

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
FELIX RODRIGUEZ	:	No. 284 EDA 2023

Appeal from the Order Dated January 20, 2023
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0000542-2022

BEFORE: BOWES, J., STABILE, J., and DUBOW, J.

MEMORANDUM BY STABILE, J.:

FILED JANUARY 23, 2024

The Commonwealth appeals from the January 20, 2023 order entered in the Court of Common Pleas of Philadelphia County, granting in part the suppression motion filed by Appellee, Felix Rodriguez ("Rodriguez").¹ The Commonwealth contends that the suppression court erred in granting the motion because Rodriguez was not in custody, and therefore ***Miranda***² warnings were not required before Rodriguez made statements during a vehicle stop. Upon review, we reverse and remand.

¹ The suppression court denied the motion with respect to a firearm located in plain view on the floorboard in the rear passenger seat of Rodriguez's vehicle. This appeal involves the court's order only insofar as the court granted the motion regarding Rodriguez's statements.

² ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Following a traffic stop on January 11, 2022, Rodriguez was arrested and charged with firearms violations for firearms not to be carried without a license and for carrying firearms on the streets in Philadelphia. 18 Pa.C.S.A. § 6101(a)(1) and § 6101. On January 12, 2023, counsel for Rodriguez made an oral motion to suppress the gun as well as statements made to the arresting officers after discovery of the gun. Rodriguez contended that the statements were a product of a custodial interrogation that occurred in absence of receiving **Miranda** warnings and that “the criminality of the firearm was not formed until Mr. Rodriguez gave his statement.” Notes of Testimony, 1/12/23, at 8.

At the conclusion of the hearing, the court took the matter under advisement, providing both sides the opportunity to file briefs. On January 20, 2023, the court entered its order as follows:

AND NOW, this 20th day of January, 2023, upon consideration of the Motion to Suppress, filed by the attorney for [Rodriguez], it is hereby ORDERED that the motion is GRANTED in respect to the Statements made by [Rodriguez] after the firearm was noticed.

Furthermore, the motion is hereby DENIED in respect to the firearm recovered.

Order, 1/20/23.

The Commonwealth filed a timely appeal pursuant to Pa.R.A.P. 311, certifying that the court’s order would terminate or substantially handicap the prosecution.

The Commonwealth presents one issue for our consideration:

Did the lower court err by suppressing statements that [Rodriguez] made during a traffic stop prior to arrest on the ground that he had not received **Miranda** warnings?

Commonwealth Brief at 3.

In **Commonwealth v. Smith**, 285 A.3d 328 (Pa. Super. 2022), we reiterated:

When reviewing an order granting a defendant's motion to suppress evidence, "we are bound by that court's factual findings to the extent that they are supported by the record, and we consider only the evidence offered by the defendant, as well as any portion of the Commonwealth's evidence which remains uncontradicted, when read in the context of the entire record." **Commonwealth v. Wallace**, 615 Pa. 395, 42 A.3d 1040, 1048 (2012) (citation omitted). "Our review of the legal conclusions which have been drawn from such evidence, however, is *de novo*, and, consequently, we are not bound by the legal conclusions of the lower courts." **Id.** (citation omitted). Moreover, our scope of review from a suppression ruling is limited to the evidentiary record that was created at the suppression hearing. **See In re L.J.**, 622 Pa. 126, 79 A.3d 1073, 1087 (2013).

Id. at 331-32.

In its Rule 1925(a) opinion, the suppression court listed its factual findings. Rule 1925(a) Opinion, 3/23/23, at 4-7, ¶¶1-24. Initially, we find that the suppression court's factual findings, which include references to the suppression hearing conducted on January 12, 2023, are supported by the record. Therefore, we are bound by them. **Smith**, 285 A.3d at 331.³

³ The Commonwealth agrees that "[t]he facts are not in dispute." Commonwealth Brief at 4 (citing Factual Findings in suppression court opinion at 4-7).

As indicated in the court's factual findings, the suppression hearing transcript reflects that at approximately 5:30 p.m. on January 11, 2022, Philadelphia Police Officer Marc Kusowski ("Kusowski") and his partner, Officer Lane ("Lane"), observed a 2010 Mercedes with heavy window tint in one of the city's most prolific precincts for crime. Kusowski testified that he ran the plate, which came back as not being a registered plate. The officers engaged their lights and siren and Rodriguez pulled to the side of the road. Rodriguez complied with the Kusowski's direction to roll down the windows. Once Rodriguez did so, Kusowski used a flashlight to see if there were passengers in the back seat of the car. He determined there were no other passengers but also observed a firearm on the floorboard in the back of the car, on the passenger side of the car. He shared that observation with Lane and also reported the finding over the police radio. Lane responded that he would ask Rodriguez if he had a license/permit to carry the gun. Kusowski admitted that, depending on Rodriguez's answer to the question, Rodriguez would be arrested. Rodriguez admitted he did not have a permit to carry.⁴ Neither officer read Rodriguez ***Miranda*** rights. Rule 1925(a) Opinion, 3/23/23, Factual Findings, at ¶¶ 1-19.

