

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1871-2006
 :
 JOVAN WILLIAMSON, : CRIMINAL ACTION - LAW
 :
 Defendant :
 : Motion to Suppress Evidence

DATE: May 30, 2007

OPINION and ORDER

Before the court for determination is the Motion to Suppress Evidence filed by Defendant Jovan Williamson on March 2, 2007. Williamson contends that the evidence seized from his person must be suppressed as the result of an illegal search. The Motion to Suppress will be granted because the search of Williamson's person conducted incident to arrest was not valid since the police lacked probable cause to arrest Williamson.

I. BACKGROUND

A. Facts

1. Officer Bolt's Observations

On October 4, 2006, at around 11:00 p.m., Officer Bolt, of the Williamsport Bureau of Police, was on routine patrol. He was dressed in full uniform and operating his marked police cruiser. As Officer Bolt drove through the 300 block of Mulberry Street in the city of Williamsport, Pennsylvania, he saw a green Pontiac pull into a parking lot and park in the stall farthest away from the street. Williamson was driving the green Pontiac. After he parked it, Williamson exited the green Pontiac and crossed Mulberry Street. He was heading towards the

apartment building located at 325 Mulberry Street. Despite the chill in the air, Williamson was dressed only in a white muscle shirt and pants.

It was at 325 Mulberry that Officer Bolt saw Albert Miller. Miller was sitting on the stoop outside of 325 Mulberry. Officer Bolt was familiar with Miller from prior contact with him and from seeing him on the Bureau's "hot sheets." The "hot sheets" are briefs that supply officers with information regarding current cases and recent events. Officer Bolt was aware that Miller was an avid drug user. Officer Bolt was also aware that 325 Mulberry was a location where drug related activity was known to have occurred.

Officer Bolt decided to position his cruiser north of 325 Mulberry so that he could observe Williamson and Miller. Officer Bolt took up a position that was approximately thirty to forty yards away from 325 Mulberry. Officer Bolt observed Williamson met Miller at the stoop of 325 Mulberry, and the two began to converse. At some point, Williamson caught sight of Officer Bolt and the cruiser. After this, Williamson took a half step away from Miller, but continued to talk with him. Throughout the course of the conversation, Williamson would look over his shoulder at Officer Bolt then reengage Miller in conversation.

After about ten minutes, Officer Bolt observed Williamson rubbing his arms as if he were cold. Then, two females appeared walking down Mulberry Street in the direction of 325 Mulberry. They were on the opposite side of the street. The two females crossed when they were near 325 Mulberry, as if they were intending to make contact with either Williamson or Miller. The two females had gotten to within five to ten feet of Williamson when he saw them approaching, looked at Officer Bolt in the marked cruiser, and then made a motion with his hand toward the two

females. According to Officer Bolt, Williamson held his hand with the palm facing down and motioned with his fingers in a flicking motion. After Williamson made the hand gesture, the two females continued walking on Mulberry Street away from Williamson.

Once the two females had gotten a distance away from Williamson, he shouted to them and they stopped. Williamson walked over to them and briefly spoke with them. Officer Bolt could not hear what they were saying because of the distance; he also did not observe Williamson exchange anything with the two females. After his conversation with the two females, Williamson returned to the stoop of 325 Mulberry and continued to talk to Miller.

Based upon his observations and his knowledge of 325 Mulberry, Officer Bolt suspected that Williamson had just engaged in a drug transaction with the two females and intended to engage in one with Miller. To investigate his suspicion, Officer Bolt intended to make contact with Williamson. Before he would attempt this, Officer Bolt called for back-up to support him.

2. The Investigation

Three officers from the Williamsport Bureau of Police responded to Officer Bolt's request for back-up. Officer Magee and Officer Snyder were on routine patrol in full uniform in a marked cruiser when they responded. Similarly, Officer Miller was in full uniform and in a marked cruiser when he responded.

