

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-672-2019  
 :  
 STEVEN SMITH-WILLIAMS :  
 Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

By Information filed on May 31, 2019, Defendant is charged with possession of crack cocaine and possession of drug paraphernalia. On July 22, 2019, Defendant filed an Omnibus Pretrial Motion which included a Motion to Suppress. Hearing and argument on the Motion to Suppress were held on November 22, 2019.

Defendant argues that the items seized from him when he was patted down by police officers on December 30, 2018, as well as all of the items seized from his jacket on the same date, should be suppressed as they were seized in violation of his rights under both the Pennsylvania and federal constitutions.

On December 30, 2018, Trooper Jonathan Thompson, of the Pennsylvania State Police (PSP), was in full uniform and on duty patrolling Loyalsock Township. As part of an investigation into suspected drug activity, which included reviewing surveillance cameras at the Uni-Mart located on Northway Road, he discovered that an individual possibly involved was wearing a black “puffy” jacket, was known as “Steve” and possibly resided with his girlfriend “Brittany” at the apartment complex across the street.

Trooper Thompson identified the apartment, and along with other PSP officers, went to it and knocked on the front door. A female answered and identified herself

as Brittany Fish. Trooper Thompson inquired as to whether “Steve” was there. He observed who he thought was Steve apparently playing a video game inside the residence. “Steve” then came to the door and moved outside of the residence to speak with Trooper Thompson after shutting the front door.

According to Trooper Thompson, “Steve”, who was later identified as Defendant, was wearing a baggie shirt and sweatpants. The two front pockets of his sweatpants had noticeable bulges.

Trooper Thompson discussed with Defendant what Trooper Thompson had seen earlier that day. He asked Defendant if he knew the individuals in the “red car.” Defendant denied that he knew any of the individuals, denied that he was in any red car and indicated that he was in the house “all day.”

Defendant became agitated when Trooper Thompson accused him of not being honest. According to Trooper Thompson, Defendant was tensing up and “bouncing.” Based upon Trooper Thompson’s training and experience, he interpreted Defendant’s actions as “consistent” with an individual that might run or possibly even assault the trooper.

Additionally, when Defendant first started speaking with Trooper Thompson, Defendant appeared to be placing his hands in his sweatpants pockets. Defendant, however, complied when Trooper Thompson asked him not to put his hands in his pockets.

Trooper Thompson decided to frisk or pat down Defendant for weapons. He explained that he thought that Defendant might have a weapon because Defendant was tensing up and agitated, he saw bulging in Defendant’s pockets, Defendant had reached for

his pockets at least two times, and Defendant was “lying” about his prior activities.

During the pat down, he felt what he described as a “heavy object” in the corner of “smashed packaging” in Defendant’s rear sweatpants pocket. Based upon his experience, Trooper Thompson believed that it was a “smoking device.” He “felt” a hard object in a container in Defendant’s pocket. He did not believe it to be a weapon but suspected it to be a smoking device. He asked Defendant if Defendant was in possession of a “narcotics device.” Defendant remained silent. Trooper Thompson then removed the item from Defendant’s pants and located a metal socket smoking device containing some residue. He asked Defendant if it was a smoking device because it smelled like marijuana. Defendant admitted to smoking “weed” earlier in the day.

Around this time, a pizza was delivered to the residence. As the door was being opened by Ms. Fish, Defendant tried to push his way past the trooper and the others in order to reenter the residence.

Trooper Thompson initially detained Defendant on the stoop but Defendant persisted in trying to reenter the premises. Accordingly, Trooper Reynolds took Defendant into custody and placed him inside a patrol car.

Ms. Fish invited the troopers inside the residence to further their conversation. While located in the living room area of the residence, Ms. Fish indicated that Defendant did not live there but stayed “a lot” to watch her children while she worked at Dunkin Donuts. She indicated that she knew Defendant had smoked marijuana and showed the troopers a gravity bong that Defendant kept under the sink. While she admitted that she saw him

smoking marijuana earlier that day, she denied having any knowledge as to where he “kept it.”

