IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CR-144-2013**
Appellant	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
DAVID E. COLLINS, JR.,	:	
	:	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this court's order signed on December 13, 2013 and docketed on December 16, 2013, which denied the Commonwealth's motion to reconsider the Opinion and Order entered on December 2, 2013. The relevant facts follow.

At approximately 2:11 p.m. on December 3, 2012, County Communications relayed a dispatch that there was a robbery at the M&T Bank on West Fourth Street in the City of Williamsport. The dispatch described the robber as a black male between 5"8" and 6'0" tall, wearing a ski mask and a dark (either black or blue) sweatshirt, who was last seen running westbound toward Funston Avenue.

Sgt. Chris Kriner, of the Old Lycoming Township Police Department, drove to the area and positioned his vehicle at or near the intersection of West Fourth Street and Funston Avenue in Williamsport to help set up a perimeter around the scene of the robbery. Sgt. Kriner was dressed in plain clothes and driving an unmarked Ford Crown Victoria.

About fifteen minutes after the dispatch, around the same time that one Williamsport unit had stopped a black male who was riding a bike on King Street and

another Williamsport unit was speaking to a witness on Diamond Street who had reported seeing a black male running through yards, Sgt. Kriner observed a white Chrysler with a Tennessee registration plate traveling eastbound on Fourth Street. The occupants of the vehicle were three black males, who appeared to be in their twenties and were wearing black coats. As the vehicle passed in front of Sgt. Kriner, the back seat passenger "ducked down".

Sgt. Kriner stopped the vehicle to determine if any of the occupants were involved in the robbery. At the time of the stop, there was another dispatch that the bank robber was wearing a Hollister sweatshirt. Sgt. Kriner had the occupants unzip their coats so he could see if any of them were wearing a Hollister sweatshirt. Although it was determined that none of the occupants were involved in the robbery, Sgt. Kriner detained them to investigate the odor of marijuana that he noticed when he initially made contact with the occupants of the vehicle.

Appellee David Collins was one of the occupants of the vehicle. Sgt. Kriner ultimately took Appellee into custody on an outstanding warrant for his arrest from Philadelphia. Controlled substances were discovered on Appellee's person and inside the vehicle. A handgun was located in the passenger compartment and another handgun was found in the trunk.

Appellee was arrested and charged with various controlled substance and firearm violations. He filed an omnibus pretrial motion, which included a motion to suppress evidence on the basis that Sgt. Kriner lacked reasonable suspicion to stop the vehicle.

While noting that it was a close issue, the court initially denied Appellee's motion on the basis that he met the general description of the robber in that he was a black male wearing dark clothing; he attempted to evade being seen by "ducking down"; and he

was heading to the easiest access to a highway out of town.

Appellee filed a motion to reconsider, alleging, among other things, that the evidence failed to show that Appellee "ducked down" as if he did not want to be seen. Appellee specifically noted that although Sgt. Kriner made this conclusory statement in his testimony, nothing was presented to support this conclusion. In fact, Sgt. Kriner testified that he did not see Appellee make eye contact with him.

The court held an argument on Appellee's motion on September 25, 2013. Based on Commonwealth v. Washington, 51 A.3d 895, 898 n.4 (Pa. Super. 2012), Appellee's counsel argued that it was error for the court to conclude that Appellee ducked down to avoid being seen by the police. The prosecutor contended the conclusion that Appellee 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 Appellee matched the description of the bank robber was significant.

After reviewing Sgt. Kriner's testimony and the Washington decision, the court granted Appellee's motion to reconsider in an Opinion and Order entered December 2, 2013.

The Commonwealth filed a motion to reconsider, which the court denied, and then the Commonwealth filed a timely appeal.

The Commonwealth asserts that the trial court erred by denying its motion for reconsideration. The court does not agree.

The fact that originally swayed the court in favor of the Commonwealth, and colored several of its other factual findings, was the conclusion that Appellee ducked down to avoid being seen by the police. However, once the court obtained the transcript and

reviewed the Washington case cited by defense counsel, the court realized that its conclusion was erroneous.

The most that the record showed was that Appellee lowered his head or leaned forward in the back seat as the vehicle in which he was a passenger passed Funston Avenue. Sgt. Kriner, who was dressed in plain clothes in an unmarked Ford Crown Victoria, could not say that Appellee made eye contact with him. There is nothing in the record to show that Appellee saw Sgt. Kriner's vehicle, which was parked on Funston Avenue, a cross street, as the vehicle in which Appellee was a passenger drove by on Fourth Street.

The finding that Appellee "ducked down" to avoid police also impacted the court's perception regarding the direction of travel. Originally, the court viewed both Appellee ducking down and the vehicle heading to the easiest access to a highway out of town as concealment or flight, evidencing consciousness of guilt. Without any evidence that Appellee saw Sgt. Kriner and realized that he was a police officer, the direction of travel no longer represented flight from a crime scene, but simply a visitor leaving town.

