

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

JESSE AGUILA

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1441 EDA 2013

Appeal from the Order Entered on April 22, 2013
In the Court of Common Pleas of Lehigh County
Criminal Division at No.: CP-39-CR-0004780-2012

BEFORE: GANTMAN, J., OLSON, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

FILED April 7, 2014

The Commonwealth appeals the trial court's April 22, 2013 order, which granted Jesse Aguila's pre-trial motion to suppress. After careful review, we conclude that the trial court erroneously granted Aguila's motion. Therefore, we reverse.

The trial court summarized the pertinent facts and procedural history of this case as follows:

On October 12, 2012, Detective Jorge A. Medero of the Allentown Police Department's Vice Unit was working the day shift in the City of Allentown in an unmarked vehicle in plain clothes. Detective Medero and Officer Evan Weaver were conducting surveillance on several locations in the City of Allentown which were the subjects of ongoing investigations. One of these locations was 309 East Walnut Street, Allentown, Lehigh County, Pennsylvania.

Shortly after 11:00 a.m. that day, Officer Weaver radioed that he needed assistance in pulling two cars over [that were] seen in the vicinity of 309 East Walnut Street. One of the individuals

stopped had [three and one-third] pounds of marijuana in his vehicle after leaving 309 East Walnut Street. Based on this, a search warrant was prepared for the Walnut Street address. While the warrant was being prepared, Detective Medero continued surveillance on the residence of 309 East Walnut Street from his vehicle to see if anyone came or left the location. During that time, two vehicles came and left a short period of time later. The driver of the first vehicle was arrested shortly thereafter after being stopped. He had marijuana in his possession and acknowledged receiving it from an individual named Terrence Brickhouse at 309 East Walnut Street. The second of these stopped vehicles was driven by [Aguila].

[Aguila] was driving a white Acura TL. Detective Medero testified that he saw [Aguila] pull up and park at the rear of the residence. [Aguila] exited the vehicle, approached the residence at the rear door, and came back to his vehicle approximately five minutes later. Because of his location, Medero had a blocked vantage point and did not see Aguila carrying anything to or from his car.

As [Aguila] drove away, Detective Medero radioed for other detectives to assist in following [Aguila's] vehicle. He also radioed for a marked unit to assist. Some center city police units also assisted in detaining [Aguila] because he was driving towards center city.

In the area of Fourth and Gordon streets in Allentown, [Aguila] was pulled over by approximately three marked units based on Detective Medero's suspicion that [Aguila] had narcotics in his vehicle.

After [Aguila] was stopped, Officer Weaver approached him and identified himself as an Allentown Police Officer. Officer Weaver asked [Aguila] from where he was coming. [Aguila] stated he was coming from a friend's house on the east side. Officer Weaver asked what the friend's name was and [Aguila] said it was Terrence. Officer Weaver then asked if he had any weed in the car, and [Aguila] acknowledged that he did and that it was in a backpack on the front seat. [Aguila] gave Officer Weaver permission to recover the marijuana. Officer Weaver recovered a large, one-gallon bag of green, leafy vegetable matter inside the backpack which subsequently tested positive for marijuana. The backpack on the front seat was also found to contain a digital scale, small plastic bags, and a grinder.

Officer French,^[1] one of the officers involved in the traffic stop, then advised Officer Weaver that he located marijuana in [Aguila's] pants pocket during a pat-down search after [Aguila] was handcuffed. [Aguila] was then transported to police headquarters. Because [Aguila's] driver's license was suspended, the car he was driving was impounded and towed.

On October 19, 2012, a preliminary hearing was held and charges of possession with intent to deliver ["PWID"], possession of a controlled substance, possession of drug paraphernalia, and driving while operating privilege is suspended^[2] were bound over for court.

On December 13, 2013, [Aguila], by and through defense counsel, . . . filed [an] omnibus pre-trial motion, which included a motion to suppress physical evidence and statement. A hearing on the omnibus pre-trial motion was conducted on January 22, 2013. Following the hearing, the notes of testimony were ordered to be transcribed and both [parties] were given time to submit briefs.

