

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | CR-285-2015 |
| v. | : | |
| | : | |
| KADEEM MONTEZ MIDDLETON, | : | CRIMINAL DIVISION |
| Defendant | : | |

OPINION AND ORDER

On April 13, 2015, the Defendant filed an Omnibus Pre-Trial Motion. A hearing on the motion was held on June 12, 2015.

I. Background

A. Direct Examination of Sheriff's Deputy Michael Caschera

Michael Caschera (Caschera) is a Lycoming County sheriff's deputy. At the time of the hearing, he had been a deputy for two and a half years. He has attended Act 120 certification classes, through which he learned the looks, smells, and packaging of narcotics. Before working as a sheriff's deputy, Caschera was an officer with the Duboistown Police Department for about 14 months. Before he was an officer in Duboistown, Caschera was an officer with the Montoursville Borough of Police for about 14 months.

On February 9, 2015, Caschera and Sheriff's Deputy Andrea Brackbill went to an apartment at 2423 1/2 West Fourth Street in Williamsport to serve a Protection from Abuse (PFA) order on the Defendant. The order stated that the Defendant was evicted and excluded from 2423 1/2 West Fourth Street. Caschera knocked on the apartment door for at least three minutes before the Defendant opened the door. The Defendant opened the door just enough to

allow himself to exit and closed the door behind him. The deputies served the Defendant and told him that he had 20 minutes to collect some of his belongings from the apartment.¹

The Defendant was upset; he said that since he was not from the area, he had nowhere to go and no one to call. The Defendant tried to open the apartment door, but it was locked. He had previously told the deputies that no one else was in the apartment, but when the Defendant knocked on the door, Caschera realized that somebody else must be in the apartment. The Defendant then told the deputies that his brother was in the apartment. The brother opened the door just enough to allow the Defendant to enter. The Defendant entered the apartment quickly and, to Caschera, it “seemed like he was going in for a purpose.”

Caschera followed the Defendant into the apartment. The Defendant “began to linger about in the living room,” so Caschera told him to think about the essential things. The Defendant then said, “You’re right. I’m going to go upstairs. Do you mind staying here?” Caschera said that the Sheriff’s policy required that he remain with the Defendant. The Defendant then quickly went to the apartment’s staircase and grabbed a blue and white checkered shirt. He held the shirt “like a football running back,” and Caschera believed that he was trying to conceal something in the shirt. Caschera was concerned that there was a weapon in the shirt, so he told the Defendant to drop the shirt. The Defendant quickly continued up the stairs without dropping the shirt. Caschera followed the Defendant into an upstairs room, where the Defendant dropped the blue and white shirt on a pile of shirts on the floor and then kicked the pile. Caschera believed that the Defendant was trying to kick another shirt over the blue and white shirt. When the Defendant kicked the pile, Caschera saw a glassine sandwich bag containing smaller blue wax bags. Caschera identified the bags as bags of heroin. He then handcuffed the Defendant and called the police.

¹ The PFA order stated that the Defendant had 20 minutes to collect some of his belongings from the apartment.

B. Cross Examination of Deputy Caschera

The sheriff's deputies followed the Defendant into the apartment, and Caschera told the Defendant that the Sheriff's policy required him to follow the Defendant. After the Defendant picked up the blue and white shirt, he "cradled it to the front of his body." Caschera was behind the Defendant and thought that he was holding the shirt suspiciously. Caschera gave multiple commands to drop the shirt since the Defendant did not comply with the first command. When the Defendant eventually dropped the shirt, Caschera saw a clear plastic bag containing other wax bags. Since Caschera saw that the object on the shirt was not a gun or a knife, he asked the Defendant to pick the shirt up, so Caschera could clearly see what the Defendant dropped. When the Defendant picked up the shirt, he kicked the pile. Caschera believed the Defendant was trying to kick another shirt over the blue and checkered shirt. After Caschera saw the bags, he handcuffed the Defendant, did a "pat down search" of the Defendant, and found crack cocaine, a cut straw, and two cell phones.

C. Finding of Fact

Caschera's testimony raised a question regarding exactly when he saw the clear plastic bag with the smaller blue wax bags inside of it. On direct examination, Caschera testified that he saw the bags when the Defendant dropped the shirt and then kicked the pile. This is consistent with Caschera's testimony on cross examination when he said that he could see the bags when Defendant dropped the shirt. But on cross examination, Caschera testified that after he realized the object on the shirt was not a gun or a knife, he asked the Defendant to pick up the shirt, so he could clearly see what the Defendant dropped. Caschera's testimony is inconsistent in that he testified that he could see the bags when the Defendant dropped the shirt, but then wanted the Defendant to pick up the shirt so that he could clearly see what was dropped. Despite the

inconsistency, Caschera did testify that when the Defendant dropped the shirt, he could see the clear bag, which contained the other bags. Therefore, the Court finds that when the Defendant dropped the blue and white shirt, Caschera saw the bags.

D. Arguments

The Defendant argues that the warrantless entry into the apartment was illegal because there were no exigent circumstances, and the Defendant did not consent to the entry. He also argues that Caschera conducted an investigation when he ordered the Defendant to drop the shirt and then ordered him to pick it up again. The Defendant cites Commonwealth v. Dobbins² and Kopko v. Miller³ to support his assertion that sheriff's deputies do not have the authority to conduct independent investigations. In addition, the Defendant argues that Caschera did not have reasonable suspicion that the Defendant was armed and dangerous. He further argues that Caschera had neither reasonable suspicion to detain him nor probable cause to arrest him.

The Commonwealth argues that the deputies' entry into the apartment was legal because a court order authorized the entry. It also argues that Caschera did not conduct an independent investigation as the totality of the circumstances show that he asked the Defendant to drop the shirt out of concern for the safety of him and his fellow deputy. The Commonwealth further argues that the actions of the Defendant created exigent circumstances.

² 934 A.2d 1170 (Pa. 2007).

³ 892 A.2d 766 (Pa. 2006).

II. Discussion

A. The Interaction Between the Sheriff's Deputies and the Defendant Began as a Mere Encounter, Not an Investigation.

“[N]ot every encounter is so intrusive so as to trigger constitutional protections. It is only when the officer, by means of physical force, or by displaying or asserting authority, restrains the liberty of the citizen that a ‘seizure’ occurs.” Commonwealth v. Boswell, 721 A.2d 336, 340 (Pa. 1998) (citations omitted).

In Boswell, the Pennsylvania Supreme Court discussed the three types of interactions between police and citizens:

Interaction between police and citizens may be characterized as a ‘mere encounter,’ an ‘investigative detention,’ or a ‘custodial detention.’ Police may engage in a mere encounter absent any suspicion of criminal activity, and the citizen is not required to stop or to respond. If the police action becomes too intrusive, a mere encounter may escalate into an investigatory stop or a seizure. If the interaction rises to the level of an investigative detention, the police must possess reasonable suspicion that criminal activity is afoot, and the citizen is subjected to a stop and a period of detention. Probable cause must support a custodial detention or arrest.

Id. (citations omitted).

In Boswell, the Court also discussed the test used to determine whether a seizure occurred:

To decide whether a seizure has occurred, we apply the following objective test: ‘a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.’ In applying this test, it is necessary to examine the nature of the encounter. Circumstances to consider include, but are not limited to, the following: the number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer’s demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked.

Id. (citations omitted). “[T]he focal point of [the] inquiry must be whether, considering the circumstances surrounding the incident, ‘a reasonable [person] innocent of any crime, would

have thought he was being restrained had he been in the defendant's shoes.” Commonwealth v. Beasley, 761 A.2d 621, 625 (Pa. Super. 2000) (quoting Commonwealth v. Matos, 672 A.2d 769, 773 (Pa. 1996)).

