

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-387-2010
vs. :
: CRIMINAL DIVISION
: RASHEAN HICKMAN,
: Defendant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order dated October 26, 2010, in which the Court granted Defendant's Motion to Suppress Evidence. The Commonwealth filed a notice of appeal on November 10, 2010. Although the Court did not order the Commonwealth to file a statement of errors complained of on appeal, the Commonwealth filed a statement on November 18, 2010.

The first issue raised in the Commonwealth's statement is: "Whether the court erred in allowing Defendant to raise another issue in his motion to reconsider the original suppression opinion." The Court does not believe the Commonwealth raised this issue at the hearing and argument on Defendant's motion to reconsider. If the Commonwealth did not raise this issue, it is waived. Pa.R.App.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal").

In the alternative, the Court does not believe it erred in allowing Defendant to litigate the issue raised in the motion to reconsider. In the original suppression motion, Defendant challenged the search of his person by contending the police did not have

reasonable suspicion to stop him or pat him down, because the officers had no reasonable suspicion to believe Defendant was armed and dangerous. Motion to Suppress, ¶¶ 22, 23. Defendant then asserted that all the evidence should be suppressed because it was seized in violation of the 4th Amendment of the United States Constitution an Article I, Section 8 of the Pennsylvania Constitution. Motion to Suppress, ¶ 27. While Defendant did not expressly argue in his original motion or at the hearing on his original motion that the officer exceeded the scope of a permissible pat down by lifting Defendant's sweatshirt, Defendant did aver in his original motion that "the officer moved his [Defendant's] waist band and saw part of the bag; only after that did he [Defendant] agree to remove it [the bag] for them." Motion to Suppress, ¶ 21. After the Court denied the motion but did not address the scope of the pat down in its Opinion and Order, counsel for Defendant filed a motion for reconsideration expressly asserting that the trooper exceeded the scope of a "Terry" pat-down. Motion to Reconsider Denial of Suppression Motion, ¶ 5.

While defense counsel did not argue the scope of the pat down at the initial hearing, one could argue that the issue was raised in paragraphs 21 and 27 of the original suppression motion. Moreover, both the issue argued at the original hearing and the issue raised in the motion to reconsider were related to the lawfulness of the pat down of Defendant's person. Under these facts and circumstances, the Court believes the issue raised in the motion to reconsider was not a new issue; therefore the Court does not believe it erred in addressing on its merits the issue raised in the motion to reconsider.

The other issue asserted in the Commonwealth's statement is the court erred in suppressing the evidence. For the reasons stated in the Opinion and Order entered October 26, 2010, the Court does not believe it erred in suppressing the evidence.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)