NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. CRAIG G. ZAHRADNIK Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1707 WDA 2013

Appeal from the Order Dated September 27, 2013
In the Court of Common Pleas of Blair County
Criminal Division at No(s): CP-07-CR-0002404-2012

BEFORE: BENDER, P.J.E., OLSON and FITZGERALD,* JJ.

MEMORANDUM BY OLSON, J.: **FILED JULY 16, 2014**

Appellant, the Commonwealth of Pennsylvania (the Commonwealth), appeals from the order entered on September 27, 2013, granting a motion to suppress statements made by Appellee, Craig G. Zahradnik, during a police standoff. After careful review, we reverse the suppression order and remand for additional proceedings.

The facts and procedural history of this case, as gleaned from the trial court's opinion, are as follows. On September 25, 2012, the Altoona Police Department received a telephone call that, on five or six different occasions, Appellee, a former police officer, was following his ex-wife and she was in fear. Police filed a criminal complaint and obtained an arrest warrant for stalking, 18 Pa.C.S.A. § 2709.1. The victim also obtained an emergency order for Protection from Abuse (PFA). On September 26, 2012, at 3:40

* Former Justice specially assigned to the Superior Court.

a.m., police surrounded Appellee's house and called him on the telephone to inform him of the warrant and to obtain his surrender. Appellee refused to exit his residence and asked police to read the criminal complaint and warrant to him. During the course of negotiations, Detective Ashley Day asked Appellee, "[D]o you know you were following [the victim] around?" N.T., 10/24/2012, at 8. Appellee allegedly responded, "I was following her around because she was ignoring me…" ***Id.*** After Detective Day read the criminal complaint and arrest warrant to Appellee, Appellee surrendered. Police apprehended Appellee and read him his rights pursuant to ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Prior to trial, on March 26, 2013, Appellee filed an omnibus pre-trial motion that included a motion to suppress. In the suppression motion, Appellee alleged that the statements he made to Detective Day required suppression, because he was in custodial detention and police had not provided him his rights under ***Miranda***. The trial court held a hearing on July 30, 2013, incorporated into the record the testimony from the preliminary hearing and a hearing on the victim's PFA, and permitted the parties to submit memoranda of law on the issue.

On September 27, 2013, the trial court granted Appellee's suppression motion. The trial court determined that Appellee "was significantly deprived of his freedom when police surrounded his residence in preparation of serving an arrest warrant on [him]." Trial Court Opinion, 9/27/2013, at 4, ¶ 1. The trial court further found that Detective Day asked Appellee questions

that were likely to elicit an incriminating response prior to giving him ***Miranda*** warnings. ***Id.*** at 5, ¶¶ 2-3. Thus, the trial court concluded that "[a]ny incriminating statement or admission provided by [Appellee] to the question posed by Detective Corporal Day prior to a ***Miranda*** warning, regardless of [Appellee's] state of mind, lack of abuse, or vast degree of police experience, is involuntary." ***Id.*** at 5, ¶ 5. As such, the trial court suppressed Appellee's statements. This timely appeal resulted.[1]

On appeal, the Commonwealth presents the following issue for our review:

> A. Whether the trial court erred in suppressing [Appellant's] statement, made while he refused to surrender to a lawful warrant for his arrest and during a portion of a conversation with police that he initiated?

Commonwealth's Brief at 3 (complete capitalization omitted).

In an appeal from a grant of a motion to suppress, our standard of review is as follows:

> When the Commonwealth appeals from a suppression order, we follow a clearly defined standard of review and consider only the evidence from the defendant's witnesses together

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[1] The Commonwealth filed a notice of appeal on October 22, 2013. The Commonwealth certified, in the notice of appeal, that the grant of suppression terminated or substantially handicapped the prosecution. ***See*** Pa.R.A.P. 311(d). On October 22, 2013, the trial court ordered the Commonwealth to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). The Commonwealth complied on November 4, 2013. The trial court did not issue an opinion pursuant to Pa.R.A.P. 1925(a) and advised this Court, when submitting the certified record for appeal, that it would rely on the record to support its decision.

> with the evidence of the prosecution that, when read in the context of the entire record, remains uncontradicted. The suppression court's findings of fact bind an appellate court if the record supports those findings. The suppression court's conclusions of law, however, are not binding on an appellate court, whose duty is to determine if the suppression court properly applied the law to the facts.

Commonwealth v. Miller, 56 A.3d 1276, 1278-1279 (Pa. Super. 2012) (citations omitted).

The Commonwealth contends that Appellee was not in custody during negotiations in a police standoff and, therefore, ***Miranda*** warnings were not required. ***Id.*** at 10-11. More specifically, the Commonwealth relies upon our Supreme Court's decisions in ***Commonwealth v. Jones***, 683 A.2d 1181 (Pa. 1996) and ***Commonwealth v. Stallworth***, 781 A.2d 110 (Pa. 2001) in support of its proposition. Upon review, we agree that ***Jones*** and ***Stallworth*** control.

