

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1959-2017
 :
 QUAHEEM BARNES, : Amended Opinion Re Defendant's
 Defendant : Motion To Reconsider

AMENDED OPINION

The court inadvertently listed the wrong police officer's name in the Opinion and Order regarding Defendant's Motion to Reconsider. This Amended Opinion is issued to correct that error. The Order remains unchanged.

Before the court is Defendant's motion to reconsider. By Opinion and Order filed on July 13, 2018, the court denied Defendant's motion to suppress and petition for writ of habeas corpus.

In his motion for reconsideration, Defendant asserts that subsequent to the court's Opinion and Order, Defendant obtained a video "of the interaction made contemporaneously [with] the officer's exact conduct." Defendant argues that "the falsities of the officer's actions became revealed and the officer's testimony cannot be squared with the actual video footage."

A hearing was held in this matter on March 20, 2019. At the hearing, Defendant provided the court with a copy of the transcript from the original suppression hearing as well as the video of the interaction between Officer Gardner and Defendant.

The video begins after the interaction with Defendant and the officer had already started. The officer is standing there while Defendant and another individual are

talking with each and to the officer. It appears that Defendant is doing the actual recording from his phone.

Soon after the video begins, the officer tells Defendant that the officer was waiting for the warrant check to come back and that once it did presumably if there were no issues Defendant could then leave. The officer specifically informed Defendant that once the check comes back, Defendant should be “good to go.” Approximately 30 seconds later, the officer asks Defendant if he has any weapons on him. Defendant says no. The officer then asks Defendant something to the effect of “what is that” and points at something presumably on Defendant’s person. Apparently there was some reaching, but the video appears to show the officer not moving his arms toward Defendant. Approximately 20 seconds later, Defendant is asked again by Officer Gardner whether he has a weapon. Defendant claims not, at which time the officer asks Defendant to put his hands on his head. At this time, Defendant apparently starts to flee although such is not confirmed on the video.

Defendant argues that the details set forth on the video are “materially different than that testified to at the suppression hearing.” Defendant further argues that the court’s decision was explicitly based upon the veracity of the officer’s testimony and that the court should reconsider the decision and purportedly the officer’s credibility.

The court does not accept Defendant’s argument. First, the court does not agree that the video depicts a scenario “materially different” than what was testified to by the officer. The video confirms what Officer Gardner testified to regarding the initial stop. As the officer testified during the suppression hearing, he told Defendant that he was not free to

leave and he was waiting for the warrant check to return. (Transcript p. 26). The video also confirms what the officer observed with respect to something on Defendant's person. The video depicts Officer Gardner asking Defendant what was pointing out and if he had a weapon and if Officer Gardner could pat him down. The testimony from the suppression hearing specifically references Officer Gardner's observation of a bulge emitting from that area, thinking that it was a weapon, pointing it out to Defendant, and asking him what it was. (Transcript, at 26-27).

The court notes with specific reference that Officer Gardner testified that Defendant said it was nothing and he kind of chuckled. This chuckle was specifically heard on the video. (Transcript at 27).

The video shows Officer Gardner asking Defendant if he could pat him down, Defendant saying no and taking a step back. This is exactly what Officer Gardner testified to: "I actually asked him if I could pat him down, and it was at that point that he said no, and initially took a step back."

The only difference between the video and the transcript is that on the video Officer Gardner waits approximately 20 seconds after which he asks Defendant again if he could pat him down and then begins to start the process by telling Defendant to put his hands on his head. The transcript depicts that Officer Gardner told Defendant he was going to be patting him down due to the bulge and then Defendant proceeded to run. (Transcript at 27).

Indeed, the video confirms exactly what Officer Gardner testified to on cross-examination at the suppression hearing: he was suspicious of a firearm and asked Defendant

to do a pat down (Transcript at 57). Defendant said no. (Transcript at 57). Officer Gardner ordered him (or told him) that he was going to do a pat down. (Transcript at 57). That's when Defendant took off but he first took a step backward. (Transcript at 57).

Nothing that the court concluded of any material nature whatsoever is belied by the video. Accordingly, the court's factual findings and legal conclusions remain the same.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Edward J. Rymysz, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File