NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. AMIR GILLIS	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 292 EDA 2024

Appeal from the Order Entered January 3, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0004052-2022

BEFORE: DUBOW, J., KING, J., and SULLIVAN, J.

MEMORANDUM BY DUBOW, J.: **FILED APRIL 29, 2025**

The Commonwealth appeals from the January 3, 2024 Order entered in the Philadelphia County Court of Common Pleas that granted Appellee Amir Gillis' motion to suppress a firearm. After careful review, we reverse and remand.

We glean the relevant factual and procedural history from the suppression court opinion and the certified record. On May 3, 2022, at 3:40 P.M., Philadelphia Police Officers DelRicci and Sidebotham were on patrol in the 35th District in an unmarked car with a juvenile probation officer. At the intersection of Medary Avenue and Bouvier Street ("the intersection"), they saw a group of men, including Appellee, on either the sidewalk or the street. N.T. Motion, 1/3/24, at 11. While driving, the officers heard someone yell. Officer DelRicci could not hear what was said, but Officer Sidebotham heard "yo, cops!" N.T. Motion, 1/3/24, at 32.

Appellee was facing the police car, and Officer DelRicci recognized the outline of a firearm at his waist on his right side. Appellee put his sweatshirt over it, walked behind a car briefly, and then ran away. The officers pursued and eventually seized Appellee. After recovering the firearm from Appellee's waistband and determining that Appellee did not have a permit to carry a firearm, they arrested him.

Appellee filed a pre-trial motion to suppress the firearm. On January 3, 2024, the court held a suppression hearing, at which Officers Sidebotham and DelRicci testified in accordance with the above facts and provided details of their experience over the past 15 and 12 years, respectively, regarding their experience in the area. Officer DelRicci testified that he made "hundreds" of firearms arrests in the 35th District over 12 years, including 2 to 3 near the intersection, and was aware of approximately 2 shootings or homicides in the area "in the last several years." N.T. Suppression Hr'g, 1/3/24, at 16.

Officer Sidebotham testified that over his 15 years as a police officer, he has made "multiple" firearms arrests and responded to "multiple shootings and homicides" on the blocks of Medary Avenue and Bouvier Street near the intersection. N.T. Suppression Hr'g at 35. Regarding the incident itself, Officer DelRicci testified that he was unsure whether any of the officers had exited the police car by the time Appellee had started running, while Officer Sidebotham testified that Appellee fled as he exited the police car.

At the conclusion of the hearing, the court, while placing its factual findings on the record, stated that "[s]omeone on the street yelled 'yo, cops'." N.T. Hr'g at 53. It further explained that

> [w]e know that [Appellee] did step behind a parked car, that Officer Sidebotham and the juvenile probation officer got out of the car. And that [Appellee] ran. But I don't know the exact order in which those things occurred. The officers also—although, I do find them both very credible, their memory of what—exactly what happened was not complete in every detail. So I don't know whether and how anyone approached [Appellee]. I don't know if either officer said anything, directed him to stop. There was just no—there was no testimony about exactly what happened there.

Id. at 54. The court granted Appellee's motion to suppress.

The Commonwealth filed a timely interlocutory appeal pursuant to Pa.R.A.P. 311(d).[1] Both the Commonwealth and the suppression court complied with Pa.R.A.P. 1925.

The Commonwealth raises one issue for our review:

> Did the court err in suppressing [Appellee's] gun where plainclothes police officers in an unmarked car were driving in an area where crime, guns, and shootings were prevalent, someone near [Appellee] yelled "yo, cops," the officers saw a bulge in [Appellee's] waistband which they recognized to be a gun, [Appellee] covered the bulge in his clothing when he became aware of the police presence, and he then fled as officers merely began to get out of their car?

Commonwealth's Br. at 4.

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[1] Rule 311(d) provides that "the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution." Pa.R.A.P. 311(d).

