

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1486-2013
	:	
vs.	:	CRIMINAL DIVISION
	:	
	:	
ROCKY D. WOOD, Defendant	:	Motion to Suppress/Motion to Dismiss
	:	

OPINION AND ORDER

By Information filed on September 27, 2013, Defendant is charged with one count of Firearms not to be Carried without a License, a misdemeanor 1 offense as well as a traffic summary. The charges arise out of an incident that allegedly occurred on June 29, 2013 after the Defendant was stopped for a traffic violation and police eventually found a firearm on him.

On January 24, 2014, Defendant filed a Motion to Suppress contending that the firearm that was found on him should be suppressed as a result of an illegal search. Defendant also filed a Motion to Dismiss the firearm count in the event the Motion to Suppress was granted.

A hearing was held before the Court on April 11, 2014. Corporal Larue Stelene, a Patrol Supervisor with the Pennsylvania State Police, testified on behalf of the Commonwealth.

On June 29, 2013 at approximately 8:15 p.m. in the early evening while completing a traffic stop near the intersection of Maynard Street and State Route 180, Corporal Stelene observed a motorcycle commit a traffic violation. As the motorcycle passed him, the operator gestured with the middle finger of his left hand toward Corporal Stelene.

Suspecting that the motorcycle operator may have been under the influence of

some type of intoxicant as a result of both the traffic violation and his “lack of inhibition” in giving Corporal Stelene the middle finger, Corporal Stelene contacted Trooper Hoffman, who was located nearby, and directed him to stop the motorcycle driver.

Trooper Hoffman followed the motorcycle driver for a significant distance and eventually stopped the motorcycle driver in a residential area. Within a minute or so of the stop, Corporal Stelene arrived at the scene and identified the motorcycle operator as the same individual who had passed him, had committed the traffic violation and had given him the middle finger. He also identified the operator as Defendant.

Corporal Stelene directed Defendant to stay on his motorcycle and engaged him in a conversation. Corporal Stelene asked Defendant if he had any weapons on him to which the Defendant replied “no.” Corporal Stelene noticed, however, that on Defendant’s left hip was a sheath, which contained a knife approximately six inches long, five inches of which were sticking out at the bottom of a leather vest that Defendant was wearing.

Upon Defendant indicating that he had no weapons, Corporal Stelene confronted him stating that he could see a knife. Defendant indicated that he forgot about it. Corporal Stelene directed Defendant to keep his arms out and advised Defendant that he would be removing the knife.

While Corporal Stelene was attempting to remove the knife, he first needed to lift Defendant’s vest. He realized that the vest was extremely tight and was difficult to move as a result of bulging in the front of the vest.

After Corporal Stelene removed the knife and noticed the tightness of the vest as well as the bulging, he asked Defendant if he had any other weapons or anything illegal on

him. The Defendant replied “no.”

Corporal Stelene then asked Defendant about the bulge in the front of his vest to which Defendant replied that it was “an iPod.” Corporal Stelene confronted Defendant by indicating that it could not possibly be an iPod. Defendant then responded that it was “just stuff.”

In light of all of the circumstances Corporal Stelene decided to frisk Defendant. He had Defendant keep his arms out. Corporal Stelene felt the outside of the vest and immediately noticed the “outline of a semiautomatic pistol” in one of the pockets. Corporal Stelene testified that the vest was so tight that he could easily tell that it was a weapon.

Corporal Stelene told Defendant that it felt like a gun. Defendant responded, “I forgot my 9 is in there.” Corporal Stelene asked if it was loaded to which Defendant indicated “yes.”

At that point, Corporal Stelene indicated that he was going to remove the vest and obtain the gun. The vest was apparently so tight that Defendant had to help Corporal Stelene remove it. Corporal Stelene eventually obtained the gun, which was located in the left inside pocket of the vest. Corporal Stelene also found one round of ammunition in that pocket. In the right inside pocket, Corporal Stelene found two loaded magazines.

Defendant argues that under all of the circumstances, Corporal Stelene did not have reasonable suspicion to believe that Defendant was armed and dangerous. Accordingly, the seizure of the gun was unconstitutional and it should be suppressed.