Officers Magee and Snyder met with Officer Bolt, and he briefed them on the activity he had observed. Then, Officers Bolt, Magee, Snyder, and Miller proceeded to 325 Mulberry. Officer Bolt made contact with Williamson, while Officer Magee made contact with Miller and Bridget Roberto, who had come out of 325 Mulberry and joined Miller and Williamson. Officer

Magee engaged in brief, cordial conversations with Miller and Roberto. Officer Magee then scanned the area with his flashlight for any indication of a drug transaction, but did not find any.

Officer Bolt positioned himself in front of Williamson and engaged him in conversation. Both Officer Bolt and Williamson were on the side walk, with Williamson near the corner of the apartment building. Since Officer Bolt had never seen Williamson before, he asked him for his name, date of birth, address, and for identification. Williamson provided Officer Bolt with this information, except for the identification. Williamson told Officer Bolt that he did not have any identification. Officer Bolt then asked Williamson what was going on. Williamson told Officer Bolt that he had just walked over to talk to his friend, Miller. Officer Bolt confronted Williamson and told him that he had seen him driving a green Pontiac, park it in the nearby lot, exit from the vehicle, and walk over to 325 Mulberry. Again, Williamson said that he had walked to 325 Mulberry. At this point, Officer Bolt contacted the Lycoming County Communications Center to have them check if Williamson had a valid driver's license. The Communications Center informed Officer Bolt that Williamson did not. During Officer Bolt's questioning of him, Williamson kept his right side away from Officer Bolt and continuously angled his body away from Officer Bolt when Officer Bolt tried to square himself up with Williamson.

3. The Arrest and Search of Williamson's Person

Officers Magee and Miller had taken up cover positions to ensure the safety of Officer Bolt. Officer Magee was to the left of Officer Bolt. Officer Miller was to the right of Officer Bolt. With the officers positioned as such, they had formed a semi-circle around and in front of Williamson. The apartment building located at 325 Memorial was to Williamson's back. While

taking his position, Officer Magee noticed that Williamson's eyes were darting around and he continued to turn his right side away from Officer Bolt. Curious, Officer Magee shined his flashlight on Williamson's right side. Officer Magee saw that a small portion of a yellow plastic bag was sticking out of Williamson's watch pocket and that there was a bulge inside the watch pocket. Officer Magee also saw some United States currency sticking out of the regular right pocket in Williamson's pants. Officer Magee asked Williamson what was in the bag, and he responded that it was bubble gum.

Neither Officer Magee nor Officer Bolt believed Williamson's statement that the substance inside the plastic bag hidden in his watch pocket was bubble gum. Based upon their training and experience, they knew that the watch pocket is a typical place to secret illegal narcotics for sale. Officer Magee made it clear to Williamson that the police were watching this area because of the heavy trafficking of crack cocaine that occurred there. Officer Bolt asked Williamson to pull out the plastic bag and show him the bubble gum. Williamson refused. Officer Bolt then asked Williamson if he would consent to a search of his person. Williamson did not give a definitive response one way or the other. While Officer Bolt was talking to him, Williamson was looking out of the corner of his eyes, darting his eyes around, and craning his neck around the officers. Officer Bolt continued to ask Williamson for consent to search his person, and Williamson continued to evade definitively answering that request. Eventually, Officer Magee detained Williamson and placed him under arrest ending the five minute encounter.

Once Williamson was placed under arrest, Officer Magee searched Williamson. Officer Magee pulled out several bills of United States currency from Williamson's right front pocket.

Officer Magee pulled the plastic bag out of Williamson's right watch pocket. It was a yellow plastic bag similar to a typical plastic shopping bag. A knot was tied in it, and inside of it a quarter size chunk of suspected crack cocaine was found.

