

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

KEVIN BRAY JACKSON,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 962 WDA 2011

Appeal from the Judgment of Sentence May 11, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0010050-2010

BEFORE: STEVENS, P.J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY STEVENS, P.J.

Filed: February 25, 2013

This is an appeal from the judgment of sentence imposed on May 11, 2011, in the Court of Common Pleas of Allegheny County. After a non-jury trial, Appellant was found guilty of one count Persons Not to Possess Firearm¹ and one count Carrying a Firearm without a License². Appellant was sentenced to 48 to 96 months incarceration for Persons Not to Possess Firearm and a concurrent term of 36 to 72 months incarceration for Carrying a Firearm without a License. Appellant contends that the trial court erred in denying his Motion to Suppress Evidence. We affirm.

The facts of this case are as follows:

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S.A § 6105(a)(1).

² 18 Pa.C.S.A. § 6106(A)(1).

This matter arises out of [Appellant's] arrest on April 17, 2010. The Commonwealth presented the testimony of Officer Robert Eastman at the time of the suppression hearing, which was later incorporated into the record at the non-jury trial on May 11, 2011. At the suppression hearing, Officer Eastman testified that on April 17, 2010 he was working for the McKeesport Police Department during the 3:00 p.m. to 11:00 p.m. shift and was patrolling in a marked police vehicle in full uniform. At approximately 11:00 p.m. he received a dispatch, along with other units in the area, that the owner of the Double S Saloon had observed two males in the rear of the bar brandishing firearms. One of the males was described as wearing an M&M style racing jacket with shoulder length hair, carrying a silver firearm. The other male was wearing a red shirt with a dark colored hat with the letter P on it, brandishing a black firearm.

Officer Eastman testified that he was familiar with the location of the Double S Saloon. He described the area in which the bar is located as being heavily involved in narcotics with a "decent amount of assaults in that bar." He also indicated that nearby the police regularly get gun calls and he characterized it has a high crime area. He indicated that his concern was that the men with the guns might be staging a crime and he wanted to determine if they were licensed to carry a weapon. Officer Eastman proceeded to the bar and waited for back up before entering. He described the bar as having two sets of doors and that as he was proceeding into the second door, [Appellant] was exiting the first door to come out of the bar. [Appellant] was wearing a red shirt, black jacket and the black hat with the letter P on it. As a result of the fact that [Appellant] matched the description of the male, Officer Eastman drew his firearm on him, ordered him to the ground and detained him. At that time, another officer did a *Terry* frisk for officer safety and found a revolver in [Appellant's] right jacket pocket.

On cross-examination Officer Eastman acknowledged that there was no information given in the dispatch to suspect that the individuals were or were not licensed to carry a firearm nor was any information give that would cause him to suspect that the individuals were felons or otherwise not authorized to possess a firearm. Officer Eastman also testified that he felt that he had a "right to make sure they had a valid carry permit."

On redirect examination Officer Eastman also testified that the reason that the individuals were ordered to the ground was because of the dispatch for multiple guns and he wanted to make sure that all of the males at the scene were on the ground because the guns were not visible at the time that he encountered people exiting the bar.

Trial Opinion 1/19/2012 at 2-4 (internal citations omitted). At trial, it was stipulated that Appellant did not have a license to carry firearms and that Appellant had previously plead guilty to possession with intent to deliver felonies in October 2004 and April 2005. Because of these felonies, Appellant was prohibited from carrying a firearm.

In his sole issue on appeal, Appellant contends that the trial court erred in denying his Motion to Suppress the gun found on Appellant the night of the incident.

In reviewing a trial court's denial of a motion to suppress physical evidence, this Court must determine whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error. In so doing, we may consider only the evidence of the prosecution 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 record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

Commonwealth v. Williams. 980 A.2d 667, 670 (Pa.Super. 2009)
(internal citations omitted).

Appellant first argues that “the police could not lawfully detain Appellant based on what they observed when they arrived at the Double S Saloon, since they did not see him engage in any suspicious conduct...” Appellant’s Brief at 13. Appellant also argues that even though the concerned caller identified himself as the owner of Double S Saloon, the call should have been treated as an anonymous tip, as the Commonwealth never verified that the caller was who he claimed to be.

We first look at the issue of the caller. We find that because Appellant did not raise this issue at the suppression hearing, the issue is waived. “Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.” *Id.* (quoting Pa.R.A.P. 302(a)).

Even if this issue had not been waived, it would still be meritless. In the instant case, the police received a reliable tip from the owner of the Double S Saloon that Appellant and another individual were “brandishing” firearms inside the bar. The owner also gave officers detailed descriptions of Appellant and the other man, along with descriptions of the two guns. This bar is located in a high-crime neighborhood known for frequent narcotics trafficking and was, itself, known as an establishment that had witnessed a number of assaults on its premises.

Applying a totality of the circumstances test, we decline to hold that a reasonably prudent police officer receiving this dispatch would have done anything different from what was done by the officers in this case. Upon

receiving word that the owner of a nuisance bar in a high crime area called 911 to express genuine concern over men brandishing handguns in the bar, it was reasonable for the officers to approach the bar with guns drawn and immediately secure those men matching suspects' descriptions on suspicion of having placed others in the bar in reasonable fear of imminent harm. To hold otherwise would place our police officers in jeopardy.

We find the trial court did not err in denying Appellant's Motion to Suppress Evidence.

Judgment of sentence affirmed.