NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. DARIEN R. HAWKS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1580 EDA 2012

Appeal from the Judgment of Sentence April 27, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0009305-2009

BEFORE: BENDER, BOWES, and LAZARUS, JJ.

MEMORANDUM BY BOWES, J.: **FILED MAY 09, 2013**

Darien R. Hawks appeals from the judgment of sentence of three to six years incarceration imposed after he was convicted of Violations of the Uniform Firearms Act (VUFA). We affirm.

Philadelphia Officer Robert Ingram arrived at the scene of a vehicle crash on April 11, 2009, after receiving a radio report regarding the accident. He described the area as a heavily traveled neighborhood that consisted of mixed commercial and residential properties. Upon arrival, Officer Ingram observed that the car had struck a tree and had significant front-end damage. Appellant was laying on the ground outside of the car on the driver's side of the vehicle with his arms and legs up in the air.

When Officer Ingram arrived, the car was running and he detected a strong odor of gasoline. Fearing a potential gas leak, Officer Ingram

reached into the open car and turned off the ignition. In addition, he removed the key and opened the windows and doors of the car to ventilate it. Officer Ingram also attempted to open the hood of the vehicle, but could only maneuver it slightly due to the significant damage. He then moved to the back of the car, looked for any potential leaks, and, using the key, unlocked and opened the trunk. At this point, he observed a firearm. After recovering the gun, police determined that it was loaded. Appellant was charged with persons not to possess a firearm, carrying a firearm without a license, and carrying a firearm in public in Philadelphia.

Following his arrest, Appellant filed a motion to suppress the gun, alleging that Officer Ingram violated his constitutional rights by searching his trunk. Officer Ingram asserted that he opened the trunk because he feared the gasoline smell constituted a hazardous condition. The suppression court determined that Officer Ingram testified credibly and that the hazardous condition created an emergency situation permitting the warrantless search. Therefore, it declined to suppress the weapon.

Appellant proceeded to a non-jury trial. The Commonwealth introduced evidence that Appellant was convicted of an offense that precluded him from possessing a firearm and a certificate of non-licensure, and the court convicted him. The court then imposed a sentence of three to six years incarceration. This timely appeal ensued. The court directed Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors

complained of on appeal. Appellant complied, and the trial court issued its Pa.R.A.P. 1925(a) memorandum. The case is now ready for our consideration. Appellant presents the following issues for our review.

> 1. Did the Lower Court err in failing to decide and grant the Appellant's Motion to Quash Return of Transcript?
>
> 2. Did the Lower Court err in failing to suppress the firearm found in the trunk of a vehicle after a warrantless search.

Appellant's brief at 7.

Appellant's first claim is that the trial court erred in not deciding his motion to quash because the Commonwealth failed to establish a *prima facie* case at his preliminary hearing. As the Commonwealth aptly notes, such a position is moot and does not entitle a defendant to relief after he is convicted at trial. ***See Commonwealth v. Jones***, 929 A.3d 205, 209 (Pa. 2007); ***Commonwealth v. Jacobs***, 640 A.2d 1326 (Pa.Super. 1994); ***Commonwealth v. McCullough***, 461 A.2d 1229, 1231 (Pa. 1983). Hence, Appellant's first issue is devoid of merit.

The second issue Appellant levels on appeal is that the trial court erred in declining to suppress the firearm recovered from his trunk. We evaluate the denial of a defendant's suppression motion under well-established principles. We must consider only the evidence of the prosecution, as the prevailing party below, and any evidence of the defense that is uncontradicted when examined in the context of the record as a whole. ***Commonwealth v. Sanders***, 42 A.3d 325, 330 (Pa.Super. 2012). Further,

the suppression court acts as the fact-finder and makes credibility determinations. ***Commonwealth v. Williams***, 2 A.3d 611 (Pa.Super. 2010). This Court is bound by the factual findings of the suppression court where the record supports those findings and we may only reverse when the legal conclusions drawn from those facts are in error. ***Sanders***, ***supra*** at 330. We are not bound by the legal conclusions of the suppression court. ***In re T.B.***, 11 A.3d 500, 505 (Pa.Super. 2010).

