

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Montgomery

234 A.3d 523 (Pa. 2020) · No. No. 4 EAP 2019 · Decided July 21, 2020

SUMMARY

The Supreme Court of Pennsylvania considered whether a firearm partially tucked into a waistband, with its handle visible, could be concealed under 18 Pa.C.S. § 6106. The Court held that concealment is a fact-intensive inquiry based on the totality of the circumstances, but concluded that the evidence was sufficient to establish a prima facie case of concealment at the preliminary-hearing stage. The Court affirmed the Superior Court's reversal of the trial court's dismissal of the charge.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Baer; Chief Justice Saylor; Justice Todd; Justice Donohue; Justice Dougherty; Justice Wecht; Justice Mundy
JURISDICTION	Pennsylvania
DECIDED	July 21, 2020
DOCKET	No. 4 EAP 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Commonwealth appealed the Superior Court's reversal of the trial court's dismissal of a charge of carrying a firearm concealed without a license under 18 Pa.C.S. § 6106. The Supreme Court reviewed whether the Commonwealth established a prima facie case of concealment at the preliminary-hearing stage.
STANDARD OF REVIEW	Review of the sufficiency of a prima facie case is plenary and presents a question of law. Statutory interpretation is reviewed de novo with plenary scope. At the preliminary-hearing stage, the evidence is viewed in the light most favorable to the Commonwealth, and the Commonwealth need only establish probable cause and evidence of each material element sufficient to warrant proceeding to trial.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Darren Montgomery v. Commonwealth of Pennsylvania

TOPICS

criminal procedure

statutory interpretation

preliminary hearing

evidence

PRACTICE AREAS

criminal law

criminal procedure

firearms law

statutory interpretation

preliminary hearings

QUESTIONS PRESENTED

1. Whether a firearm that is partially tucked into a waistband with its handle visible is concealed as a matter of law under 18 Pa.C.S. § 6106.
2. Whether concealment under § 6106 requires absolute invisibility of the firearm.
3. Whether the evidence, viewed in the light most favorable to the Commonwealth, established a prima facie case that Montgomery carried an unlicensed firearm concealed on or about his person.
4. Whether the Superior Court properly reversed the trial court's dismissal of the § 6106 charge and remanded for further proceedings.

HOLDINGS

1. A person carries a firearm concealed on or about his person when, viewed in the totality of the circumstances, the firearm is carried in a manner that hides it from ordinary observation; absolute invisibility is not required.
2. Partial concealment does not satisfy the concealment element as a matter of law merely because any portion of the firearm is hidden; instead, the fact-finder must determine concealment from the totality of the circumstances.
3. The Commonwealth presented sufficient evidence to establish a prima facie case of concealment under § 6106 and warrant further proceedings.

KEY QUOTATIONS

“whether a defendant concealed a firearm pursuant to Section 6106 is an extremely fact- intensive question for a jury to determine based upon a consideration of the totality of the circumstances.” ([J-1-2020] - 1)

“Accordingly, we hold that one “carries a firearm concealed on or about his person” pursuant to Section 6106 when, viewed in the totality of the circumstances, he or she carries the firearm in such a manner as to hide the firearm from ordinary observation; absolute invisibility to others is not required.” ([J-1-2020] - 19 to -20)

FACTUAL BACKGROUND

Officer Robert McCuen observed Darren Montgomery handling what, based on the officer's experience, appeared to be the brown handle of a handgun in Montgomery's waistband. After Montgomery entered and briefly exited a nearby store, he returned inside when he saw the officers; McCuen then observed a firearm on a rack of potatoes a few feet from Montgomery. Montgomery denied that the firearm belonged to him. The Commonwealth relied on this testimony at the preliminary hearing to establish a prima facie case under 18 Pa.C.S. § 6106.

PROCEDURAL HISTORY

At the initial preliminary hearing, the Philadelphia Municipal Court dismissed the § 6106 charge for lack of evidence, although it held the § 6108 charge for trial. The Commonwealth refiled the § 6106 complaint under Pa.R.Crim.P. 544(a), and the trial court again dismissed the charge after relying on the prior preliminary-hearing testimony. The Superior Court reversed and remanded for further proceedings, holding that partial concealment could satisfy the concealment element and that the evidence supported an inference of intent to conceal. The Supreme Court affirmed the Superior Court's judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case remains remanded for further proceedings on the § 6106 charge, consistent with the Superior Court's judgment reversing the trial court's dismissal.

CASES CITED

- Commonwealth v. Montgomery, 192 A.3d 1198 (Pa. Super. 2018)
- Commonwealth v. Scott, 436 A.2d 607 (Pa. 1981)
- Commonwealth v. Nickol, 381 A.2d 873 (Pa. 1977)
- Commonwealth v. Horshaw, 346 A.2d 340 (Pa. Super. 1975)
- Commonwealth v. Butler, 150 A.2d 172 (Pa. Super. 1959)
- Commonwealth v. Williams, 346 A.2d 308 (Pa. Super. 1975)
- Commonwealth v. Scott, 176 A.3d 283, 291 (Pa. Super. 2017)
- Commonwealth v. Karetny, 880 A.2d 505 (Pa. 2005)
- Commonwealth v. Weigle, 997 A.2d 306 (Pa. 2010)
- Commonwealth v. McBride, 595 A.2d 589 (Pa. 1991)
- Commonwealth v. Huggins, 836 A.2d 862 (Pa. 2003)
- Commonwealth v. Pressley, 249 A.2d 345, 346 (Pa. 1969)
- Commonwealth v. Brown, 981 A.2d 893, 898 (Pa. 2009)
- Shafer Elec. & Constr. v. Mantia, 96 A.3d 989, 994 (Pa. 2014)
- Commonwealth v. Mason, 112 A.2d 174, 175 (Pa. 1955)
- Commonwealth v. McKnown, 79 A.3d 678, 690 (Pa. Super. 2013)
- Commonwealth v. Berta, 514 A.2d 921 (Pa. Super. 1986)