Here, the PFA order evicted the Defendant from 2423 1/2 West Fourth Street. The deputies went to the apartment to serve the Defendant and enforce the order, which they have the authority to do. See 23 Pa.C.S. § 6113(a) (providing that “[a] police officer or sheriff shall arrest a defendant for violating [a PFA order]”). They did not go to the apartment to investigate the Defendant for a crime. The deputies did not brandish a weapon, say that the Defendant was suspected of a crime, or ask any questions with answers that may have revealed criminal activity. Until the command to drop the shirt, they did not command anything other than what was in the PFA order. The order gave the Defendant the option to collect some of his belongings; the deputies did not force the Defendant to do so. The Defendant chose to enter the apartment, and the deputies followed. Caschera told the Defendant that the Sheriff's policy required that he follow the Defendant in the apartment. Although there were two deputies and Caschera was following the Defendant, the totality of the circumstances shows that a reasonable person in the Defendant's shoes would have felt free to leave the apartment. Therefore, the interaction was a mere encounter.

B. The Defendant Voluntarily Consented to the Deputies Entering the Apartment.

“[I]f a person voluntarily consents to a search, evidence found as a result of that search is admissible against him.” Commonwealth v. Bagley, 596 A.2d 811, 817 (Pa. Super. 1991). “In order for consent to be valid, it must be unequivocal, specific, and voluntary. Consent must also be given free from coercion, duress, or deception. The voluntariness of consent is a question of fact that is determined by looking at the totality of the circumstances.” Commonwealth v.

Edwards, 735 A.2d 723, 725 (Pa. Super. 1999) (citations omitted). “The burden of proving a valid consent to search rests upon the Commonwealth.” Bagley, 596 A.2d at 817.

Here, the deputies were at the apartment to enforce a PFA order, not to conduct a search, so the Court believes that consent was not needed. But even consent was needed, the totality of the circumstances shows that the Defendant voluntarily consented to the deputies’ entry. The Defendant was given the option to collect some of his belongings; he was not forced to do so. The Defendant chose to enter the apartment and was told that Caschera was going to follow him. While the deputies were in the apartment, the Defendant was “linger[ing] about in the living room.” These circumstances show that the Defendant voluntarily consented to the deputies’ entry. See Commonwealth v. Daniels, 421 A.2d 721, 723 (Pa. Super. 1980) (holding that a suspect who did not answer an investigating officer’s question but silently re-entered apartment impliedly consented to the entry of the police officers into the apartment in order to continue the questioning).

C. The Command to Drop the Shirt did not Elevate the Mere Encounter into an Investigation.

“[I]f during a mere encounter, an individual, on his own accord, puts his hand in his pocket, thereby creating a potential danger to the safety of a police officer, the officer may justifiably reach for his side arm and order the individual to stop and take his hand out of his pocket. Such reaction by the police officer does not elevate the mere encounter into an investigative detention because the officer’s reaction was necessitated by the individual’s conduct.” Commonwealth v. Carter, 779 A.2d 591, 594 (Pa. Super. 2001).

Here, the Defendant, on his own accord, quickly went to the stairs and grabbed a shirt after expressing a desire to go upstairs alone. Like a pocket, the shirt could conceal a weapon.

Therefore, Caschera was justified in ordering the Defendant to drop the shirt, and the command did not elevate the mere encounter into an investigation.

D. The Arrest was Lawful Because, Without an Investigation, Deputy Caschera had Probable Cause to Believe the Defendant was Committing Possession of a Controlled Substance with Intent to Deliver in Caschera's Presence.

“[S]heriffs lack authority to conduct independent investigations under the Controlled Substances Act, including the seeking of search warrants where no breach of the peace or felony has occurred in their presence.” Commonwealth v. Dobbins, 934 A.2d 1170, 1181 (Pa. 2007). “[T]he power of Sheriffs to arrest for crimes committed in their presence is no different from that of a private citizen.” Kopko v. Miller, 892 A.2d 766, 774 (Pa. 2006). “A private person in fresh pursuit of one who has committed a felony may arrest without a warrant.” Commonwealth v. Chermansky, 242 A.2d 237, 239 (Pa. 1968).

