

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MICHAEL MCCLELLAND,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1655 EDA 2012

Appeal from the Judgment of Sentence February 24, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0015490-2010

BEFORE: BOWES, MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.:

FILED AUGUST 20, 2013

On appeal, Michael McClelland assails the court's refusal to suppress drugs found on his person that were the basis for his conviction of possession of a controlled substance.¹ We affirm.

On July 14, 2010, Appellant was arrested and charged with possession of a controlled substance and purchase of a controlled substance by an unauthorized person. The case proceeded in the Municipal Court of Philadelphia County, where Appellant's motion to suppress was denied. Thereafter, he was adjudged guilty of possession of a controlled substance and was sentenced to nine months of reporting probation.

* Former Justice specially assigned to the Superior Court.

¹ The Commonwealth brief was filed late and was not considered herein.

Appellant filed a request for a trial *de novo* in the Court of Common Pleas of Philadelphia County. The trial court found him guilty of the possession offense and sentenced him to no further penalty. Appellant then filed a post-sentence motion asking the court to reconsider the municipal court's ruling on his suppression request. The trial court elected to review the decision and affirmed it.

Appellant filed the present appeal after denial of his post-sentence motion and challenges the suppression ruling rendered below, as follows: "Did not the lower court err in affirming the denial of the motion to suppress physical evidence where the facts elicited at the suppression hearing did not establish probable cause and as such appellant was seized and searched illegally?" Appellant's brief at 3. We review Appellant's allegation pursuant to the following standard of review:

Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous.

Commonwealth v. McAdoo, A.3d 781, 783-84 (Pa.Super. 2012) (quoting ***Commonwealth v. Hoppert***, 39 A.3d 358, 361-62 (Pa.Super. 2012)).

In this case, the suppression court relied upon the following facts in concluding that police lawfully stopped and frisked Appellant.

Police Officer Thomas Robinson testified that on July 14, 2010, his tour of duty took him to the location of the 1500 block of North Frazier Street in the city and county of Philadelphia to set up a surveillance for illegal sales of narcotics. Officer Robinson testified that shortly after he arrived and set up the surveillance, at approximately 6:40 p.m., he was parked on Media Street and looking northbound on the 1500 block of Frazier Street, when he observed a black man, later identified as Willie Hannible, standing on the west side of the street close to 1518 Frazier Street. Officer Robinson was parked about 50 to 100 feet from that location. At that point, Officer Robinson observed another unknown black male come up to Hannible and engage him in a conversation. During the conversation, Officer Robinson testified that he observed Hannible reach into his pants and pull out a clear plastic baggie and the unknown black male gave Hannible U.S. currency. After Hannibal accepted the U.S. currency, he reached into the baggie and gave the unknown black male small items. Officer Robinson could not tell what the small item was because he never saw inside the bag, nevertheless, based on his experience with narcotic surveillances and the observation from the interaction, Officer Robinson made an inference that he had witnessed an illegal narcotics transaction. After receiving the small items, the unknown black male walked westbound on Media Street into an alleyway and Officer Robinson gave out flash information for him but the unknown black male was never stopped.

Then Officer Robinson testified that at approximately 6:55, he saw the Appellant, who was wearing a green shirt, walk up Frazier Street and engage Hannible in a brief conversation. Then in the same manner, Hannible produced that same clear plastic baggie at which time Appellant handed Hannibal U.S. currency and Hannibal reached inside the baggie and gave Appellant small items. It was another closed fist open palm transaction that Officer Robinson believed to be another illegal narcotics transaction. The Appellant then walked northbound on Frazier Street towards Lansdowne Avenue and made a left turn. At that point, Officer Robinson put out flash information on the

Appellant, and Officer Sean Bascom immediately stopped the Appellant about a block away and recovered one red tinted packet of an off white chunky substance alleged [to be] crack cocaine which later tested positive for cocaine. Officer Bascom testified at trial that he stopped Appellant on the 5700 block of Lansdowne Avenue based on the information given to him by Officer Robinson and he recovered the red tinted packet from the Appellant's pants pocket.

Trial Court Opinion, 12/4/12, at 2-3 (citations to record omitted).

Based upon these facts, the suppression court concluded that Officer Robinson possessed probable cause to stop and search Appellant for narcotics. It reasoned that the police interdiction was lawful because: 1) Officer Robinson stated that he had experience with narcotics surveillance; 2) Officer Robinson observed Hannible engage in two transactions on a public street; and 3) the transactions in question had the characteristics of a classic narcotics sale. This latter conclusion was premised upon the fact that, after a brief conversation with each purchaser, Hannible removed small items from a baggie and transferred them to the buyer for currency.² Further, the small objects were given to the recipients in the closed-fist to open-palm manner that is the signature way in which illegal narcotics are sold in public. Those factors compel us to concur with the suppression court's legal conclusion that police possessed probable cause to believe that

² While Officer Robinson neglected to specify that Hannible received currency during the first transaction with the unidentified male, the suppression court properly made this inference based upon the interaction described by Officer Robinson.

Appellant purchased drugs from Hannible. ***Commonwealth v. Thompson***, 985 A.2d 928 (Pa. 2009); ***Commonwealth v. Dixon***, 997 A.2d 368 (Pa.Super. 2010) (*en banc*). We therefore affirm.

Judgment of sentence affirmed.

The Honorable Sallie U. Mundy Concurrs in the Result.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetta", written over a horizontal line.

Prothonotary

Date: 8/20/2013