

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

SANTOS CRUZ,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1551 EDA 2012

Appeal from the Judgment of Sentence of April 16, 2012,
in the Court of Common Pleas of Philadelphia County,
Criminal Division at No. CP-51-CR-0005036-2011

BEFORE: ALLEN, OTT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED DECEMBER 03, 2013

This is a direct appeal from judgment of sentence. Appellant presents one issue for our review: whether his pretrial motion to suppress should have been granted. We affirm.

The sole legal principle needed to resolve this appeal is a well-established one concerning preservation of issues for appeal: "[A] new and different theory of relief may not be successfully advanced for the first time on appeal." ***Commonwealth v. Haughwout***, 837 A.2d 480, 486 (Pa. Super. 2003) (citation omitted). ***See also*** Pa.R.A.P. 302(a).

Before the suppression court, Appellant argued that the officer who seized Appellant did not have justification to do so where the officer's

*Retired Senior Judge assigned to the Superior Court.

testimony describing such justification was incredible.¹ His counsel argued, in relevant part:

Your Honor, my argument is that it's incredible to believe that [Appellant] and another Hispanic male pull guns out on the street and are walking in the direction of a police officer, and the police officer doesn't go over police radio.

. . .

And it's not for me to speculate what really happened out there, or quite frankly for you to speculate. But if you don't believe this officer, your Honor, then I would submit that you have to grant the motion. Because if you don't believe him, then you really don't know what really did happen out there, your Honor.

. . .

Well, obviously, if your Honor believes that my client had a gun drawn out there and this officer saw it, then he had probable cause to arrest [Appellant], and the motion is denied.

But what I'm telling this Court is that [Appellant] and this other guy didn't have guns out.

N.T., 04/16/12, at 49, 52-54.

The suppression court found the officer to be credible and denied the motion. On appeal, Appellant argues that the facts, as testified to by the officer, do not support a finding of reasonable suspicion. This theory was

¹ The officer testified that he saw Appellant emerge from a car about 15 feet from the officer; Appellant was carrying a black ski mask in one hand and a gun in the other hand.

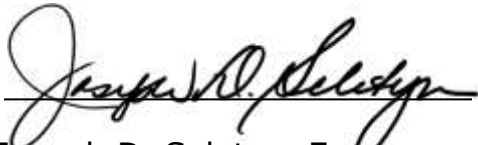
not raised in the suppression court and thus it may not be raised on appeal.
Accordingly, Appellant's sole appellate issue fails.

Judgment of sentence affirmed.

Judge Allen joins the majority and the Concurring by Judge Ott.

Judge Ott files a Concurring Statement.

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: 12/3/2013