

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1351-2010
vs. :
THOMAS HOFFMAN, :
Defendant : Opinion and Order re Defendant's
: Motion to Suppress

OPINION AND ORDER

This matter came before the Court on the Defendant's Motion to Suppress.

The relevant facts follow.

On July 16, 2010 at approximately 12:18 a.m., Officer Damon Hagan and Officer Jason Bolt of the Williamsport Bureau of Police were on bicycle patrol in the 500 block of Fifth Avenue when they observed an individual riding a bicycle without any lights on it. The officers approached the individual and told him to stop. The individual on the bicycle was Defendant Thomas Hoffman.

The officers told Defendant the reason for the stop and asked him for biographical information. Officer Hagan then asked Defendant if he had any weapons or drugs. Defendant stated he had a knife and he started to reach into his pocket to retrieve it. Officer Hagan told Defendant not to do that. Officer Hagan then retrieved the knife from Defendant's pocket and proceeded to pat him down for weapons. No additional weapons were found, but the small coin pocket in the right side of Defendant's pants was completely full. Officer Hagan could not tell what was in the pocket, but the first thought that came into his mind was that it could be contraband. Officer Hagan asked Defendant if he wanted to talk about what was in his pocket, but Defendant did not respond. Instead, Defendant reached toward the pocket. Officer Hagan told him not to do that then asked

Defendant what was in the coin pocket. Defendant answered that he had a little bud in there. Officer Hagan testified that the term “bud” is slang for marijuana and the bud is the portion of the marijuana plant that contains the highest level of THC. Officer Hagan then reached in Defendant’s coin pocket and removed the suspected marijuana. The substance field tested positive for marijuana. The police took Defendant’s bicycle to his residence and Defendant was taken to City Hall for processing.

The police charged Defendant with possession of a small amount of marijuana and possession of drug paraphernalia. The police neither issued a citation to Defendant for operating a bicycle at night without a light nor included this charge in the criminal complaint.

Officer Hagan admitted Defendant was not free to leave and that he did not read Miranda rights to him at any time during the stop.

Defense counsel argued that Defendant was in custody because he was not free to leave and Miranda rights should have been read to Defendant before Officer Hagan asked Defendant about the contents of the coin pocket.

The attorney for the Commonwealth argued that Defendant was not in custody and he was free to decline to answer Officer Hagan as evidenced by the fact that Officer Hagan did not demand that Defendant tell him what was in his pockets but simply asked him if he wanted to talk about what was in his pocket.

Miranda warnings are required only when a suspect is in custody. Commonwealth v. Ford, 539 Pa. 85, 650 A.2d 433, 439 (1994). The test for custody is an

objective one that focuses on the reasonable impression conveyed by the actions of the police to the person being questioned. Commonwealth v. Sherwood, 603 Pa. 92, 982 A.2d 483, 499 (2009).

A person is in custody for Miranda purposes only when he ‘is physically denied his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by the interrogation.’ Commonwealth v. Johnson, 556 Pa. 216, 727 A.2d 1089, 1100 (1999). The U.S. Supreme Court has elaborated that, in determining whether an individual was in custody, the “ultimate inquiry is ... whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” Stansbury v. California, 511 U.S. 318, 322, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994).

Sherwood, supra., quoting Commonwealth v. Boczkowski, 577 Pa. 421, 846 A.2d 75, 90 (2004)(footnote and parallel citations omitted).

The Court finds that Defendant’s rights were violated in this case. Contrary to the prosecutor’s assertion, Defendant obviously was not free to decline to answer Officer Hagan. The first time Officer Hagan broached the subject of what was in Defendant’s coin pocket, he asked Defendant if he wanted to talk about what was in the pocket. Defendant did not respond and moved his hand toward his pocket. Officer Hagan told Defendant not to do that and again asked what was in the pocket. If Defendant were at liberty to not respond, there was no need Officer Hagan to ask a second time. Officer Hagan’s actions and statements would lead a reasonable person in Defendant’s circumstances to believe he had to answer; they could even send the message to a reasonable person that he was not going anywhere until he answered the question.

In the alternative, the Court finds the Commonwealth has failed to meet its

burden of proof. Rule 581(H) states, in relevant part: “The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant’s rights.” Pa.R.Cr.P. 581(H). The typical questions such as whether the officers were armed or had their weapons drawn, whether the officers blocked Defendant in, or the tone of voice Officer Hagan used during his questioning of Defendant were not asked in this case.

