NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. DEMETRIUS LAMON MURRELL Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 824 WDA 2013

Appeal from the Judgment of Sentence April 18, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0004695-2012

BEFORE: GANTMAN, P.J., FORD ELLIOTT, P.J.E. and OLSON, J.

MEMORANDUM BY OLSON, J.: **FILED JULY 03, 2014**

Appellant, Demetrius Lamon Murrell, appeals from the judgment of sentence entered on April 18, 2013, following his jury trial conviction for persons not to possess a firearm, 18 Pa.C.S.A. § 6105. Upon review, we affirm.

The trial court summarized the facts of this case as follows:

> [A Pittsburgh] police officer, [Officer Jason Cyprowski], testified that he stopped [a black GMC Yukon SUV] on February 4, 2012, at approximately 2:00 [a.m.] when he was responding to a burglary-in-progress call on the Southside of Pittsburgh. While driving to the scene, the officer witnessed a black GMC Yukon traveling at a high rate of speed in a very tight alleyway. The officer shined his spotlight into the Yukon and observed [Appellant] driving. The officer also saw that [Appellant] was bleeding from his forehead. The officer pulled over the SUV, made contact with the driver, and saw an empty black holster that was located on top of the center console. [Appellant] consented to a search of the vehicle. A gun was found [with blood on

> it[1]] and [Appellant] was charged with the possession of a firearm offenses.

Trial Court Opinion, 8/28/2013, at 1-2.

The Commonwealth charged Appellant with persons not to possess a firearm, carrying a firearm without a license, and careless driving.[2] On July 19, 2012, Appellant filed a motion to sever the charges, which the trial court granted. On January 28, 2013, a jury convicted Appellant of persons not to possess a firearm. On April 18, 2013, the trial court sentenced Appellant to five to 10 years of imprisonment. This timely appeal resulted.[3]

Appellant presents the following issues for our review:

> A. Whether the trial court erred in denying Appellant's motion to suppress where the arresting officer did not have reasonable suspicion nor probable cause to stop Appellant[']s vehicle for speeding, careless driving or involvement in a burglary?
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> B. Whether the trial court erred in permitting Officer Cyprowski to testify that in his experience with cases involving firearms, not once has [the] firearm produced a fingerprint?

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[1] The Commonwealth presented evidence at trial that "the DNA profile that was obtained from the blood stain from the Ruger handgun matched the DNA profile that was obtained from the buccal [swab] collect[ed] from [Appellant]." N.T., 1/25/2013, at 98.

[2] 18 Pa.C.S.A. §§ 6105 and 6106 and 75 Pa.C.S.A. § 3714, respectively.

[3] Appellant filed a notice of appeal on May 15, 2013. On May 24, 2013, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied on June 4, 2013. The trial court issued an opinion pursuant to Pa.R.A.P. 1925(a) on August 28, 2013.

> C. Whether the trial court erred in permitting the Commonwealth to elicit testimony that Appellant was stopped, at least in part, for suspicion of being involved in a burglary?

Appellant's Brief at 10.

In his first issue presented, Appellant contends that the Commonwealth failed to prove the police officer had reasonable suspicion or probable cause to stop him for a violation of the Motor Vehicle Code and, as a result, the trial court erred in denying suppression of the evidence obtained after the vehicular stop. ***Id.*** at 13-19. More specifically, Appellant claims:

> The trial court found that Appellant was essentially guilty of careless driving. The problem is that if the act of careless driving involves speeding, not every act of speeding is careless driving, particularly where there was never testimony or evidence to support a charge of speeding[.] The issue is whether Officer Cyprowski had the right to stop Appellant for speeding and not whether [Officer] Cyprowski's opinion that Appellant was speeding can be converted into careless driving because Carey Way might be narrow.

Id. at 16.

