

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-601-2012
vs. :
MONTE SMITH, : Opinion and Order regarding
Defendant : Defendant's Motion to Suppress
:

OPINION AND ORDER

This matter came before the Court on August 28, 2012 for a hearing and argument on Defendant's motion to suppress evidence. The relevant facts follow.

Shortly after midnight on March 25, 2012, Officer Robert Williamson of the Williamsport Bureau of Police heard a "triple-tone" dispatch for an armed robbery in the vicinity of Campbell and West Fourth Street. While Officer Williamson was en route to the scene, another officer who had spoken to the alleged victim advised Officer Williamson that there were two or three suspects, all of whom were Black males, with one in possession of a firearm. The other officer also indicated that one of the suspects was wearing blue jeans and a blue hooded sweatshirt.

Within five to fifteen minutes after the original dispatch, Officer Williamson observed a black male wearing jeans and a dark hooded sweatshirt walking north on the 300 block of Walnut Street. The individual then turned west onto the 700 block of Grace Street, in a direction that was toward the scene of the alleged robbery. Officer Williamson radioed that he was getting out of his vehicle to make contact with the individual.

Officer Williamson, who was in full uniform, exited his marked patrol vehicle, approached the individual and directed him to stop. The individual complied.

Officer Williamson pulled out his flashlight and told the individual to show him his hands. Again, the individual complied. After Officer Williamson confirmed that the individual was not carrying anything, he asked the individual for identification. The individual provided an identification card to Officer Williamson and was identified as Defendant Monte Smith. Other officers arrived on the scene to provide back up. Officer Williamson then asked Defendant if he had any weapons on him, and Defendant indicated that he had a knife in his back pocket. Officer Williamson told Defendant to turn around and keep his hands where he could see them. Defendant complied, and Officer Williamson could see the outline of a knife in Defendant's back pocket. Officer Williamson retrieved the knife and then continued to pat down Defendant for the safety of the officers, an intern and the public in case Defendant was involved in the robbery and the one who had the gun. During the course of the pat down, Officer Williamson discovered controlled substances. After the pat down was completed and the controlled substances were discovered, the officer realized the dark hooded sweatshirt that Defendant was wearing was black.

Defendant was arrested and charged with possession with intent to deliver a controlled substance, possession of a controlled substance, and possession of drug paraphernalia.

On July 3, 2012, Defendant filed a motion to suppress all evidence discovered as a result of his interaction with Officer Williamson on the grounds that his detention and arrest were not supported by reasonable suspicion that Defendant engaged in criminal activity and there was no basis to conduct a pat down of Defendant.

The Court conducted a hearing and argument on Defendant's motion on August 28, 2012. Defense counsel argued that reasonable suspicion was lacking, because Defendant did not meet the description of the alleged robber because he was wearing a black hooded sweatshirt, not a blue one. The Commonwealth argued that the officer had reasonable suspicion to conduct a pat down, because Defendant generally met the description of one of the robbers, one of the robbers possessed a gun, and Defendant admitted to the officer that he was armed.

At the conclusion of the hearing and argument, the Court gave the parties until September 7, 2012 to provide to the Court any case citations or other legal authorities in support of their arguments. The Commonwealth submitted a memorandum in which it contended that the officer's contact with Defendant was a mere encounter, not an investigatory detention based on Commonwealth v. Coleman, 19 A.3d 1111 (Pa. Super. 2011). Defense counsel countered that the contact was more than a mere encounter, because the officer did more than approach Defendant and ask if he possessed a gun, as was the case in Coleman. Defense counsel then argued, pursuant to cases such as Commonwealth v. Berrios, 437 Pa. 338, 263 A.2d 342 (1970) and Commonwealth v. Jackson, 519 A.2d 427 (Pa. Super. 1986), that the contact was an investigatory detention that was not supported by reasonable suspicion.

There are three categories of interaction between citizens and the police that are relevant in determining whether a particular search and seizure conforms to the requirements of the Fourth Amendment to the United States Constitution and Article 1,

Section 8 of the Pennsylvania Constitution.

The first of these is a ‘mere encounter’ (or request for information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or respond. The second, an ‘investigative detention’ must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or ‘custodial detention’ must be supported by probable cause.

Commonwealth v. Ellis, 541 Pa. 285, 662 A.2d 1043, 1047 (1995)(citations and footnote omitted); see also Commonwealth v. Lyles, 2012 PA Super 191 (September 10, 2012);

Commonwealth v. Coleman, 19 A.3d 1111, 1115-1116 (Pa. Super. 2011). In deciding whether an interaction rises to the level of an investigatory detention, the court must examine all the surrounding circumstances and determine whether the police action would have made a reasonable person believe he was not free to go and was subject to the officer’s orders.

Commonwealth v. Stevenson, 832 A.2d 1123, 1127 (Pa. Super. 2003), citing Commonwealth v. Sierra, 555 Pa. 170, 175, 723 A.2d 644, 646 (1999).

Considering all the facts and circumstances of this case, the Court concludes that Defendant was subject to an investigatory detention. Defendant was walking down the street dressed in common attire of blue jeans and a hooded sweatshirt when he was approached by a police officer in full uniform and directed to stop. Defendant complied. Officer Williamson pulled out his flashlight and told Defendant to show him his hands. Again, Defendant complied. Officer Williamson then asked for identification, which Defendant provided. Two additional uniformed police officers arrived. Officer Williamson then asked Defendant if he possessed any weapons. When Defendant replied that he had a

knife in his back pocket, Officer Williamson ordered Defendant to turn around and keep his hands where he could see them. Defendant did as he was told, and Officer Williamson could see the outline of a knife in Defendant's back pocket, which he promptly retrieved. Although Officer Williamson did not see any bulges to indicate that Defendant possessed any other weapons and Defendant did not engage in any furtive or suspicious movements, Officer Williamson proceeded to pat down Defendant.

Clearly, Officer Williamson was directing Defendant's movements. He told Defendant to stop, to show Officer Williamson his hands, and to produce identification. Two additional officers arrived as back up, even though Defendant complied with all of Officer Williamson's directives. Under all the surrounding circumstances, a reasonable person in Defendant's position would not feel free to leave or to decline to answer Officer Williamson when he asked Defendant if he had any weapons. Therefore, Defendant was subject to an investigative detention before Officer Williamson asked Defendant if he had any weapons.

In the alternative, Defendant was clearly seized when Officer Williamson conducted a pat down of his person. No reasonable person would ever think he was free to leave when a police officer orders him to turn around and then pats down every inch of his clothing looking for weapons.

The Commonwealth, relying on Commonwealth v. Coleman, 19 A.3d 1111 (Pa. Super. 2011) contends that the interaction was a mere encounter. The Court finds Coleman distinguishable for several reasons. First, the defendant in Coleman met all aspects of the description of the perpetrator of a robbery in progress. The complainant described the

robbers as two black males wearing green hooded jackets with black coats over them. The defendant was black male wearing a green hoody with a black coat over it. Id. at 1114. Second, the defendant in Coleman was present when the officer arrived at the location of the robbery. Id. Third, the officer in Coleman approached the defendant and merely asked him if he had a gun, because the radio call reported the robbery was “point of gun and point of knife.” Id. Finally, the defendant in Coleman engaged in furtive movements. When the officer asked Coleman if he had any weapons, Coleman responded “no,” but at the same time he fumbled with his hands in his pocket. Id. The officer asked Coleman to raise his hands, but Coleman continued to keep his hands in his pockets “fumbling around.” Id. At that point, the officer grabbed Coleman by the arm and tried to move him to the police car, at which point the “mere encounter” ceased and Coleman was “seized.” Id. at 1116-17.

This case bears little resemblance to Coleman. First and foremost, Officer Williamson did not simply approach Defendant and ask him if he had a gun. Rather, Officer Williamson told Defendant to stop, directed Defendant to show his hands, and had Defendant provide identification before he asked him if he possessed any weapons. Defendant was totally cooperative with Office Williamson, and he did not engage in any furtive movements or suspicious activity. Furthermore, Defendant only partially met the description of one of the robbers. Although Officer Williamson initially said Defendant “matched” the description of a black male wearing jeans and a dark hooded sweatshirt, upon further questioning it was revealed the alleged victim told Officer Chilson that one of the robbers was a black male

wearing blue jeans and a blue hooded sweatshirt¹ and Officer Williamson had no idea if the shade of blue was light or dark. Defendant is a black male, who on the night in question was wearing blue jeans and a black hooded sweatshirt. He also was not at the location of the robbery. He was southeast of the location of the robbery, walking towards it. Therefore, Defendant only partially matched the description of one of the alleged robbers.

Based on the foregoing, Coleman is distinguishable and Defendant was not the subject of a mere encounter when Officer Williamson asked him if he possessed any weapons or when Officer Williamson conducted the pat down.