The Court also believes the inquiries regarding contraband exceeded the scope of a stop for a lighting violation. Officer Hagan is a member of the Williamsport Bureau of Police. Officer Hagan stopped Defendant because he was operating a bicycle at night without appropriate lighting in violation of the Vehicle Code, 75 Pa.C.S.A. §3507(a). This type of violation requires probable cause, not the reasonable suspicion standard of an investigative detention, because there is no further evidence of the violation that could be obtained from a subsequent stop and investigation.

Commonwealth v. Feczko, 2010 PA Super 239 (Pa.Super. December 22, 2010). This lighting violation is a summary offense. See 75 Pa.C.S.A. §3502. Typically, proceedings for summary cases are instituted by issuing a citation. Such proceedings can only be instituted by arrest without a warrant when specifically authorized by law.

Pa.R.Cr. 400(4). Although Pennsylvania State Police who are in uniform are authorized to arrest for violations of the Vehicle Code, municipal police officers in uniform are only authorized to arrest nonresidents who commit the violation in the officer’s presence. See 75 Pa.C.S.A. §6304(b). Defendant is a resident. Therefore, this is a case where the only

additional information the officer needed was Defendant's biographical information so he could issue a citation, file a citation or file a complaint.¹ See Pa.R.Cr. 400.

Officer Hagan asked for Defendant's biographical information. Defendant provided Officer Hagan with identification. Officer Hagan testified that he checked for outstanding warrants, with negative results. He wasn't sure if the warrant check had already come back negative when he asked Defendant if he possessed any weapons or contraband. No evidence was presented to show Officer Hagan had any reason to believe Defendant either was armed and dangerous or in possession of contraband prior to the officer asking about weapons or contraband. Officer Hagan clearly testified that Defendant was not free to leave when he inquired about weapons and contraband. There is no information in the record whether Officer Hagan still possessed Defendant's identification at the time he made these inquiries.

When Defendant responded that he had a knife in his pocket and started to reach in his pocket, Officer Hagan told Defendant not to go into his pocket. Officer Hagan then seized the knife from Defendant's pocket and patted him down to search for any additional weapons. No additional weapons were found, but Officer Hagan noticed that the small coin pocket of Defendant's pants was completely full. He could not tell what was in the pocket, but there was nothing to indicate it was a weapon. Officer Hagan testified that the first thing that came to his mind was that it could be contraband. No

¹ Even when an officer is specifically authorized by statute to arrest, the Rules of Criminal Procedure only contemplate arrest for summary offenses "in exceptional circumstances such as those involving violence, or imminent threat of violence, or those involving a danger that the defendant will flee." Pa.R.Cr.P. 440, Comment.

testimony was presented to show any factual basis why Officer Hagan thought the pocket could contain contraband. Without such a basis, the Court can only conclude that Officer Hagan had a hunch.

Officer Hagan asked Defendant if he wanted to talk about what was in his pocket. The Court would have no problem with this inquiry if Officer Hagan had reasonable suspicion to believe the pocket contained drugs or if this were a mere encounter and Defendant were free to leave without answering. However, it is clear from Officer Hagan's testimony that Defendant was not free to leave.

Defendant did not verbally respond to Officer Hagan. Instead, he reached toward his pocket but was prohibited from doing so by Officer Hagan's command not to reach in his pocket. Officer Hagan then said, "What's in your pocket?" Under the totality of the circumstances of this case, the Court finds that a reasonable person in Defendant's situation would view the question as a command or directive to tell the officer what was contained in the pocket, especially since Defendant was not free to leave, the officer was prohibiting him from reaching in his pocket and the inquiry changed from "Do you want to talk about what's in your pocket?" to "What's in your pocket?"

When Defendant answered that the pocket contained a "bud," Officer Hagan reached into Defendant's pocket and seized the marijuana contained therein.

The officer's inquiries about contraband were unrelated to and beyond the scope of the stop for the lighting violation. Officer Hagan should have simply issued

Defendant a citation or written down his biographical information to file a citation or a complaint against Defendant.

In summary, the Court finds Defendant's statements and the controlled substances seized from his person must be suppressed because Defendant was subject to custodial interrogation or the officer's inquiries exceeded the scope of a stop for a lighting violation or the Commonwealth failed to establish that the evidence was lawfully obtained.

ORDER

AND NOW, this ___ day of January 2011, the Court **GRANTS** Defendant's motion to suppress evidence and **PRECLUDES** the Commonwealth from utilizing Defendant's statements or the marijuana seized from his person.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Jeffrey Rowe, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)