

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TERRANCE HALL,	:	
	:	
Appellant	:	No. 460 EDA 2013

Appeal from the Judgment of Sentence January 24, 2013
in the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0008132-2012

BEFORE: BENDER, P.J., OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 17, 2013**

Terrance Hall (Appellant) appeals from the judgment of sentence entered on January 24, 2013, after he was convicted of persons not to possess, use, manufacture, control, sell or transfer firearms.¹ We affirm.

Appellant was arrested and charged with, *inter alia*, the above-mentioned offense. The trial court’s docket does not reflect that Appellant filed a motion to suppress, and no such motion is contained in the certified record. However, a hearing took place on January 2, 2013. At the beginning of the hearing, the trial court allowed Appellant to supplement orally his omnibus pretrial motion to include a motion to suppress. Thereafter, a hearing was held on the motion to suppress, and the court denied the motion from the bench.

¹ 18 Pa.C.S. § 6105(a)(1).

* Retired Senior Judge assigned to the Superior Court.

As the trial court explained:

On January 24, 2013, [Appellant] stipulated to the facts presented by the Commonwealth and was found guilty of persons not to possess, use, manufacture, control, sell or transfer firearms. A negotiated sentence of three (3) to six (6) years of incarceration was imposed. [Appellant timely] filed a notice of appeal to the Superior Court. Following receipt of the notes of testimony, a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. Rule 1925(b) was ordered. A 1925(b) Statement was filed on March 18, 2013.

Trial Court Opinion, 4/30/2013.

In his brief to this Court, Appellant asks us to consider one question, namely, "Did the lower court err in denying [A]ppellant's motion to suppress physical evidence where the police stopped [A]ppellant without reasonable suspicion on the basis of a radio call, which contained a description [A]ppellant only partially fit, and without corroboration?" Appellant's Brief at 3.

The only witness to testify during the suppression hearing was Philadelphia Police Officer David Palma. Officer Palma testified that, at approximately 12:47 a.m., he was working with Officer Walman when they were informed that an armed robbery had occurred at a Dunkin' Donuts on "Broad and Allegheny." N.T., 1/2/2013, at 7. Officer Palma stated, "We received information through other officers that the male wanted for that robbery was a black male, thin, tall, medium complexion, in his 20s wearing a gray hooded-sweatshirt and black pants." *Id.* When the prosecutor asked the officer whether he knew when the robbery took place, the officer

answered, "I do not know, Your Honor. It was probably 12:30ish somewhere around there." *Id.* at 7-8. At that time, Appellant's counsel objected to the officer "testifying to something he doesn't know." *Id.* at 8. The court sustained the objection.

According to Officer Palma, the officers were traveling on the 1600 block of West Lehigh Avenue when they observed Appellant walking westbound on that avenue. Officer Palma testified that this block is less than a mile from the Dunkin' Donuts. The officer estimated that they were six or seven blocks from the Dunkin' Donuts at that time.² He stated that the officers observed Appellant ten minutes after receiving the flash information regarding the description of the suspect in the armed robbery.

The following exchange then took place between the prosecutor and Officer Palma.

[Prosecutor:] And, Officer, can you please describe what brought you into contact with [Appellant]?

[Officer Palma:] Your Honor, I observed [Appellant] walking westbound on 1600 Lehigh Avenue. [Appellant] fit almost the exact description I provided. The only part of the description that was up to debate was whether or not he was tall, depending on what your definition of that is, or the complainant's definition of that.

[Prosecutor:] I'm sorry to interrupt you. When you say fit the exact description, was he wearing the clothing described?

² On cross-examination, Officer Palma estimated that the officers observed Appellant "roughly" three-quarters of a mile away from the Dunkin' Donuts. N.T., 1/2/2013, at 21.

[Officer Palma:] [Appellant] was a medium-complected black male. He appeared to be in his 20s. He had a gray hooded-sweatshirt on and black pants.

[Prosecutor:] And also when you observed [Appellant], what, if anything, did you do?

[Officer Palma:] Your Honor, when I observed [Appellant] walking, at some point [Appellant] looked my direction of our vehicle [*sic*]. [Appellant] immediately walked up the front steps of 1613 West Lehigh Avenue. When [Appellant] walked up the steps and approached the top landing, [Appellant] immediately attempted to open the front door of that house.