B. Williamson's Argument

In the Motion to Suppress Evidence, Williamson contends that the evidence seized as a result of the search of his person must be suppressed. Williamson contends that Officer Magee's search of his person was illegal, because his arrest was illegal. Williamson advances two arguments to support this contention. The first argument is that Williamson was subjected to an investigative detention that was not supported by reasonable suspicion when he was questioned by Officers Bolt and Magee, and consequently, any evidence obtained through that detention cannot be used to provide probable cause for arrest. Without that evidence, Williamson argues that the observations prior to the investigative detention do not give rise to probable cause to support the arrest. The second argument is that, even if the investigative detention was supported by reasonable suspicion and the evidence obtained during it are included, the totality of the circumstances did not establish probable cause to arrest him.

II. ISSUE

There is one main issue before the court. It is:

Must the yellow plastic bag, United States currency, and suspected crack cocaine, which was seized as a result of the search of Williamson's person by Officer Magee, be suppressed as the result of an unlawful search incident to arrest?

III. DISCUSSION

The evidence seized as a result of a search of Williamson's person must be suppressed because the search was not valid. Williamson was subjected to an investigative detention that was not supported by reasonable suspicion. As such, the observations made by the officers during that detention cannot be used to form the basis for probable cause to arrest. Without these observations, the officers did not have probable cause to arrest Williamson. Accordingly, the search conducted pursuant to that arrest was illegal.

A. Legal Background

1. Standard of Review

When a motion to suppress evidence has been filed, the Commonwealth bears both the burden of production and persuasion to prove that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 581(H); *Commonwealth v. West*, 834 A.2d 625, 629 (Pa. Super. 2003), *app. denied*, 889 A.2d 1216 (Pa. 2005). The Commonwealth bears the burden of establishing by a preponderance of the evidence that the challenged evidence is admissible. *Commonwealth v. Lindblom*, 854 A.2d 604, 605 (Pa. Super. 2005), *app. denied*, 868 A.2d 1198 (Pa. 2005); *Commonwealth v. Smith*, 784 A.2d 182, 186 (Pa. Super. 2001).

2. Search Incident to Arrest General Rules and Principles

The Fourth Amendment of the United States Constitution and Article I, Section Eight of the Pennsylvania Constitution prohibit unreasonable searches and seizures. *Commonwealth v. Beaman*, 880 A.2d 578, 582 (Pa. 2005); *In re R.P.* 918 A.2d 115, 120 (Pa. Super. 2007). Except for a few established exceptions, warrantless searches and seizures are considered to be unreasonable. *Commonwealth v. Hughes*, 836 A.2d 893 (Pa. 2003); *Commonwealth v. Cleckley*,

738 A.2d 427, 429 (Pa. 1999). A search conducted incident to a lawful arrest is one such exception. *Commonwealth v. Rickabaugh*, 706 A.2d 826, 836 (Pa. Super. 1997), *app. denied*, 736 A.2d 603 (Pa. 1999).

“It is well established that a warrantless search incident to a lawful arrest is reasonable, and no justification other than that required for the arrest itself is necessary to conduct such a search.” *Commonwealth v. Ingram*, 814 A.2d 264, 272 (Pa. Super. 2002), *app. denied*, 821 A.2d 586 (Pa. 2003). Incident to a lawful arrest, a police officer may fully search the person of the individual under arrest and the immediate area which the person occupies. *Commonwealth v. White*, 669 A.2d 896, 902 (Pa. 1995). Any evidence seized as a result of a search incident to a lawful arrest is admissible. *Ingram*, 814 A.2d at 272.

A lawful arrest is a precondition to the applicability of the search incident to arrest exception to the warrant requirement. *Commonwealth v. Shiflet*, 670 A.2d 128, 130 (Pa. 1995); *see also, Commonwealth v. Frank*, 595 A.2d 1258, 1260 (Pa. Super. 1991) (“In order for a warrantless search to be lawful it must have been made pursuant to a lawful arrest.”). For an arrest to lawful, it must be supported by probable cause. *Commonwealth v. Polo*, 759 A.2d 372, 375 (Pa. 2000); *Commonwealth v. Campbell*, 862 A.2d 659, 663 (Pa. Super. 2004); *Commonwealth v. McCleave*, 750 A.2d 320, 324 (Pa. Super. 2000).

