

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

HASAN JONES

Appellant

No. 2857 EDA 2011

Appeal from the Judgment of Sentence July 20, 2009
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0006864-2008

BEFORE: PANELLA, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.

Filed: January 16, 2013

Hasan Jones appeals from the judgment of sentence imposed in the Court of Common Pleas of Philadelphia County after the trial court,¹ sitting in a bench trial, found him guilty of possession with intent to deliver a controlled substance ("PWID"). We affirm.

Jones was arrested on February 4, 2008 and charged with PWID after Philadelphia Police Officer Joseph Sulpizio witnessed him engage in two separate drug transactions. At the suppression hearing, Officer Sulpizio described the events as follows:

¹ This matter was reassigned to Judge Cunningham at the post-conviction phase.

On [February 4, 2008 at approximately 1:30 p.m.] I went to [the area of 1700 West Huntingdon Street] to investigate illegal sale of narcotics. . . . I observed [Jones], along with a second individual later identified to me as Jason Thomas. They were standing on the north side of the 1700 block of West Huntingdon Street between Bouvier and 18th Street by the mouth of an alley[.]

Approximately, 1:40, Your Honor, a female who was not identified wearing a black jacket and blue jeans approached both males and engaged in a conversation. She handed [Jones] an undetermined amount of United States currency, Your Honor. With that, [Jones] went into that alley approximately 10 feet in and retrieved a clear plastic baggie from a trash pile. From that clear plastic baggie, [he] removed an item or items, returned the clear plastic baggie to that trash pile, returned to that female and handed her those items.

The female left the area walking eastbound on Huntingdon Street where she was not located[.] I gave a description of her to my backup officers, but she was not located.

About five to ten minutes thereafter, Your Honor, a male who was not identified, wearing a green jacket and blue jeans approached both males which [were Jones and Thomas and] engaged them in conversation. He handed [Jones] an undetermined amount of United States currency.

During both transactions – I'm sorry, if I may go back, Your Honor – [Thomas] was looking east and west on Huntingdon Street as [Jones] entered they alley on the first transaction. And again, if I may, after the male handed [Jones] the [currency], again, [Thomas] would look east and west. [Jones] again walked into that alley, retrieved that clear plastic baggie, from that baggie, removed items. He returned to that male and handed him those items. That male, Your Honor, left the area . . . and was not located.

Approximately ten minutes thereafter, Your Honor, [Jones] walked into that alley and retrieved that clear plastic baggie. He removed it from that trash pile. After he removed that baggie, he started to walk westbound on Huntingdon Street with [Thomas].

[F]earing they were going to leave the area, I radioed my backup officers to come to the area, stop both males. As backup units came and arrived on location, [Jones] fled through the alley that he went into to retrieve that clear plastic baggie. As he ran through the alley, Your Honor, I observed him discard that baggie approximately 20 feet into the alley[.]

N.T. Suppression Hearing, 3/31/09, at 5-7. The clear plastic baggie was recovered by Officer Danny Wright and contained 25 orange-tinted packets containing what was later determined to be crack cocaine.

Officer Sulpizio testified that he is a sixteen-year veteran of the Philadelphia Police Department and has worked on the narcotics Strike Force for ten years, at least eight of which he has spent doing plain clothes work. *Id.* at 10. Officer Sulpizio stated that he has had "numerous training[s]" related to that work, including field test training, narcotic field test training, top gun training, and DA training. *Id.* He estimated that, over the course of his career, he has made at least 2,000 narcotics arrests, at least 50 of which occurred in the area immediately surrounding the 1700 block of West Huntingdon. *Id.* at 10-11. He has also engaged in "at least 500 surveillances in that general area," at least 50 of which were on that particular block. *Id.* at 13-14. Officer Sulpizio testified that the interactions

he witnessed Jones engage in were "consistent with the pattern of narcotics transactions . . . from my . . . prior surveillances." *Id.* at 12. Specifically,

Officer Sulpizio testified:

I conducted numerous observations of the different narcotics and different areas, and saw the same pattern of male/female would come up to potential seller, have a conversation with that [person], in turn they would present United States currency in return for some type of product.

Id. Moreover, Officer Sulpizio testified to the familiarity of the packaging, based on his experience:

Q: When you saw [Jones] go to the alley and pick up items from a baggie, had you ever seen a baggie and small items similarly packaged in your experience as a police officer?

A: Yes, numerous times.