Located on a living room floor was a jacket that looked like the jacket that the person on the Uni-Mart surveillance was wearing earlier when he got out of the red vehicle. It was lying on the living room floor next to Defendant’s shoes. Trooper Thompson recognized it as the jacket that he had seen earlier that day.

Trooper Thompson noticed that the “tail” of a plastic sandwich bag was protruding out of the pocket of the jacket. He asked Ms. Fish if there was marijuana in the jacket to which she responded she didn’t know. Trooper Thompson recognized the portion of the sandwich bag that was “hanging out of the pocket” as a bag associated with packaging controlled substances. While he could not see whether the bag was knotted, he could see the tail and the tail was “consistent” with a knotted bag used to possess controlled substances.

He seized the sandwich bag by pulling it out of the jacket. Upon further testing, it contained 15 grams of crack cocaine.

In explaining why he seized the plastic baggie without consent or a search warrant, Trooper Thompson explained that he recognized the “contraband” in plain view and was concerned that the three minor children in the room might have access to the substances. Both Defendant and Ms. Fish had admitted Defendant smoked earlier. As well, Ms. Fish provided Trooper Thompson with the gravity bong that Defendant kept in the kitchen.

The first issue the court must address is whether Trooper Thompson had the legal right to frisk Defendant. If so, the court must then address whether the frisk exceeded

its permissible scope.

The proper analysis for a Fourth Amendment violation is objective. *Commonwealth v. Johnson*, 202 A.3d 123, 128 (Pa. Super. 2019). An action is reasonable regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify the action. *Id.* Although similar or comparable seizure determinations may serve as guideposts, a suppression court must independently employ a totality of the circumstances test. *Commonwealth v. Luczki*, 212 A.3d 530, 543 (Pa. Super. 2019). No single factor controls. *Id.*

Once a defendant files a motion to suppress, it is the Commonwealth's burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights. *Commonwealth v. Kane*, 210 A.3d 324, 329 (Pa. Super. 2019).

A weapons frisk is appropriate only when the officer reasonably believes the suspect may be armed and dangerous. *Commonwealth v. Dix*, 207 A.3d 383, 389 (Pa. Super. 2019), citing *Commonwealth v. Mackey*, 177 A.3d 221, 227 (Pa. Super. 2017).

The court finds that Trooper Thompson had reasonable suspicion to believe Defendant may have been armed and dangerous. Defendant was previously observed engaging in illegal activity, Defendant denied certain facts which were belied by the trooper's prior observations, Defendant was wearing loose clothing which had bulges, Defendant was agitated and confrontational, Defendant reached for his pockets at least two times and, based on the officer's experience, Defendant was acting as if he might assault the

officer. See, for example, *Commonwealth v. Davis*, 102 A.3d 996, 1000 (Pa. Super. 2014); *Commonwealth v. Foglia*, 979 A.2d 357, 361 (Pa. Super. 2009) (en banc).

As to the scope of the pat down, it must be confined to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer. *Terry v. Ohio*, 392 U.S. 1, 29 (1968).

In *Minnesota v. Dickerson*, 508 U.S. 366 (1993), a police officer detected no weapon-like objects during the course of a pat down search. The frisk did reveal, however, “a small lump” in the suspect’s pocket. After “squeezing, sliding and otherwise manipulating” the lump, the officer concluded that it was crack cocaine and retrieved it from the pocket. *Id.* at 377-78.

The court concluded that although the officer was lawfully in a position to feel the lump in the defendant’s pocket, he exceeded the scope of a *Terry* search after concluding that the object was not a weapon. *Id.* at 379. The court noted that while the sense of touch is capable of revealing the nature of an object with sufficient reliability to support a seizure, the very premise of *Terry* was that officers would be able to detect a presence of weapons through the sense of touch. *Id.* at 376.

A *Terry* frisk under Pennsylvania law, is a pat down of a suspect’s outer garments for weapons. *Commonwealth v. E.M.*, 558 Pa. 16, 25, 735 A.2d 654, 659 (1999). In *E.M.*, supra., the Pennsylvania Supreme Court found a seizure of soft items from an individual’s pockets exceeded the scope of a permissible *Terry* frisk when the items clearly were not weapons, but also were not immediately recognizable as drugs during the frisk.