3. Probable Cause General Rules and Principles

“[P]robable cause is a reasonable belief that an illegal activity is or has occurred or that evidence of a crime is present. *Commonwealth v. Petrall*, 738 A.2d 993, 998 (Pa. 1999). Probable cause to arrest exists when the facts and circumstances within a police officer’s knowledge are

reasonably trustworthy and sufficient to warrant a person of reasonable caution to believe that the person to be arrested has committed an offense. *Commonwealth v. Peters*, 915 A.2d 1213, 1220 (Pa. Super. 2007); *Rickabaugh*, 706 A.2d at 835.

Probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent men act.” *Commonwealth v. Wright*, 867 A.2d 1265, 1268 (Pa. Super. 2005), *app. denied*, 879 A.2d 783 (Pa. 2005), *cert. denied*, 546 U.S. 1104 (2006) (quoting *Commonwealth v. Romero*, 673 A.2d 374, 376 (Pa. Super. 1996)). As probable cause does not require certainty, it exists when criminality is one reasonable inference, even though it may not be the most likely inference. *Commonwealth v. Lindblom*, 854 A.2d 604, 607 (Pa. Super. 2004), *app. denied*, 868 A.2d 1198 (Pa. 2005). Standards like proof beyond a reasonable doubt and by a preponderance of the evidence have no place in the determination of probable cause. *Commonwealth v. Dommel*, 885 A.2d 998, 1002 (Pa. Super. 2005). Furthermore, probable cause only requires a probability and not a *prima facie* showing of criminal activity. *In re R.P.*, 918 A.2d at 121; *Rickabaugh*, 706 A.2d at 836.

In order to determine whether probable cause exists, a court must consider the totality of the circumstances. *In re R.P.*, 918 A.2d at 121; *Peters*, 915 A.2d at 1220. The existence of probable cause is fact sensitive to the circumstances of the particular case. *Commonwealth v. Dunlap*, 846 A.2d 674, 676 (Pa. Super. 2004). Those facts must be “ ‘viewed from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training.’ ” *In re R.P.*, 918 A.2d at 121 (quoting *Commonwealth v. Clark*, 735 A.2d 1248, 1252 (Pa. 1999)).

B. Probable Cause Determination

In order to determine whether Officer Magee had probable cause to arrest Williamson, the court must first determine whether Williamson was subject to an investigative detention during his questioning by Officers Magee and Bolt. If so, the court must then determine whether the investigative detention was supported by reasonable suspicion. The reason for this preliminary determination is because the observations made by the officers during this part of the encounter with Williamson were used to form the probable cause justifying his arrest.

1. Seizure Determination

(a) Seizure General Rules and Principles

“Not every encounter between a citizen and the police is so intrusive as to amount to a “seizure” triggering constitutional concerns.” *Commonwealth v. Smith*, 835 A.2d 5, 9 (Pa. 2003); *see also, Commonwealth v. Wright*, 672 A.2d 826, 829 (Pa. Super. 1996). A seizure occurs when a police officer, by means of physical force or a display of authority, restrains the liberty of a citizen. *Commonwealth v. Dowds*, 761 A.2d 1125, 1129 (Pa. 2000); *Wright*, 672 A.2d at 829. In order to determine when a seizure has taken place, courts have employed an objective test. A court must examine the totality of the circumstances, with no single factor dictating the outcome, to determine whether a reasonable person would believe he was free to leave. *Commonwealth v. Blair*, 860 A.2d 567, 572 (Pa. Super. 2004); *Commonwealth v. McCleese*, 750 A.2d 320, 324 (Pa. Super. 2000); *see also, Commonwealth v. Jones*, 874 A.2d 108, 116 (Pa. Super. 2005) (a court must examine all of the circumstances to determine whether police action would have made a reasonable person believe he was not free to go and was subject to the officer’s orders). If, under

the totality of the circumstances, a reasonable person would not believe he was free to leave, then a seizure has occurred. *Commonwealth v. Johnson*, 833 A.2d 755, 762 (Pa. Super. 2003), *app. denied*, 847 A.2d 1280 (Pa. 2004).

