

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-347-2010
vs. :
:
BRUCE GRIMES, :
Defendant :

OPINION AND ORDER

This matter came before the court on Bruce Grimes’ Motion to Suppress/Motion to Dismiss. The relevant facts follow.

On December 9, 2009, at approximately 10:35 p.m., Officer Damon Hagan and Officer Jeremy Brown of the Williamsport Bureau of Police were on patrol in full uniform in an unmarked, silver Ford Crown Victoria in the 700 block of Edwin Street when they observed an individual that appeared to be looking at graffiti on Mifflin Place, an alley. The police turned their vehicle around. The individual began to walk away

Officer Hagan recognized the individual but could not recall his name. When Officer Hagan asked the individual for his name, he replied “Bruce.” Officer Hagan asked “Smith?” The individual replied, “No, Grimes.”

Grimes also had an object in his sweatshirt pocket that was consistent in size and shape as a either a spray paint can or a beverage bottle. Officer Hagan asked Grimes what he had in his pockets. Grimes continued to walk slowly, but began to empty his pants pockets. Officer Hagan asked what was in his sweatshirt pocket. Grimes then stopped walking and pulled out a bottle of vitamin water. As he took his other hand out of his sweatshirt pocket, a knotted, plastic baggie fell to the ground. Although there was something

in the baggie, the officers did not see what was inside the baggie. Grimes looked surprised and nervous. He quickly picked up the baggie and began to walk away. As he did so, he brought his hand to his mouth then took a swig of his drink as if he was washing something down. Grimes then threw the baggie down, but it no longer held any contents.

The officers got out of their vehicle. Officer Hagan, who was about 10 feet behind Grimes, caught up to Grimes and told him to stop. Officer Brown placed Grimes in handcuffs then Brown retrieved the baggie. The baggie, which was now torn open, smelled like marijuana and had a couple of flecks of vegetable material. Officer Brown brought the baggie to Officer Hagan, who then told Grimes to open his mouth. Grimes complied and Officer Hagan observed green vegetable material that smelled like marijuana inside Grimes' mouth. Officer Hagan told Grimes to spit the material out, but Grimes refused. Officer Hagan asked Grimes if he wanted to go to the hospital, and again Grimes refused. Officer Hagan spoke to his supervisor about taking Grimes to the hospital to have his stomach pumped, but his supervisor directed against it.

The officers arrested Grimes and charged him with tampering with physical evidence, possession of a small amount of marijuana, and possession of drug paraphernalia.

Grimes, through his counsel, filed a motion to suppress. Grimes submits that upon being asked what was in his pockets, Defendant was subjected to an illegal investigative detention. It was illegal, Defendant argues because a reasonable person would not feel free to leave and the officers lacked reasonable suspicion to conduct the detention. The Commonwealth argues Grimes was subjected to a mere encounter because he was under

no obligation to stop or respond to the officers' questions.

The Pennsylvania Supreme Court has recognized three basic categories of interaction between citizens and the police under both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, and described them as follows:

The first category, a mere encounter or request for information, does not need to be supported by any level of suspicion, and does not carry any official compulsion to stop or respond. The second category, an investigative detention, derives from *Terry v. Ohio* and its progeny: such a detention is lawful if supported by reasonable suspicion because, although it subjects a suspect to a stop and period of detention, it does not involve such coercive conditions as to constitute the functional equivalent of an arrest. The final category, the arrest or custodial detention, must be supported by probable cause.

Commonwealth v. Smith, 575 Pa. 203, 211-212, 836 A.2d 5, 10 (2003).

The Court finds the officers' initial questioning of Grimes about his name and what was in his pockets to be a mere encounter. The police neither stopped nor attempted to stop Grimes. They did not order him to empty his pockets or to show them what was in his pockets. They merely asked Grimes a few questions while they remained in their vehicle and Grimes continued to walk down the street.

After voluntarily showing the officers that the object in his sweatshirt pocket was a bottle of vitamin water, Grimes inadvertently dropped a knotted, plastic baggie onto the ground. Grimes looked surprised, quickly picked up the baggie and walked away from the police. Although the police did not see what was in the baggie, a knotted baggie is typical packaging for drugs such as marijuana and cocaine.

As Grimes walked away, he brought his hand to his mouth and took a swig of his vitamin water. Then he threw the now empty baggie onto the ground and quickened his pace. Since the police did not make any effort to stop or detain Grimes prior to his throwing the empty baggie on the ground, the court finds Grimes' abandonment of the baggie cannot be considered "forced."

The police stopped Grimes, handcuffed him, and then retrieved the empty baggie. Although the court does not believe the police had probable cause to arrest Grimes, the court finds the police had reasonable suspicion that criminal activity was afoot. Given the type of packaging, Grimes' surprised and nervous demeanor when he first dropped the baggie, and then his unusual behavior of intentionally discarding the baggie onto the ground after apparently ingesting its contents, the police had sufficient reasonable suspicion that Grimes had possessed controlled substances to detain him until they retrieved the empty baggie and investigated further.

Thereafter, the police discovered the baggie contained a couple of flecks of green, vegetable material and it smelled like marijuana. They also noticed that Grimes' mouth contained bits of green, vegetable material and smelled like marijuana. At this point the police had probable cause to arrest Grimes for possession of a small amount of marijuana. It must be remembered that neither reasonable suspicion nor probable cause involves certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent persons act. See Commonwealth v. Miller, 497 Pa. 257, 260, 439 A.2d 1167, 1169 (1982)("the requirement of probable cause is not structured to assure

certainty but rather is a test of probabilities dealing with the considerations of everyday life.”); In the Interest of M.D., 781 A.2d 192, 199 (Pa. Super. 2001)(“we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.”); Commonwealth v. Epps, 415 Pa. Super. 213, 233, 608 A.2d 1095, 1096 (1992)(“It is well settled that to justify their decision to stop and briefly detain appellant, the police need not establish their suspicions to a level of certainty, a preponderance or even a fair probability.”).

In the alternative, the court finds the police had reasonable suspicion to ask Grimes what he had in his pockets. When the police first observed Grimes he appeared to be looking at graffiti, and arguably had in his possession an item in his sweatshirt pocket that had a size and shape consistent with a spray paint can. The court finds these facts would justify a brief detention to ask Grimes his name and try to determine, without searching him, what was in his pockets or what he was doing there.

ORDER

AND NOW, this ___ day of August 2010, for the forgoing reasons the court denies Grimes' motion to suppress.¹

By The Court,

Marc F. Lovecchio, Judge

cc: Henry Mitchell, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)

¹ The Court rules Defendant orally withdraw the Motion to Dismiss based on receipt of testing results.