Q: And what was in those other times?

A: Most of the time, it was crack cocaine[.]

Id. at 13.

Jones was arrested and charged with PWID. He subsequently filed a motion to suppress, claiming that he was arrested without probable cause and the physical evidence was seized in violation of his Fourth and Fourteenth Amendment right under the U.S. Constitution, as well as Article I, Section 8 of the Pennsylvania Constitution. After a suppression hearing on March 31, 2009, the trial court denied Jones' motion and he proceeded

directly to a bench trial, after which the court found him guilty of PWID. On July 20, 2009, the court sentenced Jones to 24 to 48 months' incarceration.

Jones did not file a direct appeal. On July 20, 2010, Jones filed a *pro se* petition under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46, seeking to restore his appellate rights *nunc pro tunc*. Following the appointment of counsel, Jones' appellate rights were reinstated by agreement of counsel on October 7, 2011. Jones filed a notice of appeal on October 12, 2011, followed by a court-ordered statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). The trial court filed its Rule 1925(a) opinion on January 4, 2012.

On appeal, Jones challenges the trial court's denial of his suppression motion on the basis that "[a]n exchange of unknown objects for currency without anything more did not establish probable cause to arrest [Jones] and the evidence should be suppressed." Brief of Appellant, at 11.

In his appellate brief, Jones cites a single case in support of his claim. Jones analogizes his case to the factual scenario present in ***Commonwealth v. Banks***, 658 A.2d 752 (Pa. 1995), and concludes that ***Banks*** supports his claim that the police lacked probable cause to arrest him. In ***Banks***, an officer in a marked car witnessed the appellant, who was standing on a street corner, reach into his pocket and hand an object to an unknown female who, in return, gave him an unknown sum of cash. The appellant fled as the officer's vehicle approached, but he was quickly apprehended and

arrested, at which time cocaine was found on his person. In concluding that there was no probable cause to support the arrest, the Supreme Court noted that:

[w]ell recognized additional factors giving rise to probable cause were not present here. This is not a case where a trained narcotics officer observed either drugs or containers commonly known to hold drugs being exchanged. This is not a case where police observed multiple, complex, suspicious transactions. . . . We believe that the fact of flight, under the circumstances presented, did not constitute a sufficient additional factor to give rise to probable cause.

Banks, 658 A.2d at 753 (citations omitted).

In **Commonwealth v. Dunlap**, 941 A.2d 671 (Pa. 2007), the Court again addressed the issue of probable cause in light of its decision in **Banks**. In **Dunlap**, a trained, five-year-veteran officer working in what the officer described as a “high-crime neighborhood” observed the appellant and another person exchange money for an unknown object “without seeing any other suspicious activity.” *Id.* at 673. The officer had conducted approximately fifteen to twenty arrests in the general area in which Dunlap was arrested. Based on those facts, the appellant was subsequently apprehended and found to possess crack cocaine. The trial court declined to suppress the evidence and this Court, sitting *en banc*, affirmed in a 5-4 decision, concluding that probable cause existed to support the warrantless arrest and search. In distinguishing the facts in **Dunlap** from **Banks**, this Court noted that: (1) an experienced narcotics officer made the

observations; (2) the transaction took place in an area known by the officer in his professional experience to be a high drug-crime area; and (3) based on the officer's training and experience as an officer with knowledge of the area, the officer reasonably concluded he had probably witnessed a drug transaction. *Id.* at 674.

However, on allowance of appeal, the Supreme Court reversed, holding that training and experience is not a "stand-alone" factor to be considered in the probable cause analysis. Specifically, the Court held that:

police training and experience, *without more*, is not a fact to be added to the quantum of evidence to determine if probable cause exists, but rather a 'lens' through which courts view the quantum of evidence observed at the scene.

Id. at 675. Applying its holding, the Court concluded that a single transaction observed by an officer in a "high-crime" area, without more, was insufficient to establish probable cause, despite the arresting officer's training and experience.

