NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. CLIFFORD GERALD WHITEHEAD JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1074 MDA 2013

Appeal from the Judgment of Sentence entered May 16, 2013
In the Court of Common Pleas of Lancaster County
Criminal Division at No: CP-36-CR-0000704-2012

BEFORE: GANTMAN, P.J., DONOHUE, and STABILE, JJ.

MEMORANDUM BY STABILE, J.: **FILED JULY 11, 2014**

Appellant, Clifford Gerald Whitehead, Jr., appeals from the May 16, 2013 judgment of sentence imposing five to ten years of incarceration for possession with intent to deliver a controlled substance (PWID) and one year of probation for possession of drug paraphernalia.[1] We affirm.

We begin with a review of the pertinent facts. On July 8, 2011, the day of Appellant's arrest for the instant offenses, he was under the supervision of Parole Agent Craig Barrett ("Barrett") for a prior conviction. Barrett was aware that during his parole Appellant was a student at a barber school and unemployed. N.T. Suppression Hearing, 3/13/13, at 14. Prior to his arrest, he was living with his girlfriend. ***Id.*** During his visits with

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[1] 35 P.S. § 780-113(a)(30), (32), respectively.

Appellant, Barrett observed Appellant living above his apparent means. ***Id.*** at 15. Specifically, Barrett said Appellant was typically clad in expensive new clothes and had a nice flat screen television and nice furniture at his residence. ***Id.*** at 15-17. Also, another agent informed Barrett that Appellant's phone number was recovered from the cell phone log of an arrested drug dealer. ***Id.*** at 18.

On the day of Appellant's arrest, Barrett conducted a home visit. ***Id.*** at 19. Barrett asked for a urine sample and Appellant declined, stating he had just urinated. ***Id.*** at 20. Appellant also informed Barrett that he was just leaving to play basketball at the local gym. ***Id.*** Barrett allowed Appellant to leave and asked him to stop by Barrett's office later that day. ***Id.*** at 21. Shortly after the meeting, Barrett was in a van with several other agents when he observed Appellant driving by in a new Chevrolet Impala. ***Id.*** at 22. Barrett was aware that Appellant had a suspended driver's license. ***Id.*** at 20. Moreover, Appellant was on the opposite end of town from the gym. ***Id.*** at 23.

Barrett instructed the driver of the van to pull alongside Appellant's vehicle as Appellant was stopped at a stop sign. ***Id.*** at 24. Barrett asked Appellant why he was driving on a suspended license. ***Id.*** at 25. Appellant claimed his license was valid, though he was unable to produce a license. ***Id.*** Barrett observed Appellant's wallet through the vehicle's window, and the wallet appeared to have a large amount of cash in it. ***Id.*** at 26.

Appellant exited his vehicle in response to an order from one of Barrett's partners. ***Id.*** As Appellant stepped out of his vehicle a large amount of cash fell to the ground, and Appellant attempted to kick it underneath the vehicle. ***Id.*** at 26-27. Appellant claimed he won the cash at a casino. ***Id.*** Subsequently, Barrett and his partners searched Appellant's residence for contraband. ***Id.*** at 31. The search revealed cocaine and drug paraphernalia, and Appellant was placed under arrest. ***Id.***

Appellant filed a pretrial motion to suppress the evidence, arguing that Barrett did not have reasonable suspicion to detain him on July 8, 2011 and that the evidence recovered from the search of his home was therefore inadmissible at trial. The trial court denied Appellant's motion, and the parties proceeded to a stipulated bench trial at the conclusion of which the trial court found Appellant guilty of PWID and possession of paraphernalia. The trial court imposed sentence on May 16, 2013, and this timely appeal followed.

Appellant raises a single issue for our review: Whether the lower court erred when it found parole agents had reasonable suspicion to detain Appellant while he operated a motor vehicle? Appellant's Brief at vii. We review this issue as follows:

> [W]e may consider only the Commonwealth's evidence 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 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. An appellate

> court, of course, is not bound by the suppression court's conclusions of law.

Commonwealth v. Russo, 934 A.2d 1199, 1203 (Pa. 2007) (citations omitted).[2]

We are mindful that parolees have diminished expectations of privacy under the Fourth Amendment of the United States Constitution and Article 1, § 8 of the Pennsylvania Constitution. ***Commonwealth v. Hunter***, 963 A.2d 545, 551 (Pa. Super. 2005), *appeal denied*, 980 A.2d 605 (Pa. 2009).

> Because 'the very assumption of the institution' of parole is that the parolee is 'more likely than the ordinary citizen to violate the law,' the agents need not have probable cause to search a parolee or his property; instead, reasonable suspicion is sufficient to authorize a search. Essentially, parolees agree to 'endure warrantless searches' based only on reasonable suspicion in exchange for their early release from prison.

Id. (quoting ***Commonwealth v. Curry***, 900 A.2d 390, 394 (Pa. Super. 2006)). Nonetheless, a search of a parolee is reasonable only if the parole officer had reasonable suspicion to believe a violation occurred and the search was reasonably related to the parole officer's duty. ***Id.***

The law governing reasonable suspicion is well-settled:

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[2] Recently, our Supreme Court decided ***In re L.J.***, 79 A.3d 1073, 1085-86 (Pa. 2013), in which the court concluded the scope of our review of a suppression does not extend to the trial transcript, which post-dates the suppression order. That holding applies prospectively to "litigation commenced Commonwealth-wide after the filing of this decision." ***Id.*** at 1089. ***L.J.*** therefore does not apply to this appeal, though we note that the holding in ***L.J.*** would not alter the result here.

> Reasonable suspicion exists only where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of intrusion warrant a [person] of reasonable caution in the belief that the action taken was appropriate.

Commonwealth v. Chambers, 55 A.3d 1208, 1215 (Pa. Super. 2012).

A parole officer's search of an offender is governed by statute: 61 Pa.C.S.A. § 6153(d). That section sets forth factors to be considered in discerning whether a parole officer had reasonable suspicion to support a search:

> **(d) Grounds for personal search of an offender.—**
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> […]
>
> (6)The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following factors, where applicable, may be taken into account:
>
> (i) The observations of agents.
>
> (ii) Information provided by others.
>
> (iii) The activities of the offender.
>
> (iv) Information provided by the offender.
>
> (v) The experience of agents with the offender.
>
> (vi) The experience of agents in similar circumstances.
>
> (vii) The prior criminal and supervisory history of the offender.

> (viii) The need to verify compliance with the conditions of supervision.

61 Pa.C.S.A. § 6153(d)(6).

Mindful of the foregoing principles, we now assess the trial court's decision. Appellant argues the trial court erred because Barrett's reasonable suspicion was not based on specific facts, and that the facts of record support innocent inferences. For example, Appellant asserts Barrett had no reason to doubt Appellant's explanation for not providing a urine sample. Appellant's Brief at 16. Concerning his location on the opposite side of town from the Y, Appellant asserts he could have changed plans, been picking up a friend, or simply taking a circuitous route. ***Id.*** at 16-17. The new car could have been supplied by Appellant's girlfriend or her family. ***Id.*** at 17. Further, Appellant asserts Barrett had no specific information that Appellant's driver's license remained suspended. ***Id.***

We will address the last of these assertions first. In ***Commonwealth v. Stevenson***, 832 A.2d 1123, 1130-31 (Pa. Super. 2003), this Court held that a parole officer could not rely on his knowledge that, three years prior to the investigative detention, the defendant had a suspended driver's license. An investigative detention based on stale information would subject many validly licensed drivers to unwarranted detentions. ***Id.*** at 1131.

In ***Commonwealth v. Farnan***, 55 A.3d 113, 114 (Pa. Super. 2012), on the other hand, the police officer had confirmed only 30 days before the vehicle stop that the defendant had a suspended driver's license. While

declining to adopt a bright line rule concerning the timeliness of an officer's information, we concluded that the 30-day period between the officer's information and the detention of the defendant was not so lengthy as to be too stale to create reasonable suspicion of a motor vehicle code violation. ***Id.*** at 118.

Instantly, Barrett's knowledge of Appellant's suspended license was approximately 18 months old at the time of the investigative detention, placing it in between the three-year time period of ***Stevenson*** and the 30-day time period in ***Farnan***. We need not opine as to whether Barrett's information was stale in this case, because Barrett believed Appellant was obligated to inform Barrett if his driver's license was reinstated. N.T., Suppression Hearing, 3/13/13, at 37. Appellant, pursuant to his parole conditions, was required to notify Barrett of any changes in status. ***Id.*** While a driver's license reinstatement was not a specifically enumerated example of change in status, Barrett believed the agreement required Appellant to notify him of that occurrence. Appellant had not done so.[3]

In addition to Barrett's observation of Appellant driving a new car, we must consider additional facts available to Barrett at the time of the detention. For reasons summarized succinctly by the trial court, we believe

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[3] The record confirms that Appellant's license remained under suspension at the time of the investigatory detention. N.T. Suppression Hearing, 3/13/13, at 64.

the facts known by Barrett were more than sufficient to create reasonable suspicion in accordance with § 6153:

> Here, Agent Barrett knew substantially more than the average officer effectuating a traffic stop. At the time he effectuated the stop of [Appellant's] vehicle, he knew that [Appellant] was living far beyond his means, that [Appellant] was being deceptive about his status as a barbering student and his destination that afternoon, that [Appellant] had been convicted of felony drug charges, that [Appellant] avoided taking a drug test, and that [Appellant's] phone number was in the cell phone of a known drug dealer. Through the eyes of a trained officer, these facts give rise to a reasonable suspicion that [Appellant] was engaged in illegal drug-related activity.

Trial Court Opinion, 5/13/13, at 7.

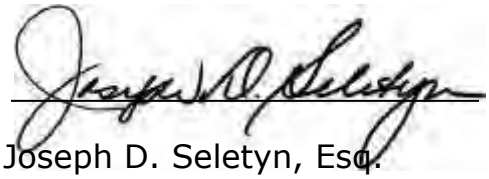
The trial court noted that most of these facts were based on Barrett's observations, in accordance with § 6153(d)(6)(i). Pursuant to § 6153(d)(6)(ii), Barrett learned from another agent that Appellant's phone number was found in the phone of a known drug dealer. Concerning § 6153(d)(6)(iii), the activities of the offender, the trial court noted that Appellant's refusal to take the drug test, combined with his appearance on the opposite end of town from the gym evinced deceptive behavior. The trial court also relied on these facts in analyzing § 6153(d)(6)(iv) – information received from the offender – concluding that Appellant provided false information to Barrett during Barrett's house visit. Barrett's experience with Appellant, relevant under § 6153(d)(6)(v) was that Appellant appeared to be living beyond his means during Barrett's visits with Appellant. Barrett testified that, in his experience, an offender's ability to live beyond his

apparent means indicates the offender's potential involvement in unlawful activity. ***See*** § 6153(d)(6)(vi). Finally, Barrett was aware of Appellant's criminal history, specifically his prior felony drug conviction, as per § 6153(d)(6)(vii). ***See*** Trial Court Opinion, 5/13/13, at 8-10.

Our review of the record, summarized above, confirms that the record supports the trial court's findings of fact. Likewise, we find no error in the trial court's legal conclusions. We therefore conclude Appellant's sole argument on appeal lacks merit, and we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/11/2014