore being familiar with the area of 1700 West Lehigh Avenue, the nexus between Officer Moore's prior VUFA arrests, Appellant's evasive demeanor, and that Appellant denied possessing a firearm visible to Officer Moore from the street and began to walk away - created the reasonable suspicion necessary for Officer Moore to effect a lawful investigative detention.

Tr. Ct. Op. at 6.

Following our review of the record before the suppression court, including the notes of testimony from the suppression hearing and Officer Moore's body-worn camera footage, we find that the record supports the court's findings of fact, and the court properly denied Appellant's motion to suppress. The suppression court simply did not credit Appellant's testimony that he was confused when responding to Officer Moore's questions, and was moving his arms to walk rather than trying to conceal and/or reach for the firearm that was "printing through his t-shirt." N.T. Hr'g at 11. It was within the suppression court's discretion to make credibility determinations, and we decline to usurp them.

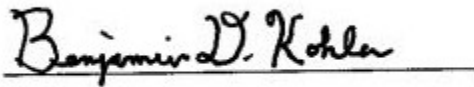
Moreover, this case is distinguishable from **Hicks** because Officer Moore did not infer criminal activity solely from Appellant's possession of a concealed firearm. Rather, as in **Toliver**, Officer Moore personally observed the firearm and caught Appellant in a lie about its presence — facts that, standing alone, were sufficient to establish the reasonable suspicion required to justify an investigative detention. Further, the evidence demonstrates that Officer

Moore did not just rely on his observation of Appellant's firearm and Appellant's lie regarding the firearm. Officer Moore's years of experience as a police officer making VUFA arrests in the area and his personal knowledge of the high crime and violence in the neighborhood added further support for reasonable suspicion.

In conclusion, the suppression court's factual findings are supported in the record. We decline to usurp the court's credibility determinations or reweigh the evidence. We discern no error in the suppression court denying Appellant's motion to dismiss.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/30/2026