

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 1034-2015
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 DONALD SMITH, :
 :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on July 16, 2015 with one count of criminal conspiracy to possess with intent to deliver controlled substances, two counts of possession with intent to deliver controlled substances, one count of criminal use of a communications facility, two counts of possession of a controlled substances and one count of possession of drug paraphernalia.

Defendant filed an omnibus pretrial motion on August 19, 2015. A hearing was initially scheduled for September 23, 2015 but continued at the Commonwealth's request to December 7, 2015.

Defendant's omnibus pretrial motion contains several motions. The first is a motion to suppress. Defendant contends that he was either illegally detained without the requisite reasonable suspicion or illegally arrested without the requisite probable cause and that all evidence obtained as a result should be suppressed.

Defendant's remaining motions to suppress relate to his first motion. Defendant contends that any statements made by him or evidence seized from either his person or his hotel room following his arrest must be suppressed as fruit of Defendant's

illegal arrest and/or detention.

Defendant contends that the items seized from his hotel room, for example, must be suppressed because the search warrant authorizing the search should be excised to exclude the controlled substances and statements illegally obtained from Defendant. He contends that after excising such, the search warrant fails to set forth sufficient probable cause.

Defendant's last motion consists of a petition for writ of habeas corpus. Defendant contends that there is insufficient evidence to support any of the charges if the motions to suppress are granted in whole or in part.

Trooper Tyson Havens testified at the hearing on Defendant's omnibus pretrial motion. He has been employed by the Pennsylvania State Police for 22 years. He has extensive training and experience in controlled substances including, but not limited to, almost ten years of undercover work. His experience includes the investigation, arrest and prosecution of thousands of individuals engaged in illegal drug activity throughout the Commonwealth of Pennsylvania.

On June 16, 2015, Trooper Havens and Trooper Robert Williamson were on duty and patrolling in an unmarked vehicle in Loyalsock Township. They were assigned to a "aggressive patrol" traveling throughout specific areas of Loyalsock Township and Williamsport where "a lot of drug activity was being reported by civilians."

Approximately a week earlier, Trooper Havens was speaking with Trooper William Holmes regarding drug activity in Loyalsock Township in the area of the Kmart

Plaza. Trooper Holmes provided Trooper Havens with at least one surveillance photo of a black male between 20 and 30 years old, who weighed approximately 220 pounds, had tattoos on his left arm and was wearing bright red shoes. Trooper Holmes related to Trooper Havens that he observed the black male conduct what appeared to be at least five different drug transactions with unknown individuals in cars in the area. Trooper Holmes asked for Trooper Havens' assistance in identifying the black male.

At approximately 10:00 a.m. on June 16, 2015, while Troopers Havens and Williamson were stationary near the area of the Best Western Hotel in Loyalsock Township across the street from the Kmart Plaza, they observed a passenger in a vehicle that passed in front of them. Both Trooper Williamson and Trooper Havens concluded that the passenger "looked a lot like the guy in the surveillance photo" provided by Trooper Holmes. This particular area was a known "narcotics area." In fact, the troopers were stationed in close proximity to the area where Trooper Holmes previously took the picture of the suspect.

Trooper Havens and Trooper Williamson followed the vehicle around the hotel. The vehicle parked and the troopers parked beside the vehicle. The passenger exited the vehicle. Trooper Havens immediately recognized the individual as the same individual in the surveillance photo "right down to the bright red shoes." In fact, Trooper Holmes had nicknamed the unknown black male as "Dorothy" because of the shiny red shoes. Trooper Havens concluded as well that the suspect might have been wearing the same shorts as were depicted in the surveillance photo.

The suspect exited the vehicle and quickly started walking away toward a

breezeway. Trooper Havens exited his vehicle and called out for the suspect to stop. The passenger looked back, saw Trooper Havens who was in uniform, made eye contact with Trooper Havens and walked away even faster. It was clear to Trooper Havens that the suspect wanted to get away. For a short period of time, perhaps a few seconds, Trooper Havens lost sight of the suspect in the breezeway area.

As a result, Trooper Havens jogged after the suspect, observed him at the end of the breezeway and called for him to stop a second time. The suspect continued walking away at a fast pace. Trooper Havens jogged faster and caught up with the suspect. Trooper Havens grabbed the suspect's arm. Immediately, the suspect tensed. Trooper Havens, based on his personal experience in the field for over two decades concluded that "a fight was coming." For "officer safety", Trooper Havens placed the suspect in handcuffs. The suspect was wearing a t-shirt and shorts. Trooper Havens was not concerned with Defendant having any weapons; he just did not want to get in a fight and be "rolling around on the floor." Trooper Havens advised Defendant that he was not under arrest, just being detained.

