

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-387-2010**
:
RASHEAN HICKMAN, :
Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on April 16, 2010 with one count of Possession with Intent to Deliver (crack cocaine), one count of Possession of a Controlled Substance (crack cocaine), one count of Possession of Drug Paraphernalia and one count of Possession of a Small Amount of Marijuana. On May 19, 2010, Defendant filed a Motion to Suppress requesting that the Court suppress all of the evidence obtained from the Defendant following his initial encounter with the police. More specifically, Defendant alleges that the police officers who initially confronted the Defendant did not have reasonable suspicion to conduct a pat down frisk.

Defendant further avers that a list of names and telephone numbers that was provided to him in discovery should be suppressed because the police obtained it illegally from his cell phone. At the argument in this matter the Commonwealth indicated that the list was inadvertently forwarded to the Defendant, did not contain any information relevant to this case, was not obtained from the Defendant's cell phone and would not be utilized in the Commonwealth's case. Accordingly, Defendant's Motion with respect to the list is deemed moot.

Pennsylvania State Trooper Tyson Havens and Williamsport Bureau of Police Officer Justin Snyder testified on behalf of the Commonwealth at the hearing in this matter which was held on July 14, 2010. On March 4, 2010 at approximately 6:30 p.m. Trooper

Havens and Officer Snyder were traveling in an unmarked unit northbound on the 300th Block of Mifflin Place in Williamsport.

This particular area was described as a “high crime area”. Numerous firearms and drug crimes have been committed in the area and both law enforcement officers have made arrests in the area for such crimes.

Officer Snyder was driving the police cruiser and Trooper Havens was in the front passenger seat. As they were traveling north they noticed the Defendant who suddenly appeared on the road from between parked vehicles on the right side of the roadway. He looked back at the officer’s vehicle, lunged at the vehicle and struck an aggressive posture (his chest was pumped up and his arms were flexed and to his side). Officer Snyder veered slightly to the left and stopped the vehicle so as to avoid hitting the Defendant.

Once the vehicle was stopped near the Defendant, the Defendant walked to the passenger side and again struck an aggressive posture. Both law enforcement officers exited the vehicle. The Defendant stepped back from Trooper Havens and Defendant placed both of his hands in the front pouch of his sweatshirt.

Both law enforcement officers recognized the Defendant. Trooper Havens was aware that the Defendant had a prior criminal history which included weapons offenses, drug offenses and “violence” offenses which he believed included an aggravated assault offense. Both law enforcement officers had previously come in personal contact with the Defendant.

Given the circumstances confronting the officers, Trooper Havens decided to conduct a pat down of the Defendant for weapons. Trooper Havens testified that he feared the Defendant may be armed and dangerous. According to Trooper Havens, the circumstances

justifying his belief included the Defendant acting “out of sorts”, the location and time of the incident and the Defendant’s prior criminal history.

More specifically, Trooper Havens testified that the Defendant lunged at the vehicle, twice struck an aggressive posture, backed up and concealed his hands in his front sweatshirt pouch, Mifflin Place was a street which was located in a high crime area, it was night time, the crimes that occurred in the Mifflin Place area included not only drug crimes but firearm crimes including a shooting, and finally the Defendant had a prior history known to Trooper Havens which included weapons and violence offenses.

Officer Snyder described the Defendant’s conduct as “unorthodox”. Officer Snyder conceded that he had previous encounters with the Defendant wherein the Defendant would wave to Officer Snyder and speak with him after going up to Officer Snyder’s police cruiser. Officer Snyder noted, however, that this incident was “unlike” the other incidents; the Defendant’s conduct was not in public, it was at night in a high crime area and happened very quickly.

Defendant testified on his own behalf. He verified that he was traveling north on Mifflin Place when he first noticed Officer Snyder’s car which he nicknamed the “silver bullet”. He noted that he put his hand up and made a waving gesture. He noted that the car stopped at which time he walked up to the passenger door. He did not remember whether he put his hands in his sweatshirt pouch. He confirmed that once the door was opened, that both officers exited the vehicle and he was patted down by Trooper Havens.

A police officer may conduct a pat down search or frisk for weapons if the

officer reasonably fears that the person with whom he or she is dealing with may be armed and dangerous. Commonwealth v. Taylor, 771 A.2d 1261 (Pa. 2001); Commonwealth v. Cooper, 994 A.2d 589 (Pa. Super. 2010). “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or the safety of others was in danger.” Commonwealth v. Taylor, 771 A.2d 1261 (Pa. 2001); citing Terry v. Ohio, 392 U.S. 1, 27 (1968).

Reasonable suspicion to conduct a pat down search of an individual is judged in light of the totality of the circumstances confronting the police officer. Taylor, supra. The Court finds the testimony of Trooper Havens and Officer Snyder to be credible. The Court concludes that in light of the circumstances confronting Trooper Havens, he reasonably suspected that the Defendant could be armed and dangerous.

First, the officers were patrolling a high crime area. Both officers had substantial law enforcement experience, had law enforcement experiences in this particular area and were aware that weapons crimes including at least one shooting had previously occurred in the area. It was not daylight but rather early evening and was dark. The Defendant confronted the cruiser in an “unorthodox” or “out of sorts” manner. He twice exhibited a fighting stance or aggressive behavior toward the vehicle and/or its occupants. The Defendant was known to the officers as having a prior criminal history which included weapons offenses and an apparent aggravated assault offense. Finally, once the officers exited the vehicle, the Defendant stepped back and immediately secreted his hands in the front pouch of his sweatshirt.

While Defendant's motivation could have been to say hello, fool around with or perhaps even engage Officer Snyder in conversation, the existence of reasonable suspicion must be considered solely in light of the circumstances confronting the officers. The Court finds that Trooper Havens justifiably frisked the Defendant in order to protect his safety and the safety of others.

ORDER

AND NOW, this ____ day of July, 2010, following a hearing and argument, the Court denies Defendant's Motion to Suppress.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Nicole Spring, Esquire (PD)
Mary Kilgus, Esquire (DA)
Gary Weber, Esquire (Lycoming Reporter)
Work File