

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellant :
: v. :
: SHELTON SPEAKS, :
Appellee : No. 3186 EDA 2011

Appeal from the Order entered October 27, 2011,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-CR-0015221-2010

BEFORE: GANTMAN, DONOHUE and PLATT*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: January 14, 2013

This is an appeal by the Commonwealth¹ from the order of court granting in part the motion to suppress filed by Shelton Speaks (“Speaks”). Following our review, we reverse.

When reviewing the ruling of a suppression court, “our task is to determine whether the factual findings are supported by the record. If so, we are bound by those findings.” *Commonwealth v. Powell*, 994 A.2d 1096, 1101 (Pa. Super. 2010), *appeal denied*, 608 Pa. 665, 13 A.3d 477 (2010) (internal citation omitted). At the conclusion of the hearing on Speaks’ suppression motion, the trial court issued its findings of fact.² We

¹ The Commonwealth has certified that the entry of this order substantially handicaps its prosecution of this case, as required by Pa.R.A.P. 311(d).

² This hearing was conducted jointly with a motion to suppress filed by Speaks’ co-defendant, Derik Childs. The Honorable Roger F. Gordon, who

*Retired Senior Judge assigned to the Superior Court.

have reviewed the record, and conclude that these factual findings are supported thereby; as such, we are bound by them, and so we recite them here to provide the background of this case:

[O]n July 14, 2010[,] Officer Davis of [the] Narcotics Filed Unit was assigned to this unit [sic] with information he had received regarding possible drug sales by black males in the 4200 block of Griscom Street. [He had received this information] around June of 2010.

After that date other information came to his knowledge with regard to some black male with the nickname of 'Ish'..., 20 to 30 years of age, skinny with a dark complexion; and a black male, nicknamed 'D', 20 to 30 years of age, tall and skinny, and with a connection to a cell phone of (215) 494-8963. So as of July 14th, police had this information. Also, an allegation of activity at 4226 Griscom Street, first floor.

On this surveillance assignment, Officer Davis parked his vehicle at Griscom and Womrath, about 100 feet from the corner. With the naked eye and sometimes using 10/50 binoculars, he did in that time observe both defendants, [Childs] and [Speaks], within a group of individuals, as estimated four to six other people were there talking.

When he saw this, he alerted Officers Toomer [] and Cruz[], also assigned with him, by radio to bring a confidential informant to the area, if possible, to go along with the surveillance assignment.

As a result of that, a confidential informant was assigned to this investigation, and was released by some officers somewhere at this corner. They were in radio contact with Officer Davis, so that

presided over this hearing, left the bench prior to authoring an opinion pursuant to Pa.R.A.P. 1925(a).

when they lost the informant, Officer Davis ... picked up the informant with his own view.

On this particular day, Officer Davis says that he saw the informant give money to [Childs]. ...[T]he defendant Speaks went inside 4226, inside a door on the right, for 30 seconds to one minute and came back. [Speaks] then gave some object to the informant with a pinching open palm motion. [T]he informant returned to Officer Toomer, where they recovered two packets of alleged crack cocaine.

The investigation continued on July 17, 2010, when [s]earch [w]arrant 150389 was served at the location of 4226. Nothing was recovered.

Also on that same date, Officer Davis observed [Speaks] speaking to two females on the porch. A white male approached with some money, spoke to both [Speaks and Childs], and at that time Officer Davis arranged by radio for [O]fficers Kelly and Cruz to call the cell phone number. At that time, Officer Davis observed that [Childs] answered a cell phone, at least by way of what he could observe.

Then ... [Speaks] got into a Cadillac with a key near this location for 30 seconds to one minute. Then he got out of the vehicle, and then the rest of the officers were called in order to make arrests

It was Officer Williams who made the arrest of [Childs], allegedly finding \$409 United States currency, one cell phone, and identification cards.

Officer Kelly arrested [Speaks], finding \$925 United States currency, no ... illegal drugs were found on either [Speaks or Childs]. The officer did match the cell phone found on [Childs] with the number that had been given.

Based upon that information, Officer Kelly gave the keys he had gotten off [Speaks] [to] Sergeant

Friel who eventually went to this Cadillac, saying he was going to try to start the vehicle so he could move it He said he looked into the vehicle and could see there was a scale in plain view. He went into the vehicle to start it. He was unable to start the vehicle. He did search the vehicle and found 160 grams of marijuana. There was no warrant for the Cadillac. And there was no buy money which had been recorded on July 14th recovered.

N.T., 10/27/11, at 95-99.

Speaks was arrested and charged with possession of a controlled substance, possession of a controlled substance with the intent to deliver ("PWID"), possession of drug paraphernalia, criminal use of communication facility, and conspiracy.³ Prior to trial, Speaks filed a motion seeking to suppress "all physical evidence" recovered in conjunction with Speaks' and Childs' arrest. *Id.* at 8-9. The trial court subsequently granted Speaks' motion in part, suppressing only the items recovered from the Cadillac. *Id.* at 103. In doing so, the trial court expressly found that Speaks had an expectation of privacy in the Cadillac. *Id.* at 103-04.

