

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellant

v.

DENNIS C. CUFFIA

Appellee

No. 464 WDA 2013

Appeal from the Order February 25, 2013
In the Court of Common Pleas of Westmoreland County
Criminal Division at No(s): CP-65-CR-0000382-2012

BEFORE: BENDER, P.J.E., LAZARUS, J., and MUNDY, J.

MEMORANDUM BY LAZARUS, J.

FILED: April 14, 2014

The Commonwealth appeals from the order entered February 25, 2013, granting Dennis C. Cuffia's motion to suppress all evidence seized by the police as the result of a traffic stop on August 14, 2011. We affirm.

On August 14, 2011, Washington Township Police conducted a DUI checkpoint on Route 356 in Westmoreland County, Pennsylvania. While the checkpoint was in effect, Officer Dakota Drew acted as the 'safety car', observing vehicles as they approached and entered the checkpoint. On that evening, Cuffia approached the checkpoint in his vehicle, executed a U-turn prior to entering the checkpoint, and drove away in the opposite direction.

At that point, Officer Drew followed Cuffia and executed a traffic stop, which led to Cuffia's arrest for two counts of driving under the influence of alcohol.¹

Cuffia filed a motion to suppress all evidence obtained during the traffic stop, arguing the stop was illegal because he had not yet entered the checkpoint at the time of the U-turn. Cuffia testified to the same at the suppression hearing. N.T. Suppression Hearing, 2/4/13, at 56-58. The Commonwealth presented conflicting testimony from Officer Drew that Cuffia had, in fact, entered the checkpoint area prior to executing the U-turn, and that he failed to properly execute the U-turn, constituting a violation of the Motor Vehicle Code. *Id.* at 12. The trial judge heard both accounts of the incident through Cuffia's testimony and that of the officer, and ultimately credited Cuffia's version.

In its opinion issued in support of the suppression order, the court found:

[t]hat Defendant did not go through a roadblock but made his U-turn before going through the checkpoint. The only reason Officer Drew followed Defendant's vehicle was because he failed to go through a roadblock area. The police did not observe a violation of the Motor Vehicle Code or have a reasonable suspicion that the vehicle herein was involved in criminal conduct.

Order and Opinion, 2/25/13, at 2.

¹ 75 Pa.C.S.A. § 3802(a)(1) (general impairment) and 75 Pa.C.S.A. § 3802(c) (highest rate of alcohol).

The suppression court found “no other reasonable grounds to justify the stop were articulated,” and applying ***Commonwealth v. Scavello***, 734 A.2d 386 (Pa. 1999), granted Cuffia’s motion to suppress. ***Id.***

Our standard of review when the defendant prevails on a motion to suppress evidence is as follows:

When reviewing the propriety of a suppression order, an appellate court is required to determine whether the record supports the suppression court’s factual findings and whether the inferences and legal conclusions drawn by the suppression court from those findings are appropriate. Because Appellee prevailed in the suppression court, we may consider only the evidence of the defense and so much of the evidence for the Commonwealth as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. However, where the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court’s conclusions of law [...] are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. As a result, the conclusions of law of the suppression court are subject to plenary review.

Commonwealth v. Dean, 940 A.2d 514, 516 (Pa. Super. 2008) (citations omitted).

Furthermore, as an appellate court:

When faced with a conflict of testimony, we defer to the suppression court, which, as fact[-]finder, passes upon credibility of witnesses, and its findings are not [to be] disturbed when supported by the record.

Commonwealth v. Marshall, 568 A.2d 590, 595 (Pa. 1989).

Under **Scavello**, “failing to go through [a] roadblock in and of itself . . . provides no basis for police intervention.” **Scavello**, 734 A.2d at 388. If, however,

[p]olice should observe a violation of the Motor Vehicle Code or have a reasonable suspicion that the vehicle which is avoiding the roadblock is involved in criminal conduct, such observation or suspicion, which can be articulated with particularity, would be the basis for a vehicle stop.

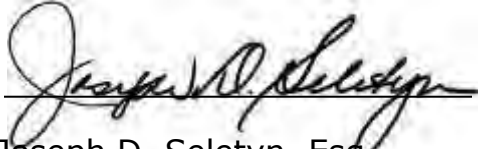
Id.

Based on the suppression court’s findings, this case does not fall within that exception. The court explicitly found the only reason Officer Drew stopped Cuffia was his avoidance of the roadblock, and that Office Drew did not observe any violations of the Motor Vehicle Code. Order and Opinion, 2/25/13, at 2. These findings are supported by Cuffia’s testimony at the suppression hearing. N.T. Suppression Hearing, 2/4/13, at 56-58. The trial judge heard Cuffia’s testimony and that of the officer and credited Cuffia’s version. As an appellate court, we are bound by the suppression court’s credibility findings. **Commonwealth v. Swartz**, 787 A.2d 1021, 1023 (Pa. Super. 2001) (en banc) (“With respect to factual findings, we are mindful that it is the sole province of the suppression court to weigh the credibility of the witnesses. Further, the suppression court judge is entitled to believe all, part or none of the evidence presented.”) (citation omitted). Furthermore, because those findings place the traffic stop executed by Officer Drew

outside of the exception to the general **Scavello** rule, we must affirm the suppression court's holding.²

Order affirmed.

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: 4/14/2014

² Although the Commonwealth attempts to present the suppression court's recitation of the suppression hearing testimony as factual findings, it is clear to this Court that is not what the suppression court intended. A thorough reading of the Order and Opinion issued by the suppression court demonstrates there is only one set of factual findings, which is supported by the record as discussed above.