“To secure the rights of citizens to be free from intrusions, courts in Pennsylvania require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens as those interactions become more intrusive.” *Johnson*, 833 A.2d at 760. There are three common categories of encounters between a police officer and a citizen. *Polo*, 759 A.2d at 375.

The first is a mere encounter. A mere encounter can be any formal or informal interaction between a citizen and a police officer. *Commonwealth v. Krisko*, 884 A.2d 296, 299 (Pa. Super. 2005), *app. denied*, 895 A.2d 1260 (Pa. 2006). A mere encounter carries no official compulsion to stop or respond to the officer. *Polo*, 759 A.2d at 375; *Commonwealth v. Campbell*, 862 A.2d 659, 663 (Pa. Super. 2004), *app. denied*, 882 A.2d 1004 (Pa. 2005). As such, it need not be supported by any level of suspicion. *Polo*, 759 A.2d at 375; *Commonwealth v. Matos*, 672 A.2d 769, 775 (Pa. 1994).

The second category of encounters is an investigative detention. An investigative detention does carry an official compulsion to stop and respond to the police officer. *Krisko*, 884 A.2d at 299. An investigative detention subjects a citizen to a stop and a period of detention, but it does not involve such coercive conditions as to constitute the functional equivalent of an arrest. *Polo*, 759 A.2d at 375; *Campbell*; 862 A.2d at 663; *McCleave*, 750 A.2d at 324. However, an investigative detention does constitute a seizure. *Jones*, 874 A.2d at 116. As such, an

investigative detention must be supported by reasonable suspicion. *Polo*, 759 A.2d at 375; *Commonwealth v. Barber*, 889 A.2d 587, 593 (Pa. Super. 2005).

The third and final category of encounters is arrest or custodial detention. An arrest is “any act that indicates an intention to take the person into custody and subjects him to the actual control and will of the person making the arrest.” *Commonwealth v. Rosas*, 875 A.2d 341, 348 (Pa. Super. 2005), *app. denied*, 897 A.2d 455 (Pa. 2006) (quoting *Commonwealth v. Conde*, 822 A.2d 45, 53 (Pa. Super. 2003) (Bender, J., concurring)). The factors a court should look at to determine whether an encounter has evolved into an arrest include: (1) the reason for the detention; (2) the detention’s length; (3) the detention’s location; (4) whether the individual was transported against his or her will; (5) whether physical restraints were used; (6) whether the police used or threatened force; and (7) the character of the investigative methods used to confirm or dispel the suspicions of the police. *Commonwealth v. Clinton*, 905 A.2d 1026, 1032 (Pa. Super. 2006); *Commonwealth v. Stevenson*, 894 A.2d 759, 770 (Pa. Super. 2006), *app. denied*, 2007 Pa. LEXIS 130 (1/17/07). An arrest must be supported by probable cause. *Polo*, 759 A.2d at 375; *Campbell*, 862 A.2d at 663; *McCleave*, 750 A.2d at 324.

(b) Williamson was subjected to an Investigative Detention

Williamson was subjected to an investigative detention when he was corralled by Officers Magee, Bolt, and Miller. Williamson was seized at this point because a reasonable person in Williamson’s position would not have felt free to leave. While Officer Bolt questioned Williamson, Officers Magee and Miller had taken up positions on either side of Officer Bolt creating a semi-circle of police officers to Williamson’s front and flanks. To Williamson’s rear,

the apartment building at 325 Mulberry was located. The officers had positioned themselves in such a manner and in combination with the environment to effectively restrict Williamson's movement to the few feet of ground in front of the officers. If Williamson had wanted to end the questioning and leave, he would have had to have made his way through three uniformed and armed police officers. A person in Williamson's position would have reasonably viewed the officers' actions as a sign that they were not going to let him go until they had received sufficient answers to their questions. Accordingly, Williamson was seized.

Although seized, Williamson was subject to an investigative detention and not an arrest. Williamson's liberty was restrained, but he was not subjected to such coercive conditions which would have made the seizure the functional equivalent of an arrest. The detention took place on a public street and only lasted roughly five minutes. The officers did exert force by encircling Williamson, but this display of force was minimal. The officers did not draw their weapons or threaten Williamson with physical violence. The officers did not handcuff or physically restrain Williamson. The officers did not direct his movements. In fact, there was no physical contact between the officers and Williamson. Accordingly, the type of seizure Williamson was subjected to was an investigative detention.

Having determined that Williamson was subjected to an investigative detention, the court will now determine whether the officers had reasonable suspicion to detain Williamson.

(c) Reasonable Suspicion General Rules and Principles

“[T]he inquiry into the establishment of reasonable suspicion requires a lesser showing in terms of quantity, content, and reliability than that which would be needed to establish probable

cause.” *Commonwealth v. Tucker*, 883 A.2d 625, 630 (Pa. Super. 2005). In order to establish reasonable suspicion, a police officer “... must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, ... that criminal activity was afoot and that the person he stopped was involved in that activity.” *Commonwealth v. Reppert*, 814 A.2d 1196, 1204 (Pa. Super. 2002). “The inquiry will not be satisfied by an officer’s hunch or unparticularized suspicion.” *Ibid.* (emphasis omitted). The inquiry into whether a police officer possessed reasonable suspicion is an objective one and centers on whether “... the facts available to the officer at the moment of the [intrusion] warrant a man of reasonable caution in the belief that the action taken was appropriate.” *Tucker*, 883 A.2d at 630 (change in original); *Commonwealth v. Rosas*, 875 A.2d 341, 347 (Pa. Super. 2005), *app. denied*, 897 A.2d 455 (Pa. 2006) (same). The determination of whether a police officer possessed reasonable suspicion must be based upon the totality of the circumstances. *Commonwealth v. Rogers*, 849 A.2d 1185, 1189 (Pa. 2004); *Tucker*, 883 A.2d at 630.

Reasonable suspicion does not require that the activity at issue be unquestionably criminal before a police officer may investigate. *Rogers*, 849 A.2d at 1190. “Rather, the test is what it purports to be – it requires a suspicion of criminal conduct that is reasonable based upon the facts of the matter.” *Ibid.* Reasonable suspicion is dependent upon both the content and the degree of reliability of the information possessed by a police officer, as both quantity and quality are considered in evaluating the totality of the circumstances. *Commonwealth v. Lohr*, 715 A.2d 459, 461 (Pa. Super. 1998).

In examining the totality of the circumstances, “ [a]mong the factors to be considered in forming the basis for reasonable suspicion are tips, the reliability of the informants, time, location, and suspicious activity, including flight.” *In re M.D.*, 781 A.2d 192, 197 (Pa. Super. 2001) (quoting *Commonwealth v. Lynch*, 773 A.2d 1240, 1244 (Pa. Super. 2001)). Two important factors that must be considered in evaluating whether reasonable suspicion exists are the police officer’s knowledge and experience. *Reppert*, 814 A.2d at 1204. In evaluating the totality of the circumstances, “... due weight [must be given] to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.” *Tucker*, 883 A.2d at 630 (quoting *Rogers*, 849 A.2d at 1189)) (change in original). Even so, a court must be mindful “... that the officer’s judgment is necessarily colored by his or her primary involvement in the ‘often competitive enterprise of ferreting out crime.’” *Reppert*, 814 A.2d at 1204 (quoting *In re D.E.M.*, 727 A.2d 570, 578 n. 19 (Pa. Super. 1999)).

(d) The Investigative Detention was not Supported by Reasonable Suspicion

The officers did not have reasonable suspicion to justify the investigative detention of Williamson. The facts of this case can be described as Williamson being present in an area known for drug transactions and his taking evasive actions at the sight of police. In *Commonwealth v. Tither*, 671 A.2d 1156 (Pa. Super. 1996), and *Commonwealth v. Carter*, 779 A.2d 591 (Pa. Super. 2001), the Pennsylvania Superior Court held that similar facts were insufficient to establish reasonable suspicion.

