

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-724-2020
	:	
vs.	:	
	:	
QUINTON JAMAL WILSON,	:	
Defendant	:	

OPINION AND ORDER

This matter came before the court on October 27, 2020 for a hearing and argument on Defendant’s Omnibus Pretrial Motion, which consists of a motion to suppress evidence and a motion for additional discovery. The court addressed the discovery motion in a separate order. Therefore, this Opinion and Order will only address the motion to suppress evidence.

At the hearing, the prosecutor called two witnesses: David Poretta and Luke Ellison, who are both Lycoming County Adult Probation Officers.

Officer Poretta testified that he was the supervising officer for Defendant, Quentin Wilson. He first came in contact with Defendant in March or April of 2020 when he was released from incarceration onto supervision for the offense of possession of a firearm without a license. Officer Poretta made numerous attempts to locate Defendant at his residence, but a person at the residence said Defendant did not live there. Officer Poretta also could not reach Defendant by phone. Under normal circumstances, Officer Poretta would have labeled Defendant an absconder and obtained a bench warrant for his arrest; however, due to COVID-19, he did not obtain a warrant and instead placed Defendant on the “hot list.” The “hot list” was a list created by and for Lycoming County Adult Probation Officers. If any officer saw an individual who was on the “hot list,” the officer would

immediately have contact with the individual.

On March 5, 2020, Officer Ellison was in a marked unit and in full uniform with Officer Jared Corman. As they were driving east down West Fourth Street, they saw Defendant standing on the north side of the street. They turned around and made contact with Defendant. They allowed Defendant to use his cell phone to call Officer Poretta's office number. When Defendant did not reach Officer Poretta at that number, Officer Corman dialed Officer Poretta's cell phone number. The phone call was on speaker, so Officer Ellison heard most of the conversation between Defendant and Officer Poretta.

Officer Poretta asked Defendant why he wasn't reporting and why he wasn't at his residence. Defendant replied that he was not coming into the Adult Probation Office due to COVID restrictions. At the end of the conversation, Office Poretta told Defendant to go to his approved residence and to stay there until Officer Poretta came to see him that evening.

Before Officer Ellison and Officer Corman released Defendant, they told him that they were going to conduct a pat down to make sure he was in compliance with the other conditions of his supervision. Defendant said he "did not sign up for that" and he began running away from Officer Ellison and Officer Corman. Officer Ellison yelled for Defendant to stop but he did not, and a foot pursuit ensued. Officer Ellison and Officer Corman eventually apprehended Defendant. As a result of a search of Defendant and his flight path, Defendant was charged with receiving stolen property, a felony of the second degree; possession of a firearm without a license, a misdemeanor of the first degree; criminal mischief, a misdemeanor of the third degree; possession of a controlled substance, an

ungraded misdemeanor; and possession of drug paraphernalia, also an ungraded misdemeanor.

Defendant filed an omnibus pretrial motion ,which included a motion to suppress evidence on the basis that the probation officers did not have reasonable suspicion to believe he was armed and dangerous to conduct a pat down or to conduct a search of Defendant's person. He argued that the officers did not have any concern for their safety because they were in Defendant's presence for several minutes without patting him down and they allowed him to pull out his cell phone to call Officer Poretta. They heard Officer Poretta tell Defendant to go to his residence and to wait for him there. At that point, Defendant's detention should have ended and he should have been released to return to his residence.

The Commonwealth noted that there was no testimony regarding where Defendant's phone was located. He argued that, but for the COVID-19 pandemic, there would have been a bench warrant for Defendant's arrest. He also argued that Defendant's status as an absconder and the fact that Defendant was on supervision for a firearm offense was sufficient reasonable suspicion for a brief pat down. According to the Commonwealth, the fact that Officer Poretta told Defendant to go to his residence and stay there was of no moment because while Officer Poretta was on the phone, there was no reason for Officer Poretta to be concerned with his safety whereas Officer Ellison and Officer Corman were within feet of Defendant.

DISCUSSION

A county probation and parole officer may conduct a personal search of an

offender:

- (i) if there is reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision;
- (ii) when an offender is transported or taken into custody; or
- (iii) upon an offender entering or leaving the security enclosure of a correctional institution, jail or detention facility.

42 Pa. C.S.A. §9912(d)(1). Neither Officer Poretta nor Officer Ellison testified about any basis to believe that Defendant currently possessed controlled substances, a firearm or any other contraband. Officer Ellison did not observe any bulges consistent with possession of a firearm, and Defendant did not make any gestures or furtive movements before the officers attempted to conduct the pat down. While the officers had reasonable suspicion to believe that Defendant was in violation of his condition to report, there was no indication that the officers would find any evidence of that violation in Defendant's possession. In fact, Officer Ellison was not looking for evidence of that violation; rather, he wanted to conduct a pat down to look for evidence of other violations such a possession of a firearm or controlled substances. Unfortunately, Officer Ellison did not testify to any specific and articulable facts which led him to believe Defendant was in possession of any prohibited items. Due to COVID-19, Officer Ellison and Officer Corman were not taking Defendant into custody or transporting him to a correctional institution, jail or detention facility. Therefore, they could not search him incident to arrest as they normally would if they were taking Defendant into custody pursuant to the bench warrant for absconding.

The Commonwealth seemed to argue that the officers were justified in conducting a pat down for their safety. The court cannot agree. First, the officers testified that they were going to conduct the pat down to determine if Defendant was in compliance

with his other conditions of supervision, not for their safety. Second, the evidence presented did not establish that the officers reasonably believed that Defendant was armed and dangerous.

To conduct a pat down or frisk, the investigatory stop must be lawful and the officer must reasonably believe the person stopped is armed and dangerous. *Commonwealth v. Adams*, 205 A.3d 1195, 1204 (Pa. 2019). Something more than an inchoate and unparticularized hunch is required. The officer's suspicion must be reasonable and based on specific, articulable facts and reasonable inferences drawn from those facts in light of the officer's experience. *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997). The absence of any specific, articulable facts establishing that the defendant was armed and dangerous renders the frisk unlawful. *In Interest of S.J.*, 713 A.2d 45, 48 (Pa. 1998).

The prosecutor did not present any evidence regarding the officers' experience or how that experience affected how the officers viewed the facts and circumstances of this case.

ORDER

AND NOW, this ___ day of December 2020, the court grants Defendant's motion to suppress contained in his omnibus pretrial motion.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Robert Hoffa, Esquire
Work file
Gary Weber, Esquire