

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

DION WAGNER

Appellant

No. 915 WDA 2013

Appeal from the Judgment of Sentence May 3, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0015537-2012

BEFORE: PANELLA, J., MUNDY, J., and STABILE, J.

MEMORANDUM BY PANELLA, J. FILED: April 23, 2014

Appellant, Dion Wagner, appeals from the judgment of sentence entered on May 3, 2013. We affirm.

As explained in detail below, during a lawful traffic stop police officers became concerned for their safety and conducted a search under the stopped vehicle's passenger seat for weapons. The search uncovered a semi-automatic handgun. Prior to trial, Wagner moved to suppress the handgun, arguing that the police conducted the search without reasonable suspicion. The suppression court disagreed and upheld the search. Immediately thereafter, the matter proceeded to a bench trial and the trial court found Wagner guilty of firearms not to be carried without a license, 18 Pa.C.S.A. § 6106(a)(1). The trial court sentenced Wagner to a period of five years' probation. This timely appeal followed.

On appeal, Wagner maintains that the suppression court erred in failing to suppress the handgun as the police conducted the search of the vehicle without reasonable suspicion in violation of the Federal Constitution and the Pennsylvania Constitution.

Our standard of review when a defendant appeals from a suppression order is as follows. We consider only the evidence of the prosecution and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted. **See 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.” **Id.** (citation omitted). Factual findings that are not supported by the evidence may be rejected as only those findings that are supported by the record are binding on this Court. **See Commonwealth v. Snell**, 811 A.2d 581, 584 (Pa. Super. 2002). We may only reverse if the trial court’s legal conclusions drawn from its factual findings are in error. **See Commonwealth v. Bomar**, 573 Pa. 426, 445, 826 A.2d 831, 842 (2003).

Our review of the record with respect to the suppression court’s factual findings reveals that the suppression court’s findings of fact are traceable to testimony in the record. Accordingly, we must next focus our attention to

the propriety of the suppression court's legal conclusions. We find that the suppression court committed no error in denying the suppression motion.

A police officer is permitted to conduct a search of the passenger compartment of an automobile if he "possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer[ ] in believing that the suspect is dangerous and the suspect may gain immediate control of weapons." **Michigan v. Long**, 463 U.S. 1032, 1049 (1983) (quoting **Terry v. Ohio**, 392 U.S. 1, 21 (1968)). **See also Commonwealth v. Morris**, 537 Pa. 417, 644 A.2d 721 (1994) (concluding that the rule announced in **Michigan** comports with Article 1, § 8 of the Pennsylvania Constitution). This standard applies even when the occupant is under direct police supervision outside of the vehicle. **See Michigan**, 463 U.S. at 1051.

This Court has held that a driver's furtive movements within an automobile during a traffic stop conducted at night constitute sufficient reasonable suspicion to conduct a search of the passenger compartment for weapons. **See Commonwealth v. Buchert**, 68 A.3d 911, 916-917 (Pa. Super. 2013); **In re O.J.**, 958 A.2d 561, 566 (Pa. Super. 2008) (*en banc*); **Commonwealth v. Murray**, 936 A.2d 76, 80 (Pa. Super. 2007).

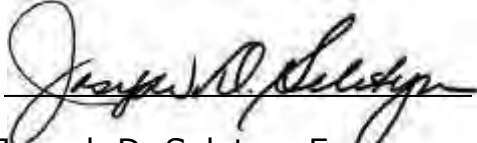
Here, Officer James Goss of the City of McKeesport Police Department conducted a lawful traffic stop, at 10:45 p.m., after he observed the driver, later identified as Wagner, make "two or three turns without signaling."

N.T., Suppression Hearing, 5/3/13, at 4-5. The stop occurred in a high crime area. **See id.**, at 4. As Officer Goss approached the car, he observed Wagner “make a suspicious movement towards the passenger side, front floor area of the vehicle.” **Id.**, at 6. He watched while Wagner reached “underneath the passenger front seat.” **Id.**, at 7. Officer Goss noted that such movements were not consistent with Wagner reaching for his documentation. **See id.** Wagner’s movements caused Officer Goss to be concerned for his safety. **See id.**, at 8. Officer Steve Kondrosky also testified that he became concerned for his safety when “the driver leaned over towards the floor board on the passenger side of the vehicle....” **Id.**, at 52. After Officer Goss checked Wagner’s driver’s license he removed Wagner from the vehicle and searched under the passenger seat. **See id.**, at 9. There, he observed a partially opened compartment that contained a semi-automatic weapon. **See id.**

We find that the furtive movements, at night, and in a high crime area were sufficient to warrant a reasonable police officer to believe that his safety was in danger and that Wagner might gain immediate control of a weapon. The suppression court committed no error in denying the 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: 4/23/2014