

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 01-12,007

VS :

ANTHONY CURTIS NIXON :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress Evidence obtained from his person following a stop of the Defendant after a drug transaction on August 23, 2001. The following is a summary of the evidence presented at the hearing on the motion. Officer Dustin Kreitz of the Williamsport Bureau of Police Narcotics Unit testified that on August 23, 2001, he was at the residence of a confidential informant who resided at the corner of Mulberry and 7th Streets. (N.T. 2/26/02, p. 3) At approximately 5:15 p.m., they received a call from an individual known as "G". They were informed at that time that "G" would be ready to deal in fifteen to twenty minutes. (Id., p. 4)

A short time later, they received a second phone call that "G" was in front of the residence. Officer Kreitz testified "[o]riginally the deal was supposed to happen at Joey's, the bar that's down the street at Washington Boulevard. This kind of threw us off that he was sitting out front in the car and I immediately activated the body wire that was on the confidential informant, radioed to the other units, to the arrest team and Corporal Ungard to change locations that he was now down at my location."(Id., p. 4) At that time, Officer Kreitz looked out the window of the residence, and saw a four-door gold sedan. He identified the driver as a black male, and did not see any other occupants in the vehicle at that time.

The confidential informant left the residence, and entered the rear seat of the gold sedan. At that time, the vehicle proceeded west on 7th Street. Officer Kreitz lost sight of the vehicle as it turned northbound on State Street. (Id., p. 6) Concerned that the other officers had not had time to respond to the location, Officer Kreitz departed the residence to follow in his vehicle. He testified that as he departed the residence, the informant appeared back in the intersection and gave him the signal that the deal had been completed, and that he had cocaine in his possession. (Ibid.) At that point, Officer Kreitz entered his vehicle, and proceeded north on Mulberry Street, in an attempt to intersect the gold sedan. Moments later, he received Officer Ungard's radio transmission that he was behind the suspect's vehicle at the intersection of State Street and Washington Boulevard.¹ (Id., p. 8)

Corporal Thomas Ungard testified that when he received the information that there had been a change in plan, and that the vehicle was in front of the residence, he proceeded north on Mulberry. From there he saw the vehicle, a gold Mercury Sable, turn onto 7th Street. He testified that he was traveling west onto Ross as the vehicle passed heading east. He testified that his "eyes made direct contact with [the defendant's] and I felt that he recognized me. I was a little innerved at that point in time he made direct eye contact with me and then spoke to the driver of the car. I got out of the area and looked in my rearview mirror saw them make the left-hand turn or west turn onto 7th Street and I proceeded to the area of Washington Boulevard where I could see down State Street." (Id., p. 47) Officer Ungard immediately radioed a description of

¹ The intersection of Washington Boulevard and State Street is approximately one block from the intersection where the informant was let out of the vehicle after the transaction.

the vehicle and the occupants.² He described the passenger of the vehicle as a young black male in a white t-shirt.

Officer Kreitz saw the suspect vehicle when it turned north on Mulberry Street. (Id., p. 9) Officer Kreitz identified the driver of the vehicle, and observed another individual in the passenger seat. He attempted to pull in behind the vehicle, but was unable to do so in the heavy traffic. He lost sight of the vehicle when it turned east onto Brandon Place. By the time Officer Kreitz arrived at the intersection of Brandon Place and Elizabeth Street, the sedan had been stopped, and the driver had been taken out of the vehicle. (Id., p. 10) Officer Ungard informed Officer Kreitz that they had only the driver of the vehicle in custody. Officer Kreitz learned that the second individual in the vehicle was wearing a white t-shirt. (Ibid.)

Officer Kreitz turned around, and backtracked the path of the sedan. Within one minute, he observed a young black male wearing a white t-shirt with "like a black sweatshirt over his head, over his face attempting to conceal his identity." (Id., p. 10) This was on the north side of Washington Boulevard between State Street and Mulberry Street. Officer Kreitz pulled up next to him, exited his vehicle, informed the individual that he was a police officer, and requested that he stop. (Id., p. 11) When the individual did not respond after a second request to stop, Officer Kreitz testified that he "got nervous and at that time I tackled him, knocked him down on the ground."(Id., p. 12) Officer Kreitz explained to the individual that a drug deal had just occurred, and that he met the description of the suspect.

² The officers later discovered that some of their radio transmissions were not transmitted due to technical problems.

Officer William B. Lynn was called to stay with the individual, as Officer Kreitz picked up the confidential informant and transported him to the location.³ The informant identified the individual as the suspect. (Id., p. 22) Officer Lynn testified that after Officer Kreitz left the scene to get the confidential informant, he did a pat down of the Defendant before putting him in the police cruiser. During the pat down, he felt a large quantity of money in the Defendant's front right pant's pocket.⁴ The money was removed before the Defendant was placed in the vehicle. (Id., p. 39)

Defendant argues that the police did not have probable cause to warrant a stop of 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 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 Kreitz had sufficiently reliable information to justify the stop of the Defendant in this case. He knew that the passenger he saw in the vehicle that had been involved in a drug transaction was not in the vehicle

³ The confidential informant released 3 ounces of cocaine to Officer Kreitz at that time.

⁴ This was later identified as the \$3300.00 in prerecorded funds given to the confidential informant for the purchase of the cocaine.

at the time it was stopped. He knew that the passenger wore a white t-shirt. Approximately one minute later, he observed the Defendant, wearing a white t-shirt, approximately one block from the stop. The Defendant had a black sweatshirt over his head in an apparent attempt to hide from identification. The Court finds these circumstances sufficient to have established reasonable suspicion that criminal activity was afoot, justifying the detention of the Defendant until he could be identified by the informant. The Court therefore denies Defendant's Motion to Suppress the evidence found as a result of the stop.

ORDER

AND NOW, this ____ day of May, 2002, upon consideration of Defendant's Motion to Suppress Evidence, it is ORDERED and DIRECTED that the Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
DA
William Miele, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire