

IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

Docket No. 335 MDA 2012

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

V.

HOBSON LYLE MCKOWN,

Appellant.

**BRIEF OF *AMICUS CURIAE*, THE CITY OF PHILADELPHIA,
IN SUPPORT OF APPELLEE, THE COMMONWEALTH OF
PENNSYLVANIA**

CITY OF PHILADELPHIA LAW DEPT.
Shelley R. Smith, City Solicitor
Richard Feder, Chief Deputy City Solicitor,
Appeals and Legislation

By: Kelly Diffily
Assistant City Solicitor, Appeals
I.D. No. 200531
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-5010
kelly.diffily@phila.gov
*Attorney for Amicus Curiae, the City of
Philadelphia*

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INTEREST OF AMICUS CURIAE THE CITY OF PHILADELPHIA

The City of Philadelphia (“City”) is the largest city in the Commonwealth and the fifth-most-populous city in the United States, with a population of approximately 1.5 million people. The City is interested in this matter because the question of whether Pennsylvania residents are permitted to carry firearms on the streets of Philadelphia, with only an out-of-state gun permit and without a Pennsylvania firearms license, entirely circumventing the legislatively imposed gun licensing framework devised by the Pennsylvania General Assembly, seriously implicates crime, violence, and safety in the City.

Like most large, urban areas in America, Philadelphia is no stranger to gun violence. Crime and violence are major concerns affecting the safety of the citizens of Philadelphia, as well as police trying to enforce the law. Between 2007 and 2011, there were 1,654 murders committed in Philadelphia, an average of 331 annually. Of these killings, a firearm was used to commit 1,359, or 82% of these murders. See www.phillypolice.com/assets/PPD.Homicide.Analysis.2011.pdf. During that same five year period (2007 to 2011), 7,261 people were victims of a shooting by firearm in the City, an average of 1,452 each year. Id.

The question before this Court directly impacts upon the statutory duties of the Mayor, the Police Commissioner and the overall responsibilities of the City of Philadelphia to its citizens, businesses and visitors. The Mayor and the Police Commissioner have a duty to enforce the law, including making arrests for illegal gun possession pursuant to 18 Pa. C.S. § 6106 (Firearms not to be carried without a license) and 18 Pa. C.S. § 6108 (Carrying firearms on public streets or public

property in Philadelphia), as the General Assembly intended.

The Police Commissioner is also charged by 18 Pa. C.S. § 6109 with conducting investigations of applicants for licenses to carry a firearm to determine their fitness for such a license; for granting or denying applications for licenses to carry a firearm; and for revoking licenses to carry a firearm for good cause. If Pennsylvania residents may carry with only an out-of-state gun permit, the Commissioner's statutory authority to deny an application (or revoke a license) based on the legitimate statutory standards set out at Section 6109 is completely usurped. 18 Pa. C.S. §§ 6109(e)(1), 6109(i).

Further, permitting Pennsylvania residents to carry firearms in Philadelphia with only an out-of-state license places at risk both police officers and the community, not only because such residents may not meet Pennsylvania's statutory standards for gun licensure, but also because officers often cannot verify without substantial delay the validity of an out-of-state license. In contrast, a Pennsylvania license to carry firearms can be verified on-the-spot by police officers because they have immediate access to the pertinent Pennsylvania database.¹

¹ Appellant's Brief presents ten questions for this Court's consideration. The City only has an interest in, and this *Amicus* Brief only discusses, the first question, which concerns whether Pennsylvania residents are permitted to carry firearms while in Pennsylvania with only an out-of-state gun license or permit.

SUMMARY OF THE ARGUMENT

Pennsylvania law does not allow a Pennsylvania resident, while in Pennsylvania, to conceal-carry a firearm without a Pennsylvania firearms license — particularly a Pennsylvania resident like McKown whose Pennsylvania license was revoked by the local sheriff — and with only a license from New Hampshire, or any other state with which Pennsylvania has “reciprocity.” “Reciprocity” — whether Agreement Reciprocity pursuant to 18 Pa. C.S. § 6109(k) or Statutory Reciprocity pursuant to 18 Pa. C.S. § 6106(b)(15) — applies only to non-Pennsylvania residents when they are visiting Pennsylvania, and to Pennsylvania residents when they are visiting other states.

With Section 18 Pa. C.S. § 6109, the General Assembly set strict, uniform standards for gun licensure. The view of “reciprocity” proffered by Appellant McKown would completely undermine the Uniform Firearms Act’s licensure scheme, rendering it optional, and allow any Pennsylvania resident to forum shop among the twenty-eight “reciprocity” states in which to apply for a gun license. Pennsylvania law, properly construed, does not allow for this absurd result.

Moreover, McKown’s argument that he was entitled to conceal-carry in Pennsylvania based on an out-of-state license pursuant to Section 6106(b)(15) fails for two independent reasons. First, he relies on a statutory provision, Section 6106(b)(15), which has no application to the facts of his case, because his purported license is from New Hampshire, a state with which Pennsylvania has Agreement Reciprocity pursuant to Section 6109(k), not Statutory Reciprocity pursuant to Section 6106(b)(15). Importantly, Section 6106(b)(15)(ii) requires the

Attorney General to make a determination that the firearm laws of the states are similar, which indisputably has not occurred here.

Second, even assuming *arguendo* that Section 6106(b)(15) *did* apply, this Court must read the words “any person” sensibly, and so read, the General Assembly intended the exemption to apply only to non-residents of Pennsylvania. Faced with extremely similar statutory language exempting from criminal liability “a person” who held a valid out-of-state license, the courts in Michigan rejected the view offered by McKown, holding the Legislature intended the exemption to apply only to non-residents of Michigan.

Finally, even if Sections 6109 or 6106 of the Uniform Firearms Act could be read to permit a Pennsylvania resident to legally conceal-carry a firearm while in Pennsylvania with only an out-of-state license or permit, McKown’s presentation of that issue is an abstract one. The trial court conclusively determined he was not a valid New Hampshire license holder, and McKown does not challenge this issue on appeal. Thus, the holding is binding against him. McKown’s purely theoretical challenge therefore presents no opportunity for this Court to adopt his far-reaching argument.

ARGUMENT

With substantial amendments to the Uniform Firearms Act in 1988, the General Assembly specifically established uniform, statewide standards for gun licensure for Pennsylvania residents for the first time, including dictating that a Pennsylvania resident seeking a license to carry a firearm *must* apply to the sheriff of the county in which he resides, mandating that the issuing authority affirmatively investigate the applicant, and absolutely prohibiting the issuance of a license to certain persons who do not meet certain statutory pre-conditions, including those convicted of felonies and other crimes, and persons who are mentally incompetent. Critically, the Pennsylvania statute also requires local officials to investigate the applicant's character and reputation and to deny the license if the local official determines that issuance of a conceal-carry permit would be a danger to public safety.

A license to carry issued by New Hampshire, with which Pennsylvania has a firearms Reciprocity Agreement pursuant to Section 6109(k) — a state with far less rigorous permitting standards, with no standardized criteria against which applicants are scrutinized, and where even a felony conviction for a *weapons* offense does not act as an automatic bar — is insufficient to permit a Pennsylvania resident to legally conceal-carry a firearm while in Pennsylvania. A contrary conclusion would absurdly undermine the General Assembly's intent in setting uniform, statewide standards for gun licensure for Pennsylvania residents. Further, if this Court determines that Pennsylvania law allows McKown to carry with just a New Hampshire license, then the floodgates will open for Pennsylvania residents

to freely forum shop for a conceal-carry license from any one of the twenty-eight states with which Pennsylvania has “reciprocity.”

Pennsylvania law, properly construed, cannot possibly call for this self-defeating and absurd result. Read properly, Pennsylvania law provides that the benefits of “reciprocity” apply only to non-residents of Pennsylvania who reside in “reciprocity” states, when they are visiting Pennsylvania, and to Pennsylvania residents when they are visiting other “reciprocity” states.

Further, 18 Pa. C.S. § 6106(b)(15), the exception upon which McKown exclusively relies for “[a]ny person who possesses a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state,” is wholly inapplicable to the instant case. This is because the Firearms Act sets forth **two different kinds of firearms reciprocity** — Agreement Reciprocity under 6109(k), and Statutory Reciprocity under 6106(b)(15) if an agreement is not possible or desired. As explained more fully herein, Agreement Reciprocity requires (unsurprisingly) a reciprocity agreement with another State; and Statutory Reciprocity requires a wholly different condition -- a finding by the Attorney General that, *inter alia*, the reciprocity state has firearms laws that are similar to the firearm laws of Pennsylvania. Whatever rights Statutory Reciprocity may confer on Pennsylvania residents who hold permits from a Statutory Reciprocity state while in Pennsylvania (and, we submit, the answer is none), those rights (which McKown seeks to claim here) cannot help McKown. This is because New Hampshire is an Agreement Reciprocity State, and not a Statutory Reciprocity state, and, therefore, the Attorney General has not made the necessary

prerequisite finding that New Hampshire’s firearm laws are similar to Pennsylvania’s firearm laws. The exemption set forth at Section 6106(b)(15) therefore cannot provide McKown relief from criminal liability.

Regardless, McKown does not challenge the trial court’s finding that he did not have a valid New Hampshire license. Therefore, this case presents no opportunity to hold that a New Hampshire license would allow a Pennsylvania resident to conceal-carry in Pennsylvania.

I. The General Assembly Did Not Intend to Allow a Pennsylvania Resident, While In Pennsylvania, to Conceal-Carry a Firearm Without a Pennsylvania Firearms License, With Only a License From New Hampshire or From Any Other State With Which Pennsylvania Has Reciprocity.

A. The Relevant Uniform Firearms Act Provisions (Sections 6106 and 6109).

The Pennsylvania Uniform Firearms Act, 18 Pa. C.S. §§ 6101-6127 (“the Act” or “the Uniform Firearms Act”), originally enacted in 1939,² comprehensively regulates the lawful and unlawful use, possession, transfer or transportation of firearms, and establishes a uniform, state-wide scheme for the issuance of gun licenses in the Commonwealth of Pennsylvania. The Act establishes a framework of checks and balances to govern the concealed-carry licensing process.

² Act of June 24, 1939 (P.L. 872, Act No. 375, Section 628) (then found at 18 P.S. § 4628) (now repealed).

1. **18 Pa. C.S. § 6109 (Licenses), Including Agreement Reciprocity, Section 6109(k)**

18 Pa. C.S. § 6109 (Licenses) (“Section 6109”), which governs the application for and issuance of firearms licenses, provides generally that Pennsylvania residents must apply in their home county, mandates that the issuing authority affirmatively investigate the applicant, lists the statutory pre-conditions for issuance of a license, the grounds requiring denial of a license, and the circumstances dictating revocation by the issuing authority.

Importantly, Section 6109(k) also vests with the Attorney General the authority to enter into Reciprocity by Agreement with other states (hereinafter “Reciprocity Agreement Section,” codified at 18 Pa. C.S. § 6109(k)).

Unsurprisingly, Reciprocity by Agreement requires a reciprocity agreement – a contract – with another State, but other than that, there are no statutory prerequisites to the Attorney General’s authority to enter into these agreements. In particular, Section 6109(k) imposes no requirement that the two states’ statutes are similar as a precondition to the Attorney General’s authority to enter into Reciprocity by Agreement.

To date, the Attorney General’s website lists eighteen states with which Pennsylvania has a Reciprocity Agreement: Alaska, Arizona, Arkansas, Florida, Georgia, Kentucky, Maine, Michigan, Missouri, New Hampshire, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming. See <http://www.attorneygeneral.gov/crime.aspx?id=184>.

Specifically, the text of Section 6109 states in relevant part:

(a) Purpose of license. --A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle throughout this Commonwealth.

(b) Place of application. --An individual who is 21 years of age or older may apply to a sheriff for a license to carry a firearm concealed on or about his person or in a vehicle within this Commonwealth. **If the applicant is a resident of this Commonwealth, he shall make application with the sheriff of the county in which he resides or, if a resident of a city of the first class, with the chief of police of that city.**

(c) Form of application and content. --The application for a license to carry a firearm shall be uniform throughout this Commonwealth and shall be on a form prescribed by the Pennsylvania State Police.

...

(d) Sheriff to conduct investigation. --**The sheriff to whom the application is made shall:**

(1) investigate the applicant's record of criminal conviction;

...

(3) **investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;**

...

(e) Issuance of license.

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and **shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license.** A license shall not be issued to any of the following:

(i) **An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.**

(ii) An individual who has been convicted of an offense under . . . The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) An individual convicted of a crime enumerated in section 6105.

...

(viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

...

(k) Reciprocity.

(1) The Attorney General shall have the power and duty to enter into reciprocity agreements with other states providing for the mutual recognition of a license to carry a firearm issued by the Commonwealth and a license or permit to carry a firearm issued by the other state. To carry out this duty, the Attorney General is authorized to negotiate reciprocity agreements and grant recognition of a license or permit to carry a firearm issued by another state.

18 Pa. C.S. § 6109 (emphasis added).

2. 18 Pa. C.S. § 6106 (Firearms Not To Be Carried Without A License), Including Statutory Reciprocity, Section 6106(b)(15).

A separate section, 18 Pa. C.S. § 6106 (Firearms not to be carried without a license) ("Section 6106"), provides generally at subsection (a) that it is a criminal

offense to conceal-carry a firearm without a license, and, at subsection (b), lists the various statutory exemptions to criminal liability.

Of particular importance, **Section 6106(b)(15)** sets forth a second kind of **firearms reciprocity** — distinct from reciprocity pursuant to agreement under Section 6109(k) — for states with which Pennsylvania lacks a formal Reciprocity Agreement (*e.g.*, if an agreement is not possible, desired, or the other jurisdiction lacks authority to enter an agreement). 18 Pa. C.S. § 6106(b)(15) (hereinafter “Statutory Reciprocity Section”). Statutory Reciprocity requires *both* that the other state provide a reciprocal privilege to Pennsylvania residents, and that the Attorney General make a determination that the other state’s firearm laws are similar to Pennsylvania’s. *Id.* In that case, the Attorney General may recognize mutual Statutory Reciprocity pursuant to Section 6106(b)(15), and persons who hold valid out-of-state licenses from those states are exempt from criminal liability.

To date, the Attorney General has granted Statutory Reciprocity under Section 6106(b)(15) to the following ten states, based on the determination that the other state has granted reciprocity to Pennsylvania license holders, and that the other state’s laws governing firearms are similar to Pennsylvania’s: Colorado, Iowa, Idaho, Indiana, Louisiana, Mississippi, Montana, North Dakota, Utah, and Wisconsin. See <http://www.attorneygeneral.gov/crime.aspx?id=184>.

Specifically, Section 6106 states in relevant part:

(a) Offense defined.

(1) Except as provided in paragraph (2), **any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.**

...

(b) Exceptions. --The provisions of subsection (a) shall not apply to:

...