On April 22, 2013, [the trial court] issued an order with an accompanying memorandum opinion. [The court] granted in substantial part [Aguila's] motion to suppress. In the opinion, [the trial court] included *dicta* noting that the Commonwealth failed to argue, and therefore waived, what might have been a more persuasive argument, that the drugs would have been subject to inevitable discovery as a consequence of the vehicle being towed. [The court also explained its bases for granting Aguila's motion. The court first concluded that Aguila had an expectation of privacy in the vehicle. The court then determined that the police had reasonable suspicion to stop Aguila's vehicle, but that the manner in which the stop was effectuated transformed the stop into a custodial arrest. Thus, the court held that the police officers erred by not administering to Aguila

¹ Officer French's first name does not appear in the notes of testimony from the suppression hearing, or elsewhere in the certified record.

² **See** 35 P.S. §§ 780-113(a)(30), (16), and (32); and 75 Pa.C.S. § 1543(b)(1), respectively.

the standard **Miranda**³ rights before asking him if he had marijuana in his car. Consequently, the trial court suppressed both Aguila's statement and the physical evidence obtained directly as a result of those statements.]

On April 29, 2013, [the Commonwealth] filed a motion to reconsider which noted [that the trial court] was "astute enough" to elicit testimony tending to support the theory of inevitable discovery. The reconsideration motion essentially raised, for the first time, an argument premised on the grounds of inevitable discovery. This Court denied the reconsideration motion by order dated April 30, 2013.

[The Commonwealth] filed a notice of appeal from the April 30, 2013 order on May 14, 2013.⁴ A concise statement of [errors] complained of on appeal was filed on June 7, 2013.

Trial Court Opinion ("T.C.O."), 6/19/2013, at 2-5 (footnotes omitted; some capitalization modified).

The Commonwealth presents the following issues for our review:

1. Did the trial court err in concluding that [Aguila] was subject to a custodial interrogation requiring that he be informed of his **Miranda** rights when Detective Evan Weaver questioned [Aguila] whether he "had any weed in the car" during a valid vehicle stop that the court determined was supported by reasonable suspicion?
2. Did the trial court err in determining that it could not make a finding of inevitable discovery where it addressed the issue in its opinion granting suppression and observed that the record supported such a finding, and the Commonwealth subsequently raised this argument in its motion for reconsideration, which the trial court denied?

³ **See *Miranda v. Arizona***, 384 U.S. 436 (1966).

⁴ The Commonwealth certified in its notice of appeal that the trial court's suppression order terminated or substantially handicapped its case pursuant to Pa.R.A.P. 311(d).

3. Did the trial court err in suppressing the drugs and paraphernalia recovered from the car [that Aguila] was operating without a valid driver's license where the record supports that the drugs and paraphernalia would have inevitably been recovered pursuant to a valid inventory search as highlighted by the trial court in its opinion granting [Aguila's] motion to suppress?

Brief for the Commonwealth at 4-5. For the reasons that follow, we conclude that the trial court erroneously concluded that the stop of Aguila's vehicle escalated from an investigatory detention into a custodial arrest requiring ***Miranda*** warnings. As such, we do not consider the Commonwealth's last two questions presented.⁵

We begin with our well-settled scope and standard of review of a suppression order:

Where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible. When reviewing a decision from the suppression court, our responsibility is (1) to determine whether the record supports the factual findings of the court below, and (2) to evaluate the legitimacy of the inferences and legal conclusions drawn from those findings. Where, as here, it is the Commonwealth who is appealing the decision of the suppression court, we must consider only the evidence of the defendant's witnesses and so much of the evidence for the prosecution which when read in the context of

⁵ We also note that the issue of whether Aguila possessed a legitimate expectation of privacy in the vehicle, which belonged to his mother, was litigated extensively at the suppression hearing. ***See*** Notes of Testimony ("N.T."), 1/22/2013, at 4-52. The trial court ultimately concluded that Aguila had such an expectation. ***Id.*** at 52; T.C.O. at 7. The Commonwealth does not challenge that finding in this appeal. Thus, we will not discuss the merits of the trial court's decision with regard to Aguila's privacy expectations.

the record as a whole, remains uncontradicted. If the record supports the factual findings below, we are bound by those findings. However, while we are bound by the suppression court's findings of fact if supported by the record, we are not bound by the court's legal conclusions [that] are drawn from the facts of the case.