Appellant argues that police had secured him and "[t]here was no danger of him fleeing or removing the vehicle from the scene." Appellant's brief at 12. Accordingly, he submits that the Commonwealth did not establish any exigent circumstances justifying the opening of his trunk absent a warrant. Appellant also attacks the credibility of Officer Ingram, noting that the officer incorrectly indicated on the property receipt applicable to the gun that the search was conducted pursuant to a search incident to arrest for DUI. He points out that Appellant was not immediately removed from the area, nor were other officers or the public directed a safe distance from the car. According to Appellant, since there was no gas leak or damage to the vehicle around the gas tank, Officer Ingram's claim that he opened the trunk due to a hazardous condition lacked credibility.

The Commonwealth responds that police are permitted to open a trunk under an emergency aid exception. ***See Brigham City, Utah v. Stuart***, 547 U.S. 398 (2006); ***Commonwealth v. Galvin***, 985 A.2d 783 (Pa. 2009);

Commonwealth v. Miller, 724 A.2d 895 (Pa. 1999); ***Commonwealth v. Silo***, 502 A.2d 173 (Pa. 1985); ***Commonwealth v. Maxwell***, 477 A.2d 1309 (Pa. 1984); ***Commonwealth v. Richter***, 791 A.2d 1181 (Pa.Super. 2002) (*en banc*). Under this exception, the Commonwealth is excused from the probable cause requirement. Instead of the warrant requirements, the prosecution must establish that police had "an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger." Commonwealth's brief at 7 (citing ***Michigan v. Fisher***, 130 S.Ct. 546, 549 (2009)).

The Commonwealth contends that the "present case is also similar to the police discovering a home or object likely to explode." Commonwealth's brief at 8. In this regard, it cites to several federal circuit court decisions involving methamphetamine laboratories. ***See United States v. Rhiger***, 315 F.3d 1283 (10th Cir. 2003); ***United States v. Walsh***, 299 F.3d 729 (8th Cir. 2002); ***United States v. Wilson***, 865 F.2d 215 (9th Cir. 1989). Ultimately, the Commonwealth posits that Officer Ingram's smelling of gasoline made it reasonable for him to open the trunk of Appellant's vehicle because he was looking "for the source of a gasoline leak[,]" Commonwealth's brief at 10, and was attempting to "diffuse defendant's car-turned-timebomb." Commonwealth's brief at 9.

Generally, a warrantless search or seizure of persons, places, or possessions is unconstitutional under both the federal and Pennsylvania

Constitution, unless both probable cause and exigent circumstances exist. ***Commonwealth v. Wright***, 961 A.2d 119, 137 (Pa. 2008); ***Commonwealth v. Hernandez***, 935 A.2d 1275 (Pa. 2007) (warrantless search of rental truck); ***Commonwealth v. Lee***, 972 A.2d 1 (Pa.Super. 2009) (warrantless search of private property); ***Commonwealth v. Fickes***, 969 A.2d 1251 (Pa.Super. 2009) (warrantless search of garage); ***Commonwealth v. Dean***, 940 A.2d 514 (Pa.Super. 2008) (warrantless search of hotel room); ***Commonwealth v. McAliley***, 919 A.2d 272 (Pa.Super. 2007) (warrantless search of residence). Thus, ordinarily exigent circumstances alone is not conclusive as to whether a search or seizure is constitutionally permissible. ***Wright***, ***supra*** at 137 ("a dual inquiry, both parts requiring affirmative answers must be made: first, whether there existed probable cause to search; and secondly, whether exigent circumstances can be found to excuse the obtaining of a warrant.").

However, both the United States Supreme Court and the Pennsylvania Supreme Court have concluded that probable cause is unnecessary to enter a residence where law enforcement officers face an emergency situation and reasonably believe a person or persons are in immediate danger requiring assistance. The federal constitution does not require law enforcement to secure a search warrant when they are not conducting a search for contraband or seeking to arrest a criminal suspect, but are attempting to ensure that a person inside a residence is not faced with an emergency.

Mincey v. Arizona, 437 U.S. 385, 392 (1978) ("We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.") (footnotes omitted); ***see also Brigham City, Utah***, ***supra***; ***Galvin***, ***supra*** at 795-796 ("the police will be excused from compliance with the warrant and probable cause requirements of the Fourth Amendment to the United States Constitution in only limited circumstances. One of these circumstances is when the police reasonably believe that someone within a residence is in need of immediate aid.").