Our standard of review for suppression determinations is well settled. When a defendant files a suppression motion, "it is the Commonwealth's burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights." ***Commonwealth v. Wallace***, 42 A.3d 1040, 1047-48 (Pa. 2012); ***see also*** Pa.R.Crim.P. 581(H). We review the grant of a suppression motion to determine "whether the record supports the trial court's factual findings and whether the legal conclusions drawn from those facts are correct." ***Commonwealth v. Carmenates***, 266 A.3d 1117, 1122-23 (Pa. Super. 2021) (*en banc*) (citation omitted). When the Commonwealth appeals from a suppression order, we "consider only the evidence from the defendant's witnesses together with the evidence of the prosecution that, when read in the context of the entire record, remains uncontradicted." ***Commonwealth v. Rice***, 304 A.3d 1255, 1259 (Pa. Super. 2023) (citation omitted). We defer to the suppression court's factual findings if they are supported by the record. ***Commonwealth v. Batista***, 219 A.3d 1199, 1206 (Pa. Super. 2019). We, however, give no such deference to the suppression court's legal conclusions and, instead, review them *de novo*. ***Id.***

In addition to determining whether the record supports the suppression court's factual findings, we also "determine the reasonableness of the inferences and legal conclusions drawn therefrom." ***Commonwealth v. Tucker,*** 883 A.2d 625, 629 (Pa. Super. 2005) (citation omitted). The suppression court must consider whether the totality of the circumstances,

not individual facts in isolation, supports reasonable suspicion. ***Commonwealth v. Carter***, 105 A.3d 765, 772 (Pa. Super. 2014) (*en banc*). Facts can still establish reasonable suspicion even if they could point equally to innocent conduct. ***Id.***

The Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. ***In re D.M.***, 781 A.2d 1161, 1163 (Pa. 2001). "To secure the right of citizens to be free from [unreasonable searches and seizures], courts in Pennsylvania require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens as those interactions become more intrusive." ***Commonwealth v. Beasley***, 761 A.2d 621, 624 (Pa. Super. 2000). There are three defined categories of interaction between citizens and police officers: (1) mere encounter, (2) investigative detention, and (3) custodial detention. ***See Commonwealth v. Collins***, 950 A.2d 1041, 1046 (Pa. Super. 2008) (*en banc*).

Our Supreme Court has recognized that the U.S. Supreme Court has held "that law enforcement officials may briefly detain an individual for questioning and pat down or 'frisk' the person based on facts that amount to less than probable cause to arrest." ***Commonwealth v. Adams***, 205 A.3d 1195, 1203 (Pa. 2019) (citing ***Terry v. Ohio***, 392 U.S. 1 (1968)). To conduct a constitutionally valid investigative detention, or ***Terry*** stop, police must have "reasonable suspicion that criminal activity was afoot." ***Id.*** at 1203.

Reasonable suspicion "is less than a preponderance of the evidence but more than a hunch." ***Commonwealth v. Jackson***, 907 A.2d 540, 543 (Pa. Super. 2006) (citation omitted). "Reasonable suspicion must be based on specific and articulable facts, and it must be assessed based upon the totality of the circumstances viewed through the eyes of a trained police officer." ***Commonwealth v. Williams***, 980 A.2d 667, 671 (Pa. Super. 2009) (citation omitted). In addition, "we must give due weight...to the specific reasonable inferences the police officer is entitled to draw from the facts in light of his experience." ***Rice***, 304 A.3d at 1261 (citation omitted).

The presence of a concealed firearm alone is insufficient to establish reasonable suspicion; however, the surrounding circumstances, such as the suspect's conduct and presence in a high-crime area, combined with a firearm, may establish reasonable suspicion. ***Commonwealth v. Hicks***, 208 A.3d 916, 938-39, 945 (Pa. 2019). Likewise, flight alone is insufficient to establish reasonable suspicion but unprovoked flight in a high crime area is sufficient to establish reasonable suspicion. ***Commonwealth v. Taggart***, 997 A.2d 1189, 1196 (Pa. Super. 2010); ***D.M.***, 781 A.2d at 1164; ***see also Commonwealth v. McCoy***, 154 A.3d 813, 819 (Pa. Super. 2017) (holding that evasive behavior in a high crime area and unprovoked flight established reasonable suspicion).

Finally, the record must establish that the defendant knowingly fled from police officers for flight to support reasonable suspicion. ***See Commonwealth v. Washington***, 51 A.3d 895, 898-99 (Pa. Super. 2012)

(holding that defendant's unprovoked flight in a high crime area did not establish reasonable suspicion because police were in an unmarked car two houses away and the defendant fled before they arrived, so there was no indication that he knew they were police); ***see also Commonwealth v. Brown***, 904 A.2d 925, 929 (Pa. Super. 2006) (finding reasonable suspicion where the appellant fled from police who were in an unmarked vehicle, but officer's "police" shirt identified him as an officer).

We have previously addressed this issue in cases that are factually similar to the case now before us. For example, we have held that police officers possessed reasonable suspicion to stop a defendant when they saw him with a heavy bulge in his pocket at 9:00 P.M. on a corner where one of the officers had previously made drug and firearms offenses, and the defendant turned his body and walked in the opposite direction of the officers three times as the officers circled the block. ***Carter***, 105 A.3d at 766-67. We have also found that police officers had reasonable suspicion when, while in uniform and patrolling a high crime area in a marked car, they saw an L-shaped bulge near the defendant's waistband and when police vehicle approached him, he walked away and then ran when the police officer got out of the vehicle. ***Rice***, 304 A.3d at 1258-59.

The Commonwealth asserts that the court erroneously disregarded evidence that the intersection was in a high-crime area, improperly considered each piece of evidence individually instead of considering the totality of the circumstances, and "focus[ed] on the possibility of innocuous explanations for

[Appellee's] conduct." Commonwealth's Br. at 12-14, 18. The Commonwealth argues that, taken together, Appellee's possession of a firearm in his waistband, his evasive movements to cover the bulge, and his flight "while continuing to use his hand to hold and cover the gun"—after someone yelled "yo, cops!" in a high-crime area—are "suggestive" of an attempt to conceal an unlawfully-possessed firearm and, thus, sufficient to establish reasonable suspicion. ***Id.*** at 13-14 (quoting ***Illinois v. Wardlow***, 528 U.S. 119, 124 (2000)). Finally, the Commonwealth maintains that it is a "commonsense" inference that the shout of "yo, cops!" alerted Appellee to the police presence and caused him to flee, and thus, the court erroneously concluded that the Commonwealth did not establish that Appellee knew he was fleeing from police. ***Id.*** at 16-17.

The suppression court determined that the Commonwealth failed to establish that police possessed reasonable suspicion to stop and frisk Appellee. Trial Ct. Op., 4/3/24, at 3-4, 6-7. First, the court found that the evidence did not prove that the intersection was a high-crime area. ***Id.*** at 6. It interpreted the officers' testimony, which it found credible, to mean that there was an average of just one firearms-related crime near the intersection per year, and that there was no indication that the crime was recent, had increased, or that they had "special concerns" about that intersection. ***Id.*** at 7. It also noted that the stop took place on a May afternoon, "when people might reasonably be expected to be out on the streets for non-criminal purposes." ***Id.***

Second, the court found that the Commonwealth did not establish that Appellee knowingly fled from police. ***Id.*** It noted that the officers were in plain clothes and in an unmarked car, and, although one officer "believe[d]" that someone yelled "yo, cops!", it was not clear that Appellee heard it or realized that police were present. ***Id.*** at 7-8. Ultimately, the court determined that the Commonwealth only demonstrated that Appellee was carrying a concealed firearm, pulled his clothing over the firearm and briefly stepped behind a car, then fled from the unmarked police car, which, taken individually or together, were insufficient to establish reasonable suspicion. ***Id.*** at 7.

Upon careful review, we conclude that the court's factual finding that the area was not a high-crime area is not supported by the record. The officers' uncontradicted testimony, taken together, indicated that they regularly made firearms arrests and responded to shootings and homicides in that area, including at the intersection, throughout their careers. Thus, the court's inference that crime was infrequent is not supported by the evidence presented at the hearing.

Furthermore, we conclude that the court's factual finding that Appellee did not knowingly flee from police is not supported by the record and its legal conclusion that the officers did not have reasonable suspicion to support a ***Terry*** stop is erroneous. First, the court credited Officer Sidebotham's testimony that he heard that someone in Appellee's vicinity yell "yo, cops!", and found credible the officers' testimony that Appellee then covered the bulge in his waistband, ducked behind a car, and fled shortly after. ***Id.*** at 3-4.

Second, based on our review of the suppression record, we conclude the totality of the circumstances establishes that police had reasonable suspicion to conduct a ***Terry*** frisk of Appellee. Officer DelRicci, a police officer with 12 years of experience on the street, recognized that the bulge in Appellee's waistband was a firearm, and Appellee's attempts to conceal the bulge and flee once the shout alerted him to the police presence, provided police with reasonable suspicion that Appellee possessed the firearm unlawfully.

Accordingly, we reverse the court's order granting suppression of the firearm, and remand for further proceedings.

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/29/2025