IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	**CR: 2048-2012**
	:	**CRIMINAL DIVISION**
JAMES PLUMMER,	:	
Defendant	:	

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on January 22, 2013. A hearing on the motion was held April 30, 2013. A transcript of the Preliminary Hearing held on November 29, 2012, was provided to the Court by the Defendant. The Court has addressed another motion to suppress arising from the same facts in this case. As a result, this Court has adopted relevant portions of that opinion for the background and discussion sections of this case.

Background

On November 3, 2012, at approximately 7:20 PM, Office Justin Snyder (Snyder) of the Williamsport Bureau of Police (WBP) observed a vehicle that was registered to Tirrell Williams (Williams). According to Snyder, it was dark outside when the vehicle was located. Williams had an active felony arrest warrant against him. Snyder first saw the vehicle on the 200 block of West Third Street and followed the vehicle until it was momentarily lost. Snyder re-located the vehicle in the parking lot of Hampton Inn and Perkins Restaurant and Bakery and saw that Williams was the operator of the vehicle. In addition to Williams, the vehicle had four (4) other passengers.

The vehicle stop was considered a high risk stop and Snyder called for multiple vehicles to assist him. Williams' felony arrest warrant was for the charge of robbery. In addition, Williams had posted earlier on Facebook that he wanted to shoot and kill a police officer.

Snyder was concerned that Williams could be passing a weapon to another passenger in the vehicle as he waited for additional police to arrive at the scene. While it was dark, Snyder did not observe any movements within the vehicle that was consistent with the occupants passing objects.

The police vehicles were positioned behind Williams' vehicle and each individual was taken out of the vehicle separately. James Plummer (Defendant) was the last one out of the vehicle. The Defendant was directed to walk in between two (2) police vehicles, get on his knees, and in this position he was cuffed. The Defendant then stood up and he was patted down for weapons. Snyder testified that his hands were flat and that he did not manipulate them while conducting the pat down. While Snyder was conducting the pat down he felt multiple cylinders in the Defendant's groin. In Snyder's experience, which included three (3) years at the Lycoming County Prison, one (1) year at Federal Correctional Complex Allenwood, and multiple years with the WBP, due to its location he believed the bulge found in the groin area was narcotics. In addition, Snyder immediately recognized the containers as being used to hold marijuana and to mix it with other narcotics, such as PCP.

The Defendant was charged with one count of Possession with Intent to Deliver, an ungraded felony.[1] On January 22, 2013, the Defendant filed a Motion to Suppress. The Defendant alleges two issues: 1) police lacked reasonable suspicion that the Defendant was armed and dangerous prior to conducting a pat down; and 2) the pat down of the Defendant violated the plain feel doctrine.

[1] 35 P.S. § 780-113(a)(30).

Discussion

Whether police lacked reasonable suspicion that the Defendant was armed and dangerous prior to conducting a pat down

Although not directly raised by this Defendant, the issue presented raises the automatic companion rule, whether it has been rejected within Pennsylvania, and consequently whether the pat down of his person was illegal. The Supreme Court of Pennsylvania has not addressed the constitutionality of the "automatic companion" rule, "which provides that all companions of an arrestee within the immediate vicinity, capable of accomplishing a harmful assault on the officer, are constitutionally subjected to the cursory 'pat-down' reasonably necessary to give assurance that they are unarmed." Commonwealth v. Jackson, 907 A.2d 540, 543-44 (Pa. Super. 2006). As a result, the Superior Court has assessed the constitutionality of the rule. Id.; Commonwealth v. Graham, 685 A.2d 132 (Pa. Super. 1996); Commonwealth v. Reed, 19 A.3d 1163 (Pa. Super. 2011).

