

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-68-2014
v.	:	
	:	
DAVION JASON MINOR,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On December 30, 2014, the Court denied the Defendant’s Motion to Suppress. On January 9, 2015, the Defendant filed a Motion for Reconsideration.

I. Background

The facts of the case are set forth in the Court’s Opinion filed December 30, 2014.

In his motion for reconsideration, the Defendant argues that in finding that Officer Bell had reasonable suspicion to conduct a pat down, the Court “relied on” two cases which are distinguishable from the present case.

In addition, the Defendant claims that “the Court found the police officer was not only searching for weapons but specifically informed the Defendant that he was searching for any drugs he may have on him as well.” He argues that “the fact that the Defendant was not free to leave and being searched for items beyond a pat down would render [the detention] beyond an investigative detention.”

Last, the Defendant claims that because “the Court found that Officer Bell informed the Defendant that he should let the officer know if he had any drugs on him as he was going to find them anyway and the Defendant volunteered the marijuana to the officer, this rose to a level of a consensual search.” He argues that “if the consent was based on fraudulent circumstances, fraudulent information provided by the police, then the consent was not knowing and voluntary. . . .”

II. Discussion

A. After Examining the Totality of the Circumstances, the Court Found that Officer Bell had the Required Reasonable Suspicion to Pat Down the Defendant.

“In determining whether a [pat down] was supported by a sufficient articulable basis, [Pennsylvania courts] examine the totality of the circumstances.” Commonwealth v. Gray, 896 A.2d 601, 606 (Pa. Super. 2006). The Court certainly looks to other cases for guidance, but the Court “relied on” the totality of the circumstances.

B. After Examining the Totality of the Circumstances, the Court Found that the Detention was Investigatory up to the Point When the Marijuana was Revealed.

In addressing the Defendant’s core argument, the Court maintains that the totality of the circumstances shows the detention was investigative up to the point when the marijuana was revealed.

The Court will now address the Defendant’s claim that Bell searched the Defendant for drugs during the pat down. The Court found that Bell told the Defendant to tell Bell if he had any drugs because Bell was going to find them anyway. The Court did not find that Bell searched for drugs during the pat down. Searching a person is different than talking to a person to determine whether the person is involved in criminal activity. The Court has already found that Bell had the reasonable suspicion required for the investigatory detention.

Moreover, the Court believes this is the first time that the Defendant has argued the scope of the pat down exceeded lawful bounds. The Defendant’s suppression motion does not contain an argument that the scope exceeded lawful bounds. During the hearing, the Defendant argued that Bell did not have justification to conduct a pat down, but the Court does not believe the

Defendant argued that the scope exceeded lawful bounds. The Defendant's attorney did not ask Bell questions along the line of whether he reached into the Defendant's pockets or manipulated objects during the pat down. "To require the Commonwealth to prove the legality of all its investigatory techniques, in a situation where no specific or particular course of conduct is clearly challenged, is not within the contemplation of 323(h) [now 581(H)]." Commonwealth v. Dixon, 997 A.2d 368, 376 (Pa. 2010) (quoting Commonwealth v. Bradshaw, 471 A.2d 558, 560 (Pa. 1984)). Regardless, the marijuana was not found during the pat down. It was found after the Defendant told Bell that he had marijuana.

C. The Court did not Find that the Defendant Consented to the Search for Marijuana. The Search for Marijuana was Lawful Because it was a Search Incident to a Lawful Arrest.

The Court did not find that the search for marijuana was based on consent. In its Opinion filed December 30, 2014, the Court did not address the legality of the search for marijuana. Therefore, it will address the issue now.

"In order to be constitutionally valid under the Fourth Amendment to the United States Constitution, a warrantless arrest must be supported by probable cause. . . . It is well settled that in determining whether probable cause exists to justify a warrantless arrest, the totality of the circumstances must be considered. . . . Under the totality of the circumstances test, as refined by more recent cases, probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." In the Interest of O.A., 717 A.2d 490, 495 (Pa. 1998).

In its Opinion filed December 30, 2014, the Court found that the Defendant was not under arrest until the marijuana was revealed. In other words, the Defendant was not under arrest until he told Bell that he had marijuana. The Court finds that after the Defendant told Bell

that he had marijuana, Bell had probable cause to believe that the Defendant possessed marijuana. Therefore, after the Defendant told Bell that he had marijuana, Bell could have lawfully arrested the Defendant.

The search for marijuana was lawful because it was a search incident to a lawful 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). “It is of course axiomatic that an arresting officer may, without a warrant, search a person validly arrested, and the constitutionality of a search incident to a valid arrest does not depend upon whether there is any indication that the person arrested possesses weapons or evidence as the fact of a lawful arrest, standing alone, authorizes a search.” Commonwealth v. Trengge, 451 A.2d 701, 710 (Pa. Super. 1982).

ORDER

AND NOW, this _____ day of January, 2015, based on the foregoing opinion, the Defendant’s Motion for Reconsideration is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge