IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CP-41-CR-026-2018**
v.	:	
	:	
ELIJAH S. GAMON,	:	**OMNIBUS PRETRIAL**
Defendant	:	**MOTION**

OPINION AND ORDER

Elijah Gamon (Defendant) was arrested by the Williamsport Bureau of Police on November 24, 2017 on one count of Possession with the Intent to Deliver a Controlled Substance,[1] one count of Resisting Arrest,[2] and two counts of Tampering With or Fabricating Physical Evidence.[3] The charges arise out of a police contact that Defendant had within the City of Williamsport on the same date. Defendant filed a timely Omnibus Pretrial Motion on February 15, 2018. Hearing on the motion was held by this Court on May 4, 2018.

In his Omnibus Motion, Defendant challenges both the initial encounter with the vehicle and Defendant as it violated his Fourth Amendment rights under the United States Constitution and his Article 1 Section 8 rights provided under the Pennsylvania Constitution.

Testimony

Officer Joshua Bell (Bell) of the Williamsport Bureau of Police testified that he was on duty in a marked unit in full uniform on November 24, 2017. He would have been located in the area of Second Avenue and Park Avenues in the City of Williamsport along with the surrounding areas. He further testified that in that particular area he previously has been involved in calls and arrests for narcotics both as a patrol officer and in an undercover

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[1] 35 P.S. § 780-113(a)(30).
[2] 18 Pa. C.S.A. § 5104.
[3] 18 Pa. C.S.A. § 4910(1).

capacity. Bell testified that this area is frequently used for the distribution of narcotics. He also testified in the fall of 2017 he made anywhere between 5 to 10 arrests in that area; these arrest included both witnessing as a participant and observing other transactions.

On November 24, 2017 at approximately 12:30 PM, he observed a jeep traveling southbound on Second Avenue between Park and Memorial with three people in the vehicle. He watched it travel eastbound on the Memorial Avenue and leave the area, and then approximately 15 minutes later saw it traveling southbound as it turned around by Park Avenue. Bell also observed the vehicle park on the west side of the street and the occupants enter a residence on Second Avenue. Although Bell initially could not see the registration, he did and was able to determine that the vehicle was a rental. Bell stated based upon his experience rental vehicles are used by narcotic traffickers. The combination of that fact and that he saw the vehicle twice in a short period of time in a neighborhood generally known for narcotics sales he radioed to his fellow officer, Clinton Gardner, to indicate that he was going to exit his vehicle and approach the vehicle on foot.

Once Bell exited his vehicle and approached the rental vehicle he discovered that no one was in the car. While he was standing on the driver side of the vehicle and Gardner on the passenger side of the vehicle they observed Defendant exit the residence at 609 Second Avenue. When Defendant observed the officers peering into the vehicle he came off the porch and "confronted us." When Defendant approached the officers, Bell said he initially asked them what they were doing and why they were there. Defendant appeared very agitated and angry. When Bell advised him that they were just "looking inside" as Defendant came closer, Bell detected the odor of marijuana on him. Bell then asked Defendant for his identification and advised him that he was the subject of a narcotics investigation. Defendant refused to

give identification and tell the officers who he was and began arguing with them. As a result, the officers attempted to detain him. He was taken to the ground and while there Defendant started to "blade his body." Bell testified that typically when defendant's do that it raises a red flag that they are in possession of a weapon. As Defendant was on the ground he continued to resist and pull his arms in underneath him. Officers were concerned that Defendant may have been in possession of a firearm. Out of a concern for their personal safety, as he began drawing his arms in towards his body they deployed a Taser. Defendant was subsequently handcuffed and detained for officer safety. He continued to resist and yell on the sidewalk out front of 609 Second Ave. causing a disturbance. Once Defendant was detained, he was searched and in his left front coat pocket police officers found 72 individual packages of heroin, U.S. currency and cellular phones.