As I approached [Appellant], I could observe after numerous times he was unsuccessful of [*sic*] trying to open the front door. [Appellant] turned to face my direction and immediately placed both his hands in his front hooded sweatshirt pocket.

I stopped, instructed [Appellant] to remove his hands from his pocket. [Appellant] did so. When he did so, he placed both hands up in the air fully extended. When he placed both hands up in the air, [Appellant] - - when he placed his hands up in the air, it adjusted and moved, it lifted up his sweatshirt that he was wearing. As I continued to approach [Appellant], I observed in his right front center waistline, the black handle of what I believed to be a firearm. I immediately approached [Appellant] and recovered that item which was one silver Bursa .380 caliber semiautomatic firearm with a black grip. That firearm was loaded with seven .380 caliber rounds.

. . . Also, search incident to arrest I recovered from [Appellant's] front underwear area; one plastic bag which contained 20 blue-tinted packets, each containing a white chunky substance, alleged crack cocaine. Later tested by my partner, Officer Waltman, in my presence. It tested positive for cocaine base. . . .

We did radio for officers with the complainant for the Dunkin['] Donuts, and it was a negative ID on [Appellant].

Id. at 9-11.

When the prosecutor asked Officer Palma what he said to Appellant when he first saw him, the officer answered, "I don't recall our exact words to [Appellant], Your Honor. It was, 'Stop,' or somewhere in that area." **Id.** at 11-12. The officer further testified that he and Officer Waltman were in full uniform, that the officers' vehicle was an unmarked police vehicle, and that he did not draw his weapon as he approached Appellant. The prosecutor then asked, "About how many times, Officer, do you recall saying 'Stop' before [Appellant] did stop and turn around and face you?" **Id.** at 12. The officer responded, "If anything, it was only once or twice." **Id.**

On cross-examination, Officer Palma conceded that he did not see anything suspicious when he initially observed Appellant. The officer also testified that Appellant is five feet, six inches in height and has a medium build. After Appellant's counsel questioned Officer Palma regarding what he said as he approached Appellant, counsel asked the officer, "And the only reason for you stopping at that point is because you believe he matched the description, right?" **Id.** at 17. Officer Palma stated, "That's correct." **Id.**

The crux of Appellant's argument to the trial court was that, because Appellant did not sufficiently match the description received by the officers, the officers lacked the requisite suspicion to stop Appellant. Thus, Appellant contended, the court should suppress the evidence seized as a result of the illegal stop. As we noted above, the trial court denied Appellant's motion to

suppress from the bench. In its Pa.R.A.P. 1925(a) opinion, the court concluded that the officers had reasonable suspicion to stop Appellant.

In his brief to this Court, Appellant argues that the trial court erred by denying his motion to suppress. Appellant maintains that he did not match the description of the robbery suspect in material ways. Specifically, the suspect was described as tall and thin, and Appellant is short with a medium build. Appellant asserts that, because he did not sufficiently match the description of the suspect and because the officers sole reason for stopping Appellant was the flash information they received, the court should have granted his motion to suppress.

When reviewing the propriety of a suppression order, an appellate court is required to determine whether the record supports the suppression court's factual findings and whether the inferences and legal conclusions drawn by the suppression court from those findings are appropriate. Where the record supports the factual findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. However, where the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's conclusions of law are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts.

Commonwealth v. Foglia, 979 A.2d 357, 360 (Pa. Super. 2009) (*en banc*)

(citations and quotation marks omitted).

[I]n assessing the lawfulness of citizen/police encounters, a central, threshold issue is whether or not the citizen-subject has been seized. Instances of police questioning involving no seizure or detentive aspect (mere or consensual encounters) need not be supported by any level of suspicion in order to maintain validity. Valid

citizen/police interactions which constitute seizures generally fall within two categories, distinguished according to the degree of restraint upon a citizen's liberty: the investigative detention or **Terry**^[3] stop, which subjects an individual to a stop and a period of detention but is not so coercive as to constitute the functional equivalent of an arrest; and a custodial detention or arrest, the more restrictive form of permissible encounters. To maintain constitutional validity, an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such suspicion; whereas, a custodial detention is legal only if based on probable cause. To guide the crucial inquiry as to whether or not a seizure has been effected, the United States Supreme Court has devised an objective test entailing a determination of whether, in view of all surrounding circumstances, a reasonable person would have believed that he was free to leave. In evaluating the circumstances, the focus is directed toward whether, by means of physical force or show of authority, the citizen-subject's movement has in some way been restrained. In making this determination, courts must apply the totality-of-the-circumstances approach, with no single factor dictating the ultimate conclusion as to whether a seizure has occurred.

Commonwealth v. Lyles, 54 A.3d 76, 79-80 (Pa. Super. 2012) (citations omitted).

Implicit in the trial court's opinion is its conclusion that, before observing the gun in Appellant's waistband, the officers subjected Appellant to an investigative detention. The parties do not dispute this legal conclusion.

³ **Terry v. Ohio**, 382 U.S. 1 (1968).

The record establishes that, prior to observing the gun in Appellant's waistband, the officers approached Appellant, first in their vehicle and then on foot, and subsequently ordered him to stop. At that point, a reasonable person would not have believed he or she was free to leave. However, in approaching and stopping Appellant, the officers did not detain Appellant in such a manner as to constitute the functional equivalent of an arrest. For these reasons, we find no error in the trial court's conclusion that the officers subjected Appellant to an investigative detention. Consequently, we must determine whether that detention was supported by reasonable suspicion.

In [**Terry**], the United States Supreme Court held that a police officer may approach or briefly detain a citizen, without probable cause, for investigatory purposes. The officer need not personally observe suspicious conduct leading to the reasonable belief needed for a **Terry** stop; rather, he may rely upon information received over the police radio to justify the stop. Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. The officer must also be able to point to specific and articulable facts which in conjunction with rational inferences deriving therefrom warrant the initial stop.

A major factor in justifying a **Terry** stop, when the suspicious conduct has not been personally observed by the officer, is the specificity of the description of the suspect. [T]he factors that must be considered in justifying an investigatory stop and subsequent frisk include the specificity of the description of the suspect in conjunction with how well the suspect fits the given description, the proximity of the crime to the sighting of the suspect, the time and place of the confrontation, and the nature of the offense reported to have been committed.

Commonwealth v. Jackson, 678 A.2d 798, 800-01 (Pa. Super. 1996)

(citations and quotation marks omitted).

Here, other officers described the suspect to Officers Palma and Waltman as “a black male, thin, tall, medium complexion, in his 20s wearing a gray hooded-sweatshirt and black jeans.” N.T., 1/2/2013, at 7. Such a description is fairly specific. Moreover, while Appellant may not have fit this description perfectly, the evidence of record indicates that Appellant is a black male with a medium complexion, that he appeared to be in his twenties, and that he was wearing a gray hooded sweatshirt and black pants.

The only manner in which Appellant arguably did not fit the description provided to the officers is that the suspect was described as tall and thin, whereas Appellant is five foot, six inches in height and has a medium build. However, as both Officer Palma and the trial court suggested, whether Appellant meets the description of “tall and thin” turns on the perspective of the person viewing him. One person may see Appellant as tall and thin, while the next person may not view him this way. Thus, this arguable discrepancy between Appellant and the robbery suspect does not, in and of itself, warrant a conclusion that the officers illegally detained Appellant. Indeed, we conclude that the record supports a finding that Appellant sufficiently fit the fairly detailed description of the suspect.

We further note that the officers observed Appellant approximately three-quarters of a mile from the Dunkin’ Donuts. The confrontation between Appellant and the officers took place in the 1600 block of West

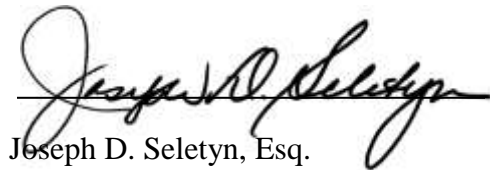
Lehigh Avenue in Philadelphia at approximately 12:47 a.m. Lastly, the offense the suspect allegedly committed was armed robbery.

We conclude that the officers justifiably relied upon the information they received from other officers and that Officer Palma was able to point to specific and articulable facts that support the officers' detention of Appellant. In short, Officers Palma and Waltman observed Appellant in the early morning hours of April 30, 2012, and Appellant sufficiently matched a fairly specific description of an armed robbery suspect, a robbery that took place less than a mile from where the officers observed Appellant.

We can find no error in the trial court's conclusion that the officers' investigative detention of Appellant was supported by reasonable suspicion. We, thus, conclude that the court did not err by denying Appellant's motion to suppress.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/17/2013