

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-144-2013
 :
 DAVID COLLINS, :
 Defendant :

OPINION AND ORDER

This matter came before the court on Defendant’s motion to reconsider the denial of his motion to suppress. Based on Commonwealth v. Washington, 51 A.3d 895, 898 n.4 (Pa. Super. 2012), defense counsel argued that it was error for the court to conclude that Defendant ducked down to avoid being seen by the police. The prosecutor contended the conclusion that Defendant was trying to avoid being seen was obvious to him based on Detective Kriner’s testimony. In the alternative, he argued that the stop did not rise or fall on that issue, because the fact that Defendant matched the description of the bank robber was significant.

When the court denied the motion to suppress, it conceded that it was a “close call.” In all candor, the factor that tipped the scales in favor of the Commonwealth was Detective Kriner’s testimony that Defendant “ducked down” as the car passed by Detective Kriner’s location as if Defendant did not want to be seen. Contrary to the prosecutor’s argument, Defendant did not completely match the description of the perpetrator. He also was not traveling in the direction in which the bank robber fled.

The initial dispatch described the bank robber as a black male, who was between 5’8” and 6’ tall, wearing a ski mask and a dark sweatshirt, and was last seen running

south towards Funston Avenue. The robbery occurred at the M&T Bank on West Fourth Street near Arch Street in Williamsport. There was no indication that more than one individual was involved in the bank robbery or that he got into a vehicle. Later radio communications revealed that the robber was in his twenties; had a thin build; was wearing jeans, a dark-colored hooded sweatshirt, a ski mask, and white gloves; and was carrying a gray bag.

The robbery occurred in the middle of the afternoon. About fifteen minutes after the robbery, Williamsport police officers stopped a black male who was riding a bike on King Street and another Williamsport police unit was talking to a witness at 912 Diamond Street who reported seeing a black male running through yards. King Street is southwest of Fourth Street and intersects with Funston Avenue. Diamond Street is one block west of Funston Avenue.

Around the same time, Detective Kriner of the Old Lycoming Township Police (who was dressed in plainclothes and positioned at or near the intersection of West Fourth Street and Funston Avenue in an unmarked, brown Ford Crown Victoria) noticed a white Chrysler 300 with Tennessee plates traveling eastbound on Fourth Street whose occupants were three black males in their twenties that were wearing black outerwear. Detective Kriner testified that the back seat passenger ducked down as if he did not want to be seen. When the court sought clarification, the following exchange occurred:

The Court: Okay. I'm not sure if I have this, when did—did you and the passenger make eye contact?

The Witness: The back seat passenger?

The Court: Yeah.

The Witness: I don't know if he was making eye contact with me, but I definitely noticed that he ducked down.

The Court: Right when he drove in front of you?

The Witness: Yeah, it – I guess it was obvious – I mean I was there right at the intersection, and it's a police car.

The Court: Was it a police car or was it your unmarked Crown-

The Witness: It's an unmarked police car, yeah, there's no lights on top of it.

Transcript of Omnibus Hearing, 5/17/2013, at 40.

In Washington, supra, the prosecutor argued that Washington's unprovoked flight upon noticing the police in a high crime area gave rise to reasonable suspicion to stop him. As in this case, the police were in an unmarked vehicle. As they started to pull closer to a group of individuals, Washington started to run in the opposite direction. The Superior Court, however, found that the court erred in finding reasonable suspicion to stop the defendant when the evidence did not establish that Washington knew he was running from the police. In footnote 4, the Superior Court stated:

Not only is this crucial element lacking, the evidence also fails to demonstrate Washington ran in response to the approach of the car. Without some indication that Washington was at least aware of the approaching unmarked car, the argument that he fled in response to the approach of the car is a demonstration of the logical fallacy of *post hoc ergo propter hoc* (it follows therefore it was caused by). We do not believe that a reasonable suspicion or reasonable inference can be properly based on a logical fallacy.

51 A.3d at 898 n.4.

In light of Detective Kriner's testimony quoted above, it is apparent that this court's finding that the back seat passenger ducked down to avoid detection also was based on a logical fallacy. Detective Kriner was stopped on a cross street. He was in an unmarked

vehicle and wearing plainclothes. There is nothing in the record to indicate that Defendant saw Detective Kriner or realized that he was a police officer. Detective Kriner could not say that Defendant made eye contact with him; he could only say that he ducked down.

On redirect examination, the prosecutor elicited testimony from Detective Kriner to the effect that police are the ones who drive Ford Crown Victoria vehicles and that the out of state registration was a factor in stopping the vehicle, because he was aware of instances where banks were robbed by people from out of state and he would say it happens rather frequently, especially with serial bank robbers. Transcript of Omnibus Hearing, 5/17/2013 at 41. The court did not utilize this testimony in its original decision on Defendant's motion to suppress, because it did not find this testimony particularly weighty.

Certainly, there are models of the Crown Victoria (and the virtually identical Mercury Grand Marquis) that are driven by members of the general public. Furthermore, Detective Kriner's testimony regarding the frequency of out-of-state bank robbers was more conclusory than factually based. No specific instances were testified to by Detective Kriner. Although serial bank robberies may frequently involve out-of-state perpetrators, the court cannot recall in either its experience on the bench or in private practice of any bank robberies in Lycoming County that were committed by out-of-state offenders. Therefore, the fact that the vehicle was registered in Tennessee did not make it any more likely that its occupants were involved in the bank robbery in this case.

When "ducking down" is removed from the equation, the portion of the description that Defendant met was vague and general. No testimony was presented whether

any of the occupants had a thin build or were wearing a ski mask or white gloves. Since they were riding in a vehicle, it would be difficult to determine their height and impossible to tell if they were wearing jeans. The description only included one individual who fled on foot in a different direction, not three individuals who fled in a vehicle. The individuals also were not wearing blue or black hooded sweatshirts; they were wearing black jackets. Thus, the only portion of the description that the occupants of the vehicle met is that they were young, black males wearing dark clothing.

However, many individuals out and about in the middle of the afternoon in this section of Williamsport would fit this vague description. See Commonwealth v. Berrios, 437 Pa. 338, 263 A.2d 342, 344 (1970)(description of individuals believed to be involved in shooting as two Negroes in dark clothing and one Puerto Rican in light clothing walking east on Ontario Street too vague to stop and frisk one Negro and one Puerto Rican who were walking in the area and wore clothing of the general color reportedly being worn by those involved); Commonwealth v. Taggert, 997 A.2d 1189 (Pa. Super. 2010)(no reasonable suspicion where appellant only the same race and gender as description of one of the robbers). Therefore, based on the totality of the circumstances, the court cannot find that Detective Kriner had reasonable suspicion to stop the vehicle, and it will grant Defendant's motion for reconsideration.

In light of this decision, the court will modify Defendant's bail to \$10,000 ten percent or surety approved through any appeal. A further condition of bail is that Defendant not possession any firearms or other weapons and he not possess or consume any illegal

controlled substances. Defendant is reminded of his obligation to notify his counsel, the District Attorney and the court of any change in address.

ORDER

AND NOW, this 2nd day of December 2013, the court grants Defendant's motion for reconsideration. In light of this decision, the court also grants Defendant's motion to modify bail. From now throughout any appeal in this case, bail is set at \$10,000 ten percent or surety approved. A further condition of bail is that Defendant not possession any firearms or other weapons and he not possess or consume any illegal controlled substances. Defendant also is reminded of his obligation to notify his counsel, the District Attorney and the court of any change in address.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file