

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
LONDELL BERNARD FOSTER	:	
	:	
Appellant	:	No. 3036 EDA 2025

Appeal from the Judgment of Sentence Entered June 25, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0003174-2023

BEFORE: SULLIVAN, J., BECK, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.:

FILED OCTOBER 27, 2026

Appellant, Londell Bernand Foster, appeals from the judgment of sentence imposed following his conviction for one count of unlawful possession of a firearm. Appellant challenges the denial of his motion to suppress and raises a constitutional challenge to his conviction. We affirm.

The parties stipulated to the following facts for purposes of the bench trial, which the trial court incorporated in its Rule 1925(a) opinion.

On February 13, 2023, at approximately 12:24 a.m., Officer Michael Roberts of the Abington Township Police Department was on routine patrol in the Jenkintown Section of Abington Township, Montgomery County. While on patrol, Officer Roberts observed a gray Nissan Altima, bearing PA registration LVG7413 traveling southbound on Old York Road. Officer Roberts checked the vehicle's registration through NCIC (National Crime Information Center) and obtained a hit, indicating that the car was wanted in connection with a shooting incident that occurred in Philadelphia two weeks prior. Officer Roberts followed the vehicle into the Wawa gas station located at 816 Old York Road and requested backup.

As backup was responding, Officer Roberts conducted a high-risk vehicle stop. Eventually, back up arrived and only one person, the operator, was found in the vehicle. This individual was later identified as [Appellant].

Officer Robert Steck, also of the Abington Township Police Department, approached [Appellant] and conducted a cursory pat-down search of [Appellant]'s outer garments. Officer Steck then felt what he recognized as a firearm inside [Appellant]'s left inner jacket pocket. [Appellant] was then taken into custody. Officer Steck performed a more thorough search of the jacket and ultimately recovered a loaded nine (9) millimeter Smith & Wesson M&P Shield firearm, bearing serial number: JFL6414. At the time of this traffic stop, [Appellant] was ineligible to possess a firearm due to two (2) 2007 felony convictions for possession of a controlled substance with intent to deliver.

Trial Court Opinion, 1/5/26, at 1-2.¹

The Commonwealth thereafter charged Appellant with one count of illegal possession of a firearm.² Appellant filed a motion to suppress, at which the Commonwealth offered testimony consistent with the stipulated facts. The trial court denied the motion and the parties proceeded to a stipulated bench trial. The trial court found Appellant guilty and sentenced Appellant to five to fifteen years of incarceration.

Appellant filed a timely post-sentence motion for relief, arguing that his conviction violated the Second Amendment to the United States Constitution. The trial court denied the motion, and Appellant filed a timely notice of appeal and complied with the order to file a Pa.R.A.P. 1925 concise statement. The

¹ The Honorable Thomas P. Rogers heard Appellant's suppression hearing. Upon his retirement in January of 2025, the case was reassigned to the Honorable Wendy Rothstein.

² 18 Pa.C.S. § 6105(a)(1).

trial court issued its opinion in response, and Appellant presents two issues for our consideration.

1. Did the Trial Court err in denying the Appellant's Motion to Suppress Physical Evidence where the sole reason for the stop, pat-down, search and seizure of the firearm was due to a two-week-old NCIC information that the vehicle was wanted for being involved in a shooting in Philadelphia[?]
2. Did the Trial Court err in ruling 18 Pa. C.S. § 6105 constitutional, when there is no historical tradition of categorically disarming individuals convicted of crimes for the remainder of their lives during either the Founding or Reconstruction[?]

Appellant's Brief at 6-7.

Appellant's first issue challenges the denial of his motion to suppress, alleging that both the initial stop and the subsequent frisk were unlawful. Our standard of review for the denial of a suppression motion is well-settled.

Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. 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. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous. The suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review.

Moreover, appellate courts are limited to reviewing only the evidence presented at the suppression hearing when examining a ruling on a pre-trial motion to suppress.

Commonwealth v. Carey, 249 A.3d 1217, 1223 (Pa. Super. 2021).

“The investigation of possible criminal activity invariably brings police officers in contact with members of the public. Depending on the circumstances, a police-citizen encounter may implicate the liberty and privacy interests of the citizen as embodied in both the federal constitution, and our state constitution.” ***Commonwealth v. Mackey***, 177 A.3d 221, 226–27 (Pa. Super. 2017) (citation omitted). “Jurisprudence arising under both charters has led to the development of three categories of interactions between citizens and police.” ***Commonwealth v. Lyles***, 97 A.3d 298, 302 (Pa. 2014) (citation omitted). The three categories are (1) a mere encounter, which is not applicable here, (2) investigative detentions, and (3) custodial detentions. ***Id.*** The parties primarily dispute whether the seizure rose to the level of a custodial detention. ***See*** Appellant’s Brief at 22 (“In the case at bar, there is no doubt that the Appellant’s interaction with the officers was a custodial detention.”); Commonwealth’s Brief at 8 (“[Appellant] first . . . argu[es] that he was subject to an illegal custodial detention. He is wrong.”).

In ***Terry v. Ohio***, 392 U.S. 1, 20 (1968), the United States Supreme Court recognized that “necessarily swift action predicated upon the on-the-spot observations of the officer on the beat . . . historically has not been, and as a practical matter could not be, subjected to the warrant procedure.” Thus, the ***Terry*** Court authorized seizures upon “reasonable suspicion” as opposed to probable cause. A garden-variety traffic stop typically constitutes an investigative detention. ***Berkemer v. McCarty***, 468 U.S. 420, 439 (1984)

(stating that “the usual traffic stop is more analogous to a so-called ‘**Terry** stop,’ than to a formal arrest”). However, the circumstances may transform the encounter. “The usual traffic stop constitutes an investigative rather than a custodial detention, unless, under the totality of the circumstances, the conditions and duration of the detention become the functional equivalent of arrest.” **Commonwealth v. Mannion**, 725 A.2d 196, 202 (Pa. Super. 1999).

Notably, Appellant concedes that Officer Roberts was authorized to seize the vehicle and its occupants for further investigation. **See** Appellant’s Brief at 22 (“It appears that case law indicates that the police had the right to make a stop of the Appellant’s vehicle based on the [license plate reader] hit and NCIC information that the Nissan was involved in a shooting in Philadelphia from two weeks prior.”); **Commonwealth v. Cotton**, 740 A.2d 258, 264–65 (Pa. Super. 1999) (explaining that “[w]e have previously held that the information contained in a N.C.I.C. report is so inherently reliable that such information is, in and of itself, sufficient to form the basis of a finding of probable cause for a police officer who receives such information from an N.C.I.C. report to make an on the spot arrest.”).³ However, Appellant disputes

³ The Commonwealth, citing **Cotton**, argues in the alternative that, if Appellant were arrested, then the search was lawful as a search incident to that arrest. While **Cotton** discusses an on-the-spot arrest, that case involved an arrest warrant. The Court held that the NCIC report authorized the “initial” arrest and “later personal verification of the information contained within the report, which was the existence of the bench warrants, validated the initial probable cause provided by the report itself.” **Id.** at 265. Due to our resolution, we need not decide whether Officer Roberts was entitled to arrest Appellant.

that the right to seize the vehicle for investigative purposes based on the NCIC report authorized the subsequent acts.

In the case at bar, there is no doubt that the Appellant's interaction with the officers was a custodial detention. Officer Roberts was in a marked patrol car with his lights and sirens activated. When Officer Roberts stepped out of his vehicle he had his weapon drawn. He then gave commands to the Appellant to open his car windows, place his hands [out of] the window, exit the vehicle, walk back toward him and was then immediately handcuffed. Thereafter, either Officer Roberts or Steck immediately proceeded to pat him down discovering a firearm.

Appellant's Brief at 22.

