

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellant

v.

HENRY COOKS, IV,

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 302 WDA 2013

Appeal from the Order of February 7, 2013,  
in the Court of Common Pleas of Mercer County,  
Criminal Division at No. CP-43-CR-0001310-2012

BEFORE: LAZARUS, OLSON and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

**FILED AUGUST 16, 2013**

In this Commonwealth appeal, we affirm the order granting the pretrial suppression motion filed by Henry Cooks.

On September 7, 2012, at approximately 1:16 a.m., two officers were on patrol in separate marked police cruisers. Having each received calls of a suspicious person at a nearby Walgreens store, the officers responded and arrived at the store at roughly the same time, 1:20 a.m. Both officers were uniformed.

The officers immediately confronted Cooks as he exited the Walgreens store. One officer then asked the store clerk if Cooks was the suspicious

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\* Retired Senior Judge assigned to the Superior Court.

person. The clerk indicated Cooks was. The officers had no information that there had been any theft in the store or that Cooks was casing the store. Multiple times, police asked Cooks what his name was and/or what he was doing. Cooks was evasive, usually responding to police by repeating the question(s) the police had asked.

The police then handcuffed Cooks. It was 1:26 a.m. Thereafter, one officer learned from the store clerk that Cooks had purchased a drink and a cookie, apparently twice, before police arrived. At some point after he was handcuffed, police advised Cooks he was the target of a criminal investigation. In response to police questioning, Cooks told police his name was Edward Cooks and gave them a certain birth date. He also told them he was from Ohio. Unable to locate the foregoing information in police records, police apparently realized the information Cooks had given them was false. Police again asked Cooks his name. It appears he briefly continued to maintain it was Edward Cooks, but then told police that he was Henry Cooks and that he was from the state of Indiana. He gave them the same birth date he had provided earlier.

Police charged Cooks with providing false identification to law enforcement authorities and loitering. He moved to suppress the evidence police obtained from him during the aforesaid incident at the Walgreens store. After a hearing, the court granted his motion, thereby suppressing Cooks's statements. The court's ruling was based on its determinations that police placed Cooks in custody by effectively arresting him at the time they handcuffed him, that they had no probable cause to arrest him, that, having

placed him in custody, they were required to advise him of his rights under ***Miranda v. Arizona***, 384 U.S. 436, (1966), before questioning him, that they failed to advise him of those rights, and that the statements police obtained from him were the unlawful fruit of the illegal police activity (*i.e.*, effectively arresting him without probable cause and questioning him while he was in custody without administering ***Miranda*** rights).

The Commonwealth, certifying that the suppression order substantially handicapped the prosecution, filed this appeal. In its argument, the Commonwealth takes no issue with any factual determination by the suppression court. Thus, there is no dispute before us about the circumstances leading up to the point when police handcuffed Cooks or about what transpired thereafter (*e.g.*, that police failed to give Cooks his ***Miranda*** rights and questioned him). Similarly, the Commonwealth does not dispute that probable cause would have been required to justify subjecting Cooks to the functional equivalent of an arrest or that ***Miranda*** rights would have been necessary to question him while he was in custody by virtue of any such arrest.

Instead, the Commonwealth's argument is that Cooks was not subject to an arrest or its functional equivalent at the time he provided the subject statements to police. According to the Commonwealth, Cooks was subject only to an investigative detention which was, in the Commonwealth's view, supported by reasonable suspicion. The Commonwealth further maintains the officers' questions were a lawful part of that lawful investigative detention. As such, the Commonwealth contends the court erred in

suppressing the information Cooks supplied to police. Consequently, we must determine whether the suppression court was wrong to find Cooks was functionally arrested at 1:26 a.m. For the following reasons, we find no error by the court.

Though we may not need to apply all of them, we review the following legal principles for the sake of clarity.

The first type of police-citizen interaction is a mere encounter. ***Commonwealth v. Ellis***, 662 A.2d 1043, 1047 (Pa. 1995). It carries no official compulsion for the citizen to stop and it normally involves a simple request for information. ***Id.*** In a mere encounter, police need not have any level of suspicion that the citizen is engaged in any criminal activity. ***Id.***

The second police-citizen interaction is an investigative detention. ***Id.*** It subjects the citizen only to a brief stop and detention for the purpose of a brief investigation (*e.g.*, limited questions). ***Id.*** To conduct an investigative detention, police must have reasonable suspicion that the citizen is involved in crime. ***Id.***

Third, a police-citizen interaction becomes a custodial detention if the conditions of the detention are sufficiently coercive as to constitute the functional equivalent of an arrest. ***Id.*** Whether a detention is, in fact, a custodial one (*i.e.*, the functional equivalent of an arrest), depends on the totality of the circumstances. ***Commonwealth v. Williams***, 941 A.2d 14, 31 (Pa. 2008). Those circumstances include the basis for the detention, its

location, its length, whether restraints were used, whether law enforcement displaced force, and whether and how far the suspect was transported by police. **Id.** The ultimate question is whether the citizen was denied freedom of movement to the degree associated with formal arrest. **Id.** To undertake a custodial detention/arrest, police must have probable cause to believe the citizen in question has committed a crime. **Ellis**, 662 A.2d at 1047. Probable cause exists where the facts and circumstances in the officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that an offense has been committed by the citizen under suspicion. **Williams**, 941 A.2d at 27.

Where a citizen is in custodial detention and where police subject the citizen to express questioning or the functional equivalent thereof (*i.e.*, police words and/or actions reasonably likely to elicit a response from the citizen), statements made by that citizen in the absence of **Miranda** rights are presumptively involuntary and, therefore, suppressible. **Williams**, 941 at 30.

When the Commonwealth appeals from a suppression order, we consider only the evidence from the defendant's witnesses together with the evidence of the Commonwealth that, when read in the context of the entire record, is not contradicted. **Commonwealth v. Miller**, 56 A.3d 1276, 1278-79 (Pa. Super. 2012). A suppression court's factual findings bind this Court if the record supports those findings. **Id.** at 1279. A suppression court's conclusions of law, however, are not binding on this Court, and our

duty is to determine if the suppression court rightly applied the law to the facts. ***Id.***

Applying the aforesaid law to the instant facts, we find Cooks was in custodial detention as of 1:26 a.m. Two uniformed police officers approached Cooks just a few minutes prior to that time. One or both of them questioned him but, after he was evasive, police handcuffed him, thereby preventing him from leaving. They told him he was the target of a criminal investigation; they questioned him.

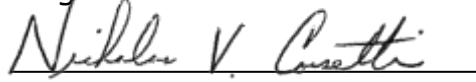
We recognize the entire incident was brief, and Cooks was not transported to any destination prior to making his statements. We also recognize the facts do not reveal any extreme show of force was used—*e.g.*, police did not draw their weapons. Even still, there was the implicit show of authority attendant to the presence of two uniformed officers detaining Cooks at 1:26 in the morning. Moreover, police used restraints while informing Cooks they were investigating him and while continuing their questioning. Cooks was denied his freedom of movement to the degree normally associated with a formal arrest. He was thus subject to the functional equivalent of an arrest at the time he was interrogated without having received his ***Miranda*** rights.

Accordingly, having reviewed this case pursuant to our aforementioned standard of review, we find the Commonwealth has failed to persuade us the suppression court erred factually or legally in suppressing the statements Cooks supplied to the officers after he was handcuffed.

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Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 8/16/2013