NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. DANIEL SEGURA Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 76 EDA 2012

Appeal from the Judgment of Sentence December 6, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0001247-2011

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.: Filed: March 15, 2013

Appellant, Daniel Segura, appeals from the December 6, 2011 judgment of sentence of two to four years' imprisonment imposed after he was found guilty of possession with the intent to deliver a controlled substance (PWID), and conspiracy.[1] After careful review, we affirm.

The relevant facts and procedural history, as gleaned from the certified record, are as follows. On November 22, 2010, several Philadelphia police officers set up surveillance of 5049 F Street, in Philadelphia, based on a tip from a confidential informant that a large amount of heroin was going to be

---

* Former Justice specially assigned to the Superior Court.

[1] 35 Pa.C.S.A. § 780-113(a)(30) and 18 Pa.C.S.A. § 903, respectively.

delivered.[2] Specifically, the confidential informant provided information that a delivery was to occur in the area of Whitaker and Ruscomb Streets, the car making the delivery was a gold Aurora, and the individual driving would be a Hispanic male, balding, of average height, weight, and age. Approximately 45 minutes after the officers set up the surveillance, they observed that "a gold vehicle arrived and parked on Whitaker just south of Ruscomb [Street]." N.T., 5/31/11, at 10. The vehicle was occupied solely by Appellant. Officer Michael Spicer, one of the officers present during the surveillance, testified to the following events which occurred after the vehicle was observed.

> The vehicle pulled up, sat there for a couple of minutes. [Appellant] exited the vehicle. He sat outside the vehicle. He walked around. He came back to the car. He then returned, sat back inside the vehicle with no activity. He was just sitting in the car, Your Honor.
>
> After probably about 20 minutes in total the vehicle got on the move. The vehicle was followed around the area basically in a circle. …
>
> … [Appellant] parked his car on Jericho just east of F Street.

---

[2] At oral argument, it was brought to this Court's attention that at least one of the officers who was a part of the search challenged by Appellant was the subject of a recent investigation. It was also noted that the Philadelphia District Attorney has withdrawn charges in pending cases involving the officer's narcotics squad. Nevertheless, because those issues were not discussed in either party's brief, and are not germane to the resolution of this appeal, we do not address them here.

> He got out of the vehicle. He walked around the area. He actually walked northbound at first. I did have officers as well as myself. I was in a vehicle, but I was also moving – I was in and out of the car on foot. There were several other officers in vehicles and on foot as well.
>
> ...
>
> He started to walk up the [steps] of 5049, and he looked in the direction of Officer Reynolds, who was walking I would say that's northbound on F Street, in his direction. He then came off the steps. He walked onto Jericho out of my view.

Id. at 10-12.

During the course of the surveillance, Appellant was observed returning to the gold Aurora, opening the door, and placing something in through the driver's side. ***Id.*** at 37-40. Appellant then returned to 5049, at which point he was stopped by the officers and the apartment was secured while a search warrant was obtained. ***Id.*** at 13. Appellant was subsequently arrested, and the gold Aurora was searched. The officers recovered heroin in both the apartment and the vehicle.

On March 1, 2011, Appellant filed a motion to suppress the "search of vehicle and any evidence found therein" on the basis that the police officers failed to obtain a search warrant for the vehicle. Motion to Suppress, 2/24/11, at ¶ 6. On May 31, 2011, a suppression hearing was held. Subsequently, on June 14, 2011, Appellant's motion to suppress was denied.

Thereafter, Appellant proceeded to a bench trial and was found guilty on October 18, 2011.

On December 6, 2011, Appellant was sentenced to two to four years' incarceration. N.T., 12/6/11, at 26. No post-sentence motions were filed. On December 16, 2011, Appellant filed a timely notice of appeal.[3]

On appeal, Appellant raises the following issue for our review.

> I. Is it a violation of the Pennsylvania Constitution and, consequently, reversible error when a suppression judge upholds a warrantless vehicle search without exigent circumstances being present?

Appellant's Brief at 1.

Our standard of review regarding the denial of a suppression motion is well settled.

> Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse

---

[3] In the instant matter, Appellant's judgment of sentence was imposed by the Honorable Roger F. Gordon. As Judge Gordon is no longer sitting as a Judge in Philadelphia County, the certified record in this matter was forwarded to this Court without an opinion pursuant to Pa.R.A.P. 1925(a).

> only if the court's legal conclusions are erroneous. Where … the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review.

Commonwealth v. Jones, 988 A.2d 649, 654 (Pa. 2010) (citations and quotations omitted), *cert. denied*, ***Jones v. Pennsylvania***, 131 S. Ct. 110 (2010).

"The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures, thereby ensuring the right of each individual to be let alone." ***Commonwealth v. Barber***, 889 A.2d 587, 592 (Pa. Super. 2005) (citation omitted).

> A search within the meaning of the Fourth Amendment occurs when an expectation of privacy that society is prepared to consider as reasonable is infringed. Under state constitutional principles, we employ the same two-part test used by the United States Supreme Court to determine the extent of Fourth Amendment protection, that is, we first decide whether a person has established a subjective expectation of privacy in the place searched, and then determine whether the expectation is one that society is prepared to recognize as reasonable and legitimate.

Commonwealth v. English, 839 A.2d 1136, 1139 (Pa. Super. 2003) (citation omitted). "To satisfy the first requirement, the individual must demonstrate that he sought to preserve something as private. To satisfy the

second, the individual's expectation of privacy must be justifiable under the circumstances." ***Commonwealth v. Moore***, 928 A.2d 1092, 1098 (Pa. Super. 2007) (citation omitted).

This Court has held the following in assessing privacy interest in terms of a vehicle search.

> [G]enerally under Pennsylvania law, a defendant charged with a possessory offense has automatic standing to challenge a search. "However, in order to prevail, the defendant, as a preliminary matter, must show that he had a privacy interest in the area searched."
>
> ...
>
> Pennsylvania law makes clear there is no legally cognizable expectation of privacy in a stolen automobile. Additionally, this Court has declined to extend an expectation of privacy to an "abandoned" automobile.
>
> ***Commonwealth v. Jones***, 874 A.2d 108, 118 (Pa. Super. 2005) (internal citations omitted). In ***Jones***, this Court held that the operator of a rental car did not have a privacy interest sufficient to challenge the constitutionality of a search of that rental car when the operator was not an authorized driver and the rental agreement had expired.

Commonwealth v. Burton, 973 A.2d 428, 434-435 (Pa. Super. 2009) (*en banc*). Based on the foregoing, the ***Burton*** Court held the following.

> In the instant case, the vehicle was not owned by Appellant. The vehicle was not registered in Appellant's name. Appellant offered no evidence that he was using the vehicle with the authorization or permission of the registered owner. Appellant offered no evidence to explain his connection to the vehicle or his connection to the registered owner of

> the vehicle. Appellant failed to demonstrate that he had a reasonably cognizable expectation of privacy in a vehicle that he did not own, that was not registered to him, and for which he has not shown authority to operate.

Id. at 436.

Herein, Appellant also failed to demonstrate that he had a reasonable expectation of privacy in the gold Aurora he was driving. The officers ran the license plate and discovered the vehicle was not registered in Appellant's name. N.T., 5/31/11, at 20. Additionally, at the suppression hearing Appellant failed to set forth any evidence to "explain his connection to the vehicle or his connection to the registered owner of the vehicle." ***Burton***, ***supra*** at 436. Absent a showing of a reasonable expectation of privacy in the gold Aurora, we decline to conclude the trial court erred in denying Appellant's motion to suppress. ***See Commonwealth v. Cruz***, 21 A.3d 1247, 1251 (Pa. Super. 2011) (holding an "appellant cannot successfully challenge the search of the vehicle" when he has "presented no evidence that he owned the vehicle, that it was registered in his name, or that he was using it with the permission of the registered owner[]"), *citing* ***Burton***, ***supra*** at 436.

Based on the foregoing, we conclude the trial court did not err in denying Appellant's motion to suppress, and the evidence obtained from the search of the gold Aurora was admissible at trial. Accordingly, we affirm Appellant's December 6, 2011 judgment of sentence.

Judgment of sentence affirmed.