The Commonwealth then filed this appeal, presenting us with two questions for review:

1. Does the mere possession of a car key confer upon a defendant a 'property right' in a vehicle and relieve him of his burden of establishing a constitutionally protectable privacy interest?
2. Where a police officer observed evidence in an automobile in plain view from a lawful vantage

³ 35 P.S. §§ 780-113(a)(16),(30),(32); 18 Pa.C.S.A. §§ 7512, 903.

point and with lawful right of access to the vehicle, can the officer seize the evidence?

Appellant's Brief at 3.

The first issue presented questions whether the trial court erred in determining that Speaks had a legitimate expectation of privacy in the Cadillac. "A defendant moving to suppress evidence has the preliminary burden of establishing standing and a legitimate expectation of privacy." ***Commonwealth v. Maldonado***, 14 A.3d 907, 910 (Pa. Super. 2011) (citation omitted). In cases such as the present one, where the defendant is charged with a possessory offense, he or she automatically has standing to challenge a search. ***Id.*** at 911 n.3. However, "[a] defendant must separately establish a legitimate expectation of privacy in the area searched or thing seized." ***Commonwealth v. Burton***, 973 A.2d 428, 435 (Pa. Super. 2009). To be clear, "[t]he burden is on the defendant seeking suppression to establish a legitimate expectation of privacy as an essential element of his case." ***Commonwealth v. Perea***, 791 A.2d 427, 429 (Pa. Super. 2002).

We addressed a factually similar situation in the context of a suppression motion in ***Perea***:

On October 6, 1998, in Philadelphia, police officer Joseph McCook conducted a surveillance in the 3000 block of Swanson Street, an area known for high crime and drug activity. On that afternoon, McCook observed [Perea] engage in drug transactions, in which he received cash from a customer, and then

walked to a parked van on a side street. [Perea] removed small packages from the front bumper of the van and handed them to the customer, who then drove away without being stopped. A second customer, subsequently identified as Joseph Baer, drove up and gave [Perea] some cash. He, too, received some objects from the bumper of the van. When Baer drove away, he was stopped by police and placed under arrest. A bag of heroin, stamped 'diabolic,' was found on his person.

After making the two sales, [Perea] then approached a blue Toyota Tercel parked on the street. McCook observed him take a white bag from the front seat, remove some small objects, and replace the bag in the Toyota. [Perea] transferred the small objects to the bumper of the van. [Perea] then concluded a third transaction with a customer. Another officer, Brent Miles, then placed [Perea] under arrest. He handcuffed appellant and patted him down. Officer Miles found the keys to the Toyota on [Perea's] person. Miles then approached the vehicle. He testified that he saw, in plain view, the white bag from which [Perea] had been removing small objects. He used the keys to unlock the car, and recovered the bag, which was found to contain four bundles of twelve glassine packets stamped 'diabolic.' Twenty-eight pills labeled Prozac were also found. More drugs were taken from the bumper of the van. It was determined that the Toyota had no registered owner and had not been reported stolen. Two of the tires were flat; it had no license plate; and the inspection sticker was expired.

Id. at 428.

Perea challenged the search of the Toyota, and the trial court denied his motion. On appeal, Perea argued that his possession of keys to the Toyota established an expectation of privacy in the vehicle so as to render the search thereof constitutionally invalid. We rejected this claim, noting

that a prior decision had already established that “possession of a key does not establish constructive ownership.” *Id.* at 429 (citing ***Commonwealth v. Rodriguez***, 618 A.2d 1007, 1008-09 (Pa. Super. 1993)). We concluded that “[Perea’s] argument depends upon a proper showing of a privacy interest in the Toyota. Failure to show such an interest makes his argument that the police needed a warrant to search the car without merit.” *Id.*

As in ***Perea***, we must conclude that Speaks has failed to establish a privacy interest in the Cadillac. Although he possessed a key to the vehicle, that does not satisfy his burden. *Id.* Speaks offered no evidence to prove that he owned the Cadillac or that he had the owner’s permission to use or otherwise be in possession of the Cadillac.⁴ Speaks’ failure to show that he had a privacy interest in the Cadillac precludes his ability to challenge the search thereof. *Id.*; ***Maldonado***, 14 A.3d at 910-11; ***see also Commonwealth v. Cruz***, 21 A.3d 1247, 1251-52 (Pa. Super. 2011) (holding that no privacy interest in vehicle can be found where appellant fails to present evidence that he owned vehicle, that it was registered in his name, or that he was using it with the permission of the registered owner). We therefore reverse the portion of the order of court granting Speaks’ motion to suppress in part and remand for further proceedings.

⁴ Indeed, Speaks did not even claim to own the Cadillac. We also note that unlike in ***Perea***, no evidence was offered regarding whether there was a registered owner for the Cadillac.

In light of this disposition, we need not address the Commonwealth's remaining issue.

Order reversed. Case remanded. Jurisdiction relinquished.