NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. COREY M. PURNELL-JONES Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1946 MDA 2013

Appeal from the Judgment of Sentence June 14, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0001035-2012

BEFORE: PANELLA, J., WECHT, J., and STRASSBURGER, J.*

MEMORANDUM BY PANELLA, J. **FILED JULY 23, 2014**

Appellant, Corey Purnell-Jones, appeals from his guilty verdict of persons not to possess firearms and firearms not to be carried without a license.[1] Purnell-Jones argues that the Commonwealth failed to present sufficient evidence to support the jury's verdict of guilty that Purnell-Jones had constructive possession of the firearm in the glove compartment of his car. He also contends that the trial court erred in denying his motion to suppress the admission of the firearm as evidence because the state trooper impermissibly seized his vehicle and coerced Purnell-Jones into involuntarily giving him consent to search the vehicle. We find that the trial court did not

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* Retired Senior Judge assigned to the Superior Court.
[1] 18 Pa.C.S.A. §§ 6105 and 6106, respectively.

err in denying the motion to suppress the evidence and that the evidence was sufficient to uphold the jury's verdict of guilty.

On November 2, 2011, Purnell-Jones was driving his black Audi Sedan with New Jersey plates eastbound in the right-hand lane of the Pennsylvania Turnpike at 9:20 AM. The Trooper, Luke Straniere, was in the left lane when he saw Purnell-Jones' vehicle traveling behind a tractor-trailer. Trooper Straniere drove at 65 miles per hour while observing Purnell-Jones, who was following the truck with only one car length between the vehicles. Trooper Straniere activated his lights, and pulled Purnell-Jones over.

Trooper Straniere asked Purnell-Jones and his passenger, Hector Escalera, for their license and registration. Trooper Straniere discovered that both Purnell-Jones and Escalera had suspended licenses. As such, Trooper Straniere did not allow them to drive away after the traffic stop was complete. Trooper Straniere instructed them that they would have to secure a ride by calling someone on Purnell-Jones' cell as the vehicle would need to be towed from the location.

Trooper Straniere was suspicious of the two individuals as they were driving a tinted-window vehicle and wore heavy clothing. Upon further examination of their suspended licenses, Trooper Straniere learned that they were both convicted felons for drug and weapons crimes. Trooper Straniere called the K-9 squad and asked Purnell-Jones to step out of the vehicle. Trooper Straniere saw an empty gun holster and a meat cleaver in plain

sight in the vehicle. He then informed both individuals that he wanted to obtain a search warrant for the vehicle. Purnell-Jones ultimately gave his consent to have the vehicle searched and Trooper Straniere found a gun in the glove compartment of the vehicle.

On September 21, 2012, Purnell-Jones filed a motion to suppress the evidence seized, which the trial court subsequently denied. A jury later found Purnell-Jones guilty of one count of persons not to possess firearms and one count of firearm not to be carried without a license by a jury. The trial court sentenced Purnell-Jones on June 12, 2013. After the denial of his post sentence motions, he filed this timely appeal.

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***. 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***, 826 A.2d 831, 842 (Pa. 2003).

It is proper to grant a motion to suppress the evidence when the Commonwealth infringes upon a defendant's constitutional rights. ***See Commonweatlh v. Cleckley***, 738 A.2d 427, 521 (Pa. 1999). Both the Fourth Amendment of the United States Constitution as well as Article I, § 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. A warrantless search is deemed unreasonable and therefore impermissible, unless an established exception applies. ***See Schneckloth v. Bustamonte***, 412 U.S. 218, 219 (1973). One such exception is voluntary consent. ***See Cleckley***, 738 A.2d at 522.

Warrantless vehicle searches and/or seizures must be accompanied by both probable cause and exigent circumstances beyond the mere mobility of the vehicle. ***See Commonwealth v. Hernandez***, 935 A.2d 1275, 1280 (Pa. 2007); ***Commonwealth v. Joseph***, 34 A.3d 855, 860 (Pa. Super. 2011). Where there is probable cause and exigent circumstances, police may either search the vehicle without a warrant or immobilize it until a search warrant may be obtained. ***See Commonwealth v. Baker***, 541 A.2d 1381, 1383 (Pa. 1988). The seizure of a vehicle for an indeterminate amount of time while police attempt to obtain a search warrant cannot be constitutionally justified based upon mere reasonable suspicion. ***See Joseph***, 34 A.3d at 862.

Probable cause exists where "the facts and circumstances within the knowledge of the officer are based upon reasonable trustworthy information and are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." ***Commonwealth v. Thompson***, 985 A.2d 928, 931 (Pa. 2009) (citation and internal quotation marks omitted). In order to determine whether probable cause exists, we apply the totality of the circumstances test. ***See id***. In ***Joseph***, our Supreme Court found that there was not probable cause for the trooper to seize a vehicle when there were air fresheners and soaps in the defendant's car and defendant had a history of criminal drug trafficking because those were not factors to give the trooper a firm basis that there were drugs in the trooper's car *at that time*. ***See*** 34 A.3d at 863.

