

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

MOHAMMED S. FAHAD

Appellant

No. 2170 EDA 2012

Appeal from the Judgment of Sentence July 12, 2012
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0006141-2010

BEFORE: BENDER, J., BOWES, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.

FILED MAY 02, 2013

Mohammed S. Fahad appeals from his judgment of sentence after he was found guilty, following a stipulated non-jury trial,¹ of possession of a small amount of marijuana for personal use. Fahad was ordered to pay a \$300 fine and related court costs.² On appeal, Fahad contends that the evidence uncovered from his stop should be suppressed because his stop

¹ Originally, Fahad had entered a negotiated guilty plea and was sentenced to one year of probation in December 2010. However, the trial court granted Fahad a new trial based on a claim of ineffective assistance of counsel under the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-46.

² 35 P.S. § 780-113(a)(31).

and subsequent arrest were not based upon reasonable suspicion or probable cause.³ After careful review, we affirm.

Fahad's arresting officer, Officer Steven Russo, testified at the suppression hearing that he is a fifteen-year police veteran with the Upper Darby Police Department and, at the time of Fahad's arrest, was assigned as a trained canine handler to patrol for the detection of narcotics on the streets of Upper Darby. N.T. Suppression Hearing, 1/10/2012, at 5-6. The majority of Officer Russo's training involved identification of different drug odors and how drugs are packaged. *Id.* at 8-9.

In the early morning hours of September 27, 2010, Officer Russo was on duty patrolling the vicinity where Fahad was stopped; he testified that a high amount of "hand-to-hand [drug] buys" occurred in that area. *Id.* at 12. The officer also noted that five days earlier a home invasion/robbery occurred one street over from where he first observed Fahad. *Id.* at 17. Officer Russo stated that at 2:13 a.m., he noticed a man standing on the corner of Bywood Road and Sellers Avenue; when the individual, later identified as Fahad, saw Russo's patrol vehicle, he looked startled,

³ When reviewing an order denying a motion to suppress evidence, we must determine whether the trial court's factual findings are supported by the evidence of record. *Commonwealth v. Blair*, 860 A.2d 567, 571 (Pa. Super. 2004). If the evidence supports the trial court's findings, we are bound by them and may reverse only if the legal conclusions drawn therefrom are erroneous. *Id.*

“shrugged [his shoulders] like he was scared” and immediately turned and began walking at a fast pace away from the officer. **Id.** at 20-22. As he continued to walk briskly, Fahad continuously turned to his left-hand side to see where the officer was positioned. **Id.** at 22-23. When Fahad turned the corner onto Wayne Avenue, Officer Russo stopped and exited his vehicle and asked Fahad to stop. **Id.** at 24. Officer Russo asked Fahad what he was doing, where he was headed, and if he had any identification. **Id.** at 26. Fahad said he was heading home and did not have any identification on him. **Id.** At that point, Officer Russo used his flashlight to illuminate the bottom portion of Fahad’s body. **Id.** The officer observed a clear bag with green residue hanging from Fahad’s pocket which he immediately identified as marijuana. **Id.** Officer Russo then placed Fahad in custody. **Id.** at 26-27. Officer Russo subsequently patted Fahad down and recovered 11 white pills in a clear plastic bag from Fahad’s pocket. **Id.** at 28. The pills were later identified as Percocet. **Id.**

Fahad claims that his stop and arrest were illegal because the area where he was stopped was not a high-crime area and because Officer Russo did not observe Fahad engaged in any suspicious or illegal activity.

Based upon the evidence presented by Officer Russo at the suppression hearing, we conclude that the trial court’s factual findings are supported by the record and justify the court’s denial of Fahad’s suppression motion. **Blair, supra.** Officer Russo was in an area that had experienced a robbery/home invasion within a week of Fahad’s arrest, Fahad was seen on

the street early in the morning, and he acted suspiciously upon seeing Officer Russo's patrol vehicle within close proximity. Moreover, prior to being stopped, Fahad continued to walk briskly away from the officer's car and repeatedly looked over his shoulder to keep tabs on where the officer was located. Under such circumstances, the officer had reasonable suspicion to stop Fahad. **See Commonwealth v. Stratton**, 331 A.2d 741 (Pa. Super. 1974) (where defendant was seen by officers at 12:08 a.m. in doorway of closed store, where doorway was twelve feet from curb, and moved quickly out of that area upon observing approaching officer, there was reasonable suspicion to suspect that defendant may be engaged in criminal activity); **see also Commonwealth v. Pine**, 536 A.2d 811 (Pa. Super. 1988) (given combination of defendant's actions, late hour, and officer's knowledge of character of neighborhood, officer had reasonable suspicion that criminal activity was afoot).⁴

Judgment of sentence affirmed.

⁴ Although not raised on appeal, the officer's use of a flashlight to illuminate Fahad's body in the dark of night was likewise permissible. **Commonwealth v. Burton**, 436 A.2d 1010 (Pa. Super. 1981) (officer's discovery of marijuana in plain view, with aid of flashlight, was proper where flashlight illuminated items that would be in plain view during daylight hours). Additionally, Officer Russo had probable cause to arrest Fahad when he observed incriminating evidence hanging from Fahad's pocket in plain view. **Commonwealth v. McCree**, 857 A.2d 188 (Pa. Super. 2004) (under plain view doctrine warrantless seizure of evidence which is in plain view is permissible when (1) evidence is seen from lawful vantage point and (2) it is immediately apparent to viewer that object is incriminating).

J-S21038-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambett", written over a horizontal line.

Prothonotary

Date: 5/2/2013