> In light of the extreme risks facing lawmen in performing arrests, it will always be reasonable for officers to take some actions to insure their safety concerning companions of arrestees. To find otherwise, would be equivalent to turning a blind eye to reality and declaring open season on our protectors of the peace. Consequently, it is inherently reasonable for a law enforcement officer to briefly detain and direct the movement of an arrestee's companion, regardless of whether reasonable suspicion exists that the companion is involved in criminal activity. Such minimal intrusion upon the companion's federal and state constitutional rights are clearly outweighed by the need to extinguish the risks otherwise posed to the lawman's well-being. Accordingly, the first prong of the "stop and frisk" test is a nullity in cases involving an arrestee's companion.

Graham, 685 A.2d at 136-37. The Superior Court found that for an officer to "stop and frisk" an arrestee's companion, there must be reasonable and articulable suspicion that the arrestee's companion is armed and dangerous. Id. at 137.

Applying reasonable and articulable suspicion to an arrestee's companion, the Superior Court found that an area known for guns, drugs, and violence towards police is sufficient. In

Jackson, an officer observed two men engaged in a narcotics transaction. Jackson, 907 A.2d at 541. After the transaction, one of the suspects was found with a group of other men. Id. Officers instructed the group to turn and face a fence so that they could be checked for weapons. Id. As a result of this request, one of the companions tried to flee and was arrested. Id. The Superior Court found that the search of the companions had reasonable suspicion because the men were "in an area known for drug problems, gun problems, and most significantly, violent reactions to the police." Id. at 545.

Further, reasonable suspicion has been found when an arrestee's companion had a prior record that included armed robbery, his hands were not visible, and the driver was found with drugs. In Reed, a vehicle was pulled over for going through a red light. Commonwealth v. Reed, 19 A.3d at 1164. The driver was found to have an outstanding warrant and was arrested. Id. The passenger of the vehicle gave police a fake name and when confronted gave his real name. Id. The police found that there were no outstanding warrants but asked the passenger to exit the vehicle and conducted a pat down, which resulted in a pistol being found. Id. The Superior Court stated:

> The trial court continued that once Appellant gave Officer Sandor his correct name, "Officer Sandor was able to determine that Appellant had a criminal record (i.e. two Felony convictions for Armed Robbery)." The trial court then concluded that "[i]t would have been jeopardizing the officer's safety had Officer Sandor given Appellant the opportunity to depart the scene (after exiting the vehicle) without first insuring that, in so doing, he would not be permitting a 'dangerous person' to get behind him." Based on the totality of circumstances and independent review of additional evidence of record, we agree that there were sufficient grounds for Officer Sandor to conclude that Appellant was armed and dangerous.

Id. at 1170. The Superior Court also noted that the driver was found with drugs, the car did not belong to the driver or passenger, and the passenger's hands were not visible. Id. at 1171.

Lastly, the Superior Court has found reasonable suspicion to search a companion based solely on the driver being found with a gun and being in a high crime area. In Powell, the police looked into a parked vehicle with a sleeping driver and passenger. Commonwealth v. Powell, 934 A.2d 721, 722 (Pa. Super. 2007). An officer noticed a bulge in the driver's waistband and found a loaded gun. Id. at 723. "After the driver was found to have a loaded gun when he appeared to be sleeping in a car in a high crime area, there was no choice left to the officers but to investigate the passenger and every reason to pat down the passenger for the officer's safety." Id. at 722. The passenger, who was still asleep after police had arrested the driver, was awoken and searched because the driver had a gun and because they were in a high crime area.

Here, the Court finds that the police had reasonable suspicion to search the Defendant. Williams' vehicle was not found in an area known for guns, drugs, and violence toward police, however, he had an outstanding warrant for a violent crime (Robbery). See In the Interest of N.L., 739 A.2d 564 (Pa. Super. 1999) (using the arrestee's prior violent crime to justify reasonable suspicion). Additionally, Williams posted on Facebook that he wanted to shoot and kill a police officer. The vehicle was not in a dangerous area, but it possessed a person that was violent and publicly broadcasted his intent to kill an officer.[2] The Court finds that it is reasonable for an officer to infer that the companions of Williams' vehicle were aware of his declaration, if not in agreement with it. To disregard such an inference would be to jeopardize an officer's safety.