Commonwealth v. Simmons, 17 A.3d 399, 402 (Pa. Super. 2011) (citations omitted).

The trial court first concluded that the police officers in this case possessed adequate reasonable suspicion to conduct an investigatory detention on Aguila and his vehicle. On this particular point, we agree.

Pennsylvania case law recognizes three categories of interaction between police officers and citizens. The first is a "mere encounter," which need not be supported by any level of suspicion. The second is an "investigative detention," which must be supported by reasonable suspicion. This interaction subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. The third category, a "custodial detention," must be supported by probable cause.

Commonwealth v. Caban, 60 A.3d 120, 127 (Pa. Super. 2012) (citations and internal quotation marks omitted). Reasonable suspicion can be established based upon "only some founded suspicion that criminal activity may be afoot." ***Commonwealth v. Joseph***, 34 A.3d 855, 862-63 (Pa. Super. 2011) (citing ***Commonwealth v. Fell***, 901 A.2d 542, 545 (Pa. Super. 2006)). On the other hand, probable cause requires proof that "the facts and circumstances within the officers' knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." ***Commonwealth v. Hernandez***, 935 A.2d 1275,

1284 (Pa. 2007). Reasonable suspicion is a less-demanding standard, and can be established through information that is of lesser quantity or quality than that necessary to establish probable cause. **Joseph**, 34 A.3d at 862-63.

More particularly, to establish reasonable suspicion, a police officer must “articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity.” **Commonwealth v. Basinger**, 982 A.2d 121, 125 (Pa. Super. 2009) (quoting **Commonwealth v. Reppert**, 814 A.2d 1196, 1203 (Pa. Super. 2002)). To evaluate whether an officer sufficiently demonstrated that he had reasonable suspicion, we consider the totality of the circumstances, **Caban**, 60 A.3d at 128 (citation omitted), giving “due weight . . . to the specific reasonable inference the [police officer] is entitled to draw from the facts in light of his experience.” **Commonwealth v. Cook**, 735 A.2d 673, 676 (Pa. 1999) (quoting **Terry v. Ohio**, 392 U.S. 1, 27 (1968)).

The evidence presented at the suppression court reveals the following. For a significant period of time leading up to October 12, 2012, Detective Medero had been investigating suspicious activity at 309 East Walnut Street. Detective Medero believed, based upon the entirety of his investigation, that Terrence Brickhouse was selling large amounts of marijuana from that residence. On the date in question, Detective Medero observed multiple

individuals park at 309 East Walnut Street, enter the residence, and leave within five minutes after entry. The first to follow this sequence of events was Angel Solis. After leaving the residence, Solis was stopped by the police and found to be in possession of three and one-third pounds of marijuana. Solis indicated that he had just purchased the marijuana from Brickhouse at 309 East Walnut Street. Based upon this information, Detective Medero received approval from the Lehigh County District Attorney's Office to apply for a search warrant. While the detective was driving to the local magistrate's office for approval of the search warrant, he learned that Aguila had just followed the same protocol as Solis did at 309 East Walnut Street. That is, Aguila parked at the house, entered, and left within five minutes. Detective Medero directed that Aguila's car be stopped. We conclude, as the trial court did, that this information sufficed to establish that the police had reasonable suspicion to stop Aguila's vehicle and detain him for investigatory purposes. Based upon the totality of the circumstances, and the reasonable inferences drawn therefrom, Detective Medero reasonably believed that criminal activity, namely drug trafficking, was afoot.

