

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ARTURO GUZMAN,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2553 EDA 2013

Appeal from the Judgment of Sentence entered July 7, 2011,  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division, at No(s): CP-51-CR-0015893-2010

BEFORE: GANTMAN, P.J., ALLEN and FITZGERALD\*, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED JULY 09, 2014**

Arturo Guzman ("Appellant") appeals from the judgment of sentence entered after the trial court found him guilty of possession of a controlled substance with intent to deliver and conspiracy.<sup>1</sup>

The pertinent facts leading to Appellant's arrest were summarized by the trial court and supplemented by our review of the notes of testimony as follows:

On December 7, 2012, Special Agent David Morina of the Drug Enforcement Agency (DEA) testified that he had received credible information, from his confidential informant (CI), that a large amount of drugs were to be delivered from Chicago to Philadelphia [by Appellant's co-defendant, Jose Munoz]. [FN2 Agent Morina testified that the CI was a registered informant and has produced credible information on approximately 20 - 30

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<sup>1</sup> 35 Pa.C.S.A. § 780-113(a)(30) and 18 Pa.C.S.A. § 903.

\*Former Justice specially assigned to the Superior Court.

prior occasions]. [Pursant to the investigation of the reported drug delivery,] Agent Morina instructed his CI to have [Munoz and Appellant] meet [the CI] at the Burger King parking lot at Welsh Road and Roosevelt Boulevard in the City and County of Philadelphia.

The CI called Appellant and set [up] the meeting. The CI was frisked and his vehicle searched prior to the arranged meeting. Appellant and his conspirators met the CI at the arranged location where Agent Morina was present at a distance, along with two uniformed SWAT officers waiting in the nearby vicinity.

[When the CI arrived at the Burger King, he met with an unnamed Spanish-speaking individual ("unnamed informant") who had arrived at the location in a Nissan Armada accompanied by Appellant, co-defendant Jose Munoz, and an unknown juvenile. The unnamed informant entered the CI's car, and the two drove away. They were followed by Appellant and his conspirators who were driving a Nissan Armada. The CI then telephoned Agent Morina and relayed to him information from the unnamed informant who was in the car with him that there was contraband in the Nissan Armada. Agent Morina contacted the SWAT team and informed them that there were drugs and possibly a gun in Appellant's vehicle. N.T., 5/10/11, at 10-40.]

[Shortly thereafter, the Nissan Armada] was pulled over by the SWAT officers on the order given by Agent Morina. As the officers approached the vehicle, [the] juvenile was found in the front driver's seat. He was removed from the vehicle. Appellant and his co-conspirator/co-defendant Jose Munoz were both found in the backseat. On the passenger side floor, Officer Cooney saw what looked like a "giant white aspirin ... oblong and wrapped in plastic." The white substance was tested and determined to be 205.3 grams of heroin. The two men were taken from the vehicle and detained.

A search warrant was executed on the vehicle. Upon search of the vehicle, 970 grams of cocaine was discovered in the rear backseat.

Trial Court Opinion, 12/17/13, at 2-3.

Appellant was arrested and charged with the aforementioned crimes. Appellant subsequently filed a suppression motion, and following a hearing on May 10, 2011, the trial court denied Appellant's motion. A non-jury trial commenced that same day, at the conclusion of which the trial court rendered its guilty verdicts. Following a hearing on July 7, 2011, the trial court sentenced Appellant to five to ten years of imprisonment. No post-sentence motion or notice of appeal were filed. On January 18, 2012, Appellant filed a petition under the Post Conviction Relief Act seeking reinstatement of his direct appeal rights. On July 11, 2013, the trial court reinstated Appellant's direct appeal rights *nunc pro tunc*. This appeal followed. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant raises the following issue for our review:

DID THE [TRIAL] COURT ENTER A DECISION NOT SUPPORTED BY THE RECORD AND COMMIT AN ERROR OF LAW WHEN THE [TRIAL] COURT DENIED [APPELLANT'S] MOTION TO SUPPRESS?

Appellant's Brief at 5.

Appellant argues that the trial court improperly applied the reasonable suspicion standard rather than the probable cause standard to determine whether the stop of Appellant's vehicle was constitutionally permissible. Appellant's Brief at 15-17. Additionally, Appellant argues that Agent Morina and the police officers who stopped his vehicle received their information from an unreliable, anonymous source who relayed information to the

confidential informant, and that the information from the unreliable, anonymous source was inadequate to support the police officer's stop of his vehicle. *Id.*

In reviewing Appellant's challenge to the denial of his suppression motion, our appellate standard of review is as follows:

Our standard of review of a denial of suppression is whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error. Our scope of review is limited; we may consider only the evidence of the prosecution 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 findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

***Commonwealth v. Reppert***, 814 A.2d 1196, 1200 (Pa. Super. 2002) (citations omitted).

Appellant argues that when the police officers stopped his vehicle, he was subjected to an arrest, not an investigative detention, for which probable cause rather than reasonable suspicion was required. Appellant's Brief at 13-14. Our Courts have explained that "[t]he key difference between an investigative and a custodial detention is that the latter involves such coercive conditions as to constitute the functional equivalent of an arrest." ***Commonwealth v. Goldsborough***, 31 A.3d 299, 306 (Pa. Super. 2011) (citations omitted). "Police detentions only become custodial when, under the totality of the circumstances, the conditions and/or duration of the

detention become so coercive as to constitute the functional equivalent of formal arrest ... [T]he test focuses on whether the individual being interrogated reasonably believes his freedom of action is being restricted.”

***Commonwealth v. Baker***, 963 A.2d 495, 501 (Pa. Super. 2008) (citations omitted).

The standard for determining whether an encounter with the police is deemed custodial is an objective one based on a totality of the circumstances with due consideration given to the reasonable impression conveyed to the person interrogated.

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Indeed, police detentions only become “custodial” when under the totality of the circumstances the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of formal arrest.

Among the factors the court utilizes in determining, under the totality of the circumstances, whether the detention became so coercive as to constitute the functional equivalent of a formal arrest are: the basis for the detention; the duration; the location; whether the suspect was transferred against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions.

***In re B.T.***, 82 A.3d 431, 441-442 (Pa. Super. 2013) (citations omitted).

Here, Officer Joseph Cooney, who participated in the stop of Appellant’s vehicle, testified about the circumstances surrounding the stop as follows:

Assistant District Attorney: What vehicle did Agent Morina direct you to stop?

Officer Cooney: It was a gray Nissan Armada. ...

Assistant District Attorney: How did you effectuate the stop of that Nissan Armada...

Officer Cooney: I activated my overhead lights ... and used the air horn and the siren. The vehicle was travelling northbound onto the 9400 block of Ashton Road. The vehicle pulled over slightly to the right, at which point I pulled the marked police vehicle in front of their car.

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Assistant District Attorney: What did you do?

Officer Cooney: I came from the driver's side of my car and Officer Cassidy was on the passenger's side and he was armed with a shotgun. I came from in front of my vehicle behind Officer Cassidy and we approached the front of the Armada.

Assistant District Attorney: Did you both have guns drawn at that time?

Officer Cooney: Yes, ma'am.

Assistant District Attorney: Why?

Officer Cooney: Based on information that one of these passengers may be armed with a gun.

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I saw [Appellant] tucking something in between the seats. [Officer Cassidy] yelled repeatedly somewhere between 10 to 15 times for [Appellant] to show ... his

hands. [Appellant] did not comply with that, at which point I was prepared to engage him because I assumed he was armed with a gun.

At that point, he put his hands on the headrest and all the occupants were taken out of the vehicle [and handcuffed].

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I walked back to the front of the vehicle and observed what looked like a giant aspirin thing like oblong, wrapped in plastic on the floor of the passenger's side front of the vehicle.

N.T., 5/10/11, at 47-48, 50-51.

After reviewing the record, we conclude that Appellant was subjected to a custodial detention when Officers Cooney and Cassidy stopped Appellant's vehicle. The circumstances surrounding the stop became so coercive as to constitute the functional equivalent of a formal arrest when, after activating their air horn, lights and sirens, the officers approached Appellant's vehicle with their weapons drawn and "prepared to engage," and shouted repeated commands to the occupants of the vehicle to show their hands, after which the officers removed Appellant from the vehicle and handcuffed him on the sidewalk. **See Commonwealth v. Kiner**, 697 A.2d 262, 266 (Pa. Super. 1997) (where off-duty, non-uniformed trooper displayed his weapon, ordered the appellant out of his vehicle, handcuffed him and held him by his arm, thereby threatening and using force, the

appellant was subjected to an arrest); ***Commonwealth v. Stewart***, 648 A.2d 797, 798 (Pa. Super. 1994) (“It is inconceivable that a reasonable person would believe he or she is free to leave when a uniformed officer with a gun drawn has requested that person to turn the car off and to place his or her hands on the dashboard.”).<sup>2</sup> Accordingly, since Appellant was subjected to a custodial detention, the police officers required probable cause to support the seizure. We agree with the trial court that the police officers possessed the requisite probable cause to justify their actions.

“[I]nformation received from confidential informants may properly form the basis of a probable cause determination. Where ... the officers’ actions resulted from information gleaned from an informant, in determining whether there was probable cause, the informant’s veracity, reliability and basis of knowledge must be assessed. An informant’s tip may constitute probable cause where police independently corroborate the tip, or where the informant has provided accurate information of criminal activity in the past, or where the informant himself participated in the criminal activity.” ***Goldsborough***, 31 A.3d at 306.

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<sup>2</sup> ***But see Commonwealth v. Ferraro***, 352 A.2d 548, 551 (Pa. Super. 1975) (“It does not seem to us that, without regard to motive, solely because an officer draws his weapon, an investigatory stop is turned into an arrest. To require an officer to risk his life in order to make an investigatory stop would run contrary to the intent of ***Terry v. Ohio***, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).”).



Here, at the suppression hearing, Agent Morina testified to the past veracity and reliability of both the CI and the unnamed Spanish-speaking informant. With regard to the CI, Agent Morina testified that he had used the CI twenty to thirty times in the past, that the CI had been registered as an informant with the DEA for almost a year, and that his information was "extremely" reliable, credible and accurate. N.T., 5/10/11, at 25. With regard to the unnamed informant, Agent Morina testified that the unnamed informant "is a Spanish speaking male that provides sources of information and who has provided me with information through interpreters at times – credible information." *Id.* at 13. Agent Morina further stated that he had personally had contact with the unnamed informant prior to the date of the investigation in this case. *Id.* at 25-26. Agent Morina specifically testified that the unnamed informant had previously "provided information on another job, not to me directly, but to the CI and it was credible. The information went through and the job went through." *Id.* at 36. Upon review, we conclude that through the testimony of Agent Morina that he had worked with both of the informants previously, and that their information had proven reliable and accurate, the Commonwealth established the reliability of both the CI as well as the unnamed informant.

Under the totality of the circumstances in this, the information provided by the Commonwealth's informants was sufficient to supply the police officers with probable cause to stop Appellant's vehicle. The stop of

Appellant's vehicle was based on information relayed to police officers from both the CI and the unnamed informant immediately after the unnamed informant had exited Appellant's car. The unnamed informant possessed personal knowledge of the existence of contraband in Appellant's vehicle, and both informants jointly participated in relaying that information to the police. We find no error in the trial court's determination that, given the established past reliability and accuracy of the CI and the unnamed informant in providing accurate and reliable information, together with the unnamed informant's personal knowledge that there were drugs and possibly weapons in the car that he had just exited, and the fact that the information regarding contraband in the car was relayed to the police almost instantaneously while the events were still unfolding, the officers possessed the requisite probable cause to believe that a crime was occurring.

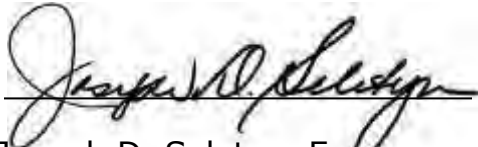
Because the Commonwealth satisfied the higher burden of demonstrating probable cause to support a custodial detention, even if Appellant was subjected to an investigative detention when the officers stopped his vehicle, the evidence presented would have been sufficient to support the lesser reasonable suspicion burden. The officers articulated specific facts to justify approaching Appellant's car with their guns drawn, based upon the information relayed to them that Appellant might be armed. As this Court has explained, "[o]ur law enforcement officers are not required to take any more risks than those already inherent in stopping a drug

suspect, particularly one in an automobile. An officer approaching a car cannot see if there is a weapon being held below the level of the car window. While we ask our police officers to take risks, we do not ask them to be suicidal. It is both prudent and safe for an officer to draw his firearm when approaching a vehicle in a criminal investigation.” **Commonwealth v. Johnson**, 849 A.2d 1236, 1238-1239 (Pa. Super. 2004). Given the testimony of Agent Morina regarding the established reliability of the confidential informants, the record as a whole supports a finding that even if the stop of Appellant’s vehicle constituted an investigative detention, such a detention was supported by the requisite reasonable suspicion.

For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/9/2014