Subsequently, in *Commonwealth v. Thompson*, 985 A.2d 928 (Pa. 2009), the Court revisited the issue, this time addressing *Dunlap* as well as *Banks*. In *Thompson*, Philadelphia Police Officer Orlando Ortiz was in plainclothes with his partner in an unmarked vehicle when he saw a parked car, next to the driver's side of which appellant was standing. Officer Ortiz saw appellant hand the car's driver some money and the driver gave appellant a small object in return. Believing the men to have been engaged

in a drug transaction, Officer Ortiz stopped appellant and recovered from his pocket a packet of heroin. The evidence established that Officer Ortiz:

was a nine-year veteran of the police force who was on undercover patrol in a high crime area that had been designated by the Philadelphia Police Department as an Operation Safe Streets neighborhood. In addition[,] Officer Ortiz was personally familiar with heroin sales activity in the neighborhood, heroin packaging, and hand-to-hand drug exchanges on the street. In drawing the nexus between his experience and the observations he made, Officer Ortiz testified that he had seen this type of “exchange done several hundred times” on the street and had made several hundred narcotics arrests of this very type.

Id. at 936.

At the outset, the **Thompson** Court noted that the **Dunlap** majority had “rejected the notion that police experience is worth of the label ‘factor,’ but it conceded that such experience informs the court’s decision so much that it enables the court to find probable cause where it otherwise would be unable to do so.” **Thompson**, 985 A.2d at 935. However, the Court also noted that the majority in **Dunlap** had also acknowledged the importance of experience and training:

We do not seek to minimize the experience gained through years serving on the police force. Quite to the contrary, we recognize that many officers, particularly those with specialized training, are able to recognize trends and methods in the commission of various crimes. For instance, an officer who has specialized in drug crimes may be more suspicious that a package contains illegal narcotics because of the form of packaging used to conceal those drugs. *He or she may recognize criminal activity where a*

non-police citizen may not. However, a court cannot simply conclude that probable cause existed based upon nothing more than the number of years an officer has spent on the force. Rather, the officer must demonstrate a nexus between his experience and the search, arrest, or seizure of evidence. By doing so, a court aware of, informed by, and viewing the evidence as the officer in question, aided in assessing his observations by his experience, may properly conclude that probable cause existed. This is true even where the court may have been unable to perceive the existence of probable cause had the court viewed the same evidence through the eyes of a reasonable citizen untrained in law enforcement.

Id., quoting **Dunlap**, 941 A.2d at 675-76 (emphasis added in **Thompson**).

Accordingly, the Court endeavored to parse the holding in **Dunlap** to clarify the extent to which police training and experience is to be considered in a probable cause determination. Ultimately, the Court adopted the reasoning espoused in Justice Saylor's **Dunlap** concurrence, in which two of the justices comprising the majority had joined, holding that an officer's experience "may be fairly regarded as a relevant factor in determining probable cause" but that "an officer's testimony in this regard shall not simply reference 'training and experience abstract from an explanation of their specific application to the circumstances at hand.'" **Thompson**, 985 A.2d at 935.

In light of the Supreme Court's pronouncements in **Banks**, **Dunlap** and **Thompson**, we conclude that the police possessed probable cause to arrest Jones. First, Officer Sulpizio is a sixteen-year veteran with ten years' experience on the narcotics strike force. Officer Sulpizio received significant

training related to narcotics work and has made at least 2,000 arrests during his career, at least fifty of which occurred in the immediate area in which Jones was arrested. Moreover, in his testimony, Officer Sulpizio created a nexus between his experience and training and the events that led to Jones' arrest, stating that Jones' actions were "consistent with the pattern of narcotics transactions . . . from my . . . prior surveillances" and that he had seen the type of packaging used by Jones "numerous times" and that it usually contained crack cocaine. N.T. Suppression Hearing, 3/31/09, at 12-13. This testimony satisfies the requirement imposed by the Court in ***Thompson***.

Moreover, unlike the appellants in ***Banks*** and ***Dunlap***, here, Jones engaged in more than one transaction in which he exchanged cash for small orange objects. The objects given to the buyers did not come from his person; rather, he was required to retrieve them from a plastic bag hidden in a trash pile located in an alley. Additionally, while Jones retrieved the orange objects, a co-conspirator acted as a look-out, lending more support to Officer Sulpizio's belief that the transaction was illicit in nature. Finally, when Officer Sulpizio's backup units arrived, Jones fled through the alley and discarded the plastic baggie. ***See Banks***, 658 A.2d at 753 (flight coupled with additional facts that point to guilt may establish probable cause).

Given the totality of the circumstances, Officer Sulpizio's experience reasonably led him to believe that he had witnessed Jones engage in drug

transactions. *Thompson, supra*. Together, these facts were sufficient to establish probable cause and, accordingly, Jones' suppression motion was properly denied.

Judgment of sentence affirmed.