(15) **Any person who possesses a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state, regardless of whether a reciprocity agreement exists between the Commonwealth and the state under section 6109(k), provided:**

(i) **The state provides a reciprocal privilege for individuals licensed to carry firearms under section 6109.**

(ii) **The Attorney General has determined that the firearm laws of the state are similar to the firearm laws of this Commonwealth.**

18 Pa. C.S. § 6106.

B. History of the Uniform Firearms Act/Gun Licensing in Pennsylvania

1. The Original and Current Licensing Schemes (Pre- and Post- 1988)

The Original Licensing Scheme

In 1939, the Pennsylvania General Assembly first enacted the Uniform Firearms Act, which provided for mandatory licensing of all firearms carried in a vehicle or concealed on a person, and made criminal the carrying of a concealed firearm or a firearm in a vehicle without a license. Act of June 24, 1939 (P.L. 872,

No. 375, Section 628) (then found at 18 P.S. § 4628) (now repealed).³

From 1939 until 1988, 18 Pa. C.S. § 6109 (Licenses) (“Section 6109”), and its predecessor, 18 P.S. § 4628, authorized the chief of police of a city or the sheriff of a county to issue licenses to carry a firearm (hereinafter the “Original Licensing Scheme”). Act of June 24, 1939 (P.L. 872, No. 375, Section 628); Act of December 6, 1972 (P.L. 1482, No. 334, Section 6109).⁴

Under the Original Licensing Scheme, the issuing authority was vested with great discretion to issue or deny a firearms license based on whether the applicant “appear[ed] . . . [to have] good reason to fear an injury to his person or property, or ha[d] any other proper reason for carrying a firearm,” and was a “suitable person to be so licensed.” *Id.* Further, under the Original Licensing Scheme, people could apply for, and obtain, a gun license in any county in the Commonwealth. That is, there was no requirement that a license applicant reside in the county in which she or he was applying for the license.

The Current Uniform Licensing Scheme

In December of 1988, by Act of December 19, 1988 (P.L. 1275, No. 158, 1988 Pa. Laws 158), the General Assembly substantially amended, and made more stringent, Section 6109, establishing — for the first time — a comprehensive,

³ In 1972, by Act of December 6, 1972 (P.L. 1482, No. 334), the Act, previously found at 18 P.S. § 4628, was codified at 18 Pa. C.S. § 6101 *et seq.* (as amended, now found at 18 Pa. C.S. §§ 6101 to 6127).

⁴ Downloadable .pdf versions of Pennsylvania Pamphlet Laws, 1960 to 2009, can be found at <http://www.palrb.us/pamphletlaws/browse/plgetyears.php>.

uniform state-wide licensing scheme, whereby standardized criteria for the issuance of a license were set out (hereinafter the “Current Uniform Licensing Scheme”).

The Current Uniform Licensing Scheme added a residency requirement, codified at 18 Pa. C.S. § 6109(b), whereby any Pennsylvania resident “shall make application . . . [with] the county in which he resides.” Further, pursuant to these uniform standards, the local issuing authority, in determining whether to grant an individual a license, became required to conduct an extensive investigation to ensure that licenses are issued only to applicants who are qualified under Pennsylvania law, and to absolutely prohibit the issuance of a license to certain persons, including those convicted of felonies and other crimes, and persons who are mentally incompetent. See 18 Pa. C.S. § 6109.

Further, as part of the investigation mandated by the Current Uniform Licensing Scheme, the issuing authority became required to “investigate whether the applicant’s character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety,” and to deny the license based on dangerous character or reputation. See 18 Pa. C.S. §§ 6109(d)(3), 6109(e)(1)(i).

Finally, the 1988 amendments also added a mandatory revocation provision: “A license to carry firearms shall be revoked by the issuing authority for any reason [that is a basis for denial pursuant to Section 6109](e)(1) which occurs during the term of the permit.” See 18 Pa. C.S. § 6109(i).

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2. Addition of the Two Reciprocity Sections.

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The Uniform Firearms Act was later amended to add the two different kinds of firearms reciprocity — Agreement Reciprocity under Section 6109(k), and Statutory Reciprocity under Section 6106(b)(15).

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First, the General Assembly provided for Agreement Reciprocity. In June 1995, the General Assembly added subsection (k) to Section 6109, giving the Attorney General the power to enter into reciprocity agreements with other states which allow for the mutual recognition of each state's firearms licenses. See Act of June 13, 1995, Special Session 1 (P.L. 1024, No. 17, 1995 Pa. Laws 17).

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Statutory Reciprocity was added ten years later. In 2005, the General Assembly added subsection (b)(15) to Section 6106, exempting from the prohibition on carrying a firearm without a license “any person who possesses a valid and lawfully issued license or permit to carry a firearm . . . issued under the laws of another state, regardless of whether a [R]eciprocity [A]greement exists,” if two criteria are satisfied: the states' statutes are deemed to be similar and the other jurisdiction grants reciprocity to Pennsylvania license holders. 18 Pa. C.S. § 6106(b)(15); Act of November 10, 2005 (P.L. 335, No. 66, 2005 Pa. Laws 66, § 3).

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D. Absurd Consequences Would Result If a Pennsylvania Resident Could Entirely Avoid The Uniform Firearms Act's Legislatively Imposed Requirements By Obtaining a License or Permit to Carry From Another State.

The Rules of Statutory Construction Preclude an Absurd Reading.

This Court is certainly familiar with the canons of statutory construction, but a number of them bear emphasis here, as they provide critical guideposts for this case.

The object of statutory interpretation is to determine the intent of the General Assembly. See Colville v. Allegheny County Retirement Board, 592 Pa. 433, 444, 926 A.2d 424, 430-431 (2007); 1 Pa. C.S. § 1921(a). When the words of a statute are clear and free from all ambiguity, there is no need to look beyond the plain language of a statute, for the language of a statute is the best indication of legislative intent. Colville, 592 Pa. at 444, 926 A.2d at 431; 1 Pa. C.S. § 1921(b). If the words of the statute are not explicit, the General Assembly's intent may be ascertained by resort to principles of statutory construction, including consideration of the occasion and necessity for the statute; the circumstances under which it was enacted; the mischief to be remedied; the object to be attained; the former law, if any, including other statutes upon the same or similar subjects; the consequences of a particular interpretation; the contemporaneous legislative history; and legislative and administrative interpretations of such statute. See 1 Pa. C.S. § 1921(c).

Moreover, a statute may not be interpreted in such a way as to render it meaningless, and, in ascertaining the intention of the General Assembly in the

enactment of a statute, it can be presumed that the legislature does not intend a result that is absurd, impossible of execution or unreasonable, and that it intends the entire statute to be effective and certain. See 1 Pa. C.S. § 1922(2); Pa. State Corr. Officers Ass’n v. State Civil Serv. Comm’n (Dep’t of Corr.), 595 Pa. 548, 559, 939 A.2d 296, 303 (2007); McGrory v. DOT, Bureau of Driver Licensing, 591 Pa. 56, 66, 915 A.2d 1155, 1160 (2007). Every statute shall be construed, if possible, to give effect to all of its provisions. 1 Pa. C.S. § 1921(a). Also, “[s]tatutes or parts of statutes are *in pari materia* when they relate to the same persons or things or to the same class of persons or things . . . Statutes *in pari materia* shall be construed together, if possible. . . .” 1 Pa. C.S. § 1932.

The Rule of Lenity is Only Implicated After Efforts at Statutory Interpretation Yield No Definitive Conclusion, and Does Not Override Common Sense and Evident Statutory Purpose.

Further, while it is true (as McKown argues) that penal statutes should be strictly construed, 1 Pa. C.S. § 1928(b), Appellant’s Br. at 10, [t]he canon of **strict construction of penal statutes is not an inexorable command to override common sense and evident statutory purpose.**” Commonwealth v. Butler, 150 A.2d 172, 173 (Pa. Super. 1959) (emphasis added). “The evil sought to be corrected by the enactment of the Uniform Firearms Act is a serious one, and courts owe a duty to the public to see to it that the legislative intent is not thwarted by a construction which is unreasonably rigid and inflexible.” Id.

