

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DARRELL WILLIAMS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1545 WDA 2012

Appeal from the Judgment of Sentence August 27, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0000579-2010

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY BOWES, J.:

FILED DECEMBER 10, 2013

Darrell Dwayne Williams appeals from the judgment of sentence of fifteen to thirty-six months imprisonment that was imposed after he was convicted by a jury of possession of a controlled substance. We reject his challenges to the suppression court's rulings herein and affirm.

The following facts, which are supported by the record, are pertinent to resolution of Appellant's issues on appeal. At approximately 3:00 p.m. on December 31, 2009, McKeesport Police Lieutenant Thomas Greene, who was off-duty, was driving down Sixth Street in McKeesport. He parked in front of Street Stars Bar when he noticed Appellant about ten feet in front of him. Appellant was standing next to two individuals. On the date in question, Lieutenant Greene had been a police officer for twenty five years, worked in

narcotics for a solid year, and conducted at least twenty narcotics investigations, fifteen of which pertained to the sale of cocaine.

Lieutenant Greene observed Appellant holding a small plastic bag and hand something to the two individuals, who gave Appellant currency in return. Lieutenant Greene knew one of the purchasers "by name," and that individual was a "common street user, common drug user." N.T.Hearing, 4/5/11, at 10. Based upon his experience, observation of the transaction, and knowledge that one of the two individuals who gave Appellant money was a consumer of drugs, Lieutenant Greene believed that he had witnessed a drug sale. As the officer was unarmed, he telephoned the police station. When uniformed police arrived, Lieutenant Greene advised them that Appellant was the man who sold drugs. Appellant was seized and frisked for weapons. Police discovered a plastic bag containing suspected cocaine. Appellant was placed under arrest and searched at the police station, where \$1,409 in cash was recovered on his person.

Appellant was charged with possession of a controlled substance with intent to deliver ("PWID") and possession of a controlled substance. After unsuccessfully litigating a motion to suppress the drugs and currency found in his possession, Appellant proceeded to a jury trial, where he was acquitted of PWID but convicted of possession. This appeal followed imposition of the above-described judgment of sentence. Appellant raises this allegation:

Did the trial court err in denying the motion to suppress insofar as the police lacked reasonable suspicion to believe that the appellant was armed and dangerous in order to frisk him and the police lacked probable cause to arrest the appellant and search him pursuant to that arrest?

Appellant's brief at 4.

As we conclude that the suppression court properly found that police had probable cause to arrest Appellant, we need not address Appellant's position that the discovery of the cocaine was unconstitutional as it was discovered during an unlawful weapons search.

We first outline our standard of review:

In addressing a challenge to a trial court's denial of a suppression motion, we are limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the Commonwealth prevailed in the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as it remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Weaver, 76 A.3d 562, 565 (Pa.Super. 2013) (quoting ***Commonwealth v. Brown***, 64 A.3d 1101, 1104 (Pa.Super. 2013)).

"Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." ***Weaver, supra*** at 565 (quoting ***Commonwealth***

v. Williams, 941 A.2d 14, 27 (Pa.Super. 2008)). In determining whether police had probable cause to arrest, we are required to look at the totality of the circumstances and all of the facts of which the police have personal knowledge. **Weaver, supra** at 565. "Probable cause requires only a showing that criminal activity may reasonably be inferred, not that it be shown to exist." **Commonwealth v. Smith**, 979 A.2d 913, 919 (Pa.Super. 2009).

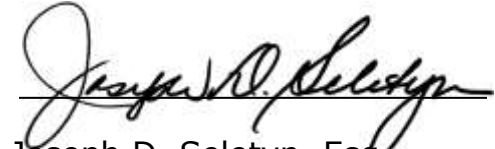
Herein, Lieutenant Greene had experience in narcotics investigations and saw Appellant hand a known drug user objects from a plastic bag in exchange for cash. Based upon his experience, the manner in which the transaction occurred, and the person to whom Appellant sold the items, Lieutenant Greene concluded that he witnessed a drug transaction. Due to the facts within that officer's knowledge, we concur with the suppression court's determination that there was probable cause to arrest Appellant. **Commonwealth v. Thompson**, 985 A.2d 928 (Pa. 2009) (experienced narcotics officer had probable cause to arrest after observing single transaction in high crime area where manner in which sale was conducted signaled to officer that it involved sale of drugs); **accord Commonwealth v. Dixon**, 997 A.2d 368 (Pa.Super. 2010) (*en banc*); **Smith, supra**. Herein, while there was no indication that the area in question was a high-crime area, that omission is counterbalanced by the fact that Lieutenant Greene personally knew that one of the individuals who received items

packaged in a manner similar to drugs was a drug user. Additionally, while the officer did not actually view the items, he saw the plastic baggie, which is a common container used by drug traffickers. Since police had probable cause to arrest Appellant, they were permitted to search his person incident to that arrest. ***Commonwealth v. Rogers***, 849 A.2d 1185, 1196 n.4 (Pa. 2004). Thus, the suppression court did not abuse its discretion in failing to suppress the cocaine discovered as a result of that search.

Moreover, it is irrelevant that Lieutenant Greene described the search during which cocaine was found as a weapons frisk rather than search incident to arrest. Since the search was proper as it was lawfully done when police had probable cause to arrest, the officer's characterization of it as a weapons frisk does not render that action infirm. ***Commonwealth v. Elliott***, 546 A.2d 654, 662 (Pa.Super. 1988) (although officer described search as weapons frisk, probable cause to arrest existed; we held that since "arrest was based on probable cause, the items seized from the persons of the defendants were the fruits of a valid search incident to a lawful arrest and are properly admissible at trial"); ***see also Commonwealth v. Thompson***, 778 A.2d 1215, 1222 (Pa.Super. 2001).

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: 12/10/2013