

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

AQIL RAHEEM FORD-BEY

Appellant

No. 854 EDA 2013

Appeal from the Judgment of Sentence March 15, 2013  
In the Court of Common Pleas of Chester County  
Criminal Division at No.: CP-15-CR-0003283-2011

BEFORE: FORD ELLIOTT, P.J.E., WECHT, J., and MUSMANNNO, J.

MEMORANDUM BY WECHT, J.:

**FILED April 10, 2014**

Aquil Raheem Ford-Bey appeals his March 15, 2013 judgment of sentence. Specifically, Ford-Bey argues that the trial court erred by denying his pre-trial motion to suppress evidence. We affirm.

On August 21, 2011, Ford-Bey's vehicle was stopped after a police officer suspected Ford-Bey of using marijuana inside the vehicle. As a result of the stop, and the subsequent seizure of evidence from the vehicle, Ford-Bey was charged with possession of a controlled substance, possession of a controlled substance with intent to deliver, possession of drug paraphernalia, adulteration of the label of a drug, tampering with physical evidence, and criminal use of a communication facility.<sup>1</sup>

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<sup>1</sup> **See** 35 P.S. §§ 780-113(a)(16), (30), (32), and (5), and 18 Pa.C.S. §§ 4910, and 7512, respectively.

On February 16, 2012, Ford-Bey filed a motion to suppress the evidence seized from his vehicle. The Honorable Howard F. Riley, Jr., conducted hearings on Ford-Bey's motion on September 27 and November 8, 2012. Judge Riley summarized the facts presented at those hearings as follows:

Officer Sean Knapp of the Phoenixville Police Department was on duty on August 21, 2011 at 2:21 a.m. At that time, he was driving down the 200 block of Bridge Street toward Club 212. He saw [Ford-Bey's] vehicle pull out onto the street mid-block. Officer Knapp's windows were down, he could smell marijuana and he saw smoke coming out of the windows of [Ford-Bey's] vehicle. He activated his lights and siren and initiated a traffic stop. Sergeant David Gold arrived on the scene to assist Officer Knapp. Officer Knapp walked over to the passenger side of the car and saw four people in the vehicle. He also saw more smoke coming out of the window. [Ford-Bey], who was in the driver's seat, had his hand on a blue bag. He was either trying to push the bag under the seat or get something out of it. The bag was open and Officer Knapp saw a large plastic bag with suspected marijuana in it. Officer Knapp was afraid that there was also a weapon in the bag that [Ford-Bey] was trying to obtain. Everyone except [Ford-Bey] was removed from the car. Officer Knapp retrieved the bag while [Ford-Bey] was still in the vehicle and placed it on [Ford-Bey's] car.

Sergeant Gold removed [Ford-Bey] from the car and placed him under arrest at around the same time the bag was removed. A marijuana blunt that was still smoldering was seen sticking out of the center console. Loose marijuana leaves were also seen on the floor of the driver's seat from under where the bag was taken.

Officer Knapp then took the blue bag and placed it on the hood of his patrol car. He began to search the bag for weapons. He did not find any weapons, but he found a large bag of marijuana in the bag. He then secured the blue bag in his vehicle. A tow truck arrived at the scene and an inventory search of [Ford-Bey's] vehicle was conducted in accordance with the Phoenixville Police Department's Inventory Search Policy. Assorted CD's and

colognes were found in the vehicle. The police also found a bag containing cocaine and eight pill bottles with over 100 assorted pills suspected to be Oxycontin, Oxycodone, Percocet, Xanax and Alprazolam in the blue bag. [Ford-Bey] was also searched incident to his arrest. Two cell phones and \$1,405.00 in cash was found on his person. [Ford-Bey's] vehicle was towed away and a search warrant for the vehicle was subsequently obtained.

Suppression Court Order, 12/20/2012, at 1-2 n.1. On December 20, 2012, Judge Riley denied Ford-Bey's suppression motion by order, which contained a written explanation of the court's rationale for denying the motion in one very long footnote.

Shortly thereafter, Judge Riley retired, and the matter was reassigned to the Honorable Thomas G. Gavin for disposition. On March 15, 2013, Ford-Bey waived his right to a jury trial, and elected to proceed in a stipulated non-jury trial before Judge Gavin. The parties incorporated the facts and exhibits from the suppression hearings, and submitted the matter to Judge Gavin for a verdict. Judge Gavin found Ford-Bey guilty of possession of a controlled substance, possession of a controlled substance with intent to deliver, and possession of drug paraphernalia. The Commonwealth withdrew the remaining charges. On the same date, Ford-Bey was sentenced to five to ten years' incarceration. The trial court ordered Ford-Bey's sentence to run consecutively to another five to ten-year sentence that Ford-Bey was serving based upon charges arising in another county.

On March 20, 2013, Ford-Bey filed a notice of appeal. In response, the trial court directed Ford-Bey to file a concise statement of errors

complained of on appeal pursuant to Pa.R.A.P. 1925(b). After receiving an extension of time to file the statement, Ford-Bey timely complied. On May 17, 2013, Judge Gavin issued an opinion pursuant to Pa.R.A.P. 1925(a).

Ford-Bey presents the following question for our review: "Whether the Trial Court erred in denying [Ford-Bey's] Motion to Suppress?" Brief for Ford-Bey at 4. Under this broad claim, Ford-Bey presents two substantive arguments: (1) that Judge Riley erred in determining that the police officer possessed adequate reasonable suspicion to stop Ford-Bey's vehicle; and (2) that Judge Riley subsequently erred in concluding that the police officer's search of the blue bag was admissible based upon a valid inventory search and/or the doctrine of inevitable discovery. Brief for Ford-Bey at 10, 12-20.

Our standard of review of an order denying a motion to suppress is well-settled:

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. 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.

***Commonwealth v. Foglia***, 979 A.2d 357, 360 (Pa. Super. 2009) (internal citations and quotes omitted). In conducting this analysis, we are mindful

that we must defer to the credibility determinations of the trial judge, who was in the best position to observe and evaluate the credibility of the witnesses' testimony. ***Commonwealth v. Brice***, 856 A.2d 107, 110 (Pa. Super. 2004).

We have reviewed the certified record, the briefs submitted by the parties, Judge Riley's suppression order and analysis, the cases cited therein, and other applicable authorities. Based upon this review, we conclude that the suppression court was correct that the stop was supported by reasonable suspicion, subject to our brief observations below, and that the bag, while prematurely searched, would have been seized and searched pursuant to a proper inventory search. We also agree that, even if the inventory search was improper, the police would have seized and searched the bag pursuant to the doctrine of inevitable discovery. Consequently, Judge Riley did not err in denying Ford-Bey's suppression motion. We adopt Judge Riley's thorough reasoning as our own. **See** Suppression Court Order, 12/20/2012, at 1-7 n.1. We have attached a copy of that order and analysis hereto for convenience.

In arguing that the Judge Riley incorrectly concluded that the police officer had reasonable suspicion to stop his vehicle, Ford-Bey maintains, first, that the dashboard video of the stop contradicts Judge Riley's factual findings. Specifically, Ford-Bey contends that the video does not depict smoke emitting from his vehicle, an important fact in Judge Riley's analysis. We have watched the video, which is part of the certified record, and we

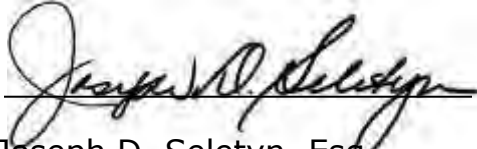
agree with Ford-Bey that it does not show smoke coming out of the vehicle's windows. However, that does not mean that he is entitled to relief. Smoke, by its very nature, is opaque and difficult to observe on any video, especially so in a video captured by a camera that is attached to a moving vehicle. Judge Riley, who also watched the video and observed the police officer's testimony first-hand, concluded that the officer's testimony that he could see smoke coming from the vehicle was credible, despite what the video depicted. Absent that testimony, we would be bound to conclude that such a finding would be unsupported by the record. However, because the officer so testified, and Judge Riley credited that testimony, we are compelled to conclude that the finding was supported by the record.

Regardless, even if the officer could not see smoke, the officer was able to smell marijuana and determine that the odor was coming from Ford-Bey's vehicle. Judge Riley credited the officer's testimony in this regard. Thus, even if we ignore the officer's testimony about the smoke, the officer still had reasonable suspicion to stop Ford-Bey's vehicle for investigatory purposes. On this point, Ford-Bey contends that it was unreasonable for Judge Riley to conclude that the police officer was able to make this determination, because the officer's observations were made at night, with open windows, from a moving vehicle, and in a highly populated area. It is not our role to reweigh the testimony. We are bound by Judge Riley's credibility determinations. Consequently, Ford-Bey's argument fails.

For these reasons, we adopt Judge Riley's astute analysis, subject to these observations, and conclude the Judge Riley did not err in denying Ford-Bey's suppression motion.

Judgment of sentence 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: 4/10/2014