

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 00-11,108

VS :

MUHAMMAD CANNON :

OPINION

Before the Court is Defendant's Motion to Suppress Evidence from the stop and investigation of the Defendant on June 14, 2000. On that date at 3:20 p.m., the Williamsport Police Department received a call that a robbery had occurred at Petro's Jewelry Store on Basin Street in Williamsport. Witnesses at the scene reported that the robber was armed and wore a hockey mask. A witness observing the masked robber exit the store saw exposed skin on the back of the robber's neck was white. Witness observed the robber get into a black Neon, and observed that the driver of the Neon was a black male. One of the witnesses observed and reported the registration numbers from the license plate of the black Neon. Witnesses described the vehicle as heading west bound on East Fourth Street. At 3:35 p.m., one of the officers found a black Neon parked in a parking lot northwest of the scene of the robbery. Officers confirmed that the registration matched the vehicle involved in the robbery. Officers were additionally able to see the hockey mask through the passenger door window.

Officers converged at the scene where the vehicle was found. All units were told to be looking for a white male travelling with a black male. At 3:38 p.m., Officer Bachman, of the Williamsport Bureau of Police, positioned his marked patrol unit on Penn Street, a short distance from the location that the vehicle was found. Bachman testified that within 3 to 5 minutes, he saw a white male and a black male cross the

street from the direction of the parking lot where the vehicle was found. The black male held a basketball, and the white male held a paper plate with a slice of pizza. Bachman testified that the two conversed for a few moments, and then began to play basketball.¹ Bachman relayed this information by radio to senior officers at the scene.

Officer Hugh McGee was directed by the Assistant Chief to stop and detain the white and black male. Officer McGee testified that he initiated contact with the Defendant. He testified that he immediately did a frisk search for officer safety. When he reached the Defendant's rear pant pocket, he felt a metal object. He testified that upon manipulating the object with his fingertips, he could feel that the object was a circle, approximately 3 – 4 inches in diameter. He testified that he could not tell what the object was, so he pulled it out. The object was an oversized key ring. On the ring was the key to the black Neon.

Defendant first argues that the police did not have reasonable suspicion to stop the Defendant for questioning. Under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, (1968), a police officer may temporarily detain a person if he observes unusual conduct which leads him to reasonably conclude, in light of his experience, that criminal activity may be afoot. The police officer need not personally observe the illegal or suspicious conduct which leads him or her to believe that criminal activity is afoot. Commonwealth v. Jackson, 359 Pa.Super. 433, 519 A.2d 427 (1986). Under such circumstances, the court must consider “the specificity of the description of the suspect in conjunction with how well the suspect fits the given description, the proximity of the

¹ The area where the two males were playing basketball was approximately 40 – 50 yards from the location the vehicle was found.

crime to the sighting of the suspect, the time and place of the confrontation, and the nature of the offense reported to have been committed.” Jackson, at 438, 519 A.2d 430.

Instantly, when viewing these factors under the totality of the circumstances presented in this case, the Court finds that Officer McGee had sufficiently reliable information to justify the stop of the Defendant in this case. Several witnesses at the scene of the armed robbery gave consistent descriptions of a white male, wearing a hockey mask, fleeing the scene of the robbery in a black Neon, driven by a black male. Additionally, one witness was able to report the registration numbers of the Neon. Officers were able to locate the Neon. The registration numbers match those reported by witnesses at the scene of the robbery, and officers were able to clearly see the hockey mask described by witnesses at the scene. Within minutes of finding the vehicle, and within 20 minutes of the report of the robbery, the Defendant and a white male were observed a short distance from the location of the Neon. The Court finds these circumstances sufficient to have established reasonable suspicion that criminal activity was afoot.

Having legally stopped the Defendant for investigation, the Court finds that Officer McGee was justified in performing an immediate pat-down search for his protection. See Commonwealth v. Caspers, 340 Pa.Super. 136, 489 A.2d 879 (1985) (search justified when suspect is reported to possess or has used a weapon). The last question before the Court, therefore, is whether Officer McGee exceeded the scope of a permissible pat-down search when he retrieved the key chain from the Defendant’s rear pocket. “The scope of a *Terry* search is very limited since its sole justification ‘is the protection of the police officer and others nearby,. . . it must therefore be confined in

scope to an intrusion reasonable designed to discover guns, knives, clubs, or other hidden instruments for the assault of a police officer.’ “ In the Interest of S.D., Appeal of S.D., 429 Pa.Super. 576, 633 A.2d 172 (1993), *citing* Commonwealth v. Canning, 402 Pa.Super. 438, 587 A.2d 330 (1991).

A more intrusive search of a suspect’s person following a protective pat-down search would only be justified where of officer reasonably believed he had felt what appeared to be a weapon. In the Interest of S.D., *supra.*, *citing* In the Interest of Dixon, 356 Pa.Super. 105 514 A.2d 165 (1986)(scope of search exceeded where there was no evidence officer reasonable believed suspect was armed and dangerous and where heart-shaped charm discovered during search could not reasonably be mistaken for a weapon.) Additionally, under the “plain feel” exception, objects may also be searched if their contour and mass make it immediately apparent to the officer that the object is contraband. Commonwealth v. Johnson, 429 Pa.Super. 158, 631 A.2d 1335 (1993).

Instantly, the Court is not convinced that Officer McGee reasonably believed that the 3 – 4 inch circular key ring in the Defendant’s pocket was a weapon or contraband. The Officer could not state that he felt that the ring felt like a weapon, he in fact testified that he was not sure what the item was, so he lifted it out of the Defendant’s pocket to see what it was. Under these circumstances, where there was no testimony that it was immediately apparent that the item was a weapon or contraband, the Court would find that the scope of the Terry frisk was exceeded, and that the key ring and attached keys should be suppressed.

ORDER

AND NOW, this ____day of December, 2000, upon consideration of Defendant's Motion to Suppress Evidence, it is ORDERED and DIRECTED as follows:

1. The Court finds that there was reasonable suspicion to stop and investigate the Defendant.
2. The Court finds that Officer McGee exceeded the scope of a Terry search by reaching into the Defendant's pocket since he testified that he was unable to determine whether the circular object felt like a weapon or contraband. It is ORDERED and DIRECTED that the key ring and any attached keys are suppressed.

By The Court,

Nancy L. Butts, Judge

cc: CA
DA
E.J. Rymza, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire