

[J-256(B)-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 117 M.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered 11/18/97 at No.
	:	0911HBG95 vacating the Order entered
v.	:	11/22/95, Criminal Division No. 95-1447
	:	and remanding to the Court of Common
	:	Pleas of Cumberland County.
BRETT EUGENE STRICKLER,	:	
	:	
Appellant	:	ARGUED: November 17, 1999
	:	
	:	
	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: August 24, 2000

I respectfully dissent, as I believe that Strickler was being subjected to an illegal detention when he gave the police consent to search his vehicle.

In the instant case, there is no question that Strickler was subjected to an investigative detention when the officer asked for his license and registration and proceeded to run a check on them. When the officer returned Strickler's license and registration and issued him a warning, he no longer had a reasonable suspicion that criminal activity was afoot (i.e., a justification to continue the stop). Nevertheless, the officer proceeded to question Strickler, asking him whether he had anything illegal in his vehicle, and ultimately obtained consent to search the vehicle. In my view, any reasonable individual in Strickler's position would not have felt free to go when the officer turned

around and asked whether he had anything illegal in his vehicle. Thus, I believe that Strickler was indeed subjected to an illegal detention at the time that his consent was obtained.

The majority, however, finds that the officer's investigative detention of Strickler ended at some point, resulting in a mere consensual encounter between the officer and Strickler when Strickler gave his consent to search his vehicle. I disagree. Simply put, I believe that it is unrealistic for all practical purposes to assume that a citizen who is detained by the police at night on the side of a road would reasonably feel free to go on his way while the police continue to ask him questions about possible criminal activity, especially in an instance, such as that presented in the instant case, where the officer conducting the stop does not expressly inform the detainee that he is free to go.¹ See Ohio v. Robinette, 519 U.S. 33, 47 (1996) (Stevens, J., dissenting) (noting his approval of the Ohio Supreme Court's practical observation that most reasonable people would not feel free to walk away while a police officer who has detained them for one reason or another continues to question them). Thus, I respectfully dissent.

¹ With this in mind, I would note my agreement with the proposition set forth by the majority that an express admonition on the part of a detaining officer to the subject of a stop that he is free to go constitutes a potent, objective factor supporting a conclusion that the investigative detention has ceased.