In ***Commonwealth v. Jones***, 683 A.2d 1181 (Pa. 1996),

> [A]ppellant Jones had barricaded himself in his home after shooting several individuals. Police surrounded the home and a hostage negotiator attempted to persuade him to surrender peaceably. During the course of negotiations, Jones made inculpatory statements to the police and later sought to suppress those statements. Specifically, Jones claimed that he was subject to custodial interrogation and, therefore, should have been Mirandized, since the police knew he was a suspect in the shootings and that their communications with him were likely to illicit incriminating statements.

Stallworth, 781 A.2d at 115.

The ***Jones*** Court found the claim "wholly without merit[,]" noting:

> First, contrary to his assertions, [Jones] was not in custody at this time and, therefore, was not entitled to ***Miranda*** warnings. Even assuming he was entitled to such warnings, the statements made by [Jones] during this stand-off were not the product of police interrogation, but rather were unsolicited statements uttered in response to police negotiations designed to encourage [Jones] to surrender peaceably and as such, were admissible.

Jones, 683 A.2d at 1188.

In ***Stallworth***, Stallworth kicked down his estranged wife's front door, shot her twelve times, and then barricaded himself inside the victim's home. Thereafter, the following occurred:

> Once the scene was secured by police officers, two police negotiators contacted [Stallworth] via telephone at the victim's residence and remained in constant contact with him for the next two hours. They spoke with [Stallworth] and attempted to find out what [Stallworth's] plans were, and, ultimately, to negotiate a peaceful end to the situation. Eventually the officers were able to convince [Stallworth] not to take his life and to peaceably surrender.
>
> During the conversation between [Stallworth] and the officers, [Stallworth] made incriminating statements regarding his involvement in the shooting. He maintain[ed] that the statements he made to the negotiators should have been suppressed since, he allege[d], the conversation with the officers constituted custodial interrogation for which he was entitled to, but did not receive, ***Miranda*** warnings.

Stallworth, 781 A.2d at 115 (footnote omitted).

The ***Stallworth*** Court determined:

> As in ***Jones,*** [Stallworth] was not in police custody at the time he made the statements at issue. To the contrary, he was barricaded in the victim's home. Additionally, the statements [Stallworth] made to police were not the result of interrogation.

> [Stallworth] points to several questions asked by the negotiators during the more than two hours of negotiation and argues that these questions were improper as they were designed to elicit inculpatory information from him. For example, [Stallworth] claims that the negotiators improperly asked him questions regarding his frame of mind, his situation with the victim, and what led to the shooting.
>
> We do not find merit to [Stallworth's] claim. Although [Stallworth] points to a few isolated questions which he deems to be improper interrogation, a review of the transcript of the negotiation in its entirety reveals that the negotiators engaged [Stallworth] in conversation in an attempt to discover what [his] plans were given the situation, gain [Stallworth's] trust, and peacefully end the standoff.
>
> Based on the foregoing, [our Supreme Court] conclude[d] that the trial court properly denied [Stallworth's] motion to suppress the statements he made to police during the negotiation.

Id. at 116.

Here, upon review of the certified record, Detective Day testified that, during negotiations while Appellee was barricaded in his home, Detective Day "informed [Appellee] that [police] had a warrant for him [and] to come out peacefully[,] he was going to be placed under arrest." N.T., 10/24/2012, at 7. Detective Day and Appellee "went back and forth about whether or not [Appellee] would be a man of his word and turn himself in after [Detective Day] read him the complaint." ***Id.*** at 8. While Detective Day did ask Appellee an isolated question, if Appellee knew he was following the victim, like in ***Stallworth***, the entire conversation centered on gaining Appellee's trust, discovering Appellee's plans given the situation, and

peacefully ending the standoff with police. Thus, we conclude that: (1) Appellee was not in police custody, because he was barricaded in his home at the time of the statement, and (2) the statement made by Appellee was not the product of police interrogation, but rather resulted from negotiations for a peaceful resolution.[2] Hence, the trial court erred as a matter of law in granting suppression.

Order reversed. Case remanded for additional proceedings. Jurisdiction relinquished.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/16/2014

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[2] Finally, we address Appellee's attempt to distinguish ***Jones*** and ***Stallworth***. ***See*** Appellee's Brief at 9. He claims that in those cases, neither defendant was under arrest because police did not communicate to them that they would be arrested. ***Id.*** Here, Appellee claims that he was under arrest because Detective Day told him police were there to arrest him and they had a warrant. ***Id.*** We outright reject that claim, because police were *in the process* of executing a warrant. Police had not yet formally arrested Appellee when he made the statement at issue.