Indeed, the Pennsylvania Supreme Court has repeatedly explained that “the need for strict construction does not require that the words of a penal statute be

given their narrowest meaning or that legislative intent should be disregarded.”
Commonwealth v. Fithian, 599 Pa. 180, 194, 961 A.2d 66, 74 (2008); see also
Commonwealth v. Wooten, 519 Pa. 45, 53, 545 A.2d 876, 879-80 (1988) (looking
at purpose of statute and avoiding absurd result of contrary interpretation, applying
sentence enhancement and refusing to construe words of criminal statute in
narrowest sense); Commonwealth v. Gordon, 511 Pa. 481, 487, 515 A.2d 558, 561
(1986) (looking to entire statute and to avoid absurd result, affirming conviction
and holding pharmacist selling drugs on the street without a prescription not
entitled to exemption as a “practitioner,” as strict construction does not require that
the Legislature’s evident intent be disregarded); Commonwealth v. Duncan, 456
Pa. 495, 321 A.2d 917 (1974) (looking to purpose of statute and avoiding absurd
result, affirming conviction for loitering and prowling “around” a dwelling house,
where appellant was found on the outside landing of the fire tower); Butler, 150
A.2d at 173 (considering both the purposes of the entire Uniform Firearms Act and
the particular provision criminalizing carrying a concealed weapon without a
license, affirming conviction for carrying a concealed weapon without a license).⁵

In fact, in a challenge to the imposition of taxes — also subject to strict

⁵ Shedding light on the reach of the rule of lenity in federal jurisprudence, the United States Supreme Court has held that “[t]he simple existence of some statutory ambiguity . . . is not sufficient to warrant application of . . . [the] rule [of lenity], for most statutes are ambiguous to some degree. To invoke the rule, we must conclude that there is a grievous ambiguity or uncertainty in the statute.” Dean v. United States, 556 U.S. 568, 577 (2009) (affirming sentence enhancement and declining to apply rule of lenity because statute insufficiently ambiguous); Muscarello v. United States, 524 U.S. 125, 138-39 (1998) (similar).

construction— the Pennsylvania Supreme Court has held that the rule of lenity “is only implicated after our efforts at statutory interpretation yield no definitive conclusion.” Dechert LLP v. Commonwealth, 606 Pa. 334, 348 n.8, 998 A.2d 575, 584 n.8 (2010) (affirming denial of tax refund request). Thus, the Court rejected the taxpayer’s argument that the tax statute must be construed in its favor, as to do so would absurdly render the statutory language meaningless and result in automatic judgment in favor of any taxpayer who challenged the tax on an item not specifically identified in the statute. Id.

McKown’s Reading Would Lead to Absurd Results.

Applying the foregoing to the instant matter, it is manifest that Pennsylvania law does not allow a Pennsylvania resident, while in Pennsylvania, to conceal-carry a firearm without a Pennsylvania firearms license — particularly a Pennsylvania resident like McKown whose Pennsylvania license was revoked by the local sheriff — with only a license from New Hampshire, or any other state with which Pennsylvania has “reciprocity.” “Reciprocity” — whether Agreement Reciprocity pursuant to § 6109(k) or Statutory Reciprocity pursuant to § 6106(b)(15) — applies only to non-Pennsylvania residents when they are visiting Pennsylvania, and to Pennsylvania residents when they are visiting other states.

The plain language of the Uniform Firearms Act demonstrates that the General Assembly specifically and carefully set uniform, statewide standards for gun licensure for Pennsylvania residents. See 18 Pa. C.S. § 6109.

Furthermore, the General Assembly, in 1988, very clearly opted to adopt a far more uniform, categorical scheme than had previously been in place,

substantially amending the prior non-standardized rules. At that time, the legislature made a proactive decision to do away with the Original Licensing Scheme, which until 1988 did not require applicants to apply in the county where they lived, and gave authorities wide-ranging discretion to grant or deny conceal-carry licenses, with no standardized criteria against which applicants were scrutinized. Act of June 24, 1939 (P.L. 872, No. 375, Section 628); Act of December 6, 1972 (P.L. 1482, No. 334, Section 6109).

Starting in December of 1988, however, the General Assembly decided that, “[i]f the applicant is a resident of this Commonwealth, he shall make application with the sheriff of the county in which he resides,” and that the issuing authority is required to conduct an extensive investigation; and to absolutely prohibit license issuance to persons who do not satisfy standardized, uniform criteria applied to all applicants, statewide. 18 Pa. C.S. § 6109 (emphasis added); Act of December 19, 1988 (P.L. 1275, No. 158, 1988 Pa. Laws 158).

Among other conditions, an application must be denied for an individual who has been convicted of any felony, any drug crime, and numerous other enumerated weapons offenses, crimes against persons and property offenses, as well as domestic abusers subject to certain active protection from abuse orders, and persons who are mentally incompetent. See 18 Pa. C.S. §§ 6109(e)(1), 6105(b).

Critically, the Pennsylvania statute also requires local authorities to investigate, and to consider, in the decision whether to grant that person a conceal-carry license, whether the applicant’s “character and reputation are such that the applicant will . . . be likely to act in a manner dangerous to public safety.” 18 Pa.

C.S. §§ 6109(d)(3), (e)(1)(i). In so doing, the Uniform Firearms Act provides for vital input by local law enforcement, which is in the best position to know whether a particular person poses a danger to public safety.

For example, an individual who has been arrested multiple times at known drug locations and who is known by police to be a drug dealer, but who has never been convicted, would likely be denied a Pennsylvania license by his local sheriff. See, e.g., Morley v. City of Philadelphia Licenses & Inspections Unit, 844 A.2d 637, 641 (Pa. Commw. 2004) (licensee lacked the requisite character and reputation to entitle him to be licensed to carry a firearm where he drew his gun in a bar and ordered everyone to leave); Smith v. Nace, 824 A.2d 416, 419-420 (Pa. Commw. 2003) (affirming revocation of license where licensee presented a danger to public safety after incident of road rage involving waving of weapon); Tsokas v. Bd. of Licenses & Inspections Review, 777 A.2d 1197, 1202-1203 (Pa. Commw. 2001) (affirming revocation based on character and reputation for acting dangerously); Harris v. Sheriff of Del. County, 675 A.2d 400, 403 (Pa. Commw. 1996) (licensee's reputation as a drug dealer was admissible and constituted good cause for revocation). Yet, under McKown's theory, that same individual could apply out-of-state, obtain a conceal-carry permit, and thereafter legally conceal-carry a firearm in Pennsylvania. We submit that the General Assembly did not intend to authorize conceal-carry in Pennsylvania by any of the licensees at issue in the foregoing cases, regardless whether they somehow could procure a license from some *other* state.

The case of Marqus Hill illustrates the danger of a contrary construction.

Applying Pennsylvania law’s character and reputation standard, the Philadelphia Police revoked Hill’s license to conceal-carry a firearm in 2006 based in part upon evidence supporting his involvement with a shooting. Hill appealed the revocation and lost. In January 2008, when the Board Licenses and Inspections Review upheld the revocation, Hill became agitated and violent and was charged with assaulting a police officer. The case against Hill ended with a conviction for disorderly conduct, which, not being a felony conviction, did not prevent Hill from applying to, and being granted, a Florida license to carry firearms. See Docket for MC-51-CR-0001379-2008, available at <http://ujportal.pacourts.us/DocketSheets/CP.aspx>. In September 2010, Hill shot an 18-year-old boy multiple times, killing him. Hill was subsequently convicted of third degree murder and sentenced to eight to twenty years in prison. See Docket for CP-51-CR-0001335-2011, available at <http://ujportal.pacourts.us/DocketSheets/CP.aspx>; see also http://articles.philly.com/2010-09-16/news/24979574_1_gun-hill-philadelphia-police.

The New Hampshire Gun Permitting Scheme Undermines and Clashes With Pennsylvania Law.

In contrast to Pennsylvania’s firearm statute, the New Hampshire statute broadly directs that authorities “shall issue” a license to carry “if it appears that the applicant has good reason to fear injury to the applicant’s person or property or has *any proper purpose*, and that the applicant is a *suitable person* to be licensed.” N.H. Rev. Stat. Ann. 159:6 (emphasis added).