In its motion to reconsider, the Commonwealth argues that it doesn't matter who Appellee was hiding from – be it police, bank employees, or would-be citizens on the street- it shows a guilty conscience or something to hide. The fact that Appellee ducked down or leaned over does not necessarily show a guilty conscience or something to hide. There is nothing in the record to show that Appellee saw anyone to be hiding from. Appellee simply could have been trying to retrieve something he dropped or lying down on the backseat to take a nap during the long drive back to Tennessee.

In its motion to reconsider, the Commonwealth also relies on Commonwealth v. Jackson, 519 A.2d 427 (Pa. Super. 1986). While the court agrees that the Superior Court

found reasonable suspicion in Jackson, this case is distinguishable.

In Jackson, there was a report of an attempted burglary in which the suspect was described as a black male, wearing a gray sweat suit, running east on Vine Street. The police observed a black male wearing a gray sweat suit and carrying a blue gym bag, running west on Vine Street toward the crime scene and they stopped him. Although the individual was traveling in the opposite direction, he fully met the description with respect to race and clothing.

Here, the description of the bank robber was a black male, who was between 5'8" and 6' tall, wearing a ski mask and a dark (either a blue or black) sweatshirt and who was last seen running south toward Funston Avenue. Sgt. Kriner testified that Funston Avenue is actually west of the crime scene. Therefore, the suspect was running southwest from the M&T bank located on the corner of Fourth and Arch Streets.

Sgt. Kriner stopped three black males, who were riding in a white Chrysler headed east on Fourth Street from Funston Avenue toward the on ramp to the highway. Like the defendant in Jackson, these black males were headed in the opposite direction than stated in the dispatch, back toward the crime scene. The similarity to Jackson, however, stops there.

Instead of one black male, there were three black males. No one was running or even on foot; all were riding in a vehicle. Near the time that Sgt. Kriner saw the black males in the white Chrysler, one police unit was speaking to a witness on King Street who had seen a black male running through yards and another police unit had stopped a black male on a bicycle. Finally, none of the occupants of the Chrysler were wearing a dark sweatshirt; they were all wearing black coats.

The Commonwealth is only reviewing the facts that, in its opinion, would support the stop. Reasonable suspicion, however, is based on the totality of the circumstances. When all of the facts and circumstances are considered, reasonable suspicion is lacking in this case.

If the Superior Court in Jackson had upheld the stop of a vehicle with three black males who were wearing some other item of gray clothing, such as t-shirts, sweatshirts or jackets, rather than one black male wearing a gray sweat suit and running on Vine Street, the court would agree that Jackson is controlling. Instead, the court finds this case more similar to cases such as Commonwealth v. Taggert, 997 A.2d 1189 (Pa. Super. 2010) and In Interest of M.D., 781 A.2d 192 (Pa. Super. 2001).

The Commonwealth also asserts that the trial court erred by refusing to reopen the record to allow the Commonwealth to introduce additional testimony or abused its discretion by not granting the Commonwealth a hearing on its motion for reconsideration. Since these issues are related, if not the same, the court will address them together.

> The general rule is that a court may, in its discretion, reopen the case after a party has closed for the taking of additional evidence, but such matters are peculiarly within the sound discretion of the trial court, and a denial of the opportunity for a rehearing for the purpose of introducing additional evidence will not ordinarily be disturbed.

Commonwealth v. Deitch Co., 449 Pa. 88, 100-101, 295 A.2d 834, 841 (1972). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias[,] or ill-will discretion is… abused." Commonwealth v. Murray, 83 A.3d 137, __ (Pa. 2013)(citations omitted).

At some point, litigation must end. The court previously held hearings on

Appellee's omnibus pretrial motion and Appellee's motion to reconsider. In its motion to reconsider, the Commonwealth neither gave any reason why such testimony was not presented at either of the previous hearings in this matter nor made an offer of proof regarding the additional testimony that Sgt. Kriner would provide.[1] Therefore, the court did not err or abuse its discretion when it denied the Commonwealth's motion to reconsider without holding a hearing. See Commonwealth v. Pritchett, 225 Pa. Super. 401, 312 A.2d 434, 438 n.* (1973).

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

[1] The court also notes that Commonwealth requested expedited consideration on the cover sheet of its motion, because its appeal deadline was January 1, 2014. Given the holiday season, it was going to be difficult, if not impossible to hold a hearing and issue a decision by this deadline. The motion was filed on December 9, but the court did not receive it until several days later. The courthouse was closed on December 25 and January 1. The court typically does not schedule evidentiary hearings the afternoon before those dates to ensure that everyone can get home at a reasonable hour to spend the holidays with their families. The court also had scheduled a vacation day on December 26. Furthermore, unless a hearing settles or gets continued at the last minute, the court typically is booked solid close to two months in advance.