Even though the Court finds that Defendant was subject to an investigatory detention, this does not end the inquiry. The Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution prohibit unreasonable searches and seizures. Commonwealth v. Revere, 585 Pa. 262, 888 A.2d 694, 707 (2005); Commonwealth v. Janda, 14 A.3d 147, 157 (Pa. Super. 2011). The reasonableness of any given search or seizure is determined by the totality of the circumstances. See Revere, supra. When all of the facts and circumstances are considered in this case, it was not unreasonable for Officer Williamson to briefly stop Defendant to determine whether he was involved in the robbery or to pat down Defendant once he admitted he was armed.

Officer Williamson came across Defendant within five to fifteen minutes of receiving the radio broadcast of an armed robbery in the vicinity of Campbell and Fourth Street. The victim described one of the robbers as a black male wearing blue jeans and a blue hooded sweatshirt. It was late at night and dark outside. Officer Williamson, who had an intern with

¹ Neither the alleged victim nor Officer Chilson was called as a witness at the suppression hearing.

him, responded to the area and began looking around “trying to get lucky and find someone that matched that description.” He observed Defendant walking north in the 300 block of Walnut Street and then turn onto the 700 block of Grace Street, an area southeast of the scene of the robbery. Defendant was wearing blue jeans and a dark hooded sweatshirt. At that time, Officer Williamson could not immediately distinguish whether the sweatshirt was black or blue. Officer Williamson stopped his vehicle, and radioed that he was exiting his unit to approach the individual.

Officer Williamson walked up to Defendant and told him to stop, which Defendant did. Officer Williamson then pulled out his flashlight and told Defendant to show him his hands. Again, Defendant complied. Officer Williamson asked Defendant for identification, which Defendant provided, and then he asked Defendant if he had any weapons. When Defendant indicated that he possessed a knife in his back pocket, Officer Williamson had ample reason to believe that Defendant was armed. Officer Williamson told Defendant to keep his hands where he could see them and turn around. Officer Williamson retrieved the knife, and then he conducted a pat down to make sure that Defendant did not possess any additional weapons. Officer Williamson did not realize that Defendant’s sweatshirt was black until after he completed the pat down, during which he discovered controlled substances. One can reasonably infer from the limited number of directives and inquiries made by Officer Williamson that the time period of between the stop of Defendant and his ultimate arrest was brief.

Given the fact that Defendant at least partially fit the description of one of the robbers, Officer Williamson came in contact with Defendant in the neighborhood where an

armed robbery occurred within five to fifteen minutes of the radio broadcast of that robbery, the nature of the offense, and the late hour, it was perfectly reasonable for Officer Williamson to stop Defendant to determine whether he involved in the robbery.

Officer Williamson was simply trying to determine who Defendant was and whether he was armed. Once Defendant indicated he possessed a knife, Officer Williamson was justified for his own safety, as well as that of the intern who was with him, to retrieve the knife and conduct a pat down to make sure Defendant did not possess any other weapons. When Officer Williamson realized, as a result of the pat down, that Defendant possessed controlled substances, Officer Williamson had probable cause to believe Defendant was engaged in criminal activity and he placed him under arrest.

The Court notes that neither the Berrios Court nor the Jackson Court found that the police should not have stopped the defendant and asked questions pursuant to an investigatory detention. Rather, both Courts found that the searches were unlawful. In fact, the Superior Court in Jackson stated:

“In light of the foregoing, we conclude that although **the police justifiably stopped appellant** the immediate frisk of his person and search of his bag were improper. We are not holding that the police must always question a suspect before frisking him; we merely conclude that based on the particular facts of this case, the police should have attempted to elicit some clarifying information from appellant before frisking him and searching his closed bag.”

Jackson, 519 A.2d at 432 (emphasis added).

With respect to the pat down or frisk, this case is distinguishable from Berrios and Jackson. Officer Williamson did not immediately frisk Defendant based solely on a general

description of a robbery suspect. Instead, he asked him for identification and inquired whether he possessed any weapons. It was only after Defendant admitted that he was armed with a knife that Officer Williamson conducted a pat down. Defendant's admission that he was armed in conjunction with partially meeting the description of the robbery suspect provided Officer Williamson with a reasonable basis to conduct a pat down. Accordingly, the Court will deny Defendant's motion to suppress.

ORDER

AND NOW, this ____ day of September 2012, the Court DENIES Defendant's Motion to Suppress.

By The Court,

Marc F. Lovecchio, Judge

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