

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-1818-2009**
 :
ANDRE WISE, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant Andre Wise's motion to suppress filed on February 22, 2010. By way of background, Defendant is charged by Information filed on November 25, 2009 with one count of persons not to possess firearms, one count of firearms not to be carried without a license, one count of receiving stolen property, one count of criminal trespass and another, but distinct count of criminal trespass (defiant communication).

On October 30, 2009 in the City of Williamsport, while police officers were conducting surveillance, they noticed the Defendant and another individual exiting a residence. The police ordered them to stop. A pursuit ensued, during which the Defendant apparently either dropped or discarded a handgun that was subsequently seized by the police. The Defendant, being a convicted felon, was allegedly not authorized to possess any firearms. Further, the firearm that the Defendant possessed had previously been stolen and Defendant allegedly either knew or should have known such.

Defendant argues that the police did not have either reasonable suspicion or probable cause to pursue the Defendant and accordingly, the handgun that was seized by the police was obtained illegally and must be suppressed.

A hearing was held before this Court on March 19, 2010. At the hearing, the Commonwealth introduced into evidence a transcript of the preliminary hearing held on

November 3, 2009. The Commonwealth also presented the oral testimony of Officer Jeremy Brown and Officer Damon Hagan of the Williamsport Bureau of Police.

On October 30, 2009, Officers Brown and Hagan were conducting surveillance on a residence located at 2530 Dove Street in Williamsport. They had received information that either there was an outstanding arrest warrant or probable cause to arrest an individual by the name of Gary Coleman, who was believed to be at the residence. It was night time and the officers took up a surveillance position across the street from the residence. The officers had observed movement in the residence and at least one of the individuals they observed appeared to be Mr. Coleman.

During the surveillance, they observed two individuals walking off the front porch of the residence and walking closely together up the street. Both of the officers were confident that the one individual was Gary Coleman but did not know the identity of the other individual, who turned out to be the Defendant. The officers approached the two individuals with Officer Hagan taking the lead. Officer Hagan rode his police bicycle in front of the two individuals, stopped, started to get off his bicycle and looking straight into Mr. Coleman's face said "stop."

Immediately, both of the individuals took off running up the street. Both officers pursued both individuals until the individuals split in different directions. Officer Brown pursued the Defendant while Officer Hagan followed Officer Brown. During the pursuit, the Defendant allegedly either dropped or discarded the handgun at issue. The Defendant was eventually captured at the residence of another while he was attempting to leave through a window.

Officer Brown indicated that the area where the surveillance and pursuit took place was a high crime area where there had been prior robberies, shootings and drug offenses. Officer Brown also indicated that while not being sure, he believed that the Defendant was a Paul Coleman, brother of Gary Coleman although he did not know if there was an active warrant for Paul Coleman.

The Defendant argues that his accidental or intentional abandonment of the handgun was caused by the unlawful and coercive action of the police officers. Specifically, Defendant argues that the Officer Hagan's command to stop and the officers' subsequent pursuit of the Defendant was a seizure under Pennsylvania law that was not supported by either reasonable suspicion or probable cause. The Commonwealth argues in response, that there was in fact reasonable suspicion or probable cause to conduct a pursuit. Specifically, the Defendant was with a person who the police had probable cause to arrest, the Defendant was in a high crime area, the Defendant was possibly a person of interest and the Defendant fled.

An arrest may be accomplished by any act that indicates an intention to take a person into custody and subject him to the actual control and will of the person making the arrest. Commonwealth v. Jeffries, 454 Pa. 320, 323 n.3, 311 A.2d 914, 916 n.3 (1973)(quoting Commonwealth v. Bosurgi, 411 Pa. 56, 68, 190 A.2d 304, 311 (1963)). A police officer's pursuit of a person fleeing the officer is a seizure under Pennsylvania law. Commonwealth v. Cook, 558 Pa. 50, 55, 735 A.2d 673, 675 (1999).

Accordingly, in order to recover contraband from a fleeing suspect, the police officer must demonstrate either reasonable suspicion or probable cause for the pursuit. Cook, supra. When the causative factor in the abandonment of the contraband is an unconstitutional

seizure, the contraband must be suppressed. Commonwealth v. Byrd, 987 A.2d 786, 791 (Pa. Super. 2009); Commonwealth v. Evans, 717 A.2d 542, 545 (Pa. Super. 1998).

In this case, while Officer Hagan testified that he was approaching Mr. Coleman and told Mr. Coleman to stop, the Defendant could have reasonably believed that his freedom of action was being restricted by the initial order to stop and certainly by the subsequent pursuit.¹ Together, the order to stop, the show of force by the police and the pursuit induced the Defendant to abandon the handgun. Accordingly, the issue is whether there was reasonable suspicion or probable cause to justify the order to stop and the subsequent pursuit of the Defendant.

In order to establish reasonable suspicion, a police officer must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude that criminal activity was afoot and that the person he stopped was involved in that activity. Commonwealth v. Reppert, 814 A.2d 1196 (Pa. Super. 2002). The inquiry will not be satisfied by an officer's hunch or unparticularized suspicion. Reppert, supra. The inquiry into whether a police officer possessed reasonable suspicion is an objective one and centers on whether the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate. Commonwealth v. Tucker, 883 A.2d 625 (Pa. Super. 2005).

In examining the totality of the circumstances, among the factors to be considered in forming the basis for reasonable suspicion are tips, the reliability of the

¹ In fact, Officer Brown testified that he believed Officer Hagan was telling both individuals to stop.

informants, time, location and suspicious activity, including flight. In Re: M.D., 781 A.2d 192 (Pa. Super. 2001).

This Court concludes that the officers did not have reasonable suspicion to justify the pursuit of the Defendant. While simply walking down the street with another individual, the Defendant was approached by a fully uniformed and armed police officer demanding that he stop. The immediate subsequent flight was certainly provoked by the police officer's order to stop. Moreover, there were no specific observations upon which a police officer could reasonably have concluded that criminal activity was afoot and that the Defendant was involved in that activity. There was no evidence to indicate that any crimes had recently occurred in the area or that the surveillance was being conducted for any purpose other than to arrest a different person in connection with a domestic relations crime. There is no evidence whatsoever establishing any temporal proximity of any recent crime in that area. The mention by the police officer during his testimony that there was government housing approximately two blocks away is of no import whatsoever. The fact that the Defendant was with another person who the police were looking for also is of no or little consequence. The police were looking for this individual based upon probable cause that he committed an assault upon his girlfriend. There were no complaints whatsoever that the person was engaged in any drug trafficking or any other type of criminal offense that would include others as co-participants. Finally, Officer Brown's testimony that the Defendant was "possibly" a person of interest is immaterial. It was not the Defendant who was possibly of interest but rather another person. Moreover, it was speculation at best in light of Officer Brown's testimony at the suppression hearing that he could not identify the defendant because his face was covered and

his testimony at the preliminary hearing, which can be found at page 10 of the transcript admitted as Commonwealth Exhibit #1, that he did not see the face of the Defendant and he was under the assumption that he could possibly be a person of interest. Under all of the circumstances, there was not one fact upon which the police officers could reasonably conclude that the Defendant was involved in criminal activity.²

The officers did, however, have a hunch based upon their years of experience and their hunch proved correct. Oftentimes in order to properly protect the public, police officers must rely upon hunches and unparticularized suspicions. Indeed, on one level, the officers fulfilled their duties to protect the law abiding public by ridding the streets of another dangerous handgun. Effective law enforcement may not always comport with the constitutional mandates set down by our Founders. This Court, however, is bound by those mandates and firmly believes that society benefits as a whole through the proper application of such.

Accordingly, the following order is entered.

ORDER

AND NOW, this ____ day of April 2010, for the foregoing reasons, the Court **GRANTS** the Defendant's Motion to Suppress and **PRECLUDES** the Commonwealth from

²In its brief, the Commonwealth argues that the Defendant's presence in a high crime area, when combined with his flight gave the police reasonable suspicion to pursue the Defendant. The Court believes the Commonwealth is putting the cart before the horse. The Court does not believe the Defendant's flight can be considered in this case, because it occurred after the police ordered him to stop. Although a show of authority would not constitute a seizure under the Fourth Amendment to the United States Constitution, United States v. Hodari D., 499 U.S. 621, 111 S.Ct. 1547 (1991), it does under the privacy rights guaranteed to citizens of the Commonwealth under Article I, Section 8 of the Pennsylvania Constitution pursuant to Commonwealth v. Matos, 543 Pa. 449, 672 A.2d 769 (1996) and its progeny. Commonwealth v. Evans, 717 A.2d 542, 544-45 (Pa. Super. 1998); see also Commonwealth v. Byrd, 987 A.2d 786, 791-92 (Pa. Super. 2009); Commonwealth v. Jones, 978 A.2d 1000, 1005 n.6 (Pa. Super. 2009). Here, the Defendant's flight, as well as his abandonment of the firearm, was the result of coercive and unlawful police conduct, i.e., ordering the Defendant to stop without having reasonable suspicion that he was involved in criminal activity.

utilizing the handgun to any extent whatsoever in connection with the prosecution against the Defendant.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: PD (Nicole Spring, Esq.)
DA (Melissa Kalaus, Esq.)
Gary Weber, Esquire (Lycoming Reporter)
Work File