In *Commonwealth v. Tither*, an officer with the Bristol Township Police Department was on routine patrol in full uniform and in a marked cruiser in a section of Bristol Township known

for frequent drug transactions and prostitution. 671 A.2d at 1157. The officer observed a car stopped in the middle of the road about one hundred feet in front of him. There was a man standing in the street reaching into the car. *Ibid.* The officer heard someone yell out “5-0, 5-0,” which he knew to be street jargon for a warning that police were in the area. *Ibid.* The officer then saw the male who had been reaching into the car leave the car and walk to the nearest building. The car then pulled away.

The officer believed that he had witnessed a possible drug transaction and decided to pull over the vehicle to investigate. *Tither*, 671 A.2d at 1157. The officer followed the vehicle, and pulled behind the vehicle when it stopped on its own. The officer noticed that the vehicle’s interior lights were on and he observed the female driver look right and down and the male passenger look left and down toward the middle of the seat. *Ibid.* The officer approached the vehicle on foot and made contact with the driver. The officer sensed an odor of alcohol on the female driver and saw alcoholic beverages in the vehicle. *Ibid.* The officer had the female driver perform field sobriety tests, which she failed, and take a breathalyzer, which revealed a blood alcohol content above .2 percent *Ibid.*

The Pennsylvania Superior Court held that the officer did not have reasonable suspicion to believe that a drug transaction had occurred thereby justifying the detention of the female driver. *Tither*, 671A.2d at 1158. The Superior court stated that the facts relied upon by the officer were insufficient by themselves and in their totality to establish reasonable suspicion. First, the Superior Court stated that the defendant’s presence in a high crime area known for drug-related activity was not sufficient to justify an investigative detention. *Ibid.* Second, the Superior Court stated that the

defendant's flight (driving away) upon someone yelling "5-0, 5-0" did not establish reasonable suspicion. *Ibid.*¹ Third, the Superior Court stated that the mere act of a man reaching into a car window without any further observations was not indicative of criminal activity. *Ibid.* The Superior Court then stated that even if these facts were viewed in their totality, they still did not establish reasonable suspicion. Instead, the facts gave the officer a hunch that illegal contraband may have been involved, and that was not sufficient to establish reasonable suspicion. *Id.* at 1159. The Superior Court noted that the officer did not observe a transaction of any kind between the defendant and the man leaning into the vehicle, he did not observe any drugs in possession of either party, nor did he know that the defendant had been involved in any prior criminal activity. *Id.* at 1158. In short, there was nothing to link the defendant's seemingly lawful behavior with criminal activity there by justifying her detention.

In *Commonwealth v. Carter*, an officer with the Pittsburgh Police Department was on patrol in a known high drug and crime area. 779 A.2d at 592. The officer observed the defendant make contact with a pickup truck parked on the street. The defendant engaged in a conversation with the two occupants of the pickup. *Ibid.* The officer saw the defendant place his left hand in his jacket pocket and start to remove his hand when the defendant looked in the direction of the

¹ We recognize that in at least two cases decided subsequent to *Tither*, the combined factors of presence in a high crime area and *unprovoked* flight from police were held sufficient to establish reasonable suspicion to justify an investigative detention. See, *In re D.M.*, 781 A.2d 1161, 1164 (Pa. 2001); *Commonwealth v. Brown*, 904 A.2d 925, 930 (Pa. Super. 2006), *app. denied*, 919 A.2d 954 (Pa. 2007). But, there is no indication that the defendant in *Tither* fled from the police, i.e. squealed the tires and sped away. Rather, all indications are that the defendant operated her vehicle in a normal, lawful manner when she left the area. We view that as a sufficiently distinguishing fact so that neither *In re D.M.* nor *Brown* overruled *Tither sub silentio*. Further, in our present case Williamson did not leave the area after seeing the police.

