

[J-107-98]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 141 M.D. Appeal Docket 1997
	:	
Appellant	:	Appeal from the Order of Superior Court
	:	dated April 10, 1997 at 2338PHL96
	:	vacating the Order dated June 13, 1996 at
v.	:	No. 936 Criminal 1995 and remanding to
	:	the Court of Common Pleas of Monroe
	:	County
BELISARIO POLO,	:	
	:	
Appellee	:	
	:	ARGUED: April 29, 1998

OPINION

MR. JUSTICE ZAPPALA

DECIDED: October 2, 2000

This case presents the issue of whether the Pennsylvania Constitution prohibits the random stopping of a vehicle to conduct a drug interdiction investigation in the absence of reasonable suspicion or probable cause.¹ We conclude that such a stop is unlawful under

¹ We note that Appellee, the defendant below, originally asserted claims under both Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment to the United States Constitution. Our discussion, however, is limited to an analysis under Article I, Section 8. The dissent would hold that Appellee has not preserved his claim under the Pennsylvania Constitution because he failed to file a cross- appeal preserving that claim. However, as the dissent recognizes, Appellee's argument to Superior Court relied upon both the Pennsylvania and the United States constitutions. Dissenting Op. at 1. Upon prevailing in Superior Court there is no requirement that Appellee file a cross-appeal in order to preserve his state constitutional claim. In fact, only an aggrieved party can appeal from an order entered by the lower court. Pa.R.A.P. 501; *In re Elliott's Estate*, 131 A.2d 357, 358 (Pa. 1957); see also *Green by Green v. SEPTA*, 551 A.2d 578, 579 (Pa. Super. 1988) (citations omitted) ("[T]o be 'aggrieved' a party must have been adversely affected by the decision from which the appeal is to be taken. Generally, a prevailing party is not 'aggrieved,' and, therefore, does not have standing to appeal an order which has been entered in his or her favor.")

Article I, Section 8 of the Pennsylvania Constitution. For the following reasons, we affirm Superior Court's order suppressing the evidence obtained during the course of the investigation.

On September 22, 1995, a Greyhound bus on which Appellee was a passenger approached the tollbooth at the Delaware Water Gap interchange while traveling westbound on Interstate 80. Amid the traffic at the tollbooth, Agent Ronald Paret of the Pennsylvania Office of Attorney General and Officer Kirk Schwartz of the Delaware Water Gap Police Department approached the bus and requested that the driver pull to the side of the road after paying the toll. Both officers were wearing attire indicating that they were law enforcement officials. After paying the toll, the bus driver pulled over.

Agent Paret asked the driver if he could see the passengers' tickets. A review revealed one "quick turn" ticket from Cleveland to New York City and back, which indicated that the purchaser spent only about eight hours in New York. Agent Paret then boarded the bus, accompanied by Officer Schwartz. Officer Schwartz secured the bathroom on the bus, which revealed nothing, while Agent Paret approached Appellee, who had the other half of the quick turn ticket. Agent Paret asked Appellee for identification to which Appellee responded that he had none. Agent Paret then asked Appellee if he had any bags. Appellee stated that he did not.

The officers went on to match every bag on the bus with a passenger except for one, which Appellee then claimed as his. Agent Paret and Officer Schwartz then approached Appellee together and asked if they could search the bag. Appellee responded "okay," and Agent Paret located crack cocaine in the bag. Appellee was then arrested.

Appellee filed a motion to suppress the evidence obtained by Officer Schwartz and Agent Paret. The trial court denied the motion finding that the interaction between Appellee

and the officers was a mere encounter which did not require any degree of suspicion on the part of the officers. The court did not address the issue of whether the officers' initial stop of the bus, which was not based upon reasonable suspicion or probable cause, was valid. Following a jury trial, Appellee was convicted of possession of a controlled substance and possession of a controlled substance with intent to deliver.

On appeal, the Superior Court reversed the trial court holding that the officers illegally detained the bus and that Appellee's consent to search his bag was necessarily tainted by the illegal stop of the bus.² Thus, the court concluded that the evidence obtained from the seizure of Appellee and the search of his bag should have been suppressed. The court vacated the judgment of sentence and remanded to the trial court for further proceedings.³ We granted the Commonwealth's petition for allowance of appeal.

Our standard of review, when reviewing a suppression ruling, is to determine whether the record as a whole supports the suppression court's factual findings and whether the legal conclusions drawn from such findings are free of error. Commonwealth v. Zahir, 751 A.2d 1153 (Pa. 2000).

We begin our discussion by noting that Article I, Section 8 of the Pennsylvania Constitution ensures that:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to

² The Superior Court found that the officers' stopping of the bus violated the Fourth Amendment to the United States Constitution. Accordingly, the court did not address the issue pursuant to Article I, Section 8 of our constitution. As noted previously, we limit our discussion to a review under Article I, Section 8.

³ The Superior Court panel's memorandum decision in this case was a plurality opinion. We note, however, that the Superior Court sitting en banc addressed the identical issue in Commonwealth v. Wilmington, 729 A.2d 1160 (Pa. Super. 1999), and held that the stop of a bus to permit police officers to conduct a drug interdiction investigation was illegal in the absence of reasonable suspicion or probable cause to believe that an individual on the bus was transporting narcotics.

search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

In Commonwealth v. Lewis, 636 A.2d 619, 624-5 (Pa. 1994), citing Commonwealth v. Edmunds, 586 A.2d 887, 894-5, we set forth the historical framework of the heightened privacy interest protected by Article I, Section 8. We stated:

"It is both important and necessary that we undertake an independent analysis of the Pennsylvania Constitution each time a provision of that fundamental document is implicated." Therefore, we do not rest our decision solely on federal constitutional grounds, for we hold also that the seizure and search of the Appellants violated Article I, Section 8 of the Pennsylvania Constitution. We emphasize that the state constitutional protections afforded under Article I, Section 8 provide an independent basis for concluding that the seizure and search were invalid. See Michigan v. Long, 463 U.S. 1032, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

We undertook an extensive analysis of the unique history of Article I, Section 8 in Commonwealth v. Edmunds, supra, in which we stated,

The requirement of probable cause in this Commonwealth thus traces its origin to its original Constitution of 1776, drafted by the first convention of delegates chaired by Benjamin Franklin. The primary purpose of the warrant requirement was to abolish "general warrants," which had been used by the British to conduct sweeping searches of residences and businesses, based upon generalized suspicions. Therefore, at the time the Pennsylvania Constitution was drafted in 1776, the issue of searches and seizures unsupported by probable cause was of utmost concern to the constitutional draftsmen.

526 Pa. at 394, 586 A.2d 887, 897 (1991) (Citations omitted). We reiterated our statement in Commonwealth v. Sell, 504 Pa. 46, 65, 470 A.2d 457, 467 (1983), that "the survival of the language now employed in Article I, Section 8 through over 200 years of profound change in other areas demonstrates that the paramount concern for privacy first adopted as part of our organic law in 1776 continues to enjoy the mandate of the people of this Commonwealth."

With this background in mind, we now turn to the matter before us. Traditionally, this Court has recognized three categories of encounters between citizens and the police. These categories include (1) a mere encounter, (2) an investigative detention, and (3) custodial detentions. The first of these, a "mere encounter" (or request for information),

which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an "investigative detention " must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or "custodial detention" must be supported by probable cause. Commonwealth v. Mendenhall, 715 A.2d 1117 (Pa. 1998).

Here, the Commonwealth argues that the stopping of the bus constituted a mere encounter since the bus driver voluntarily pulled the bus over to the side of the road at the officers' request. Thus, the Commonwealth maintains that the stop of the bus did not constitute an illegal detention, as found by the Superior Court, as it was not the unilateral conduct of the police that detained the bus, but rather the bus driver's voluntary decision to cooperate with police.

Conversely, Appellee argues that the stop of the bus constituted an illegal detention since the officers requested the bus driver to pull to the side of the highway, which was not a scheduled stop or depot, without any reasonable articulable facts that criminal activity was afoot.

We agree with Appellee that the stop of the bus constituted an investigative detention since the purpose of the stop, as conceded by the officers, was for the purpose of conducting a drug interdiction investigation. Agent Paret testified that the sole purpose for his and Officer Schwartz's presence at the toll plaza was to conduct such investigation. N.T. March 19, 1996 at 5. The Commonwealth failed to present any evidence indicating that the officers had reasonable suspicion or probable cause to believe that illegal activity was occurring on the bus. Agent Paret failed to offer testimony as to whether the officers had any information to suspect that this bus, or its passengers, was harboring contraband. Moreover, there was no evidence that a suspected motor vehicle code violation was the reason for the stop.

Because the stop of the bus was unsupported by reasonable suspicion or probable cause, we find that the stop constituted an illegal investigative detention. In

Commonwealth v. Swanger, 307 A.2d 875 (Pa. 1973), we rejected the argument that a police officer could stop the driver of an automobile without having observed a violation of the motor vehicle code. We noted that the stopping of a vehicle and the detention of its passengers constituted a seizure implicating the constitutional prohibition against unreasonable searches and seizures. We stated:

before the government may single out one automobile to stop, there must be specific facts justifying this intrusion. To hold otherwise would be to give the police absolute, unreviewable discretion and authority to intrude into an individual's life for no cause whatsoever.

Swanger, 307 A.2d at 878.

Where, as here, there was no indication of criminal activity or a motor vehicle code violation, there is absolutely no justification for the intrusion. We decline to adopt the arguments offered by the Commonwealth that under the facts of this case no reasonable suspicion or probable cause was required before the officers approached the bus.

We must be mindful not to disregard our constitutionally guaranteed right of privacy encompassed within Article I, Section 8 in our zeal to eliminate criminal conduct. In discussing the Superior Court's adoption of an "end justifies the means" analysis in Commonwealth v. Rodriguez, 614 A.2d 1378 (Pa. 1992), we noted in Commonwealth v. Matos, 672 A.2d 769 (Pa. 1996), that:

Less than three years ago, this Court, in Commonwealth v. Rodriguez, rejected the contention that the goal of curtailing the drug trade permits the expansion of police intrusion without the constitutional justification of reasonable suspicion or probable cause:

We emphatically reject the Superior Court's "end justifies the means" analysis. By focusing its attention only upon the serious ills inflicted upon society by illegal narcotics, the Superior Court failed to recognize and respond to necessary constitutional constraints on excessive police conduct. The seriousness of criminal activity under investigation, whether it is the sale of drugs or the commission of a violent crime, can never be used as justification for ignoring or abandoning the constitutional right of every individual in this Commonwealth to be free from intrusions upon his or her personal liberty absent probable cause.

Matos, 672 A.2d at 775-6.

Based on the foregoing, we affirm the order of the Superior Court.

Mr. Justice Saylor files a concurring and dissenting opinion in which Mr. Justice Castille joins.

Madame Justice Newman files a dissenting opinion.