We now turn to the merits of the issue of the seizure of Purnell-Jones's car until a warrant was obtained. We first note that it was proper for the Trooper to pull over Purnell-Jones. Trooper Straniere pulled Purnell-Jones over because of his "following too closely" to the tractor-trailer.[2] Trooper Straniere explained that Purnell-Jones drove unsafely for those conditions

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[2] 75 Pa.C.S.A. § 3310.

and pulled him over for violations of the traffic code. As such, we conclude that he was justified in pulling Purnell-Jones over for an investigatory stop.[3]

Purnell-Jones contends that Trooper Straniere impermissibly seized his car when he detained it order to obtain a search warrant. Unlike ***Joseph***, we find that there was probable cause for Trooper Straniere to seize Purnell-Jones's car. Trooper Straniere knew Purnell-Jones had a criminal record for possessing weapons and found an empty gun holster in the car before he informed Purnell-Jones and his passenger that he was going to seize the car until a search warrant was obtained. He was also wary of Purnell-Jones's strange behavior and the large amount of cash that he found in his coat pockets. Trooper Straniere knew at the time he pulled over Purnell-Jones that there could have been a gun in the car as he indicated it is strange for a person to carry a holster but not a gun. ***See*** N.T., 10/24/212, at 16. Unlike ***Joseph***, where the soaps and air fresheners did not give trooper basis for believing drugs were in the car as they were not "tell-tale" signs of recent drug use, here, the presence of a holster does give an indication that there is a gun in the vehicle. We therefore conclude that Trooper Straniere did not conduct an impermissible seizure of Purnell-Jones's car as he had sufficient

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[3] A police officer may pull over a vehicle for an investigatory stop based on a reasonable suspicion of a violation of the traffic code. ***See Commonwealth v. Chase***, 960 A.2d 108, 120 (Pa. 2008).

probable cause in seeing the gun holster and knowledge of Purnell-Jones's criminal history in order to do so.

We next address Purnell-Jones's argument that Trooper Straniere coerced him into giving his consent to have his vehicle searched. In order to establish there was a valid consensual search, the Commonwealth must prove that the consent was given during a legal police interaction. ***See Commonwealth v. Strickler***, 757 A.2d 884, 889 (Pa. 2000). The consent of the defendant must be the product of an essentially free and unconstrained choice under the totality of the circumstances. ***See Commonwealth v. Mack***, 796 A.2D 970, 971 (Pa. 2002). The knowledge of the right to refuse to consent to a search is a factor to be taken into account. ***See Schneckloth v. Bustamonte***, 412 U.S. 218, 227-28 (1973). Furthermore, even though the consent inquiry is objective in nature, the maturity, sophistication, and mental or emotional state of the defendant are to be taken into account. ***See United States v. Mendenhall***, 446 U.S. 544, 557 (1980). The defendant's consent is valid when given even though the defendant knows that the warrantless search will produce evidence of a crime. ***See Florida v. Bostick***, 501 U.S. 429, 438 (1991).

Purnell-Jones contends that he was coerced into giving his consent because Trooper Straniere did not offer him a ride from the turnpike. We find that the trial court correctly decided that Purnell-Jones gave his voluntary consent to have his vehicle searched. While not dispositive to

concluding that Purnell-Jones gave voluntarily consent, Trooper Straniere made it clear to Purnell-Jones that Purnell-Jones had the right to deny him the ability to search Purnell-Jones's car. Furthermore, Trooper Straniere informed Purnell-Jones several times that he would need to call someone to pick him up as he could not walk on the turnpike, he was not allowed to drive his vehicle without a valid license, and that he would not provide him with a ride. We do not find that these had coercive effects on Purnell-Jones because he took the opportunity to use his cell to call for a ride. Additionally, the record indicates that Purnell-Jones gave his consent in order to put an end to his waiting for the investigatory stop to come to a conclusion. Lastly, Trooper Straniere gave Purnell-Jones the consent form and told Purnell-Jones before signing it that he was not doing so in a coercive manner. As such we find that Purnell-Jones gave voluntary consent, which resulted in the lawful seizure of the 9mm pistol in Purnell-Jones's glove compartment.

We therefore conclude that the trial court did not abuse in discretion in denying the motion to suppress the gun as evidence.

The second issue Purnell-Jones raises on appeal is that the Commonwealth presented insufficient evidence to prove that he possessed the firearm. A claim challenging the sufficiency of evidence is a question of law. ***See Commonwealth v. Smith***, 853 A.2d 1020, 1028 (Pa. Super. 2004). The evidence adduced at trial must be viewed in the light most favorable to the verdict winner to determine whether there is sufficient

evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. ***See Commonwealth v. Walker***, 874 A.2d 667, 677 (Pa. Super. 2005). 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. ***See id***. The Commonwealth is entitled to all reasonable inferences arising from the evidence and all facts which the Commonwealth's evidence tends to prove are treated as admitted. ***See Commonwealth v. Hunter***, 768 A.2d 1136, 1142 (Pa. Super. 2001). Only where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, is the evidence deemed insufficient as a matter of law. ***See id***. We must determine whether, "accepting as true all the evidence and all reasonable inferences therefrom, upon which, if believed, the jury could properly have based its verdict, it is sufficient in law to prove beyond a reasonable doubt that the defendant is guilty of the crime or crimes of which he has been convicted." ***Commonwealth v. Williams***, 316 A.2d 888, 892 (Pa. 1974) (citation omitted).

A jury found Purnell-Jones guilty of persons not to possess firearms[4] and firearms not to be carried without a license. The relevant portions of the criminal code state:

> § 6105. Persons not to possess, use, manufacture, control sell or transfer firearms
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> (a) offense defined
> 1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer, or manufacture or obtain a license to possess, use, control, sell, transfer manufacture a firearm in this Commonwealth.
>
> § 6106 Firearms not to be carried without a license
>
> (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.

18 Pa.C.S.A. §§ 6105(a)(1), 6106(a)(1).

At the jury trial, Purnell-Jones stipulated that he had a prior criminal conviction and was not eligible to lawfully own a gun, and Trooper Straniere determined that Purnell-Jones did not possess a permit. ***See*** N.T., 4/4/13, at 108. Therefore, the jury only had to determine if Purnell-Jones was in

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[4] "Mere possession, along with the prior criminal conviction, establishes the elements of this crime." ***Commonwealth v. Moore***, 49 A.3d 896, 903 (Pa. Super. 2012)

possession of the pistol, which was located in the glove compartment of his vehicle.

Possession of an object may be proven by circumstantial evidence. ***See In re R.N.***, 951 A.2d 363, 370 (Pa. Super. 2008). Possession of a weapon can be found by proving actual possession, constructive possession, or joint constructive possession. ***See Commonwealth v. Heidler***, 741 A.2d 213, 215 (Pa. Super. 1999). Constructive possession is found where the defendant does not have actual possession over the weapon but has a conscious dominion over it. ***See id***. at 216. The Commonwealth must prove that the defendant had conscious dominion by showing that the defendant had both the power to control the firearm and the intent to the exercise such control. ***See Commonwealth v. Magwood***, 538 A.2d 908, 909-10 (Pa. Super. 1988).

The requirements needed to satisfy constructive possession may be inferred from the totality of the circumstances. ***See Commonwealth v. Haskins***, 677 A.2d 328, 330 (Pa. Super. 1996). The fact that the contraband is located in an are usually accessible only to the defendant may lead to an inference that he placed it there or knew of its presence. ***See id***. Furthermore, the fact that another person might have equal access and control to an object does not eliminate the defendant's constructive possession. ***See id***. In ***Commonwealth v. Stembridge***, we found that defendant was in constructive possession of the cocaine in the vehicle found

underneath the vehicle because defendant had greater "access" to the vehicle than his passenger and had engaged in furtive movements after exiting the car. 579 A.2d 901, 905 (Pa. Super. 1990).

The record indicates that the 9mm pistol was found within a car that was operated by Purnell-Jones and owned by his mother. As such, like in ***Stembridge***, Purnell-Jones has greater control over the glove compartment than his passenger. Furthermore, the record shows that the day before the incident, Purnell-Jones purchased ammunition and a holster for the pistol within the glove box. In addition to the holster and ammunition found in Purnell-Jones's car, the receipt of purchase of those objects from the Bass Pro shop was also found in Purnell-Jones car. The defendant admitted that the holster and ammunition belonged to him. Lastly, the record supports that on numerous occasions the defendant engaged in furtive behavior by acting nervously in front of the Trooper and keeping his back toward the Trooper while answering the Trooper's questions. Viewed in the light most favorable to the Commonwealth, we find that this was sufficient evidence to support the jury's guilty verdict.

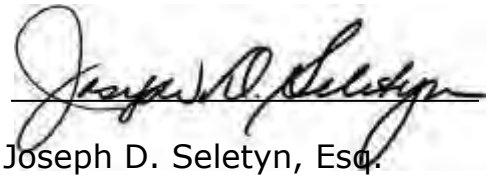
Like in ***Stembridge***, where the defendant's furtive movements provided sufficient evidence that he knew the cocaine was in his car, here, Purnell-Jones's suspicious behavior indicates that he knew that he possessed the gun in the vehicle. His bizarre behavior, which the Trooper noted was suspicious and threatening to Trooper Straniere's safety, provide sufficient

evidence for a reasonable inference that Purnell-Jones knew that the gun was in his car.

Judgment of sentence affirmed.

Strassburger, J., files a concurring memorandum.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014