In addition, Snyder expressed concern that Williams may have passed the firearm he threated to kill a police officer with to another passenger in the vehicle. While the individuals in the vehicle were directed to place their hands up, there was an opportunity for the firearm to be

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[2] The Court believes that there is more reasonable suspicion in stopping a car where an occupant has been violent and has threatened to kill police than stopping a vehicle with unknown occupants but in a high crime area.

passed before the instruction. Further, Snyder testified that the stop occurred around 7:20 PM and that it was dark outside during that time of the year. See N.L., 739 A.2d at 568 (finding that a dark and/or desolate location can be used to account for reasonable suspicion). The police were reasonable to search the companions prior to releasing them to avoid placing themselves in a vulnerable position.

Finally, this Court believes that it is consistent with precedent established by the Superior Court in finding the police had reasonable suspicion in this case to search the passengers. While the standard states that the police must have reasonable suspicion that the companion is armed and dangerous, this standard has not been strictly applied in all companion cases. In many cases, the Superior Court has also considered the arrestee himself, including whether he had drugs and/or a weapon, and the location where the stop of the defendant took place including time of day. Using those combination of factors here, this Court finds that police had the necessary reasonable suspicion to search this Defendant when the arrestee posted on Facebook that he was going to shoot and kill a police officer, was wanted on a felony warrant, it was nighttime, and the officer was concerned that if the arrestee was prepared to make good on his Facebook post, that the gun could have been passed to a passenger within the vehicle or located within the vehicle where it was accessible to all passengers.

Whether the pat down of the Defendant violated the plain feel doctrine

The Defendant contends that the police violated the plain feel doctrine and therefore the contraband found on his person should be suppressed. The plain feel doctrine states that police may seize non-threatening contraband detected by an officer's "plain feel" during a pat-down for weapons "if the officer is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent and the officer has a lawful right

of access to the object." Commonwealth v. Moultrie, 870 A.2d 352, 360 (Pa. Super. 2005). Pennsylvania Courts have defined "immediately apparent" to mean that the officer that conducted the search readily perceives that the object is contraband and no further search is needed. Id.

In Moultrie, during a pat down an officer felt plastic baggies that appeared to be bundled. Id. at 344. The object was located in the groin of the individual. Id. The Superior Court found that the officer's impression of the object and the location of the object supported a finding of probable cause to arrest the individual and seize the contraband. Id. at 361-62; see also Commonwealth v. Johnson, 631 A.2d 1335 (Pa. Super. 1993) (finding probable cause when an officer perceived illegal narcotics in an individual's crotch).

Here, Snyder testified that the contraband was immediately apparent to him due to his experience as a prison guard and as a police officer with the WBP. Further, the contraband was found in the Defendant's crotch area, which in Snyder's experience is a location used to hide narcotics. The Defendant further argues that Snyder testified he manipulated the object, pointing to testimony from transcripts of the preliminary hearing. At the suppression hearing, Snyder testified that the statement was transcribed incorrectly and that he did not in fact manipulate the objects. Based upon the transcript from the Preliminary hearing and Snyder's testimony, the Court finds that Snyder did not intend to state that he manipulated the containers. Therefore, the Court finds that Snyder did not violate the plain feel doctrine.

In addition, when Snyder patted the contraband the Defendant immediately stated that the object was marijuana, which also resulted in the Defendant's spontaneous statement he had more hidden in his armpit. The Defendant's confirmation that the object in his groin was in fact drugs would alone give Snyder probable cause to arrest. The confirmation by the Defendant

corroborated Snyder's belief that the object was immediately apparent as contraband. Therefore, a true analysis of the plain feel doctrine is unnecessary as the Defendant immediately confessed to the incriminating nature of the objects in his crotch area.

ORDER

AND NOW, this ________ day of May, 2013, based upon the foregoing Opinion, the Court finds that police had reasonable suspicion to stop and frisk the Defendant and that police did not violate the plain feel doctrine. Therefore, the Defendant's Motion to Suppress is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)
Trisha Hoover, Esq.
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