

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DANIEL PIKE,	:	
	:	
Appellant	:	No. 2893 EDA 2012

Appeal from the Judgment of Sentence entered on September 14, 2012  
in the Court of Common Pleas of Bucks County,  
Criminal Division, No. CP-09-CR-0001004-2012

BEFORE: BENDER, P.J., DONOHUE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED DECEMBER 04, 2013**

Daniel Pike (“Pike”) appeals from the judgment of sentence imposed following his convictions of one count each of possession of a firearm prohibited, resisting arrest, disorderly conduct, and receiving stolen property, and two counts of aggravated assault. **See** 18 Pa.C.S.A. §§ 6105, 5104, 5503(a)(1), 3925(a), 2702(a)(3). We affirm.

The trial court has set forth the relevant factual and procedural history in its Opinion:

On October 16, 2011, at approximately 6:20 PM, Officer Brian Detrick, and shortly thereafter[,] Corporal Robert Bray, both of Falls Township Police Department, responded to 10 Thornyapple Lane, Levittown, Bucks County, Pennsylvania for a report of a domestic disturbance. (N.T. 31-32, Apr. 17, 2012.) The residence at 10 Thornyapple Lane is approximately forty (40) feet long with a front door located in the center of the house. (N.T. 36, Apr. 17, 2012.) The residence’s attached garage is located on the left side of the house and, in addition to a main

garage door, features a side door facing towards the front door and leading out to a small patio.

Upon entering the neighborhood in his marked patrol vehicle, Officer Detrick was flagged down by the woman he believed called 911, who explained that a jeep almost hit a resident, Francis Krause ["Krause"]. (N.T. 96-97, Apr. 17, 2012.) [] Krause informed police that he was [playing] catch in the street with his son when he saw a white Jeep Cherokee driving toward them at a high rate of speed. (N.T. 9-10, Apr. 17, 2012.) [] Krause recognized the Jeep as belonging to the residents of 10 Thornyapple Lane, the property located across the street from his own. (N.T. 10, Apr. 17, 2012.) [Pike], who was driving, parked the vehicle, exited, ran into the garage, and emerged a few minutes later with a young woman. (N.T. 12-13, Apr. 17, 2012.) While standing on the front lawn, [Pike] and the woman engaged in a loud argument, which escalated until [Pike] became "very angry" and told the woman "he was going to kill her and everybody else involved." (N.T. 14, Apr. 17, 2012.)

Officer Detrick parked in the driveway in front of the garage and walked to the front door, (N.T. 98, Apr. 17, 2012), with Corporal Bray behind him in a "contact cover" position, (N.T. 37, Apr. 17, 2012). When a female answered the door, Officer Detrick asked her and a male sitting at a table about the report of a domestic disturbance at their residence and the female responded that everything was fine. (N.T. 99, Apr. 17, 2012.) Officer Detrick asked, "Is there anyone else in this house that I need to speak to? Is there anyone else here?" The officers then heard a noise which Officer Detrick later described as a "grunting, growling noise" coming from the garage and which Corporal Bray later described as "someone clearing their throat." (*Id.*; N.T. 43, Apr. 17, 2012.)

Officer Detrick asked, "Did you hear that?" to which Corporal Bray replied, "Yes." (N.T. 100, Apr. 17, 2012.) Both officers walked to the side door of the garage with Corporal Bray in front. [Pike] sidestepped out of the side door and yelled, "Fuck you, you motherfucking cops, fucking pig, motherfuckers, fuck you." (N.T. 101, Apr. 17, 2012.) Corporal Bray saw that [Pike] was wearing a button-down shirt that was completely unbuttoned, exposing a gun that [Pike] was carrying in his waist band near his crotch. (N.T. 44-45, Apr. 17, 2012.) [Pike] grabbed the open sides of his shirt and pulled them shut to

conceal the weapon, ducked forward, and attempted to move past the officers. (*Id.*)

Corporal Bray grabbed his left arm and started screaming, "Gun, gun, he has got a gun." (N.T. 46, Apr. 17, 2012.) Corporal Bray placed [Pike] into a chokehold and secured [Pike's] left hand, leaving his right hand free. Fearing that [Pike] would use his right hand to shoot the gun, Corporal Bray pulled [Pike] backwards to choke him and yelled for Officer Detrick to grab the gun. (*Id.*) Officer Detrick grabbed [Pike's] gun and secured it in his own waistband at the small of his back. (N.T. 102, Apr. 17, 2012.)

