NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellant v. TRENTON MAURICE ANDERSON, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1777 MDA 2012

Appeal from the Order of September 12, 2012
in the Court of Common Pleas of York County,
Criminal Division at No. CP-67-CR-0007489-2011

BEFORE: SHOGAN, J., MUNDY, J., and COLVILLE, J.*

MEMORANDUM BY MUNDY, J.: **FILED AUGUST 12, 2013**

The Commonwealth appeals from the September 12, 2012 order, granting in part, the motion to suppress filed by Appellee, Trenton Maurice Anderson. After careful review, we reverse and remand for further proceedings.

We summarize the relevant facts and procedural history of this case as follows. On October 7, 2011, Officer William Niehenke of the York County Adult Probation Office went to the residence of Kyreef Reid at 409 North

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* Retired Senior Judge assigned to the Superior Court.

Queen Street, York, Pennsylvania.[1] N.T., 6/26/12, at 6. Officer Niehenke went to Reid's residence with Probation Officer Christian Deardorff and Probation Officer Ryan Sell. ***Id.*** at 7. The officers knocked on Reid's door, Reid allowed them into the home. ***Id.*** Reid gave the officers consent to conduct a search of the home. ***Id.*** at 8.

Officer Deardorff and Officer Sell went to search Reid's bedroom and Officer Niehenke went into the bedroom adjacent to Reid's. ***Id.*** Upon entering the adjacent room, Officer Niehenke encountered Appellee who was asleep on a mattress in the corner of the room. ***Id.*** at 9. Officer Niehenke asked him his name and whether he was on probation. ***Id.*** Appellee answered that he was not on probation. Officer Niehenke subsequently discovered a business card for Probation Officer Jared Sechrist sitting on the dresser next to the mattress. ***Id.*** at 9-10. It was then that Appellee stated that he was actually on probation. Afterwards, Appellee got up off the bed, stating that he needed to use the restroom, but Officer Niehenke ordered him to remain on the bed. ***Id.*** at 10. Appellee ignored Officer Niehenke's commands and proceeded in an "elevated … walking pace" out of the bedroom and began to go down the stairs. ***Id.*** Officer Niehenke gave three additional commands for Appellee to stop, but he did not. ***Id.*** Officer

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[1] Although Officer Niehenke was not supervising Reid, Reid's probation officer asked him to go to Reid's residence as she had just returned from maternity leave. N.T., 6/26/12, at 6.

Niehenke gave chase down the stairwell and directed Officer Sell, who was positioned at the bottom of the stairs, to place Appellee in handcuffs, which he did. ***Id.***

In the interim, Officer Deardorff came into the room where Appellee had been sleeping, just as Appellee left the room. ***Id.*** at 24. Officer Deardorff noticed a mini-refrigerator in the room, opened it, and discovered a brown paper bag inside. ***Id.*** at 24. Inside the paper bag were two firearms, one revolver, and one nine millimeter. ***Id.*** At this point, the officers escorted Reid and Appellee to the first floor and out of the house. ***Id.*** at 25. They were both read their ***Miranda***[2] warnings. ***Id.*** It was at this time that Appellee made a statement that "he had found the firearms outside the night before and he was intending on getting rid of them." ***Id.***

On January 9, 2012, the Commonwealth filed an information charging Appellee with two counts of persons not to possess, use, manufacture, control, sell or transfer firearms, and one count of receiving stolen property.[3] On April 18, 2012, Appellee filed an omnibus pre-trial motion arguing that his seizure by the probation officers violated his Fourth Amendment rights and that all evidence derived therefrom should be suppressed.

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[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[3] 18 Pa.C.S.A. §§ 6105(a)(1) and 3925(a), respectively.

The suppression court held hearings on the motion on June 26, 2012 and July 3, 2012 at which Officer Niehenke, Officer Deardorff and Reid testified.[4] On September 10, 2012, the suppression court entered an order and opinion denying Appellee's suppression motion, concluding that the search was lawful, as Reid had given consent for the search. ***See*** Suppression Court Opinion, 9/10/12, at 5. However, on September 12, 2012, the suppression court entered a supplemental order and opinion, granting Appellee's motion to suppress his statement to the probation officers. The suppression court concluded that Officer Niehenke lacked "reasonable suspicion of any unlawful activity that would warrant detaining [Appellee]." Suppression Court Opinion, 9/12/12, at 2. On October 10, 2012, the Commonwealth filed a timely notice of appeal.[5] That same day, the Commonwealth also filed a written certification pursuant to Pennsylvania Rule of Appellate Procedure 311(d), stating that the suppression court's order would terminate or substantially handicap its prosecution.

On appeal, the Commonwealth raises one issue for our review.

> I. [Whether] the [suppression] court erred in suppressing [Appellee]'s Mirandized statement as [Appellee] was not illegally detained at the time of his statement[?]

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[4] The Commonwealth agreed below that Appellee had standing to contest the search of Reid's residence. N.T., 7/3/12, at 28.

[5] The Commonwealth and the suppression court have timely complied with Pa.R.A.P. 1925.

Commonwealth's Brief at 4.

We begin by noting our well-settled standard of review.

> When reviewing the propriety of a suppression order, an appellate court is required to determine whether the record supports the suppression court's factual findings and whether the inferences and legal conclusions drawn by the suppression court from those findings are appropriate. Where the [appellee] prevailed in the suppression court, we may consider only the evidence of the [appellee] and so much of the evidence for the Commonwealth as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. However, where the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's conclusions of law are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts.

Commonwealth v. Walls, 53 A.3d 889, 892 (Pa. Super. 2012) (citation omitted).

The Fourth Amendment of the Federal Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures. "To secure the right of citizens to be free from such [unreasonable] intrusions, 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. Pratt***, 930 A.2d 561, 563 (Pa. Super. 2007) (citation

omitted), *appeal denied*, 946 A.2d 686 (Pa. 2008). We have long recognized that there are three levels of intrusion involved in interactions between members of the public and the police. The first is a mere encounter, which requires no level of suspicion at all. ***Commonwealth v. Daniel***, 999 A.2d 590, 596 (Pa. Super. 2010) (citation omitted). The second level is an investigative detention, which must be supported by reasonable suspicion. ***Id.*** at 596-597 (citation omitted). Finally, the third level is an arrest or custodial detention, which must be supported by probable cause. ***Id.*** at 597 (citation omitted). In evaluating whether an encounter rises to the level of an investigative detention we "must examine all the circumstances and determine whether police action would have made a reasonable person believe he was not free to go and was subject to the officer's orders." ***Commonwealth v. Fuller***, 940 A.2d 476, 479 (Pa. Super. 2007) (citation omitted).

In this case, we note that the interaction between Appellee and Officer Niehenke began as a mere encounter when Officer Niehenke entered the room and asked Appellee questions. However, it escalated into an investigative detention when Officer Niehenke ordered Appellee to remain where he was on the bed after Appellee first attempted to leave the room. ***See Commonwealth v. Chambers***, 55 A.3d 1208, 1216 (Pa. Super. 2012) (concluding when the officer "commanded [the probationer] not to run, the encounter became an investigative detention[]"); ***Commonwealth v. Blair***,

860 A.2d 567, 573 (Pa. Super. 2004) (concluding mere encounter rose to investigative detention where officer told the appellant several times to stay in his car when he attempted to leave). As a result, this case hinges on whether, at the moment Appellee was seized, Officer Niehenke possessed the necessary reasonable suspicion to effectuate the detention.

> The determination of whether an officer had reasonable suspicion that criminality was afoot so as to justify an investigatory detention is an objective one, which must be considered in light of the totality of the circumstances. It is the duty of the suppression court to independently evaluate whether, under the particular facts of a case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot.

Walls, ***supra*** at 893. The Commonwealth argues that Officer Niehenke had reasonable suspicion to detain Appellee based on two factors. First, Appellee's lie concerning his probationary status and second, his subsequent flight from the room. Commonwealth's Brief at 11.

This Court has previously held that providing false information and contradictory statements to an officer are permissible factors in a reasonable suspicion calculus. ***See Commonwealth v. Shelley***, 703 A.2d 499, 503 (Pa. Super. 1997) (concluding reasonable suspicion existed where, among other factors, the appellant "lied about his identity, giving the officers a false name … [and his] statements [to the officers] were vague … and contradictory within themselves"), *appeal denied*, 725 A.2d 1220 (Pa. 1998). Instantly, after Appellee admitted to Officer Niehenke that he was actually

on probation, he started to leave the room, despite Officer Niehenke's four orders to stop.[6] ***See*** N.T., 6/26/12, at 10. It is axiomatic that flight is also a crucial factor in making a reasonable suspicion determination. ***See In re D.M.***, 781 A.2d 1161, 1164 (Pa. 2001) (concluding that an appellant's flight coupled with his matching a description given over police radio amounted to reasonable suspicion); ***accord Walls***, ***supra*** at 894. Based on the totality of the circumstances, we conclude Appellee's false statement to Officer Niehenke about his probationary status, as well as his attempt to leave the room gave rise to the requisite reasonable suspicion.[7] ***See Walls***, ***supra*** at 892.

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[6] The suppression court is correct that there was no testimony that Appellee was attempting to leave the house. ***See*** Suppression Court Opinion, 9/12/2012, at 2. However, we also note that the suppression court acknowledged Appellee was attempting to leave the room. ***Id.*** In our view, Appellee's starting to leave the immediate area of the officer at the point in time when it was clear that Officer Niehenke intended to search the room, including the mini-refrigerator, was a relevant factor in whether Officer Niehenke possessed the required reasonable suspicion to order Appellee to remain on the bed. ***See D.M.***, ***supra***; ***Walls***, ***supra***.

[7] We do not intend to suggest that a probationer's status coupled with flight can constitute reasonable suspicion. In ***Chambers***, a probation officer stopped a man he believed was on probation on the streets of Harrisburg. ***Chambers***, ***supra*** at 1209. The officer called out Chambers' name and identified himself as a probation officer, immediately after which Chambers gave the officer a "deer in headlights look," and began to back away. ***Id.*** We concluded that Chambers' "initial attempt to leave, by itself, did not give rise to reasonable suspicion." ***Id.*** at 1216. However, in this case, Appellee specifically gave Officer Niehneke false information about his probationary status, which as ***Shelley*** suggests, can contribute to a reasonable suspicion

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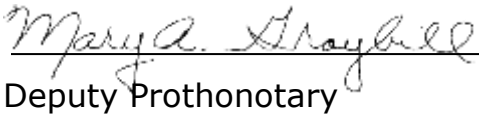
Based on the foregoing, we conclude the suppression court erred when it granted Appellee's motion to suppress the statement he made to the officers. Because Officer Niehenke's detention of Appellee was lawful, the statement Appellee made to the police was admissible. Accordingly, we reverse the September 12, 2012 order granting Appellee's motion to suppress, and remand this case for further proceedings, consistent with this memorandum.

Order reversed. Case remanded. Jurisdiction relinquished.

Judge Colville files a dissenting memorandum.

Judgment Entered.



Deputy Prothonotary

Date: 8/12/2013

(Footnote Continued) ———————————

determination. As a result, we conclude ***Chambers*** is readily distinguishable from the instant case.