

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: K.G., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: COMMONWEALTH OF
PENNSYLVANIA

No. 22 WDA 2015

Appeal from the Order Entered December 1, 2014
In the Court of Common Pleas of Beaver County
Juvenile Division at No(s): CP-04-JV-0000245-2014

BEFORE: SHOGAN, J., OTT, J., and STABILE, J.

CONCURRING STATEMENT BY OTT, J.:

FILED FEBRUARY 1, 2016

I agree that the testimony of Officer Jonnie Schooley, specifically N.T. Suppression Hearing, 11/24/2014, pages 48, 54-59, supports the determinations by the majority that the officer had reasonable suspicion to remove the juvenile from the car to determine if he had a weapon. **See Commonwealth v. Cooper**, 994 A.2d 589 (Pa. Super. 2010).

I write separately because of the acknowledged standard of review that states a suppression court's findings of fact are binding on an appellate court if the record supports those findings. **See Commonwealth v. Diego**, 119 A.3d 370, 373 (Pa. Super. 2015).

Because the trial court made no specific determination that the testimony of Officer Schooley was NOT credible, her finding that “No one was acting nervous when they^[1] were approaching the vehicle”² is not supported by the testimony of Officer Jonnie Schooley. Accordingly, we are not bound by that determination.

¹ It is unclear from the trial court opinion to whom “they” refers. If “they” refers to the defendant and the other young men as they approached the vehicle, then that determination has no effect on the initial mere encounter, **see** Majority Opinion at 7-8, between the police and the young men, wherein the police were attempting to determine what had happened on the street. If “they” refers to the police officers as they approached the vehicle, then, as noted above, Officer Schooley’s testimony does not support the trial court’s statement.

² Trial Court Opinion at 1.