We disagree that the factors cited by Appellant served to elevate the encounter from an investigative detention into a custodial one. First, that Officer Roberts was in a marked patrol car and used lights and sirens is relevant to whether a seizure occurred. **See Commonwealth v. Livingstone**, 174 A.3d 609, 621 (Pa. 2017) (stating "we simply cannot pretend that a reasonable person, innocent of any crime, would not interpret the activation of emergency lights on a police vehicle as a signal that he or she is not free to leave."). However, Appellant does not cite any case establishing that lights and sirens subject an individual to custodial arrest; in fact, if that were the case, the vast majority of vehicle stops would constitute formal arrests. While there is no doubt Appellant was seized, we do not agree that activating lights and sirens transformed the encounter.

Next, drawing a firearm does not *per se* indicate the detention is custodial. **See Commonwealth v. Dix**, 207 A.3d 383, 388 (Pa. Super. 2019) ("The officers' drawing their guns when they stopped Dix did not render the

stop a custodial detention.”).⁴ Officer Roberts testified that, after activating his emergency lights, he “was in like the wedge of my door with my gun at the low-ready.” N.T., 5/29/24, at 32. He then “instructed the driver of the vehicle, [l]ower all your windows; driver of the vehicle, turn off the car; put your hands out of the vehicle. And I held him there until I had backup arrive.” **Id.** Once backup arrived, Officer Roberts “ordered the driver, [Appellant], out of the vehicle.” **Id.** at 33. Appellant complied and walked towards the officers as directed, and stopped when ordered. **Id.** This testimony, at most, establishes that Officer Roberts had the firearm at his ready. Nothing indicates that the firearm was even visible to Appellant, let alone pointed at him.

The remaining question is whether the pat-down of Appellant was authorized.⁵ “[T]o proceed from a stop to a frisk, the police officer must reasonably suspect that the person is armed and dangerous.” **Commonwealth v. Miller**, 333 A.3d 470, 477 (Pa. Super. 2025). The Fourth Amendment test is objective, and we examine “whether the facts available to police at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate.” **Commonwealth v.**

⁴ “There is no *per se* rule that pointing guns at people, or handcuffing them, constitutes an arrest.” **Baker v. Monroe Twp.**, 50 F.3d 1186, 1193 (3d Cir. 1995) (collecting cases).

⁵ It is not clear if Appellant concedes that the authority to seize the vehicle for investigatory purposes authorized any detainment of the occupants. Officers are *per se* authorized to order both the driver and passengers to exit the vehicle. **See Maryland v. Wilson**, 519 U.S. 408, 414 (1997).

Jefferson, 256 A.3d 1242, 1248 (Pa. Super. 2021) (quoting **Commonwealth v. Gray**, 784 A.2d 137, 142 (Pa. Super. 2001)).

Officer Roberts testified that he did not possess individualized suspicion that Appellant was armed and dangerous. **See** N.T., 5/29/24, at 49 (“Q: Outside of the [NCIC] hit from two weeks prior . . . what articulable facts did you have from that night that my client or anybody driving that car was armed and dangerous? A. None.”). While his subjective assessment is not relevant to the legal conclusion, a review of the facts establishes that Appellant did not make any movements and was ordered to exit the vehicle almost immediately. Accordingly, to the extent the orders to show hands, exit the vehicle, and walk towards the officers were valid, Appellant reasons that the ensuing frisk, which resulted in the recovery of the firearm, was unauthorized due to the absence of any facts establishing reasonable suspicion that Appellant was armed and dangerous. **See** Appellant’s Brief at 23 (asserting that the officers “were unable to identify any facts” that would authorize the frisk).

We agree with the Commonwealth that Officer Roberts articulated sufficient reasons to establish reasonable suspicion that Appellant was armed and dangerous based on “the NCIC information which indicated that the car [Appellant] was driving was wanted in connection with a shooting, and that the occupant was ‘armed.’” Commonwealth’s Brief at 17. As previously noted, Appellant concedes that the NCIC information supplied a valid basis to seize the vehicle. We agree that the same information established reasonable

suspicion to believe that any occupant of the vehicle may have been armed and dangerous.