By only excluding applicants who cannot articulate a “proper purpose” for

gun usage, or who are not “suitable persons,” New Hampshire’s substantially weaker licensing scheme does not even prohibit all convicted *felons* from obtaining a gun license. See Kozerski v. Steere, 433 A.2d 1244, 1245 (N.H. 1981) (“N.H. Rev. Stat. Ann. 159:6 does not bar the issuance of a license to a convicted felon who otherwise qualifies under the statute as a ‘suitable person’”). In fact, only “certain convicted felons [those convicted of the crimes set forth at N.H. Rev. Stat. Ann. 159:3 and N.H. Rev. Stat. Ann. 159:3-a, *i.e.*, only felonies against persons or property, and drug felonies] are unsuitable for the purposes of obtaining a license to carry a concealed weapon.” Garand v. Town of Exeter, 977 A.2d 540, 544 (N.H. 2009).⁶ Notably, this means that even a **felony conviction for a weapons offense** would not act as an automatic bar under New Hampshire law.

Further, New Hampshire law certainly does not require the issuing authority to investigate, or in any way specifically consider, in the decision on whether to issue a license, the applicant’s character or reputation for acting dangerously, a critical component of the Pennsylvania scheme. Compare N.H. Rev. Stat. Ann. § 159:6, with 18 Pa. C.S. § 6109. Nor is there likely to be any way for the New Hampshire issuing authority to *know* of an applicant’s propensity for dangerous behavior, even *if* New Hampshire decided to investigate this.

Moreover, the New Hampshire permitting scheme is practically identical, word-for-word, to the pre-1988 version of Pennsylvania’s scheme, *i.e.*, the very

⁶ An individual *may* also be unsuitable if he or she has a “significant and unexplained arrest history.” Garand, 977 A.2d at 544.

one the General Assembly completely did away with. That (now-defunct) licensing framework, like New Hampshire's *current* scheme, only looked at two factors: whether the applicant had a "proper reason" for carrying a firearm, and whether the applicant was a "suitable person" to be licensed, and vested the local policing agency with practically unfettered discretion to decide this on a case-by-case basis. Compare Act of December 6, 1972 (P.L. 1482, No. 334, Section 6109), (license may be granted if the applicant "appear[ed] . . . [to have] good reason to fear an injury to his person or property, or ha[d] any other proper reason for carrying a firearm," and was a "suitable person to be so licensed"); Gardner v. Jenkins, 541 A.2d 406, 409 (Pa. Commw. 1988) ("[i]n making an evaluation of suitability [for a firearms license under pre-1988 version of Section 6109], there is no fixed rule, and each case is decided on its own facts"), with N.H. Rev. Stat. Ann. 159:6 (permit must be issued if applicant has "any proper purpose" and is a "suitable person to be licensed"); Garand, 977 A.2d at 544 ("the [New Hampshire] licensing authority is required to make two — and only two — determinations in deciding whether to grant a license: (1) whether the applicant has either (a) good reason to fear injury to his person or property or (b) any proper purpose; and (2) whether the applicant is 'a suitable person to be licensed'").

Additionally, New Hampshire issues its non-resident pistol/revolver licenses by mail, meaning Pennsylvania residents need simply download the out-of-state application form from the New Hampshire State Police's website, and mail it in from the comfort of their own (Pennsylvania) homes, without ever having to go to New Hampshire to submit the application or pick up the license. See N.H. Rev.

Stat. Ann. § 159:6; <http://www.nh.gov/safety/divisions/nhsp/ssb/permitslicensing/documents/dssp260.pdf>.

The New Hampshire gun permitting scheme undermines and clashes with Pennsylvania law in other ways. For example, Pennsylvania police have no ability to verify on-the-spot the legitimacy of a New Hampshire license, thereby making it impossible for Pennsylvania police — when making a lawful stop of an armed suspect — to determine compliance with Pennsylvania law. As a consequence, officers would be left on the street with armed Pennsylvania residents presenting out-of-state “reciprocity” licenses that cannot be immediately confirmed.⁷ By contrast, a Pennsylvania concealed-carry license to carry firearms can be verified on the spot, day or night, every day of the week, by police officers because they have immediate access to the pertinent Pennsylvania database. 18 Pa. C.S. § 6109(1).

Finally, once New Hampshire, or any other state with which Pennsylvania has reciprocity, issues a non-resident license to a Pennsylvania resident, there is no systematic way for those states to keep track of Pennsylvania resident permit/license holders. That is, a Pennsylvania resident holding an out-of-state

⁷ Typically, a Philadelphia police officer is unable to verify the validity of an out-of-state license in real time while out on the street. Once back at the district, the officer must obtain the seven-digit ORI (Originating Agency Identifier) number for the out-of-state license’s issuing agency and send a request to that agency via the National Crime Information Center (NCIC) system. Response time from out-of-state agencies varies substantially, but in no event does it allow police officers on the street to reliably and quickly verify the out-of-state licenses with which they are confronted.

license could, immediately after receiving his or her license, commit multiple criminal offenses, and even be convicted of what would be disqualifying crime(s) in that other state, yet there is no mechanism for making sure those offenses are reported back to the issuing state. Thus, such a person could continue carrying his out-of-state permit/license for years until (finally) a background check was conducted upon renewal. In contrast, in Pennsylvania, “[u]pon [a firearms disqualifying] conviction of a person . . . , the court shall determine if the defendant has a license to carry firearms issued pursuant to this section. If the defendant has such a license, the court shall notify the sheriff of the county in which that person resides.” 18 Pa. C.S. § 6109(i.1)(1).

Pennsylvania Will Not Issue Non-Resident Licenses to Persons Who Do Not Have a Home-State Conceal-Carry Permit.

Further, the Act’s Section 6109 specifically provides that, for an out-of-state resident applying for a Pennsylvania conceal-carry license, Pennsylvania will **not issue a non-resident license to a person who does not have a current home-state conceal-carry license or permit.** Section 6109(e)(1)(ix) provides:

(e)(1) . . . A license shall not be issued to any of the following:

. . .

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state. . . .

18 Pa. C.S. § 6109(e)(1)(ix). With this provision, as a matter of policy, the General Assembly made a determination that Pennsylvania does not want non-

residents conceal-carrying in Pennsylvania if those persons have not been vetted by, and cannot meet, their own state's firearm licensing rules and standards. Id.

Thus, it seems anomalous that the same General Assembly that refuses to issue licenses to out-of-staters who do not have current home-state conceal-carry permits, nonetheless intended that it is okay for *Pennsylvania* residents to conceal-carry here, without first meeting *their* home-state (Pennsylvania's) licensing rules and standards.

It would seem far more likely that the General Assembly, having explicitly recognized the importance of home-state review for non-residents who wish to carry here, would impose at least as stringent a requirement of home-state review on its *own* residents, who will likely be carrying in Pennsylvania with a lot more frequency.

The Problem is Not Limited to New Hampshire: Under McKown's View, Any Pennsylvania Resident Would Be Able to Forum Shop Among Any of the Twenty-Eight "Reciprocity" States.

As is made clear above, the problem is not limited to New Hampshire. If this Court determines that Pennsylvania law allows McKown to carry with only a New Hampshire license, then the floodgates will open for Pennsylvania residents to freely forum shop for a conceal-carry license from any of the twenty-eight states with which Pennsylvania has Agreement or Statutory reciprocity.

Like New Hampshire, many of those "reciprocity" states, including Arizona, Florida, Maine, Utah, and Virginia, permit individuals to apply by mail, *i.e.*, do not require the applicant to appear in-state to receive a license. See Ariz. Rev. Stat. § 13-3112; Fla. Stat. § 790.06; 25 Me. Rev. Stat. § 2003; Utah Code

Ann. § 53-5-704; see also http://www.azdps.gov/Services/Concealed_Weapons/Permits/Obtain/ (Arizona); http://licgweb.doacs.state.fl.us/FORMS/Concealed_WeaponLicenseApplicationInstructions.pdf (Florida); <http://www.maine.gov/dps/msp/licenses/documents/Weapons/non-resident%20application%20package.pdf> (Maine); <http://publicsafety.utah.gov/bci/documents/CFPapp0312.pdf> (Utah); http://www.vsp.state.va.us/downloads/SP-248_Application_for_Concealed_Handgun_Permit_Rev_7-1-2012.pdf (Virginia). Pennsylvania residents can mail their application from the comfort of their own homes, without ever having to leave Pennsylvania to submit the application or pick up the license, and without ever having to submit to any in-person examination or investigation.