Upon hearing Officer Detrick say, "I got the gun," Corporal Bray body[-]slammed [Pike] onto the front lawn, during which [Pike] screamed, "Fuck you," (N.T. 48-49, Apr. 17, 2012), and "Fuck you pigs, I'm a Marine, fuck you pigs," (N.T. 103, Apr. 17, 2012). [Pike] attempted to roll over and both officers got on top of [Pike] to handcuff him. (N.T. 50, Apr. 17, 2012.) [Pike] continued to scream, and the officers laid on top of him to keep him still while Corporal Bray searched [Pike]. (N.T. 51, Apr. 17, 2012.) Corporal Bray emptied [Pike's] pockets and found seven (7) watches. (*Id.*)

As the officers attempted to place [Pike] into the patrol van, he used his feet to brace himself against the bumper and the doors and continued yelling, "I'm a fucking Marine motherfucker." (N.T. 103, Apr. 17, 2012.) The officers were able to place [Pike] into the van head-first and then, based on [Pike's] behavior, called paramedics to the scene. (N.T. 103-04, Apr. 17, 2012.)

[Pike] was charged with Possession of Firearm Prohibited, three (3) counts of Aggravated Assault, Firearms Not to be Carried Without a License, Terroristic Threats, Simple Assault, Resisting Arrest, Recklessly Endangering Another Person, Disorderly Conduct-Engage in Fighting, and two (2) counts of Receiving Stolen Property.

On April 13, 2012, [Pike] filed a motion to suppress, seeking the suppression of the warrantless search of [the] house and the seizure of [Pike]. At the suppression hearing, defense counsel clarified that [Pike's] position was that the police officers reached into the garage, grabbed [Pike], pulled him out, tackled him, and sat on him until they found a gun in his waist band. (N.T. 4,

Apr. 17, 2012.) After two (2) days of testimony and argument thereon, [the trial court] denied [Pike's] suppression motion.

On July 9, 2012, [Pike] proceeded on a stipulated waiver trial .... [The trial court] found [Pike] guilty of Possession of Firearm Prohibited, two (2) counts of Aggravated Assault, Resisting Arrest, Disorderly Conduct-Engage in Fighting, and ... Receiving Stolen Property. [The trial court] *nolle prossed* the remaining charges upon request of the Commonwealth. Sentencing was deferred pending a pre-sentence investigation report, requested by defense counsel.

On September 14, 2012, [the trial court] sentenced [Pike] to not less than four (4), nor more than ten (10) years' incarceration on Possession of Firearm Prohibited. On each count of Aggravated Assault, [the trial court] imposed terms of five (5) years' probation to run consecutive to each other and consecutive to the sentence imposed on Possession of Firearm Prohibited.

On October 15, 2012, [Pike] filed a Notice of Appeal to the Superior Court.

Trial Court Opinion, 1/28/13, at 1-4 (footnotes omitted).

On appeal, Pike raises the following questions for our review:

1. Did the trial judge misapply the law in the suppression hearing?
2. Did the trial judge allow a search that was unconstitutional[,], violating [Pike's] 4<sup>th</sup> Amendment protection against illegal search and seizure when he permitted evidence to be used that was acquired by entry into a home without a warrant and without necessary probable cause and exigent circumstances?

Brief for Appellant at 9.

In his first claim, Pike contends that the trial judge misapplied the law during the suppression hearing. ***Id.*** at 14. Pike argues that the trial judge interfered in the prosecution of the case by asking questions that the

assistant district attorney omitted so that the judge could later rule in favor of the Commonwealth. **Id.** at 14-15. Pike further points to various comments made by the judge during the examination of witnesses and the judge's alleged lack of understanding of the law. **Id.** at 15-16.