Defendant argues that the investigation of the vehicle was not the result of a mere encounter and that the police officers lacked reasonable suspicion for the stop. Defendant argues that the investigative detention was without the requisite reasonable suspicion or probable cause and therefore a violation of the Fourth Amendment of the United States Constitution as well as Article 1 Section 8 of the Pennsylvania Constitution and request that all the evidence seized be suppressed.

Was the stop of the Defendant made without probable cause

The Fourth Amendment provides three categories of interaction between citizens and the police. *Commonwealth v. Boswell*, 721 A.2d 336, 340 (Pa. 1998) A "mere encounter" or request for information need not be supported by any level of suspicion, but carries no official compulsion for a citizen to stop or to respond to the officer's request for information. *Id.* at

339-40; *Commonwealth v. Riley*, 715 A.2d 1131, 1134 (Pa. Super. 1998). An "investigative detention" must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. *Boswell*, 721 A.2d at 340. An arrest or "custodial detention" must be supported by probable cause. *Commonwealth v. Rodriguez*, 614 A.2d 1378 (Pa. 1992); *see also* 16A West's Pa. Prac., Criminal Practice § 19:34.

Moreover, Pennsylvania courts have held that an officer may conduct a limited search, i.e., a pat-down of the person stopped, if the officer possesses reasonable suspicion that the person stopped may be armed and dangerous. *Commonwealth v. Carter*, 105 A.3d 765, 768–69 (Pa. Super. 2014) (en banc) (citation omitted). "In assessing the reasonableness of the officer's decision to frisk, we do not consider his unparticularized suspicion or 'hunch,' but rather . . . the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Commonwealth v. Zhahir*, 751 A.2d 1153, 1158 (Pa. 2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 27(1968)). Further, "the court must be guided by common sense concerns that give preference to the safety of the police officer during an encounter with a suspect where circumstances indicate that the suspect may have, or may be reaching for, a weapon." *Commonwealth v. Stevenson*, 894 A.2d 759, 772 (Pa. Super. 2006) (citing *Id.* at 1158). This Court has held that "even in a case where one could say that the conduct of a person is equally consistent with innocent activity, the suppression court would not be foreclosed from concluding that reasonable suspicion nevertheless existed. . . . [E]ven a combination of innocent facts, when taken together, may warrant further investigation." *Carter*, 105 A.3d at 772 (finding reasonable suspicion existed to stop and frisk the appellee, who was present in a high crime area, appeared to be concealing a weighted bulge in his

pocket from police officers, and walked away multiple times when the officers' patrol car passed by); *see also Commonwealth v. Thomas,* 179 A.3d 17 (Pa. Super. 2018).

To determine whether a mere encounter rises to the level of an investigatory detention, we must discern whether, as a matter of law, the police conducted a seizure of the person involved. To decide whether a seizure has occurred, a court must consider all the circumstances surrounding the encounter to determine whether the demeanor and conduct of the police would have communicated to a reasonable person that he or she was not free to decline the officer's request or otherwise terminate the encounter. Thus, the focal point of our 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 Defendant's shoes. *Commonwealth v. Reppert*, 814 A.2d 1196, 1201–02 (Pa. Super. 2002) (citations omitted).

Here the officers have engaged in a mere encounter with Defendant. Officers were standing at the car Defendant had previously occupied and as he observed the officers, he left the residence at 609 Second Avenue and approached them. Clearly the officers did not approach Defendant or try to engage him in conversation. However once he came close to the officers they were able to smell the odor of marijuana on Defendant which gave them reasonable suspicion to believe that Defendant was engaged in criminal activity. "Because the level of intrusion into a person's liberty may change during the course of the encounter, we must carefully scrutinize the record for any evidence of such changes." *Commonwealth v. Blair*, 860 A.2d 567, 572 (Pa. Super. 2004). It is clear that once the officers detected the odor of marijuana coming from Defendant, they had reasonable suspicion to believe that Defendant was engaged in criminal activity justifying the investigatory detention.

ORDER

AND NOW, this _____ day of September, 2018, based upon the foregoing Opinion, the Defendant's Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Rob Hoffa, Esquire