

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1414 – 2007
:
vs. : CRIMINAL DIVISION
:
TIRON NOEL, :
Defendant : Motion to Suppress

OPINION AND ORDER

Before the Court is Defendant’s Motion to Suppress, filed October 30, 2007. A hearing on the motion was held November 29, 2007.

Defendant was charged with persons not to possess a firearm and related charges after a handgun was discovered on his person as he was being taken into custody by police on August 1, 2007. In the instant motion, Defendant contends the police lacked the requisite level of suspicion to take him into custody and that any evidence seized as a result thereof should be suppressed. The Court does not agree.

At the hearing, the Commonwealth established that on August 1, 2007, Tyson Havens, a trooper with the Pennsylvania State Police, was on routine patrol in full uniform and in a marked police vehicle in a neighborhood in Loyalsock Township when he observed Defendant cross the street and enter a vehicle on the passenger side of such. As it occurred to the trooper that Defendant strongly resembled a man wanted for aggravated assault on a warrant out of East Stroudsburg,¹ Trooper Havens pulled his vehicle close to the vehicle into which Defendant had entered and walked up to the passenger side. He informed Defendant that he looked like a “wanted person” and asked him for his identification. Defendant told the trooper he had no identification on his person but he did have a New Jersey Identification Card. He gave the trooper his name, Tiron Noel, and date of birth. This information was run by the trooper through NCIC and the New Jersey Bureau of Motor Vehicles records, and resulted in a “no record found” response. According to Trooper Havens, at that point he suspected Defendant

¹ Trooper Havens testified that every day for the prior two weeks, he had observed on the “roll-call board” a photograph of the wanted individual, a man named Melvin Cowart.

was providing a false name and decided to take him into custody for identification purposes.² He asked Defendant to step out of the vehicle and place his hands on the car, which Defendant did. As Trooper Havens began patting him down, Defendant attempted to run away but was tackled by both Trooper Havens and the trooper who had since arrived as back-up. Defendant was then handcuffed and led back to the police vehicle and in the process, considering the bagginess of Defendant's pants and his stooped-over position (he was being led by his long hair which was formed into dread-locks), Trooper Havens was able to observe a handgun in the gaping front right pocket of his pants. The weapon was seized, Defendant was transported to the station for fingerprinting and when it was learned that Defendant was a person not to possess a firearm, he was formally arrested and charged with the instant offenses.

Defendant contends he was "arrested" at the time he was asked to step out of the vehicle and place his hands on the car, and that such arrest was not supported by the requisite probable cause. The Commonwealth argues that Defendant was not arrested, that he was simply being subjected to an investigative detention, and thus only reasonable suspicion was necessary to justify the intrusion. The Court finds the Commonwealth's argument misplaced as it appears to the Court that the trooper's actions were justified on the grounds that at the time of the "arrest", he had probable cause to arrest.

The Court agrees with Defendant that he was "arrested" when he was asked to step out of the vehicle and place his hands on the car to be patted-down. A reasonable person would not feel free to leave in that situation. At that point, however, Trooper Havens had probable cause to arrest Defendant, as he believed him to be the person wanted for an aggravated assault,³ and Defendant had provided a name and date of birth which could not be found where Defendant said they should be found, thus justifiably leading the trooper to believe Defendant was providing false identification, quite possibly to avoid apprehension. Trooper Havens' intention to transport Defendant to the barracks for further identification via fingerprinting was thus appropriate as incident to a proper arrest.

² It was subsequently indicated, through the trooper's testimony, that by such, Trooper Havens meant that he intended to take Defendant to the police station for fingerprinting.

Accordingly, as it is determined that Defendant's arrest was supported by probable cause, any evidence obtained as a result of that arrest need not be suppressed.

ORDER

AND NOW, this 30th day of November 2007, for the foregoing reasons, Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson

³ The Court finds this belief reasonable as the photographs introduced into evidence by the Commonwealth show a striking similarity between the two men.