marked police cruiser the officer was operating. The defendant then mouthed the word “popo,” which meant police. *Ibid.* The officer pulled his cruiser in front of the pickup and noticed that one of the occupants was a known heroine user. As the officer did this, the defendant walked away from the pickup. *Ibid.* The officer followed the defendant, and when he was close enough, he parked his cruiser, exited, and asked the defendant if he could speak with him. *Ibid.*

The Pennsylvania Superior Court held that the officer did not have reasonable suspicion to detain the defendant. *Carter*, 779 A.2d at 559. The Pennsylvania Superior Court determined that the officer’s observations regarding the defendant’s interaction with the occupants of the pickup truck did not establish reasonable suspicion that the defendant was engaged in criminal activity. Although the officer observed the defendant talking to the occupants of the pickup in a notoriously drug infested area, reach into his pocket during the conversation, mouth the word “popo,” and walk away from the pickup shortly thereafter, the officer did not observe any exchange of items. *Id.* at 594-95. The Superior Court stated that these observations combined with the officers training and experience may lead to an educated hunch that the defendant was engaged in the sale of illegal drugs, but were not sufficient to establish reasonable suspicion. *Id.* at 595.

Just as in *Tither*, and *Carver*, Officer Bolt’s observations did not rise to the level of reasonable suspicion. Officer Bolt had passed by an apartment building where drug trafficking was known to occur and where drug addicts were known to live. Officer Bolt saw Miller, a known drug addict, sitting on the front stoop of that building and saw him conversing with Williamson. Officer Bolt observed Williamson become nervous once he saw the marked cruiser and Officer Bolt in that Williamson constantly looked over his shoulder at Officer Bolt during his conversation

with Miller. When two females approached him while he was under Officer Bolt's observation, Williamson motioned with his hand for them to go away. Once they were presumably sufficiently out of Officer Bolt's sight, Williamson yelled to the two females, when they stooped over to them and had a brief conversation. Williamson then returned and renewed his conversation with Miller. What Officer Bolt had observed was Williamson in an area known for drug transactions and Williamson taking evasive actions once police presence was detected. At no time did Officer Bolt observe Williamson exchange anything with Miller or the two females. Further, at no time prior to the investigative detention did Officer Bolt observe any illegal narcotics in Williamson's possession. According to *Tither* and *Carver*, Officer Bolt's observations combined with his training and experience provided him with an educated hunch (and a good one), but not reasonable suspicion. As such, the police did not have justification to detain Williamson.

2. The Arrest was not Supported by Probable Cause

Since Officer Bolt did not have reasonable suspicion to detain Williamson, the evidence that was gathered as a result of the detention must be suppressed. Therefore, the observations made of Williamson during the detention – the evasive answering of questions, the constant turning of his right side away from Officer Bolt, the presence of the yellow plastic bag in his right watch pocket, and the presence of United States currency in his right regular pants pocket – cannot be considered in the totality of the circumstances when determining if probable cause existed to arrest Williamson. As such, the court is left with the facts leading up to the investigative detention. Since those facts were insufficient to establish the lower burden of reasonable suspicion, *a fortiori*, they cannot establish the higher burden of probable cause. Accordingly, the arrest of Williamson

was not supported by probable cause. Since the arrest was not supported by probable cause, the arrest was illegal and the search incident to arrest was illegal. Therefore, the yellow plastic bag, the United States Currency, and the crack cocaine seized from Williamson's person must be suppressed.

IV. CONCLUSION

Williamson's Motion to Suppress Evidence is granted

ORDER

It is hereby ORDERED that the Motion to Suppress Evidence filed by Defendant Jovan Williamson on March 2, 2007 is GRANTED. The evidence seized from a search of Williamson's person, specifically the yellow plastic bag, the United States currency, and crack cocaine, are SUPPRESSED.

BY THE COURT,

William S. Kieser, Judge

cc: Peter Campana, Esquire
District Attorney
Judges
Gary L. Weber, Esquire (Lycoming Reporter)
Christian J. Kalas, Esquire