⁴ The transcript reflects that Lane first asked Rodriguez if he was on probation or parole. The transcript does not include a response to that question. Notes of Testimony, 1/12/23, at 33-36.

Lane asked Rodriguez for the car keys, and Rodriguez complied, as Kusowski radioed for extra cars and reported that Rodriguez was being taken into custody because he had a gun and no license to carry. Rodriguez complied with the request to step out of the car and the officers proceeded to arrest him. Kusowski recovered the firearm, a Glock-style gun that was homemade from parts purchased online. The firearm was loaded with 16 live 9-milimeter rounds. ***Id.*** at ¶¶ 20-24.

As noted above, in this appeal the Commonwealth argues that the court erred when it suppressed Rodriguez’s pre-arrest statements based on the lack of ***Miranda*** warnings. We are guided by the following legal precepts:

During a traffic stop, the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions. [I]f there is a legitimate stop for a traffic violation . . . additional suspicion may arise before the initial stop’s purpose has been fulfilled; then, detention may be permissible to investigate the new suspicions.

Commonwealth v. Sloan, 303 A.3d 155, 163 (Pa. Super. 2023) (quoting ***Commonwealth v. Harris***, 176 A.3d 1009, 1020 (Pa. Super. 2017) (quotations and quotation marks omitted)).

In ***Commonwealth v. Ross***, 297 A.3d 787 (Pa. Super. 2023), we acknowledged:

In the context of a traffic stop, the United States Supreme Court held that the duration of police inquiries “is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop and attend to related safety concerns.” [(***Dennys Rodriguez v. United States***, 575 U.S. 348, 354 (2015)).] A stop becomes unlawful when it “lasts longer than is necessary” to

complete its mission, the rationale being that the “authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” **Id.** The Supreme Court elaborated that “the critical question is not whether the [inquiry] occurs before or after the officer issues a ticket, but whether it prolongs—, *i.e.*, adds time to—the stop.” **Id.** at 357; **see also id.** at 355 (“An officer may conduct certain unrelated checks during an otherwise lawful traffic stop. But he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.”)

Id. at 792 (cleaned up) (some internal citations omitted). **See also Commonwealth v. Galloway**, 265 A.3d 810, 815 (Pa. Super. 2021) (discussing (**Dennys**) **Rodriguez** and holding that an officer may use information gathered during an initial vehicle stop to justify a second investigatory detention).

Here, the officers initiated a legitimate traffic stop based on vehicle code violations relating to heavy window tint on a vehicle that was not registered. Upon approaching the car and using a flashlight to determine whether there were additional occupants in the car, a firearm was observed in plain view. Consistent with **Sloan**, **Ross**, and **Galloway**, having observed a firearm in plain view at the beginning of an investigative detention, and the additional suspicion that arose before the stop’s initial purpose was fulfilled, the officers were permitted to investigate the new suspicions related to the firearm.

As this Court recognized in **Sloan**:

The usual traffic stop constitutes an investigative rather than a custodial detention, unless, under the totality of the circumstances, the conditions and duration of the detention become the functional equivalent of arrest. Since an ordinary

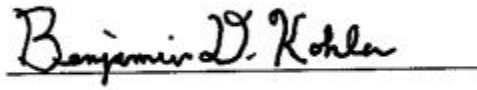
traffic stop is typically brief in duration and occurs in public view, such a stop is not custodial for ***Miranda*** purposes.

Id. at 167 (quoting ***Commonwealth v. Mannion***, 725 A.2d 196, 202 (Pa. Super. 1999) (*en banc*) (citations omitted)). The Court explained, “An ordinary traffic stop becomes ‘custodial’ when the stop involves coercive conditions, including, but not limited to, the suspect being forced into a patrol car and transported from the scene or being physically restrained.” ***Id.*** (quoting ***Mannion***, 725 A.2d at 202) (citation omitted).

Based on the totality of the circumstances here, we cannot say that the traffic stop involved coercive conditions so as to become “custodial” in nature. At the time Rodriguez was briefly questioned in a public area about being on probation/parole and having a gun license/permit, he was not in custody and therefore not entitled to warnings before even being asked to step out of his car. We conclude that the trial court erred in granting Rodriguez’s suppression motion relating to pre-arrest statements. Therefore, we reverse the suppression court’s January 20, 2023 order with respect to those statements, and remand this case for trial.

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/23/2024