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604 EDA 2018

IN THE SUPERIOR COURT OF PENNSYLVANIA

EASTERN DISTRICT

NO. 604 EDA 2018

COMMONWEALTH OF PENNSYLVANIA,

APPELLEE

V.

DONTAY HILTON,

APPELLANT

REPLY BRIEF FOR APPELLANT

APPEAL FROM THE DENIAL OF APPELLANT'S MOTION TO SUPPRESS IN THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY, ORDER ENTERED ON NOVEMBER 22, 2017, AT NO. CP-51-CR-0004357-2017.

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February 25, 2019

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Appellant Dontay Hilton, through counsel, respectfully submits this reply brief in further support of his appeal. In this reply, Mr. Hilton responds to the argument made by the Commonwealth in its brief for Appellee. In all other respects, Mr. Hilton relies on the arguments set forth in his principal brief.

THIS COURT SHOULD PLACE MINIMAL – IF ANY – WEIGHT ON APPELLANT'S PRIOR ARRESTS.

Appellee cited to numerous cases in support of its contention that Appellant's prior arrests were relevant considerations in assessing whether or not Officer Fischbach had reasonable suspicion to detain Appellant and subsequently to search Appellant's vehicle. But a closer look at the cases upon which Appellee relies illustrates just how tenuous Appellee's argument is.

In Commonwealth v. Freeman, 150 A.3d 32 (Pa. Super. 2016), this Court reviewed a trial court's handling of a motion to suppress. In Freeman, state troopers stopped the appellant on the freeway based on traffic violations. Id. at 33. This Court quoted the lower court's recitation of the factors relied upon by the investigating state trooper in support of his search of the appellant's vehicle. Id. at 33-34. Among other factors, both courts noted that the appellant had a decade-old "arrest for a weapon". Id. at 33. That arrest was not referred to again by this Court in its analysis

other than the fact that the appellant lied to the trooper and stated that his only prior contact with law enforcement was for a drunk-driving arrest. Id. at 38. This Court did not note any significance of the arrest itself in its analysis. And perhaps most notably, after the troopers undertook a thorough investigation of the appellant and his vehicle, the troopers then sought and received a search warrant. Id. at 34.

Instantly, Officer Fischbach did not seek out a warrant, as the troopers did in Freeman. And this Court appeared to place little – if any – weight on the prior arrest in Freeman. And little – if any – weight is due in the instant matter.

Appellee next cites to our Supreme Court's decision in Commonwealth v. Grahame, 7 A.3d 810 (Pa. 2010). There, the appellant, Lekeyia Grahame, had been inside of a home at the time that a juvenile sold drugs from that home. Id. at 811-12. When officers converged on the home and found the appellant inside, the officers noticed a purse at her feet. Id. Based on the debunked view that "guns follow drugs", the officers conducted a Terry search of the appellant's purse, wherein they found a controlled substance and paraphernalia. Id. at 812. Though our Supreme Court spent the bulk its time taking down the "guns follow drugs" myth in reaching its conclusion that the search of the appellant's purse was

unlawful, Appellee in the instant matter latched onto the following statement: “No one from the task force knew if [the a]ppellant had a criminal record, and there was no indication that [the juvenile] and [the a]ppellant were involved in a common enterprise.” Id. at 817. No where within the majority’s opinion did the Supreme Court indicate that a prior arrest is of any particular relevance in assessing reasonable suspicion.[1]

In U.S. v. Green, 897 F.3d 173 (3d Cir. 2018), the Third Circuit revisited its own jurisprudence on the relevance of prior arrests to assessing reasonable suspicion. The facts presented in Green are atypical, in that the relevant investigation involved three wholly separate traffic stops, of which only two involved the appellant, Warren Green. Id. at 175-77. Of relevance, though, upon stopping the appellant’s vehicle for a traffic infraction, the investigating officer noted that the appellant had “multiple prior arrests for drug and weapons offenses[.]” Id. at 176. But that investigating officer had stopped the appellant for the sole purpose of investigating him for drug trafficking. Id. at 182. The Third Circuit stressed the misleading statements made by the appellant and the smell of

[1] Interestingly, the Appellee argues elsewhere in its brief that “this Court has recognized that whether an area is known for drug dealing is a relevant factor in determining threats to officer safety.” Brief for Appellee, p. 13. But the Supreme Court in Grahame made clear that we have repeatedly declined to lessen the restrictions on protective searches despite claims that drug investigations often unearth weapons.” Id. at 817.

marijuana emanating from the vehicle at an earlier traffic stop as factors supporting the investigation for drugs. Id. at 185-87. The court only briefly mentioned the relevance of the appellant's prior record. Id. at 187. And in so doing, the court stated: "Particularly given the other factors already discussed, [the investigating officer] was amply justified in considering Green's drug arrests in assessing reasonable suspicion of drug trafficking[.]" Id. Much like this Court in Freeman, the Third Circuit placed minimal value on the prior arrests.

Appellee in the instant matter again cites to the Third Circuit in U.S. v. Conley, 4 F.3d 1200 (3d Cir. 1993). That matter provides no support for Appellee's claims. There, law enforcement was investigating illegal gambling in the form of poker machines. The primary investigator, in his affidavit of probable cause in support of a search warrant, indicated that he had previously been involved in an investigation of the appellant for the same allegations and that case resulted in a conviction. Id. at 1203-04. It is not relevant or helpful to the analysis in the instant matter to compare Officer Fischbach's investigation with that of an officer who had previously investigated the suspect for the same conduct and knew that the prior investigation resulted in a conviction.

The fact that Officer Fischbach knew Appellant had "multiple firearm-related arrests" from an undermined time frame with undetermined results is of inconsequential value to the instant analysis. Officer Fischbach stopped Appellant for traffic violations and saw Appellant make a movement. And Appellant appeared nervous when the officer approached. In a modern life of phones, gadgets and key fobs, surely all motorist move a bit when stopped by police or even just by a traffic light. And being nervous at a traffic stop is expected. And that is all that the Commonwealth was able to prove. It was not enough. The contraband should have been suppressed.

IX. CONCLUSION

Appellant respectfully requests this Court to vacate his judgments of sentence, order that the contraband in this matter be suppressed and remand for further proceedings.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

The undersigned certified that the foregoing Brief for Appellant complies with the Rules of Appellate procedure because it contains 1,260 words.

PROOF OF SERVICE

I certify that a true and correct copy of the attached Brief has been served on the 25th day of February, 2019, by electronic service on the following individuals:

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