Initially, we note that the trial court found this claim, as raised in Pike's Pennsylvania Rule of Appellate Procedure 1925(b) Concise Statement, to be waived because it was too vague to determine what error Pike sought to raise on appeal. **See** Trial Court Opinion, 1/28/13, at 5; **see also Commonwealth v. Reeves**, 907 A.2d 1, 2 (Pa. Super. 2006). Upon our review of the Concise Statement, we agree with the trial court's determination. Further, we note that in his appellate brief, Pike has not cited to any pertinent authority to support his claims. **See** Pa.R.A.P. 2119(a). Thus, we conclude that Pike's first claim is waived.

In his second claim, Pike contends that the evidence seized by the police should have been suppressed because the police entered his home without a warrant and no exceptions to a warrantless search were applicable. Brief for Appellant at 16-20. Pike argues that the police took him from a garage area that was attached to his residence and subsequently seized a handgun and jewelry that were on his person. **Id.** at 16. Pike bases his argument that he never left the garage area on the testimony by Krause, which contradicted the police officers' testimony regarding Pike's voluntary exit from the garage. **Id.** at 21-26. Pike further asserts that the

testimony presented by Corporal Bray and Officer Detrick was incredible due to various contradictory statements regarding when they saw Pike's firearm and Pike's actions toward the police, and the lack of corroboration to anything that was reported on the 911 call. **Id.** Pike also claims that the mere observation of a firearm did not allow the police to arrest and search Pike. **Id.** at 21.

Our standard of review of a denial of suppression is whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error. Our scope of review is limited; we may consider only the evidence of the prosecution 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 record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

In addition, it 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. The suppression court is also entitled to believe all, part or none of the evidence presented. Finally, at a suppression hearing, the Commonwealth has the burden of establishing by a preponderance of the evidence that the evidence was properly obtained.

**Commonwealth v. Galendez**, 27 A.3d 1042, 1045-46 (Pa. Super. 2011) (citations, quotation marks, and brackets omitted).

Here, the trial court found the testimony of the police officers to be credible. **See** Trial Court Opinion, 1/28/13, at 6; N.T., 4/18/12, at 96-97. The trial court specifically found that the police officers' search of Pike did not occur in the home or garage. **See** Trial Court Opinion, 1/28/13, at 6; N.T., 4/18/12, at 96-98. Moreover, the trial court found that the officers

observed a gun on Pike's waistband when he exited the garage. **See** Trial Court Opinion, 1/28/13, at 6; N.T., 4/18/12, at 96, 98. The record supports the trial court's factual findings; thus, Pike is not entitled to relief on his claims. **See Galendez**, 27 A.3d at 1045-46.

Furthermore, contrary to Pike's claim that the mere presence of the gun led to the officers' seizure, the officers seized the gun to protect their own safety as well as the public's safety. **See** Trial Court Opinion, 1/28/13, at 6, 7; N.T., 4/18/12, at 96-101; **see also Commonwealth v. Zhahir**, 751 A.2d 1153, 1158 (Pa. 2000) (holding that a suspect's suspicious behavior in response to police presence, combined with placing his hand in his pocket was sufficient to justify restraining suspect's hand); **Commonwealth v. Potts**, 73 A.3d 1275, 1280-81 (Pa. Super. 2013) (stating that "police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.") (citation omitted). Here, the credible evidence demonstrated that the officers were responding to a domestic disturbance, Pike's threats of violence were overheard by a neighbor, Pike refused to answer the police officers and belligerently cursed at them, and a gun was observed on Pike's waistband.<sup>1</sup> Based upon the foregoing, Pike is not entitled to relief on his second claim.

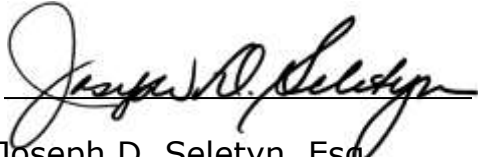
Judgment of sentence affirmed.

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<sup>1</sup> We also note that the officers legally searched Pike's pocket, which revealed the watches, as the search was incident to a lawful arrest.

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/4/2013