We find support in the United States Supreme Court's holding in ***Kansas v. Glover***, 589 U.S. 376 (2020). There, an officer ran a vehicle's license plate and learned its registered owner, Charles Glover, Jr., had his driver's license revoked. The officer assumed Glover was driving the vehicle based solely on the assumption that the registered owner is the likely driver. The Kansas Supreme Court held that the stop was invalid because the officer had only a hunch that the vehicle's registered owner was the driver.

The United States Supreme Court reversed. The officer "drew the commonsense inference that Glover was likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the stop." ***Id.*** at 381. "The fact that the registered owner of a vehicle is not always the driver of the vehicle does not negate the reasonableness of [the officer's] inference." ***Id.*** The Court disagreed with the argument that this commonsense inference was invalid due to the lack of individualized suspicion.

As an initial matter, we have previously stated that officers, like jurors, may rely on probabilities in the reasonable suspicion context. Moreover, as explained above, [the officer] did not rely exclusively on probabilities. He knew that the license plate was linked to a truck matching the observed vehicle and that the registered owner of the vehicle had a revoked license. Based on these minimal facts, he used common sense to form a reasonable suspicion that a specific individual was potentially engaged in specific criminal activity—driving with a revoked license. Traffic stops of this nature do not delegate to officers broad and unlimited discretion to stop drivers at random. Nor do they allow officers to stop drivers whose conduct is no different from any other driver's.

Accordingly, combining database information and commonsense judgments in this context is fully consonant with this Court's Fourth Amendment precedents.

Id. at 385.

The Court closed by reiterating that "the ultimate touchstone of the Fourth Amendment is reasonableness," ***id.*** (quotation marks and citation omitted), and concluded that the officer "drew an entirely reasonable inference that Glover was driving while his license was revoked." ***Id.***

We conclude that Officer Roberts used common sense to determine that the occupants of a vehicle wanted in connection with a shooting may be armed and dangerous. Officer Roberts testified that he deemed this a "high-risk traffic stop" and rejected the approach of simply "approach[ing] the driver's window" as he would in a "normal traffic stop." N.T., 5/29/24, at 29. He explained: "Walking up on a potentially armed and dangerous subject . . . if you just walk up to the car, you could possibly end up getting shot." ***Id.*** at 30. Thus, the NCIC information that the "occupant [was] armed and dangerous" prompted Officer Roberts to order Appellant to show his hands and, upon arrival of backup approximately forty-five seconds later, Officer Robert Steck conducted a pat down and "felt an object which resembled a firearm." ***Id.*** at 55.⁶

⁶ Alternatively, Appellant cursorily argues that the frisk itself was also invalid, because "[n]either officer testified that they felt what appeared to be a firearm or contraband in the Appellant's jacket. They simply pulled the gun out of his pocket resulting in a search without probable cause." Appellant's Brief at 23. This assertion is belied by the cited testimony.

As in **Glover**, it was possible that someone uninvolved in the suspected shooting was operating the seized vehicle.⁷ Similarly, it is a commonsense inference that there is reasonable suspicion to believe that whoever was in the vehicle may be armed and dangerous. “The reasonable suspicion inquiry ‘falls considerably short’ of 51% accuracy, for, as we have explained, to be reasonable is not to be perfect.” **Glover**, 589 U.S. at 381 (cleaned up). Therefore, the same Fourth Amendment principles that authorized Officer Roberts to seize the vehicle and its occupants due to the NCIC report linking the vehicle to a recent shooting extended to crediting the notion that **any** occupant of that vehicle may be armed and dangerous. Nothing testified to by the officers dispelled that common sense inference. **See id.** at 386 (explaining that the officer “possessed no exculpatory information—let alone sufficient information to rebut the reasonable inference that Glover was driving his own truck—and thus the stop was justified”). We therefore reject Appellant’s argument.⁸

⁷ Appellant was apparently not connected to the shooting, as the Commonwealth stated at sentencing that Appellant “was never charged with a shooting in Philadelphia.” N.T., 6/25/25, at 34.

