

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 00-10,893
:
:
vs. : CRIMINAL
:
WILLIE WILLIAMS, : Motion to Suppress
Defendant :
:

ORDER

AND NOW, this day of December, 2000, the Court GRANTS Defendant's Motion to Suppress. There are numerous problems with the detention and search of Defendant's person in this case. First, the police did not have sufficient evidence that Defendant was involved in criminal activity to detain him. The testimony presented at the suppression hearing clearly established that Defendant was not involved in the controlled buy made by Officer Sorage. In fact, Officer Barrett told Officer Miller that Defendant did not approach the apartment until after the drug transaction had occurred. Once this information was given to Officer Miller, he no longer was justified in detaining Defendant. See Commonwealth v. Guillespie, 745 A.2d 654, 661 (Pa.Super. 2000)(after robbery victim failed to identify the defendant as one of the perpetrators of the robbery, the police no longer had reasonable suspicion to detain the defendant). Although the police may have had suspicions that Defendant was approaching the apartment to engage in some type of drug transaction, the Court cannot consider suspicions and hunches when determining if the police had a reasonable belief that criminal activity involving this particular defendant was afoot. Commonwealth v. Zhahir, 561 Pa. 545, 751 A.2d 1153, 1158 (2000).

Second, Defendant's consent to a pat-down or search of his person was not valid as it was the product of an unlawful detention. Furthermore, in order to establish a knowing and voluntary consent to search, the Commonwealth must show by clear and positive evidence the total absence of duress or coercion, either express or implied. Commonwealth v. Harris, 429 Pa.

215, 221, 239 A.2d 290 (1968); Commonwealth v. Roland, 701 A.2d 1360, 1363 (Pa.Super. 1997); Commonwealth v. Burgos, 223 Pa.Super. 325, 329, 299 A.2d 34 (1972).¹ Here, the police drew their weapons, ordered Defendant to the ground, and handcuffed him. Although the police informed Defendant he would be free to leave after they obtained biographical information from him, they wanted to frisk Defendant for weapons for their safety prior to obtaining such information. Under these circumstances, a reasonable person would believe he had to consent to a frisk and answer the officer's biographical questions before he would be released.

Third, the police did not observe anything or possess any objective facts to believe this Defendant was armed and dangerous.² Absent valid consent, the police must possess objective facts that Defendant is engaged in or about to engage in criminal activity and that he is armed and dangerous to conduct a valid Terry stop and frisk. Commonwealth v. Allen, 555 Pa. 522, 725 A.2d 737, 740 (1999). Mere presence at the scene immediately after a drug transaction has occurred does not give rise to a reasonable belief that an individual is armed and dangerous. See Ybarra v. Illinois, 444 U.S. 85, 93, 100 S.Ct. 338 (1979)(mere presence at premises to be searched pursuant to a warrant does not justify a belief that persons on the premises are armed and dangerous); In re J.V., 2000 WL 1634769 (Pa.Super. 11/1/00) (protective pat-down of juvenile based on his presence during execution of drug warrant unjustified); Commonwealth v. Luddy, 281 Pa.Super. 541, 422 A.2d 601, 606 (1980) (resident of property who outside at shed near the house could not be searched or patted down merely because the police were executing a warrant for drugs at the residence). Similarly, the frisk

¹If the accused is under arrest at the time consent is obtained, this fact places a higher burden on the Commonwealth to prove that the consent was voluntary. Burgos, 223 Pa.Super. at 330.

²Although the police found a weapon in the apartment, this does not give rise to a reasonable belief that this defendant was armed and dangerous because the police knew prior to frisking Defendant that he had not been in the apartment as he was stopped prior to entering.

cannot be justified based on the generalization that guns follow drugs. Zhahir, 751 A.2d at 1163 (the presumption that guns follow drugs is an overbroad generalization which cannot support a justified belief that an individual under investigation is presently armed and dangerous).

Finally, even assuming for the sake of argument that the detention and frisk of Defendant were lawful under Terry and its progeny, the plain feel doctrine is not applicable to this case because the officer manipulated the objects in Defendant's pocket to determine they were small segments of a hard substance. Preliminary Hearing Transcript at pp. 12-13. Manipulation of the object constitutes an additional search unrelated to the frisk for weapons. Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130 (1993)(squeezing, sliding and otherwise manipulating the contents of the defendant's pocket constituted an additional search unrelated to the sole justification of the frisk under Terry); Commonwealth v. Graham, 554 Pa. 472, 721 A.2d 1075, 1078-79 (1998)(even a squeeze of the defendant's pocket is beyond the scope of a Terry frisk); Commonwealth v. Spears, 743 A.2d 512, 515-16 (Pa.Super. 1999) (pat-down search unlawful and not justified by the plain feel doctrine where officer moved and twisted a hard, plastic substance in the defendant's shirt pocket to determine its identity).

For these reasons, the Court grants Defendant's Motion to Suppress.

By The Court,

Kenneth D. Brown, J.

cc: Kenneth Osokow, Esquire (ADA)
Edward J. Rymysz, Esquire (APD)
Williamsport Police