

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

PEDRO S. RUBI

Appellant

No. 533 MDA 2015

Appeal from the Judgment of Sentence January 30, 2015
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0000363-2014

BEFORE: PANELLA, J., LAZARUS, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED FEBRUARY 02, 2016

A jury found Pedro Rubi guilty of possession with intent to deliver controlled substances (heroin), possession of offensive weapons (brass knuckles) and related offenses.¹ The trial court imposed an aggregate sentence of 2-4 years' imprisonment followed by one year's probation. Rubi filed timely post-sentence motions, which the court denied, and a timely notice of appeal. Both Rubi and the trial court complied with Pa.R.A.P. 1925. We affirm.

Rubi raises two issues on appeal:

1. Whether the trial court erred by denying [] Rubi's motion to suppress where [] Rubi's vehicle was illegally searched by officers who lacked probable cause for the warrantless search and, in the alternative, reasonable suspicion for a search to

¹ 35 P.S. § 780-113(a)(30) and 18 Pa.C.S. § 908(a), respectively.

secure officer safety and all evidence resulting from said illegal seizure, including all physical evidence, were fruit of the poisonous tree?

2. Whether the Commonwealth failed to present evidence sufficient to demonstrate beyond a reasonable doubt that [] Rubi possessed heroin with the intended purpose of selling or delivering to another person?

Brief For Appellant, at 2.

In his first argument, Rubi contends that the trial court erred by denying his motion to suppress evidence obtained during a warrantless search of his vehicle. Our standard of review of a trial court's suppression ruling requires us to determine

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.

Commonwealth v. Cruz, 71 A.3d 998, 1002-03 (Pa.Super.2013).

The following evidence was adduced during the pretrial suppression hearing. On October 17, 2013, Sergeant McTague, working in his capacity as an officer in Kingston Borough, was on duty between the hours of 2:00 p.m. to 10:00 p.m. During his shift, a civilian made a report regarding the registration of a motor vehicle, a white Infiniti Q45, which appeared to be outdated. Sergeant McTague went to the location identified by the civilian and inspected the vehicle. He determined that the registration was expired,

and that it belonged to a Range Rover rather than the subject vehicle. He attempted to contact anyone associated with the vehicle by knocking on doors in the neighborhood. His search was fruitless, and he notified other officers on duty, including Officers Karasinsky and Sosnoski, to look out for an Infiniti bearing temporary New Jersey registration number 106246N. Suppression Hearing Transcript ("SH"), at 6-10, 13.

Later on October 17, 2013, Officers Karasinsky and Sosnoski stopped an Infiniti on Market Street in Kingston bearing the aforesaid temporary New Jersey registration number. As the officers exited their vehicle and approached the Infiniti, Officer Karasinsky smelled what he believed was the odor of raw (unused) marijuana emanating from the vehicle, and Officer Sosnoski detected an "extreme" smell of marijuana. Officer Karasinsky instructed the vehicle occupant, Rubi, to step out of the vehicle. Rubi complied and went to the rear of the vehicle with Officer Sosnoski. SH, at 13-15, 20, 23.

Officer Karasinsky looked inside the vehicle and noticed a bulge under the car mat on the driver's side. He checked underneath the mat and found brass knuckles, a prohibited offensive weapon in Pennsylvania. The officers

placed Rubi under arrest, patted him down and found \$572.00 in cash on his person.² SH, at 17-18, 33-34.

“[T]he standards concerning the quantum of cause necessary for an officer to stop a vehicle in this Commonwealth are settled.” **Commonwealth v. Feczko**, 10 A.3d 1285, 1290–1291 (Pa.Super.2010). Officers may initiate a stop based upon reasonable suspicion to gather further information to support the enforcement of the Motor Vehicle Code. 75 Pa.C.S. § 6308(b). Traffic stops based on a reasonable suspicion of criminal activity or a violation of the Motor Vehicle Code under the authority of section 6308(b) must serve a stated investigatory purpose. **Feczko**, 10 A.3d at 1291. Reasonable suspicion exists when there are specific and articulable facts that create a reasonable suspicion, based on the officer’s experience, that there is criminal activity afoot. **Commonwealth v. Sands**, 887 A.2d 261, 271–272 (Pa.Super.2005). However, “when the driver’s detention cannot serve an investigatory purpose relevant to the suspected violation ... the officer [must] articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.” **Feczko**, 10 A.3d at 1291.

² The officers subsequently discovered heroin on Rubi’s person at the police station. The focus of Rubi’s argument, however, is on the traffic stop, not the search at the police station.

The Vehicle Code provides:

If a motor vehicle ... for which there is no valid registration or for which the registration is suspended, as verified by an appropriate law enforcement officer, is operated on a highway or trafficway of this Commonwealth, the law enforcement officer shall immobilize the motor vehicle ... or, in the interest of public safety, direct that the vehicle be towed and stored by the appropriate towing and storing agent ... and the appropriate judicial authority shall be so notified.

75 Pa.C.S. § 3309(a)(2). The Vehicle Code defines “registration” as “the authority for a vehicle to operate on a highway as evidenced by the issuance of an identifying card and plate or plates.” 75 Pa.C.S. § 102. Under these provisions, a law enforcement officer can immobilize or impound a vehicle for an invalid registration, regardless of whether the vehicle is in-state or out-of-state.