“[W]here a motion to suppress has been filed, the burden is on the

Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

The sole issue in this case is whether Corporal Stelene had reasonable suspicion that Defendant was armed and dangerous. Defense counsel admits that Defendant was armed, but contends that that Corporal Stelene did not have any basis to believe that Defendant was “dangerous.”¹

During a traffic stop, an officer may pat down the driver when the officer believes, based on specific and articulable facts, that the individual is armed and dangerous. Commonwealth v. Parker, 957 A.2d 311, 315 (Pa. Super. 2008) (quoting Commonwealth v. Stevenson, 894 A.2d 759, 772 (Pa. Super. 2006), appeal denied, 917 A.2d 846 (2007)). In other words, when the police have a belief that an individual may be armed and dangerous, the police may lawfully frisk the individual for weapons. Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968). In deciding if reasonable suspicion was present, the Court must take into account the totality of the circumstances as viewed through the eyes of a trained officer. Commonwealth v. Jackson, 907 A.2d 540, 543 (Pa. Super. 2006), appeal denied, 593 Pa. 754, 932 A.2d 75 (2007).

Under the totality of the circumstances, the Court finds that the pat down of Defendant was based on reasonable suspicion. The Court finds that Corporal Stelene possessed a reasonable belief, based on specific and articulable facts which, taken with the

¹ If the Court misunderstood Defendant’s motion and argument and Defendant is also challenging the legality of the traffic stop, the court would reject any such challenge. Corporal Stelene credibly testified that as he sat at the top of the Maynard Street off ramp he observed Defendant move from the right lane of traffic to the off ramp lane without using a visible turn signal. Corporal Stelene’s observation gave him probable cause to believe that

rational inferences from those facts, indicated that Defendant was armed and dangerous.

When first passing Corporal Stelene, Defendant gave him the middle finger exhibiting, at the very least, disrespect to law enforcement. Upon being stopped and specifically asked if he possessed any weapons, Defendant either lied or forgot. After obtaining the knife, Corporal Stelene asked if he had any other weapons to which Defendant replied “no.” The reasonable inference from his denial under all of the circumstances is that Defendant lied and did not forget. Clearly, he was “caught red-handed” with the knife and was on notice. The suggestion he may have forgotten about the gun is without merit.

Moreover, upon Corporal Stelene noticing a suspicious bulge and inquiring about it, Defendant told Corporal Stelene that it was an iPod. Obviously, Defendant’s explanation was utterly inconsistent with the appearance of the bulge, how tight it made the vest fit and the small size of an iPod. Again, the reasonable inference from all of the circumstances was that Defendant was lying to Corporal Stelene.

Upon being confronted by Corporal Stelene that it could not possibly be an iPod, Defendant was evasive indicating that it was “just stuff.” The reasonable inference is that Defendant was either lying and/or hiding what was in his vest.

The Court also notes the observations of the United States Supreme Court and the Pennsylvania appellate courts that roadside encounters, even ones involving seemingly minor traffic violations, are fraught with dangers to the police. See Interest of O.J., 958 A.2d 561, 564-65 (Pa. Super. 2008)(roadside encounters between police and suspects are especially hazardous, and danger may arise from the possible presence of weapons in the

Defendant violated section 3334 of the Vehicle Code.

area surrounding a suspect; indeed, it appears "that a significant percentage of murders of police officers occurs when the officers are making traffic stops") and cases cited therein.

Given all of these circumstances, including the disrespect, if not outright animosity, Defendant exhibited when he gestured at Corporal Stelene with his middle finger, as well as the fact that Defendant was armed with a knife, caught lying red-handed and then continued to lie, it was reasonable for Corporal Stelene to suspect that Defendant was both armed and dangerous. The minimal intrusion of frisking Defendant under these circumstances was clearly justified.

ORDER

AND NOW, this 16th day of April 2014, following a hearing and argument, the Court **DENIES** Defendant's Motion to Suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (MK)
PD (JF)
Gary Weber, Lycoming Reporter
Work file