In ***Brigham City, Utah***, ***supra***, the United States Supreme Court unanimously agreed that police do not violate the Fourth Amendment when they enter a residence based on an objectively reasonable basis that an occupant is seriously injured or imminently threatened with a serious injury.[1] Therein, police responded to a complaint about a loud house party. Upon arriving, police witnessed two juveniles outside consuming beer and

---

[1] Appellant makes no effort to differentiate between federal constitutional law and Pennsylvania's heightened constitutional privacy requirements, nor does he engage in any ***Edmunds*** analysis. ***See Commonwealth v. Edmunds***, 586 A.2d 887 (Pa. 1991) (setting forth detailed method for raising Pennsylvania constitutional challenge). Therefore, we decline to engage in any Pennsylvania constitutional analysis or opine as to whether the search violated the Pennsylvania Constitution.

observed through a screen door and window four adults attempting to restrain a juvenile. The juvenile being restrained struck one adult in the face, causing him to spit blood. The other adults continued their attempt to restrain the juvenile before the police entered the house and the scuffle ceased. The defendants were charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication. The maximum penalty for the crimes ranged from 90 days to six months incarceration. The trial court granted the defendants' motion to suppress and both the Utah intermediate appellate court and Utah Supreme Court affirmed, with the Utah Supreme Court finding that the injury suffered by the adult was insufficient to trigger the emergency-aid exception to obtaining a search warrant. In reversing, the United States Supreme Court stated that police action is reasonable when the circumstances viewed objectively justify a conclusion that a person is in need of immediate assistance.

The rationale behind the emergency aid doctrine is that police are not actually conducting a search for evidence. For example, when police enter a person's home believing someone is in danger, they are not searching for evidence, but attempting to assist the person inside. In this situation, police are lawfully on the premises and any evidence of illegality they are able to see in plain view is not subject to suppression. ***See Richter***, ***supra*** (police responding to 911 call about a domestic dispute involving a woman holding a

man at gunpoint lawfully seized drug paraphernalia in plain view after entering the residence).

While this case does not present the situation where a law enforcement officer is entering a residence to render aid to a person, we believe the emergency aid doctrine can apply. It is well-established that persons have greater privacy protections in their home than their vehicle; hence, it would make little sense to preclude the applicability of the doctrine where the intrusion by police is into an area deserving lesser protection. Further, although Officer Ingram did not enter the trunk to render assistance to a person he reasonably believed to be in imminent danger, his actions were undertaken to protect the general public against the potential of an explosion.

Having smelled gasoline, Officer Ingram appropriately turned off the car and explored areas where a possible gas leak may have occurred. Once Officer Ingram attempted to open the hood, opened the car doors, and looked under the vehicle for the potential leak and did not discover the source of the gasoline smell, it was reasonable to open the trunk to discern whether the leak was emanating from the trunk.[2] Since the officer was not

---

[2] We decline to find that the gun inevitably would have been discovered pursuant to an inventory search where the Commonwealth did not present any evidence of a police policy regarding inventory searches. ***Commonwealth v. West***, 937 A.2d 516, 529 (Pa.Super. 2007) ("the suppression transcript simply does not contain testimony showing the
(Footnote Continued Next Page)

searching for evidence of criminality and was attempting to address and prevent the potential of an explosion in a busy area, we find that the suppression court did not abuse its discretion in declining to suppress the firearm.

Judgment of sentence affirmed.

Judgment Entered.

Prothonotary

Date: 5/9/2013

(Footnote Continued) ———————————

department had in place and employed a standard, reasonable policy when searching the vehicle. The Commonwealth had the burden to demonstrate the particulars of that policy and to show the search was done in accordance therewith. Having not done so, the search cannot be upheld as a valid inventory search."); ***Florida v. Wells***, 495 U.S. 1, 4-5, (1990) ("the Florida Highway Patrol had no policy whatever with respect to the opening of closed containers encountered during an inventory search. We hold that absent such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment[.]"); ***compare Commonwealth v. Brandt***, 366 A.2d 1238 (Pa.Super. 1976); ***Commonwealth v. Smith***, 808 A.2d 215 (Pa.Super. 2002); ***see also Commonwealth v. Stewart***, 740 A.2d 712, 722 (Pa.Super. 1999) (Joyce, J. concurring) ("There is no functional difference, at least from the perspective of protecting an individual's privacy rights, between an inventory search conducted at a police station or a search of the vehicle on the highway. Accordingly, the inevitable discovery doctrine should not be confined to those situations in which an inventory search was actually conducted. Rather, proper application of the rule would allow admission of the evidence where it can be shown that it would have been inevitably discovered.").