

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**PAUL COLEMAN,
Defendant**

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**CR-0149-2010
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress on March 26, 2010. A hearing on the Motion to Suppress was held on June 28, 2010.

Background

The facts of this case reveal that on March 7, 2009, Corporal Michael Simpler (Simpler) and Sergeant Timothy Miller (Miller) were on patrol when they observed a white Volvo traveling westbound on High Street. As the vehicle approached the intersection of High Street and Campbell, the vehicle turned into the left turn lane without the operator of the vehicle using the turn signal. The vehicle then turned south onto Campbell Street and again the operator of the vehicle failed to use the turn signal. Simpler and Miller then stopped the vehicle at the intersection of Campbell Street and Park Ave. Simpler approached the vehicle and advised the driver of the reason for the stop. When Simpler asked the driver for her driver's license, the driver related that she did not have her license with her and that she did not know where the paperwork for the vehicle was located. As Simpler was talking to the driver, he observed Paul Coleman (Coleman), in the front passenger seat. Coleman was making furtive movements towards his left front pocket and towards the left side of the seat, towards the console area. Since

Simpler knew Coleman and was aware of his history, Simpler asked Miller to remove Coleman from the vehicle. Simpler then conducted a pat search of Coleman and felt a large knotted object in his left front pocket and what appeared to be a plastic bag. Upon removing the objects from Coleman's pocket, Simpler discovered that Coleman had a do rag tied in a knot and a plastic bag. Simpler then asked Coleman what the bag was for and Coleman replied that it was for his Percocet. After he was questioned, Coleman conveyed to Simpler that he had two Percocet in his right front pocket. Simpler located the Percocet in Coleman's pocket and then asked Coleman if he had a prescription for the pills. When Coleman responded that he did not in fact have a prescription for the Percocet, Simpler advised Coleman that it was against the law to possess Percocet without a prescription. Further search of Coleman revealed that he had a third Percocet in his right rear pocket. Lab tests revealed that the pills contained Oxycodone.

Discussion

A police officer may conduct a vehicle stop anytime he has "reasonable suspicion" to believe a violation of the Motor Vehicle Code has occurred. See 75 Pa.C.S. 6308. In this case, the Defendant's vehicle was stopped after the driver violated the Motor Vehicle Code by failing to use a turn signal. Therefore, the stop of the vehicle was lawful. Additionally, during a lawful vehicle stop the police may demand that both drivers and their passengers exit the vehicle. See Commonwealth v. Brown, 654 A.2d 1096 (Pa. Super. 1995). Furthermore, the court in Terry v. Ohio, 392 U.S. 1 (1968) stated:

[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to

dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Where a police officer observes a passenger's furtive movements during a lawful traffic stop, a frisk of the passenger under Terry is justified. See Commonwealth v. Morris, 619 A.2d 709, 712 (1992). Therefore, in this case it is clear that Simpler was justified in his pat search of Coleman. However, as the reason for a frisk under Terry is for the safety of police officer and other individuals nearby, the scope of such a frisk is limited, "to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." Terry at 29. If during the course of a lawful Terry frisk, an officer "feels an object whose contour or mass makes its identity immediately apparent....if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." Minn. v. Dickerson, 508 U.S. 366, 375-376 (1993). In this case, Simpler felt a knotted object and a plastic bag in Coleman's pocket. It is obvious to the Court that the identity of the knotted object and plastic bag in this case were not immediately apparent. Furthermore, it is not reasonable to assume that the small knotted object found in Coleman's pocket, no larger than a fifty cent piece, could have contained a weapon. See Commonwealth v. Perez, 595 A.2d 1315 (1991). The Commonwealth provided no testimony that would lead the Court to believe Simpler thought the small knotted object was a weapon. In fact, Simpler testified that he did not know what the small knotted object was in Coleman's pocket. As Simpler was not justified in removing the objects from Coleman's pockets, evidence found as a result of the frisk should be suppressed.

Additionally, after Simpler removed the do rag and plastic bag from Coleman's pockets, Simpler asked Coleman what the bag was for, and following Coleman's response that the bag was for Percocet, Simpler asked if Coleman had a prescription for Percocet. Simpler's removal of the do rag and plastic bag went beyond the scope of a Terry frisk justified by a concern for officer safety. Therefore, Coleman's answers in response to Simpler's questions after the removal of the do rag and plastic bag were fruit of an unlawful search. The Court believes that, based on the circumstances of this case, at the time Coleman responded to Simpler's questions, Coleman was subject to custodial interrogation. The test to determine whether someone is subject to custodial interrogation is "whether the individual being interrogated reasonably believes his freedom of action is being restricted." Commonwealth v. Ingram, 814 A.2d 264, 270-271 (2002) (Citing Commonwealth v. Meyer, 412 A.2d 517, 521(1980)). Miranda warnings are required where a suspect is subject to custodial interrogation. Ingram at 271. (See Commonwealth v. Ford, 650 A.2d 433, 438 (1994)). As Coleman was not given Miranda warnings before he was questioned by Simpler, Coleman's statements regarding the Percocet, as well as the Percocet found as a result of Coleman's statements, should be suppressed.

ORDER

AND NOW, this ____day of July, 2010, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby GRANTED. It is ORDERED and DIRECTED that the two Percocet found in Coleman's front pocket, the Percocet found in his rear pocket, and Coleman's statements regarding the Percocet are hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
PD
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)