Having so concluded, we next must determine whether the investigatory detention escalated into a custodial detention by the manner in which the detention was conducted. "A police encounter becomes an arrest when, under the totality of the circumstances, the detention becomes so coercive that it is the functional equivalent of an arrest." ***Commonwealth v. Clinton***, 905 A.2d 1026, 1032 (Pa. Super. 2006). To make this

assessment, we consider the following factors: (1) the cause for the detention; (2) the length of the detention; (3) the location of the detention; (4) whether the suspect was transported against his will, and, if so, for what distance and for what reason; (5) whether the suspect was handcuffed or otherwise restrained; (6) whether the police used or threatened to use force; and (7) the character of the investigative methods used to confirm or dispel the suspicions of the police. ***Id.***

In this case, we are constrained to conclude that the interaction between the police and Aguila constituted an investigatory detention and did not escalate into a custodial detention/arrest until after the narcotics were seized from the vehicle. Aguila's vehicle was stopped on a public street in broad daylight. Aguila had just left a residence that the police suspected was, and which appeared to be, used to sell marijuana. Aguila parked his car at that residence, and left after spending less than five minutes inside. This was the precise protocol used by Solis, whom the police earlier had stopped and confirmed had purchased marijuana from that residence. Thus, the police had reason to suspect that Aguila was involved in illicit activity.

Once stopped, Aguila was asked to exit the car by uniformed police officers. Aguila was asked to step to the back of the vehicle. His movements were not compelled by an excessive show of authority. Moreover, neither force nor threats of force were utilized to compel Aguila to take any particular action. The police calmly asked Aguila a few basic questions to confirm or dispel their suspicions. They did not subject him to

extensive questioning, excessive pressure, or any other harsh tactic. Prior to being formally arrested, Aguila was not handcuffed or restrained in any way, nor was he forcibly transported to any other location.

Based upon the totality of these circumstances, we cannot conclude that the interaction extended beyond an investigatory detention until after the marijuana was located in the car. It is true that as many as six police cars, some marked and some unmarked, were used to stop and detain Aguila's vehicle. It is also true that multiple officers, both in uniform and in plain clothes, assisted in detaining Aguila. Notably, these officers never removed their weapons or used forceful tactics when engaging with Aguila. Although the number of vehicles and officers militate in favor of a custodial detention, this factor alone does not overcome the totality of the remaining factors. Those factors lead us to the conclusion that what began as an investigative detention continued as such until after the marijuana was located in the car and Aguila formally was placed under arrest.

We now consider the propriety of the questions posed to Aguila during the investigative detention. The central purpose of a ***Terry***-style investigatory detention is "to allow immediate investigation through temporarily maintaining the *status quo*." ***Commonwealth v. Chase***, 960 A.2d 108, 115-16 (Pa. 2008). "[O]ne must remember the reason why the Constitution tolerates the lesser standard articulated in ***Terry***—the detention is allowed to maintain the *status quo* so the officer may conduct a brief and safe investigation to see if indeed there is criminal activity afoot." ***Id.*** In

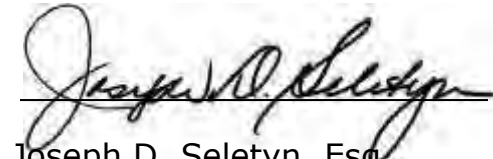
order to effectuate this specific purpose, a police officer during a **Terry** stop “may ask a detainee a **moderate** number of questions to determine his identity and **to try to obtain information confirming or dispelling the officer’s suspicions.**” *Id.* at 120 (citations omitted; emphasis added). To preclude an officer from attempting to obtain such information would be to destroy the fundamental purpose of a **Terry** stop: to confirm or dispel the officer’s belief, which is predicated upon a legitimate showing of reasonable suspicion, that criminal activity is afoot. It is axiomatic that a detainee may refuse to answer such questions, but that does not obviate the officer’s right to ask them.

Instantly, the police officers asked Aguila a limited number of questions, designed specifically to confirm or dispel their suspicions that Aguila was engaged in drug trafficking. Accordingly, we conclude that these questions were properly posed pursuant to, and in furtherance of, a legal investigatory detention.

Finally, we reiterate our conclusion that Aguila was subjected to an investigatory detention. It is well-established that “the dictates of **Miranda** do not attach during an investigatory detention.” **Commonwealth v. Murray**, 936 A.2d 76, 81 (Pa. Super. 2007) (quoting **Commonwealth v. Kondash**, 808 A.2d 943, 948 (Pa. Super. 2002)). Thus, we need not consider whether Aguila was in custody for **Miranda** purposes, and conclude that the requirements of **Miranda** were inapplicable to the facts of this case.

Order reversed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/7/2014