*Id.* at 28-29, 735 A.2d at 661. Similarly, in *Commonwealth v. Graham*, 554 Pa. 472, 721 A.2d 1075 (1998), the Pennsylvania Supreme Court held that a police officer exceeded the proper scope of a *Terry* frisk when he shined his flashlight down the defendant's pocket to see what was inside a lifesavers holes container.

The Commonwealth did not present any testimony or evidence to establish that Trooper Thompson, based solely on the plain feel of the object, immediately recognized the item as contraband or drug paraphernalia. Trooper Thompson described the item as a heavy object and a hard object. He suspected that the object was a "smoking device." There are many legal smoking devices such as tobacco pipes, for example. See *Commonwealth v. Fink*, 700 A.2d 447, 450 (Pa. Super. 1997)(illegal nature of object not immediately apparent to officer because pipes, although sometimes used to smoke marijuana, can also be used to smoke legal substances), *appeal denied*, 716 A.2d 1247 (Pa. 1998). Trooper Thompson did not provide any description of the smoking device other than it was a heavy, hard object or any statement or explanation of how or why he suspected the item was contraband.

Based on these cases, the court finds that the trooper exceeded the proper scope of a *Terry* frisk when he retrieved the "heavy object" from Defendant's pants pocket.

The next issue to be determined is whether the search of Defendant's jacket was permissible. The Commonwealth justifies the search based upon exigent circumstances.

The court cannot conclude that the seizure of the baggie was constitutionally permissible. First, despite the trooper's testimony, the illegality of the baggie was not immediately apparent. The portion of the baggie that the trooper observed was simply a

corner. While it may have been consistent with what the officer observed in the past, it was certainly not immediately apparent that it was drugs. The police officer only noticed a portion of the bag. He did not notice any controlled substances in it or around it. Furthermore and perhaps determinatively, he could not see whether it was knotted. See *Commonwealth v. Stackfield*, 651 A.2d 558, 562 (Pa. Super. 1994)(plastic baggie is not per se contraband; contents of baggie could have as easily contained the remains of appellant's lunch).

As for exigent circumstances, exigencies cannot be created. The fact that there were three children in the area did not create an exigency. The jacket could have been secured until a search warrant was obtained. Moreover, the children's mother could have taken the children elsewhere and prevented them from accessing the jacket.

The exigent circumstances exception to the warrant requirement applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. *Commonwealth v. Trahey*, 183 A.3d 444, 449-450 (Pa. Super. 2018), appeal granted, 196 A.3d 603 (Pa. 2018). It allows officers in certain circumstances to conduct a warrantless search to "prevent the imminent destruction of evidence." *Trahey*, *Id.* at 450. It is typically applied in the context of warrantless entries into homes, with the exigencies supported by probable cause plus some circumstance beyond the mere need to investigate the crime. *Commonwealth v. Mackey*, 177 A.3d 221, 236 (Pa. Super. 2017)(Bowes, concurring). This exception requires a totality of the circumstances analysis and is fact specific. *Trahey*, *Id.*

In assessing the presence of exigent circumstances, courts must take into

account the presence of various factors including the gravity of the offense, whether the suspect is reasonably believed to be armed, whether there is a clear showing of probable cause, whether there is a strong reason to believe that the suspect is within the premises being entered, whether there is a likelihood that the suspect will escape if not swiftly apprehended, whether the entry is peaceable, the timing of the entry, whether there is hot pursuit of a fleeing felon, whether there is a likelihood that evidence will be destroyed if police take the time to obtain a warrant and whether there is a danger to police or other persons inside or outside of the dwelling to require immediate and swift action.

*Commonwealth v. Dean*, 940 A.2d 514, 522 (Pa. Super. 2008).

**ORDER**

**AND NOW**, this \_\_\_\_ day of January 2020 following a hearing and argument, the court **GRANTS** Defendant's motion to suppress. The items seized from Defendant and his jacket are not admissible in that they were illegally obtained.

By The Court,

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Marc F. Lovecchio, Judge

cc: Lee Fry, Esquire (ADA)  
Dance Drier, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File