⁸ **Glover** addressed whether the officer was lawfully permitted to initiate a seizure whereas here the question is whether a frisk of a lawfully-detained individual was authorized. While we find reasonable suspicion to justify the frisk, we have recognized in other contexts that a **Terry** frisk may be authorized purely for safety reasons. **See generally Commonwealth v. Gibson**, 333 A.3d 710, 722-25 (Pa. Super. 2025).

Appellant's second issue presents constitutional challenges to 18 Pa.C.S. § 6105 under the Second Amendment to the United States Constitution, which states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

Appellant was convicted of violating Section 6105(a)(1), which prohibits certain individuals from possessing firearms. Here, Appellant was legally barred from possessing a firearm due to his prior convictions for possession with intent to deliver ("PWID"). Appellant asserts that the Commonwealth may not, consistent with ***New York State Rifle & Pistol Assoc. v. Bruen***, 597 U.S. 1 (2022), criminalize his possession of a firearm. The ***Bruen*** Court established the following test:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 597 U.S. at 24.

"Pursuant to ***Bruen***, the first step of the analysis is to consider whether the plain text of the Second Amendment covers the individual's conduct." ***Commonwealth v. Randolph***, 343 A.3d 1248, 1255 (Pa. Super. 2025). The second step "requires that the government 'justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.'" ***Id.*** at 1256 (quoting ***Bruen***, 597 U.S. at 24). In

Randolph, we concluded that the Commonwealth met its burden and explained:

America's history of prohibiting certain classes of people from having firearms, particularly those that could pose a higher risk of danger to society, provides a "historical analogue" required by **Bruen** for § 6105, even if it is not a "historical twin." **See Bruen**, 597 U.S. at 30. Additionally, our holding aligns with the federal court cases . . . that have addressed this nearly identical issue and concluded that the dangerous combination of drugs and firearms permits the government's regulation.

In reaching this decision, we necessarily conclude that [Randolph]'s arguments to the contrary are unpersuasive. Although he devotes a significant portion of his brief to describing that PWID is not a "crime of violence," that contention is unavailing since "crime of violence" is not the term utilized by the U.S. Supreme Court throughout its recent case law. Instead, the . . . Court highlighted that firearm prohibitions may apply to those that pose a "credible threat" to the safety of another. Drug traffickers fit that mold.

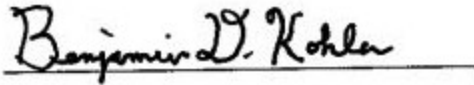
Id. at 1259 (some citations omitted).

The **Randolph** decision treats felony PWID convictions as categorically disqualifying, *i.e.*, to meet its burden under the second step of **Bruen** the Commonwealth is not required to show that the facts of the underlying PWID convictions justified a conclusion the individual convict poses a "credible threat" to the safety of others. Instead, the fact of a felony PWID conviction is dispositive. We therefore conclude that under **Randolph** the

Commonwealth met its burden under **Bruen** and Appellant's as-applied challenge fails.⁹

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: 10/27/2026

⁹ Our Supreme Court has granted review in **Commonwealth v. Farmer**, 329 A.3d 449 (Pa. Super. 2024), *appeal granted*, 343 A.3d 180 (Pa. 2025), and **Commonwealth v. Jenkins**, 328 A.3d 1076, 1080 (2024), *appeal granted*, 343 A.3d 181 (Pa. 2025) (holding that statute criminalizing possession of firearm for "fugitives from justice" did not violate Second Amendment). The appellant in **Randolph** sought review with our Supreme Court, and on January 23, 2026, the Court issued an order holding the petition pending the outcome in **Farmer** and **Jenkins**. We take Appellant's arguments to be in the nature of issue preservation, as he discusses **Randolph** and notes the pending **Farmer** case. **See** Appellant's Brief at 26.