

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1134-2018**
 v. :
 :
 :
 KAHEMIA SPURELL, : **OMNIBUS PRETRIAL**
 Defendant : **MOTION**

OPINION AND ORDER

Kahemia Spurell (Defendant) was arrested on June 30, 2018 on one count of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,¹ one count of Possession of a Controlled Substance,² and one count of Possession of Drug Paraphernalia.³ The charges arise from a traffic stop that occurred in the area of High St. and Campbell St., Williamsport, PA 17701. Defendant filed this Omnibus Pre-trial Motion on November 5, 2018. A hearing on the motion was held by this Court on December 13, 2018. In his Omnibus Pre-trial Motion, Defendant asks for the suppression of physical evidence resulting from the search of his person, disclosure of any promises or agreements and complete criminal histories of any witnesses the Commonwealth plans to produce, disclosure of any crimes wrongs, or bad acts the Commonwealth plans to use not charged in the information, and the right to reserve additional motions pending discovery.⁴ Defendant's sole challenge in his Motion to Suppress Physical Evidence is that the pat-down conducted by Officer Joshua Bell (Bell) of the Williamsport Bureau of Police was illegal and therefore the physical evidence seized as a result of should be suppressed.

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 35 P.S. § 780-113(a)(32).

⁴ This Court takes notice of Defendant's additional motions, but only his Motion to Suppress is ripe at this point in time and therefore will be the only issue addressed.

Background and Testimony

Both the Commonwealth and Defendant agreed to rest on the video from the Motion Video Recorder (MVR) in Bell's police vehicle and the transcript of the testimony from the preliminary hearing held on July 19, 2018. The Commonwealth and Defendant provided only additional argument at the suppression hearing. Based on this evidence the following was established. On June 30, 2018 around 5:00 p.m., Bell was acting in his official capacity as a police officer in full uniform and in an unmarked police vehicle in the area of High St. and Campbell St. Bell observed a purple Chevy Cobalt with a suspected sunscreen violation (i.e. tinted windows) and conducted a stop. At this time Officer Clinton Gardner (Gardner) arrived to help facilitate the stop. Both Bell and Gardner could detect the odor of marijuana upon approaching the vehicle. Gardner could see marijuana flakes on the front passenger side floor. Based on the officers' observations Defendant was asked to step out of the car so a pat down could be conducted. Bell explained:

At that time I removed, first, [Defendant] and a brief pat down for weapons was conducted with [Defendant]. During that pat down I felt what I immediately recognized as, there's several names for them; but they're plastic containers used to contain crack cocaine. They were in [Defendant]'s underwear, they were tucked back behind his scrotum so upon my pat down in that area I felt them and at that time [Defendant] was placed in handcuffs. I could also feel a large fold of U.S. currency in [Defendant]'s pocket, which was subsequently removed after [Defendant] was in custody.

P.H. 7/19/18, at 4-5.

Bell also stated that the search was conducted with "an open hand" and that he would not have manipulated any items or used his fingers to touch any items on Defendant. *Id.* at 10. As a result Bell recovered eight (8) individual canisters of crack cocaine and \$500. A search of the vehicle also yielded multiple cell phones, multicolor rubber bands, a digital scale, pieces of marijuana, and a razor blade.

Whether the Pat Down of Defendant was Conducted Lawfully

Defendant specifically challenges the *Terry* frisk as unconstitutional due to manipulation, and does not challenge the stop or search of the vehicle. The Pennsylvania Supreme Court has adopted the United States Supreme Court's holding in *Terry v. Ohio*, 392 U.S. 1 (1968), permitting police to effectuate a precautionary seizure when there is "reasonable suspicion criminal activity is afoot." *Commonwealth v. Matos*, 672 A.2d 769, 773-74 (Pa. 1996) (citing *Commonwealth v. Hicks*, 253 A.2d 276 (Pa. 1969)). It is also well-established that "when an officer detains a vehicle for violation of a traffic law, it is inherently reasonable that he or she be concerned with safety and, as a result, may order the occupants of the vehicle to alight from the car." *Commonwealth v. Harris*, 179 A.3d 1009, 1020-21 (Pa. Super. 2017) (citing *Commonwealth v. Rosas*, 875 A.2d 341, 348 (Pa. Super. 2005)). When adopting *Terry*, the Pennsylvania Supreme Court also articulated that this allows an officer to conduct "a limited search of an individual's outer clothing in an attempt to discover the presence of weapons which may be used to endanger the safety of police or others." *Hicks*, 253 A.2d at 279. During the course of a traffic stop an officer may "pat-down the driver when the officer believes, based on specific and articulable facts, that the individual is armed and dangerous." *Commonwealth v. Parker*, 957 A.2d 311, 315 (Pa. Super. 2008). The Pennsylvania Supreme Court has additionally adopted the Plain Feel Doctrine established in *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993), which allows officers to seize immediately apparent contraband if conducted "without further exploration or searching that what he is feeling is contraband." *Commonwealth v. Stevenson*, 744 A.2d 1261, 1265 (Pa. 2000). A *Terry* search will be found illegitimate if it "in any way manipulates the contents of a defendant's pocket." *Commonwealth v. Graham*, 721 A.2d 1075, 1081 (Pa. 1998).

In *Commonwealth v. Griffin*, the Pennsylvania Superior Court found that the MVR evidence was at odds with the testimony of the officer. 116 A.3d 1139, 1143 (Pa. Super. 2015). The video clearly depicted during the eleven (11) second search that the officer was manipulating items in the defendant's pocket. *Id.* Based on this the Court found that the officer's testimony stating that item was immediately apparent to be contraband was not sufficient for the trial court to determine the Plain Feel Doctrine applied, when manipulation was evident for the video. *Id.* at 1143-44. As in *Griffin*, the Commonwealth has provided the Court with the MVR, which clearly shows the *Terry* frisk that was conducted. The search begins at 3:47. Upon going down the right leg of Defendant, Bell stops at his pocket and can be seen squeezing and working an item, later determined to be the \$500, with his fingers from 3:49-:52. Then Bell goes directly to front groin area of Defendant from 3:53-3:59, before returning to the area from behind and instead of using a flat hand as described in his testimony, can be seen grabbing in Defendant's groin region for an extended period from 4:00-:05. The Court finds that the MVR shows items were manipulated during the search of Defendant. Since manipulation invalidates a valid *Terry* search the evidence obtained as a result of the frisk should be suppressed. *Graham*, 721 A.2d at 1081.

Conclusion

Defendant has not challenged the validity of the underlying vehicle stop, the search of the vehicle, or the reason for the subsequent *Terry* frisk, but only that the frisk was unconstitutional in its application. The Court agrees with Defendant that the MVR shows Bell manipulating items during the search rather than using a flat hand in a brief pat down as described at the preliminary hearing. Therefore, based on this violation of Defendant's constitutional rights the evidence resulting from the search of his person shall be suppressed.

ORDER

AND NOW, this 9th day of January, 2019, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion is GRANTED. It is hereby ORDERED and DIRECTED that the evidence obtained as a result of the search of the Defendant's person is hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge

cc: Joseph Ruby, Esquire, ADA
Aaron Biichle, Esquire

NLB/kp