

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 99-11921
:
vs. : CRIMINAL DIVISION
:
KAREEM WASHINGTON, :
Defendant : Suppression

ORDER

AND NOW, this 14th day of March 2000, the Court GRANTS the defendant's Motion to Suppress Evidence, to wit any drugs or paraphernalia seized from the defendant and any statements made by the defendant to the police.

The Court finds the police officer's pat-down of the defendant cannot be sustained under the Terry frisk rationale because there was no evidence that the defendant was armed or dangerous. Further, the pat-down of the defendant cannot be upheld on the basis of consent by the defendant. The officer testified that he asked the defendant to empty his pockets. The officer then began to pat-down the defendant. Although the defendant did not object, the officer did not obtain the defendant's consent to the pat-down. Therefore, it is clear that the defendant was only acquiescing to the authority of the police officer. See Commonwealth v. Burgas, 223 Pa.Super. 325, 299 A.2d 34 (1972); Commonwealth v. Eichelberger, 508 A.2d 589, 592 n.4 (Pa.Super. 1986).

The police officer's stop of the defendant is also questionable. Even if the officer's initial approach to the defendant could be viewed as a encounter, it clearly turned into a stop when the officer asked for identification and the defendant was required to wait while the officer radioed to check his identification.¹ Since there was no evidence that criminal activity was

¹Although the officer asked the defendant to wait, he had little choice in the matter as the officer still possessed his identification.

afoot, the stop cannot be sustained under the Terry doctrine. See Commonwealth v. Wilson, 655 A.2d 557, 572 (Pa.Super 1995) ("a police officer's observation of irregular behavior without a concurrent belief that crime is afoot renders an investigatory stop unreasonable").

If the Commonwealth files an appeal of this Order, a full opinion will be prepared by the Court.

By The Court,

Kenneth D. Brown, J.

cc: Daniel Holmes, Esq.,(ADA)
E.J. Rymza. Esq., (APD)
Eileen Grimes, CST