

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF I.T. : JV 231-2012  
A JUVENILE :

**OPINION AND ORDER**

Juvenile, I.T., seeks to suppress evidence of drugs, specifically a brick of heroin, found on his person by a police officer during a second pat down of his person. Both of these pat downs were conducted after a routine traffic stop. Juvenile was a passenger in the car. The issue in this matter is whether the evidence should be suppressed because it was found after a more junior police officer conducted a first pat down of Juvenile. Juvenile questions whether the fruits of the second pat down conducted by a veteran officer may be submitted into evidence. After a review of the facts and the applicable law, the Court finds that the evidence acquired after the second pat down was done so lawfully, and, therefore, it will not be suppressed.

**I. Factual Background**

A brief factual background is as follows. Juvenile was a passenger in a car that was stopped by a pair of police officers. The police officers were in a pair because a more junior police officer was working during his probationary period with a veteran officer. The officers stopped the car that Juvenile was riding in because the car had improperly tinted windows; the pair of officers stopped the car in a high crime area. The junior officer conducted the initial pat down of Juvenile, while the veteran officer conducted the pat down of the driver of the vehicle. During the initial pat down, the junior officer discovered a hard object in the inside of Juvenile's pants; this object was found around the groin area. The junior officer testified that he believed that the object could be a weapon. Subsequently, the junior officer placed the juvenile in handcuffs.

After completing the pat down of the driver, the veteran officer came around the vehicle and the young officer relayed to him his finding of the hard object. The junior officer relayed to the veteran officer that he could not identify the hard object, but that it could be a weapon. The veteran officer observed Juvenile earlier in the stop. The veteran officer was concerned that Juvenile may have weapon because the officer had earlier observed Juvenile pushing something in his groin. The veteran officer then performed a second, limited pat down of Juvenile; the second pat down was a limited search for a weapon, starting at Juvenile's waist. During the second pat down, the veteran officer immediately recognized the hard object in Juvenile's groin as a brick of heroin.

In this instance, Juvenile does not contest the validity of the Terry<sup>1</sup> stop or the initial pat down performed by the junior officer. The pending motion contests only the validity of the second, limited pat down of Juvenile by the veteran officer.

## **II. Discussion**

It is well-settled that a police officer may conduct a brief investigatory stop of an individual if the officer observes conduct that allows the officer to reasonably conclude, in light of his experience, that criminal activity might be afoot. *Commonwealth v. E.M.*, 735 A.2d 654, 659 (Pa. 1999); *In the Interest of C.C.*, 780 A.2d 696, 698 (Pa. Super. Ct. 2001). An officer's investigatory stop is justified if the officer can support the stop by specific, articulable facts which give reasonable suspicion of the criminal activity; this reasonable suspicion supports the limited intrusion. *Id.*

During an investigatory stop, a police officer may conduct a pat down of a suspect's outer garments for weapons if the officer observes conduct that would lead him to believe that a

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<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

suspect may be armed and dangerous. *Commonwealth v. Pakacki*, 901 A.2d 983, 988 (Pa. 2006); 735 A.2d at 659. However, this Terry search should be limited to determining whether the suspect is armed and dangerous. *Sibron v. New York*, 392 U.S. 40, 65-66 (1968); *C.C.*, 780 A.2d at 698. Therefore, if an officer exceeds this limited scope in a Terry search, the evidence should be suppressed. *Id.* When considering the validity of a pat down search during an investigatory stop, the Court must be guided by common sense concerns and should *give preference to the safety of officers* during an encounter with a suspect when the circumstances indicate that the suspect may have a weapon. *Commonwealth v. Mack*, 953 A.2d 587, 590 (Pa. Super. Ct. 2008) (emphasis added).

Evidence may be seized by an officer during this limited Terry search under the plain feel doctrine, as articulated by the Supreme Court of the United States in *Minnesota v. Dickerson*, 509 U.S. 366 (1993). *See Commonwealth v. Zhahir*, 751 A.2d 1153, 1163 (Pa. 2000); *C.C.*, 780 A.2d at 699. Under this standard, an officer may seize non-threatening contraband during a Terry search if the officer lawfully detects the contraband, if the officer immediately identifies the incriminating nature of the contraband, and if the officer has the right to access the contraband. *C.C.*, 780 A.2d at 699. When determining whether contraband is immediately apparent to an officer, the Court should consider the totality of the circumstances, including the location of the stop, the suspect's conduct, the officer's experience, and the basis for the stop. *Zahir*, 751 A.2d at 1163; *C.C.*, 780 A.2d at 699.

In the instant matter, the Court finds that the second pat down was conducted by the veteran officer in accordance with the law. Under the circumstances presented to the Court, the veteran officer had specific, articulable facts that gave rise to his reasonable suspicion that criminal activity may be afoot. The officers stopped the car in a high crime neighborhood

because the vehicle's windows were improperly tinted. Also, the veteran officer observed conduct by Juvenile that would lead the officer to believe that Juvenile was armed and dangerous. Mainly, the veteran officer received information from the junior officer that Juvenile had a hard object in his groin area. The junior officer told the veteran officer that the hard object could be a weapon. Additionally, before any pat down was conducted by either officer, the veteran officer witnessed Juvenile push something around his groin. The Court notes that the veteran officer has been a police officer since 2001, and is a member of the Drug Task Force Tactical Team. Under these circumstances, the veteran officer observed conduct that would lead him to believe that Juvenile was armed and dangerous, so, he conducted a limited pat down search of Juvenile for a weapon. After considering the concerns that existed for the officers' safety and under the totality of the circumstances, the Court finds that the second pat down was conducted in accordance with the law.

In addition, the Court finds that the veteran officer could seize the contraband found on Juvenile under the plain feel doctrine. The veteran officer lawfully detected the contraband during a Terry search of Juvenile. The veteran officer, as a member of the Drug Task Force Team and as an officer since 2001, testified that the contraband was immediately apparent to him upon the pat down of Juvenile. Under the other factors articulated above, i.e. the stop in the high crime neighborhood, Juvenile's conduct upon the stop, and the junior officer's prior pat down, and the general concerns that exist for the officer's safety, the Court finds that the contraband was seized in accordance with the law.

Therefore, evidence, i.e. heroine, that was obtained by the officer through that second pat down was lawfully obtained by the officers, and it will not be suppressed.

**ORDER**

AND NOW, this 12<sup>th</sup> day of September, 2012, based on the foregoing reasons, Juvenile's Motion to Suppress is hereby DENIED.

BY THE COURT,

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Richard A. Gray, J.

cc: JPO (4)  
Court Administrator  
J. Yates, Esq.  
D. Martino, Esq.

(RAG/et)