The suspect was escorted/walked back to the PSP vehicle. The walk back was approximately 30 to 40 feet. The suspect was identified as the Defendant. In approximately a minute after first being handcuffed, Trooper Havens released Defendant from handcuffs. In a ruse, Trooper Havens falsely informed Defendant that the PSP were dispatched to the hotel for a report of two black males breaking into a hotel room. Defendant advised Trooper Havens that he was staying at a hotel room, in fact Room 123, but he had not broken into any rooms.

The troopers were contemporaneously advised via dispatch that the driver of the vehicle, Jerome Wilson, was wanted out of Philadelphia. Mr. Wilson was taken into custody. While Mr. Wilson was being handcuffed, Trooper Havens asked Defendant if he had any weapons on him. Defendant advised no, but indicated that he had “a little personal use heroin in his pocket.”

Defendant directed Trooper Havens to his front right cargo shorts pocket where Trooper Havens discovered 22 bags of suspected heroin in bundled amounts. Trooper Havens also discovered in Defendant’s front left pants pocket a cigar wrapper with four bags of suspected heroin. As well, Trooper Havens located on Defendant \$536.00 and two cellular phones.

As a result of the heroin and paraphernalia in his possession, Defendant was taken into custody.

Trooper William Holmes also testified on behalf of the Commonwealth. He has been a Pennsylvania State Trooper for 24 years, the most recent 10 years of which he has worked in the intelligence unit. He too has extensive training and experience in narcotics. He has worked “quite a bit” with the PSP Narcotics Unit and has been involved in hundreds of investigations involving drug transactions.

On June 10, 2015, he was in the area of the Kmart Plaza assisting the Narcotics Unit in gathering information with respect to alleged control substance trafficking on Tinsman Avenue. He was in a “covert surveillance post.”

He took numerous photos of an individual on Tinsman Avenue allegedly

engaged in drug trafficking. He also observed the same individual allegedly involved in illegal drug transactions in the Kmart parking lot as well as another area in Loyalsock Township.

A few days after conducting the surveillance and taking the photos, he met with Trooper Havens and showed him at least one of the photographs. The photograph that he showed Trooper Havens was eventually marked and admitted into evidence as Commonwealth's Exhibit 1-A.

There are three levels of contact between citizens and police recognized in Pennsylvania law.

The first [level of interaction] is a 'mere encounter' (or request for information) which need not be supported by any level of suspicion, but also carries no official compulsion to stop or respond. The second, an 'investigative detention' must be supported by reasonable suspicion; it subjects a suspect to a stop and period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or 'custodial detention' must be supported by probable cause.

Commonwealth v. Bryant, 866 A.2d 1143, 1146 (Pa. Super. 2005)(brackets in original) (quoting *Commonwealth v. Phinn*, 761 A.2d 176, 181 (Pa. Super. 2000) (citations omitted)), appeal denied, 876 A.2d 392 (Pa. 2005).

Defendant contends that when he was handcuffed by Trooper Havens he was placed under an arrest. "An encounter becomes an arrest when, under the totality of the circumstances, a police detention becomes so coercive that it functions as an arrest."

Commonwealth v. Charleston, 16 A.3d 505, 515 (Pa. Super. 2011) (quoting *Commonwealth v. Stevenson*, 894 A.2d 759, 770 (Pa. Super. 2006)), appeal denied, 30 A.3d 486 (Pa. 2011).

“The key difference between an investigative and a custodial detention is that the latter ‘involves such coercive conditions as to constitute the functional equivalent of an arrest.’” *Commonwealth v. Goldsborough*, 31 A.3d 299, 306 (Pa. Super. 2011)(quoting *Commonwealth v. Gonzalez*, 979 A.2d 879, 887 (Pa. Super. 2009)), appeal denied, 49 A.3d 442 (Pa. 2012).

In determining whether an encounter is investigatory or custodial, the court must consider the totality of the circumstances. Some of the factors which the court is directed to consider are the following: the basis for the detention; the duration; the location; whether the suspect was transported against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions. *Id.*, (quoting *Commonwealth v. Teeter*, 961 A.2d 890, 899 (Pa. Super. 2008)). The fact that an officer handcuffs a suspect does not automatically turn an investigatory detention into an arrest. *Commonwealth v. Rosas*, 875 A.2d 341, 348 (Pa. Super. 2005), appeal denied, 897 A.3d 455 (Pa. 2006); *Commonwealth v. Gillespie*, 745 A.2d 654, 660 (Pa. Super. 2000). By the same token, however, “merely because a police officer says that an individual is not under arrest is not conclusive on whether an arrest was actually effectuated.” *Rosas*, supra.

“Our law enforcement officers are not required to take any more risks than are already inherent in stopping a suspect.” *Commonwealth v. Johnson*, 849 A.2d 1236, 1239 (Pa. Super. 2004). Indeed, “[w]hile we ask our police officers to take risks, we do not ask them to be suicidal.” *Id.* Further, there is a strong public policy in favor of permitting police

to respond to reports of crime, to investigate and to prevent any injuries. *Commonwealth v. Dennis*, 433 A.2d 79, 82 (Pa. Super. 1981)(citing *Commonwealth v. Daniels*, 280 Pa. Super. 278, 421 A.2d 721 (1980)).

Under all of the circumstances, the court concludes that the detention of Defendant did not rise to the level of an arrest or custodial detention. The court finds Trooper Havens' testimony to be credible. The basis for the detention of Defendant was officer safety. The duration of the detention was approximately one minute. The detention occurred in a public area outside of a hotel where Defendant might have been free to flee in any different direction. Defendant was transported against his will, but only approximately 30 to 40 feet before he was unhandcuffed. The purpose of the transport was to bring Defendant back to the vehicle for the purpose of determining his identity and further investigating whether Defendant and the driver of the vehicle were involved in illegal drug transactions. While Trooper Havens obviously handcuffed Defendant, he did not show, threaten or use any other force. The method utilized in the investigation was limited to Trooper Havens confirming or dispelling his suspicions.

In order for a law enforcement officer to detain an individual pursuant to an investigative detention, the officer must have reasonable suspicion. *Goldsborough*, supra (citing *Commonwealth v. Cottman*, 764 A.2d 595 (Pa. Super. 2000)). The court must review the totality of the circumstances possessed by the police. *Commonwealth v. Brown*, 996 A.2d 473, 477 (Pa. 2010). "In order to justify the seizure, a police officer must be able to point to 'specific and articulable facts' leading him to suspect criminal activity is afoot." *Id.*

(citing *Commonwealth v. Melendez*, 544 Pa. 323, 676 A.2d 226, 228 (Pa. 1996)). The court must consider the reasonable inferences drawn from the facts in light of the officer's experience and recognize that innocent facts, when considered collectively, may permit the investigative detention. *Id.* (citing *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673, 676 (Pa. 1999)).

Reasonable suspicion exists where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, lead him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Therefore, the fundamental inquiry of a reviewing court must be an objective one, whether the facts available to the officer at the moment of intrusion warrant [a person] of reasonable caution in the belief that the action taken was appropriate.

Goldsborough, supra (quoting *Commonwealth v. Jones*, 874 A.2d 108, 116 (Pa. Super. 2005) (internal citations and quotation marks omitted)).

Contrary to what Defendant argues, the court concludes that Trooper Havens possessed reasonable suspicion to detain Defendant. This is based on a number of factors.

First, Defendant was identified as the likely individual who was seen a few days earlier by Trooper Holmes allegedly engaged in five different illegal drug transactions. Defendant not only fit the descriptions of the individual but also appeared to be the same individual in the surveillance photo and was wearing similar distinctive shoes and perhaps even the same shorts. Second, the area in which Defendant was detained was a known "narcotics area" where there was "a lot of drug activity being reported by civilians." The drug activity was such that the state police were conducting an aggressive patrol. Third, the specific area where Defendant was detained was in close proximity to the areas where the

drug transactions had allegedly taken place previously. Fourth, in this high drug transaction area, the Defendant appeared to flee from Trooper Havens twice. Defendant failed to stop after making eye contact with Trooper Havens and knowing that Trooper Havens wanted to speak with him. Then when Trooper Havens continued to follow him and asked the Defendant a second time to stop, not only did Defendant not stop but he continued to try to evade Trooper Havens by walking even faster. Lastly, when Trooper Havens confronted Defendant, he tensed up and appeared to be nervous. All of this would lead a reasonable person to believe not only that criminal activity was afoot but that Defendant was involved in that activity.

ORDER

AND NOW, this ___ day of December 2015, following a hearing and argument, the court **DENIES** Defendant's omnibus pretrial motion. The court notes that all of Defendant's motions are based on the Court's decision with respect to Defendant's first motion to suppress. Because the Court has held that Defendant's detention was legal, all of the remaining motions are **DENIED**. By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Joshua Bower, Esquire (APD)
Gary Weber, Esquire, Lycoming Reporter
Work file