Our standard of review and the applicable law are as follows:

> In addressing a challenge to a trial court's denial of a suppression motion we are limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the Commonwealth prevailed in 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 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.
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> A police officer has the authority to stop a vehicle when he or she has **reasonable suspicion** that a violation of the vehicle code has taken place, for the purpose of obtaining necessary information to enforce the provisions of the code. 75 Pa.C.S. § 6308(b). However, if the violation is such that it requires no additional investigation, the officer must have **probable cause** to initiate the stop.
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> > Put another way, if the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop—if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion.
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> > * * *
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> > The police have probable cause where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. We evaluate probable cause by considering all relevant facts under a totality of circumstances analysis.

Commonwealth v. Brown, 64 A.3d 1101, 1104-1105 (Pa. Super. 2013) (citations and brackets omitted) (emphasis in original).

In this case, the trial court determined that "the stop was legal and justified because [Appellant] was operating his vehicle in a careless manner by travelling at a high rate of speed in a very tight alleyway[…] in violation of 75 Pa.C.S.A. § 3714[.]" Trial Court Opinion, 8/28/2013, at 2. Section 3714 provides, in pertinent part:

> Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense.

75 Pa.C.S.A. § 3714(a).

At the suppression hearing, the Commonwealth called the investigating officer, Officer Cyprowski, to testify. Officer Cyprowski stated that he "initially witnessed a black GMC Yukon traveling at a high rate of speed on Carey Way in the 2200 block." N.T., 11/13/2012, at 5. Officer Cyprowski further testified:

> Carey Way is a very tight alleyway. It's a one way. Normally there are vehicles parked in that alleyway. I believe there is no posted speed limit, but being that it is a residential area, which I believe it would be about 25 miles an hour. I believe that vehicle would have been traveling over 25 miles an hour on Carey Way.

Id. at 7. Later, Officer Cyprowski testified that the vehicle in question was "definitely" travelling over 25 miles per hour. ***Id.*** at 12. He based his conclusion regarding the speed of the automobile on his previous experience clocking vehicular speeds for the Pittsburgh Police. ***Id.*** at 7. Officer Cyprowski identified Appellant as the driver, after illuminating the interior of the vehicle, and noticed that Appellant "was bleeding heavily from his head." ***Id.*** at 6-8. Officer Cyprowski also identified two passengers who were in the car at the time of the stop. ***Id.*** at 4.

Based upon the totality of circumstances, the trial court appropriately determined that the police had probable cause to stop Appellant's vehicle for careless driving. Appellant was driving down a narrow, one-way alley. In

light of his prior police experience, Officer Cyprowski estimated that Appellant was driving faster than the speed limit permitted in a residential area. Moreover, Appellant had two passengers in his vehicle and he was driving with an injury to his forehead that was bleeding heavily. Combined, these facts were sufficient to cause a reasonable person to believe that Appellant engaged in driving with careless disregard for the safety of persons (such as the other passengers in the car or pedestrians on the street) or property (such as other vehicles on the street). In sum, while the officer opined that speeding certainly contributed to Appellant's careless driving, Appellant was also driving down a narrow roadway with a noticeably bleeding head injury. The record supports the factual findings of the trial court and, accordingly, the trial court properly denied suppression. Hence, Appellant's first issue is without merit.

In his second issue presented, Appellant claims that the trial court erred by permitting Officer Cyprowski to testify at trial that he had never experienced an instance wherein latent fingerprints were recovered from a firearm. Appellant's Brief at 19. More specifically, Appellant avers:

> [Officer] Cyprowski testified that in 20 to 30 cases, he had apparently not found a gun with a latent print of value. Appellant objected stating that [Officer] Cyprowski was not an expert. Appellant further stated that he would need to know something more about those 20 to 30 cases. Appellant's point was that if [Officer] Cyprowski was not going to be deemed an expert, anything he could testify to about the guns he found in 20 to 30 prior cases, was irrelevant.

Id. at 19-20. Appellant further claims that although he objected at trial because Officer Cyprowski was not an expert, it was obvious that the testimony was also irrelevant. ***Id.*** at 20-21. Thus, Appellant essentially argues that the trial court erred by determining, in its Rule 1925(a) opinion, that Appellant waived his claim by failing to specifically object on the basis of relevancy. ***Id.*** at 20. Appellant suggests, "[i]n a case with a defense built, in part, around the absence of fingerprints on a blood soaked gun, admission of this testimony was not harmless." ***Id.*** at 21.

Initially, we observe that our standard of review regarding the trial court's evidentiary rulings is deferential. ***Commonwealth v. Nypaver***, 69 A.3d 708, 716 (Pa. Super. 2013) (citation omitted). Accordingly,

> [t]he admissibility of evidence is solely within the discretion of the trial court and will be reversed only if the trial court has abused its discretion. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.

Id.

On this issue, the trial court determined:

> A police officer was asked at trial: "Officer, of those 20 or 30 times that you have been on cases involving firearms, how many times on average were you able to get a print off of a firearm?" The officer answered: "I never had one come back with usable prints located on a firearm." Defense counsel objected to this line of questioning on the basis that the officer was not an expert. The Commonwealth responded that the officer was not being offered as an expert. As a result of the basis stated for the objection and the Commonwealth's response, the [trial

> c]ourt permitted the question. No other grounds for an objection were made by defense counsel to serve as a basis to prohibit the officer's testimony.

Trial Court Opinion, 8/28/2013, at 3-4. We agree.

This Court has previously concluded:

> A party complaining, on appeal, of the admission of evidence in the court below will be confined to the specific objection there made. ***Commonwealth v. Cousar,*** 928 A.2d 1025, 1041 (Pa. 2007). If counsel states the grounds for an objection, then all other unspecified grounds are waived and cannot be raised for the first time on appeal. ***Commonwealth v. Arroyo,*** 723 A.2d 162, 170 (Pa. 1999); ***Commonwealth v. Stoltzfus,*** 337 A.2d 873, 881 (Pa. 1975) (stating: "It has long been the rule in this jurisdiction that if the ground upon which an objection is based is specifically stated, all other reasons for its exclusion are waived, and may not be raised post-trial"); ***Commonwealth v. Duffy,*** 832 A.2d 1132, 1136 (Pa. Super. 2003) (stating party must make timely and specific objection to preserve issue for appellate review).

Commonwealth v. Lopez, 57 A.3d 74, 81-82 (Pa. Super. 2012), *citing* ***Commonwealth v. Bedford,*** 50 A.3d 707, 713-714 (Pa. Super. 2012).

At trial, defense counsel objected to the abovementioned testimony because Officer Cyprowski "is not an expert." N.T., 1/25/2013, at 72. The trial court stated, "I will allow him to answer that. […] I don't expect you to go into any expert testimony." ***Id.*** at 72-73. Thereafter, the trial continued. Hence, it is clear that Appellant was challenging the evidence because Officer Cyprowski was not an expert. On appeal, however, Appellant is challenging the relevancy of the evidence admitted, but did not advance this specific ground in support of his objection at trial and, thus, has waived the claim. As such, Appellant's second issue fails.

In his third issue presented, Appellant claims the trial court erred in permitting the Commonwealth to elicit testimony from Officer Cyprowski that he stopped Appellant, at least in part, for suspicion of a burglary in progress. Appellant's Brief at 21-22. In sum, he argues:

> The trial court even agreed that the burglary testimony could lead to confusion. The fact is that Appellant committed no burglary, but the unfair danger of a jury suspecting that he, supposedly speeding and bleeding did, was high. The evidence of the burglary was unnecessary. It was a classic confusion of the issues related type of evidence. How can a trial court agree that evidence could lead to confusion of the issues and overrule that very objection? Other than the blood on the gun, the evidence may have pointed more to the guilt of the co-defendant sitting on top of the gun than Appellant. Appellant speeding, if suspected of being in a burglary he did not participate in, could clearly make it more likely in the minds of a juror, that it was he who was armed. The evidence was sufficient but not overwhelming. Introduction of this evidence was not clearly harmless. If a trial court agrees with an objection, but overrules it anyways, such has to be an abuse of discretion.

Id.

Regarding this issue, the trial court determined:

> The defense does not provide in its [c]oncise [s]tatement [pursuant to Pa.R.A.P. 1925(b)] where on the record the police officer testified that the [Appellant's] vehicle was stopped for suspicion of [b]urglary. The [trial c]ourt has reviewed the record and is unable to find such testimony or an objection related to such testimony. Therefore, this issue too is without merit.

Trial Court Opinion, 8/28/2013, at 4.

The trial court seems to suggest that Appellant waived the issue by failing to point to the record to show the alleged error or an objection

thereto. We disagree. Appellant raised the issue pretrial and argued that he was prejudiced by evidence that police were responding to a burglary; Appellant also alleged that the resulting prejudice outweighed its probative value. N.T., 1/23/2013, at 24. The trial court denied relief. ***Id.*** at 25. At trial, Officer Cyprowski testified that he responded to a burglary in progress and, while en route, he encountered Appellant. N.T., 1/25/2013, at 55. Later, Officer Cyprowski testified that he waited for back-up before approaching the stopped vehicle because he arrived at the scene in response to a reported armed burglary. ***Id.*** at 57-58. Upon further review, however, at no time did Officer Cyprowski specifically state that he stopped Appellant because of the burglary. Moreover, defense counsel cross-examined Officer Cyprowski and elicited testimony that: (1) "[t]he victim of the burglary did not make a positive identification as to any of the occupants in the vehicle[;]" (2) neither Appellant nor his co-defendants "were []ever charged with burglary[;]" and (3) police did not find a ski mask, as reported in the burglary, in Appellant's vehicle. ***Id.*** at 74-75.

As previously stated, this Court examines evidentiary rulings for an abuse of discretion. ***Nypaver***, 69 A.3d at 716. Evidence, even if relevant, may be excluded if its probative value is outweighed by the potential prejudice. Pa.R.E. 404(b)(3). This Court has held:

> The probative value of the evidence might be outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, pointlessness of presentation, or unnecessary presentation of cumulative evidence. Pa.R.E. 403. The comment to Pa.R.E. 403

> instructs that unfair prejudice means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially.
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> However, evidence will not be prohibited merely because it is harmful to the defendant. Exclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision based upon something other than the legal propositions relevant to the case.

Commonwealth v. Page, 965 A.2d 1212, 1220 (Pa. Super. 2009) (internal citations, brackets, and quotations omitted).

Here, Officer Cyprowski was relaying information regarding the course of events as they unfolded. At no time did he suggest that he stopped Appellant upon a suspicion of burglary. Instead, Officer Cyprowski was explaining why he was in the area and why he followed certain police protocol in securing the vehicle. In order to avoid confusion of issues, Appellant had the opportunity to cross-examine Officer Cyprowski and the evidence elicited showed that Appellant was not implicated in the burglary at any time. Thus, Appellant fails to show how the challenged evidence was so prejudicial as to inflame the jury or how, in light of all the circumstances, including the testimony from Officer Cyprowski on cross-examination, it tended to suggest a decision on an improper basis.[4] As such, we discern no

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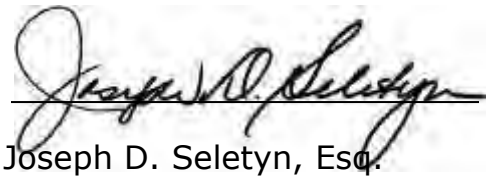
[4] We note that even if evidence involving the burglary was erroneously admitted, such error was harmless given the evidence that a firearm was found in the vehicle and Appellant's blood was on it. ***See Commonwealth v. Hairston***, 84 A.3d 657, 671-672 (Pa. 2014) (Harmless error exists if the

(Footnote Continued Next Page)

abuse of discretion in allowing the limited testimony.[5] Accordingly, Appellant's final issue is without merit.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/3/2014

(Footnote Continued) ———————————

record demonstrates either: (1) the error did not prejudice the defendant or the prejudice was *de minimis*; or (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.).

[5] We may affirm the trial court's decision on any basis. ***See Commonwealth v. Elia***, 83 A.3d 254, 264 (Pa. Super. 2013) ("[A]n appellate court may affirm a valid judgment based upon any reason appearing in the record.").