Numerous reciprocity states, including Arizona, Florida, Idaho, and North Dakota, look only for records of formal convictions and mental health restrictions, or, like New Hampshire, have no standardized criteria at all against which to weigh applicants. See Ariz. Rev. Stat. § 13-3112(E); Fla. Stat. §790.06; Idaho Code § 18-3302(1); N.D. Cent. Code, § 62.1-04-03(1); Utah Code Ann. § 53-5-704. Either way, those issuing authorities are not statutorily required to investigate, or in any way specifically consider, the applicant’s character or reputation for acting dangerously, in the decision on whether to issue a permit. Nor, realistically, could they investigate the applicant’s character and reputation hundreds or thousands of miles from the applicant’s home, knowing nothing about the applicant or his local community.

In short, the view of “reciprocity” proffered by Appellant McKown — that he, a Pennsylvania resident, was permitted to carry a concealed firearm while in

Pennsylvania, with only an out-of-state gun license from New Hampshire — would completely undermine the Uniform Firearms Act’s licensure scheme by allowing a Pennsylvania resident to entirely avoid these legislatively imposed requirements and to obtain a license or permit to carry from states with far different, and often more lenient, requirements than those established by the General Assembly. It would allow any Pennsylvania resident to forum shop among the twenty-eight “reciprocity” states in which to apply for a gun license, opening Pennsylvania to accepting the lowest common denominator of concealed-carry permits.⁸

Pennsylvania law, properly construed, does not allow for this self-defeating, and absurd reading of the General Assembly’s intent, which would render the

⁸ In fact, a cottage industry already exists in Pennsylvania to assist Pennsylvania residents in applying for non-resident concealed firearm permits from “the most useful . . . permit[ting states] in the United States,” — *i.e.*, those that issue non-resident licenses and have reciprocity with the most number of states — foremost Florida, as well as Virginia, Utah, New Hampshire, Maine, and Arizona — allowing holders to knit together “the closest thing to a National Concealed Carry Permit.” See, e.g., <http://www.personaldefensesolutions.net> (describing itself as “a one stop shop . . . supply[ing] all the necessary services in one place, for your convenience, so that you do not have to run around: application packets, assistance in completing all forms, notary, required passport photos, fingerprinting, and the required handgun safety and concealed carry class which includes a live fire range qualification”).

These permit factories at least have a quasi-legislative purpose today -- to facilitate traveling without the need to relinquish one’s firearm. Yet, were this Court to hold that Pennsylvania residents may legally conceal-carry with only a license from New Hampshire, it would no doubt begin a precipitous slide down an extremely slippery slope. These “one stop shops” can be expected to easily morph and exponentially grow to serve Pennsylvania residents who are *ineligible* for Pennsylvania licenses to apply for the easiest to obtain out-of-state permits.

Act's licensing scheme entirely optional. See 1 Pa. C.S. §§ 1921(a), 1922(2); Dep't of Corr., 595 Pa. at 559, 939 A.2d at 303; McGrory, 591 Pa. at 66, 915 A.2d at 1160 (holding that PennDOT had authority to order a suspended driver to install ignition interlock devices before restoration of his driving, as to hold to the contrary would absurdly render the statute incapable of enforcement, and meaningless).⁹

Nothing About Prohibiting Pennsylvania Residents From Conceal-Carrying in Pennsylvania With Only An Out-Of-State License Is Inconsistent With the Idea of Reciprocity.

Moreover, nothing about our reading of the statute is inconsistent with the very idea of reciprocity. It certainly is true that reciprocity, by definition, allows persons who meet very different, less rigorous, gun permitting standards established by other States — and who, therefore, may not meet Pennsylvania's gun licensing standards — to carry concealed guns here in Pennsylvania. But there are very good reasons for the General Assembly to have allowed these non-residents to conceal-carry in Pennsylvania, while simultaneously *prohibiting* our own residents who meet only those lesser standards from conceal-carrying in Pennsylvania.

Non-residents who meet their home state's permitting standards are unlikely

⁹ Although there is no formal Attorney General opinion, we note that the Attorney General appears to take the contrary position in a short Note on her website. See <http://www.attorneygeneral.gov/crime.aspx?id=184>. However, for all the reasons stated herein, that position is an erroneous reading of the Uniform Firearms Act. Absent any reasoned support or formal adoption, it is entitled to no deference.

to spend nearly as much time in Pennsylvania as do Pennsylvania residents; the danger presented by non-residents conceal-carrying, therefore, is far less than the danger presented by a Pennsylvania resident, who presumably has much more opportunity to do harm to his fellow Pennsylvanians than would an out-of-stater. As a practical matter, moreover, if we want non-residents to visit and travel to Pennsylvania, we cannot realistically expect them to take the time to apply for a Pennsylvania gun license. Finally, there is an extraordinary trade-off benefit that Pennsylvania gets by allowing out-of-staters to travel to Pennsylvania with their concealed weapons without meeting Pennsylvania's licensing standards -- it is the small price we pay to allow *our* residents to travel with their guns to *other* states, without having to apply individually to each such state to procure *those* states' gun permits.

In contrast, there is no similar logic to allowing *Pennsylvania* residents to conceal-carry in Pennsylvania with only an out-of-state permit. The danger presented by allowing Pennsylvania residents — who presumably spend most of their time here — to conceal-carry even without meeting Pennsylvania's licensing standards is great. The burden on a Pennsylvania resident of applying to his or her local sheriff for a license is minimal. And there is no offsetting benefit or trade-off received by Pennsylvania by allowing its residents to carry in Pennsylvania with only a permit from another State.

Thus, the absurdity of presuming that the General Assembly would allow its own residents to conceal-carry, even when those residents fail to meet Pennsylvania's own conceal-carry standards, is not undermined at all by the

willingness of the General Assembly to allow *non*-residents to come to Pennsylvania for occasional visits without the need to demonstrate compliance with Pennsylvania’s gun standards. The strong policy argument in favor of promoting free-ranging travel throughout this diverse nation provides no policy basis for promoting the concealed carrying of firearms by local residents who cannot qualify for a Pennsylvania concealed-carry license.

II. Section 6106(b)(15) Does Not Exempt McKown From Criminal Liability.

Although, for the reasons set forth above, it would entirely undermine the Uniform Firearms Act’s gun licensing scheme, McKown’s sole argument on appeal is that pursuant to 18 Pa. C.S. § 6106(b)(15), his purported New Hampshire gun license applies to exempt him from criminal liability, and the trial court erred in holding he could not conceal-carry under the authority of that license.

Appellant’s Br. at 9-14; *id.* at 10 (“McKown has always maintained he was entitled to carry concealed in Pennsylvania based upon the New Hampshire permit under subsection 6106(b)(15)”); *id.* at 34 (“the trial court erred in finding that McKown, a Pennsylvania resident, was prohibited from presenting evidence that he was permitted to assert an exception to section 6106 as set forth in subsection (b)(15)”).

Urging that the exemption at 6106(b)(15) by its plain terms applies to “any person,” he contends the exception applies to residents and non-residents alike, including Pennsylvania residents, so long as they “possess[] a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state” with which Pennsylvania has reciprocity, including New Hampshire.

Appellant’s Br. at 9-10, 12; 18 Pa. C.S. § 6106(b)(15). Therefore, he argues, because he falls within the definition of “any person,” he was permitted to assert the exemption set forth at Section 6106(b)(15). Id.

McKown’s argument fails for two independent reasons. First, he relies on a statutory provision, Section 6106(b)(15), which has no application to the facts of his case, because his purported license is from New Hampshire, a state with which Pennsylvania has Agreement Reciprocity pursuant to Section 6109(k), not Statutory Reciprocity pursuant to Section 6106(b)(15). Second, even assuming *arguendo* that Section 6106(b)(15) *did* apply, this Court must read the words “any person” sensibly, and so read, the General Assembly intended the exemption to apply only to non-residents of Pennsylvania.

A. Section 6106(b)(15) is Wholly Inapplicable in the Case of a New Hampshire Permit, a State With Which Pennsylvania Has a Reciprocity Agreement Pursuant to Section 6109(k).

Section 6106(b)(15) is wholly inapplicable to the instant case, as McKown’s purported license is from New Hampshire, a state with which Pennsylvania has Agreement Reciprocity pursuant to Section 6109(k), not Statutory Reciprocity pursuant to Section 6106(b)(15).

Per its express terms, Section 6106(b)(15) (Statutory Reciprocity), the exemption from criminal prosecution upon which McKown solely relies, applies *only* where two specific criteria are satisfied:

- (i) The state provides a reciprocal privilege for individuals licensed to carry firearms under section 6109.
- (ii) The Attorney General has determined that the firearm laws

of the state are similar to the firearm laws of this Commonwealth.

18 Pa. C.S. § 6106(b)(15)(i)-(ii). *Only where both criteria are satisfied*, are the two states deemed to have mutual Statutory Reciprocity, and a person who possesses a valid license or permit to carry a firearm from such state is entitled to the exemption from criminal liability set forth at Section 6106(b)(15).

Importantly, Section 6106(b)(15)(ii) requires the **Attorney General to make a determination that the firearm laws of the states are similar**. But the Attorney General has made no such finding with respect to New Hampshire. See <http://www.attorneygeneral.gov/crime.aspx?id=184> (Attorney General makes finding that only ten states' "laws governing firearms are similar" to Pennsylvania's, and thus "have been granted statutory reciprocity . . . under 6106(b)(15)," *not* including New Hampshire). Where a finding of similarity is a statutory pre-requisite to the exemption for "any person" upon which McKown relies, and the Attorney General has made no such finding, then it necessarily follows that the exemption for "any person" simply does not apply.

By contrast, **Section 6109(k) imposes no requirement of statutory similarity** as a prerequisite to the Attorney General's authority to enter into Reciprocity by Agreement. In fact, as shown above, New Hampshire's firearm laws are anything *but* similar to Pennsylvania's Act, at least since 1988. See N.H. Rev. Stat. Ann. § 159:6 (granting local authorities wide-ranging discretion to grant or deny conceal-carry gun permits, with no standardized criteria against which applicants are scrutinized). Accordingly (both because they are, in fact, not

similar, and because Section 6109(k) does not require it), there has been no determination by the Attorney General that the firearm laws of New Hampshire and Pennsylvania are similar. 18 Pa. C.S. § 6106(b)(15)(ii).

The fact that the Firearms Act sets forth these **two different kinds of firearms reciprocity** — Agreement under 6109(k) and Statutory under 6106(b)(15) — is clearly set forth on the Attorney General’s website page on “Firearms Reciprocity,” which delineates between Category 1 (“states [that] have entered into formal written reciprocity agreements with Pennsylvania under section 6109(k) of the Uniform Firearms Act”) and Category 2 (“states [that] have been granted statutory reciprocity without a formal written agreement under 6106(b)(15), based on the determination of the Attorney General that the other state has granted reciprocity to Pennsylvania license holders, and that the other state’s laws governing firearms are similar.” See <http://www.attorneygeneral.gov/crime.aspx?id=184>.¹⁰

McKown totally conflates Agreement Reciprocity under 6109(k) and Statutory Reciprocity under 6106(b)(15), as though they were one and the same. Further, and critically, he omits any reference to the fact that Section 6106(b)(15), the exemption on which he exclusively relies, requires a determination (in subsection (ii)) by the Attorney General of statutory similarity, which indisputably does not exist here. Appellant’s Br. at 13.

¹⁰ The Attorney General’s website page on Firearms Reciprocity is statutorily required. See 18 Pa. C.S. § 6109(m)(2).

Quite simply, Section 6106(b)(15) only applies to Statutory Reciprocity states. Quite clearly, Section 6106(b)(15) only applies to states for which the Attorney General has made an explicit finding of similarity. The exemption set forth at Section 6106(b)(15) does not apply to New Hampshire, an Agreement Reciprocity state, where there has been no determination by the Attorney General that the firearm laws of the state are similar to the firearm laws of this Commonwealth. *Id.* at 6106(b)(15)(ii). Thus, it cannot provide McKown relief from criminal liability.¹¹

B. Read Sensibly, the General Assembly Intended the Words “Any Person” in Section 6106(b)(15) to Mean Non-Residents of Pennsylvania.

Moreover, even assuming *arguendo* that Section 6106(b)(15) *did* apply to the instant case, and both statutory pre-requisites were met (findings of reciprocal privilege *and* statutory similarity), this Court must read the words “any person” sensibly. So read, it is manifest that the General Assembly intended the exemption to apply only to non-residents of Pennsylvania.

¹¹ To the extent that McKown may now try to argue on Reply that, in the alternative, he is impliedly exempt from criminal liability solely pursuant to the Attorney General’s power to enter reciprocity agreements under Section 6109(k), that argument is waived, for failure to raise it in the trial court, failure to assert it in his 1925(b) Statement, and for failure to raise it in his opening appellate brief. See Pa. R. App. P. 302(a), 1925(b); Commonwealth v. Chamberlain, 30 A.3d 381, 405 (Pa. 2011) (finding waived on appeal due process claim not raised in trial court); Sheppard v. Old Heritage Mutual Ins. Co., 492 Pa. 581, 591, 425 A.2d 304, 308 (1980) (“failure to pursue an issue on appeal is just as effective a waiver as is the failure to initially raise the issue”); Filoon v. Pa. Public Utility Comm., 648 A.2d 1339, 1343 n.2 (Pa. Commw. 1994) (Court would not consider arguments appellant did not raise in opening brief on appeal).

McKown would have this Court read the words “any person” in Section 6106(b)(15) in isolation from the rest of the Uniform Firearms Act, and from the uniform, state-wide licensing provisions of Section 6109 in particular. However, Sections 6106(b)(15) and 6109 must be read *in pari materia* in an attempt to give effect to both provisions. See 1 Pa. C.S. § 1932; see also 1 Pa. C.S. §§ 1921(a), 1922(2); Pa. State Corr. Officers Ass’n, 595 Pa. at 559, 939 A.2d at 303.

As discussed *supra*, it is absurd to suggest that the General Assembly essentially instructed Pennsylvania residents that the licensing scheme is optional: *i.e.*, that Pennsylvania residents are free to shop around and obtain a license or permit from any one of the twenty-eight states with which Pennsylvania has reciprocity. The more sensible reading of the Act as a whole is that reciprocity is designed to apply to out-of-state license holders *visiting* Pennsylvania, not in-state license holders who *reside* in Pennsylvania.

In fact, faced with extremely similar statutory language exempting from criminal liability “a person” who held a valid out-of-state license, the courts in Michigan rejected the view offered by McKown.

In People v. Williams, 576 N.W.2d 390 (Mich. App. 1997), a criminal prosecution on the charge of carrying a concealed weapon, defendant argued that he was exempt from liability because he held a valid pistol license from Alabama, and Michigan law provided an exemption from criminal liability “to a person holding a valid license to carry a pistol concealed upon his or her person issued by another state.” Mich. Comp. Laws § 750.231a(1)(a); MSA 28.428(1)(1)(a). The trial court dismissed the charges against defendant, holding the exemption in the

statute applied to “a person” – *i.e.*, any person, including Michigan residents who hold a valid license from another state. See Williams, 576 N.W.2d at 390-391.

On appeal, the Court of Appeals of Michigan disagreed. The Court held that, when read together with the statutory licensing requirements for Michigan residents — which, like Pennsylvania’s Uniform Firearms Act, enumerate specific criteria that must be met before an applicant may be issued a license — and in light of the general purpose of the licensing statute, the Legislature intended the exemption to apply only to nonresidents of Michigan. Id. at 392. In particular, the court found, in words and reasoning directly applicable here:

It would be absurd for the Legislature to have enacted strict criteria for a Michigan resident to obtain a Michigan [concealed weapon] license, and then to exempt him from liability . . . if he obtains a permit from another state. It is more reasonable to assume that the exemptions . . . are designed to apply to persons not covered by the licensing procedure in place for Michigan residents. We therefore hold that the exemption . . . does not apply to Michigan residents.

Id.

Likewise, in Urbanik v. Attorney General of Michigan, 1998 Mich. App. LEXIS 1293 (Mich. Ct. App. 1998), a declaratory judgment action, the Court held that the statutory exemption did not allow Michigan residents to carry a concealed weapon in Michigan pursuant to an out-of-state concealed weapon permit. See id. at *3-4; see also Wingle v. City of Ecorse, No. 94-414735 AZ (Mich. 3rd Cir. Ct. 1994) (similar).

Likewise, read reasonably, “any person” in Section 6106(b)(15) means non-residents of Pennsylvania, and the exemption does not allow Pennsylvania

residents to conceal-carry in Pennsylvania with an out-of-state license. Cf. Board of Christian Education v. School Dist., 91 A.2d 372, 378 & nn. 6, 7 (Pa. Super. 1952) (construing an exemption in a tax statute for “any business” sensibly and narrowly, in context of entire statute and legislative intent; citing numerous examples where “any” means something less than “all”). To legally conceal-carry, Pennsylvania residents are required to hold in-state gun licenses. 18 Pa. C.S. § 6109.

III. McKown Did Not Have a “Valid or Lawfully Issued” New Hampshire License.

Finally, even if Sections 6109 or 6106 of the Uniform Firearms Act could be read to permit a Pennsylvania resident to legally conceal-carry a firearm while in Pennsylvania with only a valid and lawfully issued license to carry issued by New Hampshire (or any other “reciprocity” state), McKown presents no basis to overturn his conviction on this basis, or for this Court to accept his untenable reading of the Act, because McKown did not possess a valid or lawfully issued New Hampshire license. The trial court explicitly found that McKown’s “New Hampshire permit was not validly or lawfully issued,” R197, and McKown has failed to challenge that factual finding in his 1925(b) Statement, or on appeal. Thus, any challenge to that factual finding is waived, and it is conclusively established against him. McKown’s challenge to the trial court’s ruling refusing to consider his purported New Hampshire non-resident pistol/revolver license is therefore purely abstract.

Specifically, McKown at least four times presented his argument that his

alleged New Hampshire license allowed him to conceal-carry a firearm in Pennsylvania, in four procedural postures, and each time he lost.

First, it was raised and rejected at his preliminary hearing. R28-29, R32. When he next presented the issue — in the context of the Commonwealth’s motion in limine, R41-65 (N.T. 9/28/09, argument on motion in limine) — the trial court, the Honorable Bradley Lunsford, squarely decided the issue, holding that under “§6109, a resident of the Commonwealth of Pennsylvania seeking a license to carry a firearm must apply to the sheriff of the county in which he resides,” R66 (9/28/09 Order denying motion in limine), and therefore cannot carry under the authority of a permit issued by another state with which Pennsylvania has reciprocity. Third, in denying McKown’s Omnibus Pre-trial Motion in the Nature of a Petition for Writ of Habeas Corpus, Judge Lunsford, in a published Common Pleas’ opinion dated October 29, 2009, again squarely held that “once it is established that Defendant is a Commonwealth resident, any perceived entitlement to an exception under [6106(b)(15)] is trumped by the statutory requirement that he apply for a license to carry a concealed firearm with his county sheriff or chief of police.” Commonwealth v. McKown, 9 Pa. D. & C. 5th 183, 189-90 (Centre County Ct. 2009) (10/21/09 opinion denying Petition for Writ of Habeas Corpus); 9/22/09 Br. in Supp. Habeas Corpus at 2-4.

In July 2010, McKown tried yet a fourth time. In a Motion to Declare Statutes Unconstitutional, he contended that Section 6106(a) was vague as applied, because his New Hampshire license should be recognized. R132 (Appellant’s Br. in Support of Motion to Declare Statutes Unconstitutional, 9/24/10).

In a March 18, 2011 opinion and order denying McKown's motion, the trial court, the Honorable Daniel J. Milliron, held that Section 6106(a) "is not vague," and that McKown "overlooks the possibility that he never had a 'valid and lawfully issued' New Hampshire license." R196-R197 (3/18/11 Op. at 8-9). Further, noting that "under New Hampshire law, an out-of-state applicant for a concealed carry license must present a valid concealed carry license from his or her resident state," the court found that when McKown applied to New Hampshire, "his Pennsylvania license had been revoked [by the Sheriff of Centre County] the day before." R190, R197 (3/18/11 Op. at 2, 9).¹² Therefore, the trial court held that **"Defendant's New Hampshire permit was not validly or lawfully issued,"** as it had been obtained "as the result of misleading statements and administrative inefficiencies, rather than valid and lawful means." R197 (3/18/11 Op. at 9).

McKown's 1925(b) Statement of Matters Complained of on Appeal does not remotely take issue with this holding. Further, he did not challenge, or in any way pursue, this issue, on appeal. As such, any challenge is now waived, and the trial court's holding that McKown's New Hampshire permit was not validly or lawfully issued is conclusively established against him.¹³ Pa. R. App. P. 1925(b);

¹² Sheriff Nau revoked McKown's Pennsylvania conceal-carry license on April 14, 2008. S.R.R. 63a; N.T. 9/1/11 at 39. McKown applied for a Non-Resident Pistol/Revolver License from New Hampshire by application dated April 15, 2008. S.R.R. 97a.

¹³ McKown did challenge Judge Milliron's holding in a motion for reconsideration filed May 9, 2011, R70-R71 (motion for reconsideration), which the trial court denied, but apparently abandoned the issue in his 1925(b) Statement and on appeal. Of course, a motion for reconsideration is not a substitute for properly preserving an issue in a Statement of Matters Complained of on Appeal (footnote continued on next page)

Commonwealth v. Wholaver, 588 Pa. 218, 903 A.2d 1178, 1183-84 (2006) (if trial court directs appellant to file a concise statement of matters to be raised on appeal pursuant to Rule 1925(b), any issues not raised in that statement are waived); Sheppard, 492 Pa. at 591, 425 A.2d at 308 (issues not briefed on appeal are waived).

Accordingly, McKown presents a purely abstract challenge to the trial court's ruling refusing to consider evidence of McKown's purported New Hampshire non-resident pistol/revolver license. He does not stand to benefit from a decision upholding a New Hampshire license holder's right to conceal-carry in Pennsylvania, as he has conclusively been determined not to be a valid New Hampshire license holder. This case, therefore, presents no opportunity for this Court to adopt McKown's far-reaching argument.


pursuant to Pa. R. App. P. 1925, so as to avoid the strict waiver of that rule. See Hapchuk v. DOT, BMV, 929 A.2d 656, 659 (Pa. Commw. 2007).

CONCLUSION

For the foregoing reasons, the City of Philadelphia respectfully requests that this Court rule in favor of Appellee, affirm Appellant's conviction, and hold that a Pennsylvania resident can only conceal-carry in Pennsylvania with a Pennsylvania conceal-carry license.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPT.
Shelley R. Smith, City Solicitor
Richard Feder, Chief Deputy City Solicitor,
Appeals and Legislation


By: Kelly Diffily
Assistant City Solicitor, Appeals
I.D. No. 200531
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-5010
kelly.diffily@phila.gov
Attorney for Amicus Curiae, the City of Philadelphia

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