

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : **No. CR-105-2010**
vs. :
:
GARY COLEMAN, :
Defendant :

OPINION AND ORDER

This matter came before the Court on Gary Coleman’s motion to suppress.

The relevant facts follow.

On January 8, 2010, Officer Jeremy Brown and Officer Damon Hagan were members of the Williamsport Bureau of Police’s special operations group, a unit proactive in deterring crime and detecting and reducing narcotics in the City of Williamsport. At approximately 10:38 p.m. Officer Brown observed a Chevy Blazer turn north onto Ridge Avenue from Dove Street without using the required turn signal. Officer Brown stopped the vehicle and approached the driver’s side while Officer Hagan approached the passenger’s side. Officer Brown made contact with the driver. Officer Hagan made contact with the front passenger, who was identified as the Defendant, Gary Coleman. The officers returned to their vehicle, and Officer Hagan ran the occupants’ information through Lycoming County Communications. As Officer Hagan did this, Officer Brown noticed that the occupants could not be observed through the tinted windows.

Although Officer Brown had never personally observed Coleman in possession of a weapon, he had reports and intelligence that Coleman carried a gun. Officer Brown testified that the reports and intelligence consisted of confidential sources providing information that Coleman carried, had a gun or was going to get a gun; two radio

transmissions for domestics where there might be a gun involved; information that handgun ammunition and a holster were in Coleman's residence; and an incident approximately one month earlier where Coleman fled from Officer Brown and Officer Hagan and a few days later a homeowner along Coleman's "flight path" discovered a gun in his or her yard.

Based on his inability to see the occupants through the tint and his prior knowledge about Coleman, Officer Brown decided to remove Coleman from the vehicle and pat him down for officer safety and the safety of the public. Officer Brown did not discover any weapons during the pat down. Before letting Coleman return to the vehicle, Officer Brown conducted a wingspan search which encompassed the glove box, the center console, the passenger door pocket, and the area under the passenger seat. During this search, Officer Brown discovered narcotics in the console. Officer Brown then closed the console, detained Coleman and seized the vehicle until he could obtain a search warrant.

The vehicle was searched pursuant to a warrant. Fifteen baggies of cocaine were found inside a large plastic bag in the center console. No weapons were found.

Coleman, through his counsel, filed a motion to suppress, claiming the police did not have a sufficient factual basis to believe he was armed and dangerous; therefore, according to Coleman, Officer Brown did not have reasonable suspicion to conduct a pat down of him or a wingspan search of the vehicle. The Court cannot agree.

In Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983), the United States Supreme Court enunciated the standard under which police may search the passenger compartment of a vehicle for weapons during roadside encounters with motorists. The Court stated:

Our past cases indicate then that protection of police and others

can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect. These principles compel our conclusion that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on “specific and articulable facts which, taken together with the rational inferences from those facts reasonably warrant” the officers in believing the suspect is dangerous and the suspect may gain immediate control of weapons. See *Terry*, 392 U.S. at 21. “[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Id.*, at 27.

Michigan, 463 U.S. at 1049-1050, 103 S.Ct. at 3480-3481 (footnote omitted). This same standard applies to claims made pursuant to Article 1, §8 of the Pennsylvania Constitution. Commonwealth v. Morris, 537 Pa. 417, 644 A.2d 721 (1994), cert. denied, 513 U.S. 1031, 115 S.Ct. 610 (1994).

The Court finds the police had a reasonable belief that Coleman was dangerous. While there was no testimony that Coleman was making furtive movements, Officer Brown testified that due to the dark window tint he was unable to see the occupants or what they were doing in the vehicle. The stop occurred at nighttime, and the police had information from a variety of sources that Coleman carried a gun. Under these circumstances, the Court does not believe the limited search for weapons that occurred in this case was unreasonable or in violation of Coleman’s constitutional rights.

Coleman also asserted he was not Mirandized before he was asked during booking whether he was addicted to any narcotics; thus the Commonwealth should be precluded from utilizing his answer to this question against him at trial. At the argument on this case, the Commonwealth conceded that it could not and would not utilize this

information at trial.

ORDER

AND NOW, this ____ day of July 2010, the Court GRANTS the motion to suppress with respect to the booking question which asked whether Coleman was addicted to any narcotics and Coleman's answer thereto. In all other respects, the motion is DENIED.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)