Here, the initial traffic stop was valid under section 6308(b). Sergeant McTague informed Officers Karasinsky and Sosnoski that an Infiniti bearing temporary New Jersey registration number 106246N lacked a valid registration. Later in the same shift, the officers observed an Infiniti with this registration number. Under section 6308(b), the officers had reasonable suspicion to stop the Infiniti and investigate whether its driver was carrying a valid registration.

The ensuing search of the Infiniti was proper as well. In ***Commonwealth v. Gary***, 91 A.3d 102 (Pa.2014), our Supreme Court adopted the federal automobile exception to the warrant requirement, holding that only probable cause and no exigent circumstance is required

“beyond the inherent mobility of a motor vehicle.” **Id.** at 138. In this case, both officers smelled raw marijuana emanating from the vehicle as they approached it during the traffic stop. This alone provided probable cause to search the vehicle. **See Commonwealth v. Gelineau**, 696 A.2d 188, 193 (Pa.Super.1997) (reversing trial court and finding probable cause to search vehicle where officer smelled marijuana); **Commonwealth v. Stainbrook**, 471 A.2d 1223, 1224–25 (Pa.Super.1984), (citing **Commonwealth v. Stoner**, 344 A.2d 633 (Pa.Super.1975) (*en banc*) for proposition that detection of odor of marijuana is sufficient to establish probable cause to search vehicle); **see also Commonwealth v. Jones**, 121 A.3d 524, 529 (Pa.Super.2015) (odor of marijuana sufficient probable cause to arrest for DUI and to request blood testing).

During the vehicle search, Officer Karasinsky found brass knuckles under the driver’s side car mat. This furnished probable cause to arrest Rubi for possession of an offensive weapon. **See** 18 Pa.C.S. § 908(a), (c) (prohibiting possession of an “offensive weapon” and defining this term to include “metal knuckles”). Thus, Rubi’s patdown, during which the officers found \$572.00 in cash, was a valid search incident to arrest, as was the subsequent discovery of controlled substances at the police station.

For these reasons, the trial court properly denied Rubi’s motion to suppress.

In his second argument, Rubi contends the evidence was insufficient to sustain his conviction for possession with intent to deliver heroin. We disagree.

When examining a challenge to the sufficiency of evidence, the standard we apply is

whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [trier] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa.Super.2011). When reviewing a challenge to the sufficiency of the evidence underlying a PWID conviction, we are mindful that

[t]he Commonwealth must prove both the possession of the controlled substance and the intent to deliver the controlled substance. It is well settled that all the facts and circumstances surrounding possession are relevant in making a determination of whether contraband was possessed with intent to deliver. In Pennsylvania, the intent to deliver may be inferred from possession of a large quantity of controlled substance. It follows that possession of a small amount of a controlled substance

supports the conclusion that there is an absence of intent to deliver. Notably, if, when considering only the quantity of a controlled substance, it is not clear whether the substance is being used for personal consumption or distribution, it then becomes necessary to analyze other factors.

Commonwealth v. Bostick, 958 A.2d 543, 560 (Pa.Super.2008).

Here, during trial, the Commonwealth's expert on narcotics identification and investigation, Detective Kotchik, opined that Rubi possessed heroin with intent to sell it for profit based on the following combination of factors:

(1) *Rubi's possession of 60 individually wrapped packets of heroin.*³

Detective Kotchik observed:

There was no indication that [Rubi] used any of these bags. A normal person [who] uses heroin would not have 60 unopened bags of heroin laying around on them stuffed in [his] pants. Usually as soon as one heroin addict gets a bag of heroin or three bags of heroin or five bags of heroin, [he's] immediately using them.

N.T., 12/8/14, at 97-98.

(2) *The absence of any syringes, pipes or other paraphernalia on Rubi's person.* Detective Kotchik observed that a heroin user "always ha[s] a needle on [him] or something to get into [his] body." ***Id.*** at 91. The absence of such items indicates that the individual is in possession of heroin for distribution, not usage. ***Id.*** at 91, 94.

³ The total amount of heroin in the packets was 2.13 grams. N.T., 12/8/14, at 38.

(3) *The large amount of cash (\$572.00) on Rubi's person.* Detective Kotchik testified that "you rarely see a heroin user in possession of \$572.00. As soon as [he gets] money, [he] will immediately go out and buy heroin." ***Id.*** at 99.

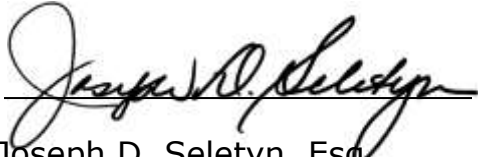
(4) *Concealment of heroin on Rubi's person.* Rubi, Detective Kotchik noted, "had the heroin hidden in his groin area. It is very common for drug dealers that we've come across to hide heroin [and other drugs] usually in the buttocks or groin area to hide it from police detection." ***Id.***

Construed in the light most favorable to the Commonwealth, we conclude that the combination of factors identified by Detective Kotchik was sufficient to establish, beyond a reasonable doubt, Rubi's guilt for possession with intent to deliver heroin. ***See Commonwealth v. Taylor***, 33 A.3d 1283, 1288-89 (Pa.Super.2011) (evidence of intent to deliver was sufficient where, *inter alia*, defendant was in possession of large amount of individually packaged contraband, which had street value of over \$1,000, inside potato chip bag which was item known for being used to conceal drugs, amount of drugs recovered indicated they were meant for delivery, and no paraphernalia was recovered from defendant's person).

Judgment of sentence affirmed.

J-S09042-16

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: 2/2/2016