“To be constitutionally valid, an arrest must be based on probable cause. Probable cause has been defined as those facts and circumstances available at the time of the arrest which would justify a reasonably prudent man in the belief that a crime has been committed and that the individual arrested was the probable perpetrator. The test is not one of certainties but rather one of probabilities dealing with the considerations of everyday life.” Commonwealth v. Dickerson, 364 A.2d 677, 680 (Pa. 1976) (citations omitted). “In determining whether probable cause exists, [courts] must consider the totality of the circumstances as they appeared to the arresting officer. Additionally, ‘[t]he evidence required to establish probable cause for a warrantless search must be more than a mere suspicion or a good faith belief on the part of the police officer.’” Commonwealth v. Copeland, 955 A.2d 396, 400 (Pa. Super. 2008) (citations omitted).

Here, when the Defendant dropped the shirt, Caschera saw the clear plastic bag containing smaller blue wax bags. When Caschera saw the bags, he possessed the following facts. The Defendant took at least three minutes to answer the door, which he opened just enough to exit the apartment. The Defendant lied by saying that nobody else was in the apartment and quickly entered the apartment when the door was opened. The Defendant wanted to go upstairs alone and quickly went to the stairs when Caschera said that he had to stay with him. The Defendant grabbed a shirt and cradled it to his body. Although he was ordered to drop the shirt, he did not immediately do so. A clear plastic bag is a common container used by drug traffickers. These facts would justify a reasonably prudent man in the belief that the Defendant was committing Possession of a Controlled Substance with Intent to Deliver, a felony. See 35 P.S. § 780-113(f).

E. Deputy Caschera's Search of the Defendant was Lawful Because it was a Search Incident to Arrest.

“The potential dangers lurking in all custodial arrests make warrantless searches of items within the ‘immediate control’ area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved.” United States v. Chadwick, 433 U.S. 1, 14-15 (1977), abrogated on other grounds by California v. Acevedo, 500 U.S. 565 (1991). After handcuffing the Defendant, Caschera searched him and found evidence. This was a lawful search as it was a search incident to arrest.

F. Even if Deputy Caschera Searched Illegally, the Evidence Found during the Search Inevitably Would Have Been Discovered.

In Commonwealth v. Gonzalez,⁴ the Superior Court of Pennsylvania discussed the inevitable discovery doctrine:

Pennsylvania courts recognize the inevitable discovery doctrine That doctrine provides that ‘evidence which would have been discovered was sufficiently purged of the original illegality to allow admission of the evidence.’ [I]mplicit in this doctrine is the fact that the evidence would have been discovered despite the initial illegality.

If the prosecution can establish by a preponderance of the evidence that the illegally obtained evidence ultimately or inevitably would have been discovered by lawful means, then the evidence is admissible. ‘The purpose of the inevitable discovery rule is to block setting aside convictions that would have been obtained without police misconduct.’ Thus, evidence that ultimately or inevitably would have been recovered by lawful means should not be suppressed despite the fact that its actual recovery was accomplished through illegal actions. Suppressing evidence in such cases, where it ultimately or inevitably would have lawfully been recovered, ‘would reject logic, experience, and common sense.’

979 A.2d at 890.

Here, any evidence found during Caschera’s search inevitably would have been discovered since the clear bag containing the smaller wax bags provided probable cause to search the Defendant and the apartment for controlled substances and drug paraphernalia.

III. Conclusion

The circumstances show that the interaction between the Defendant and the deputies began as a mere encounter, not an investigation. The circumstances show that the Defendant voluntarily consented to the deputies’ entry into the apartment. The order to drop the shirt did not elevate the mere encounter into an investigation. The arrest was lawful since, without an investigation, Deputy Caschera had probable cause to believe that the Defendant was committing

⁴ 979 A.2d 879 (Pa. Super. 2009).

possession with intent to deliver in his presence. Caschera's search of the Defendant was lawful as it was a search incident to arrest. Even if Caschera conducted an illegal search, the evidence found during the search inevitably would have been discovered.

ORDER

AND NOW, this _____ day of July, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Omnibus Pre-Trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge