

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1225-2015**
 v. :
 :
 DARRELL MICHAEL COSBY, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On September 15, 2015, the Defendant filed an omnibus pre-trial motion. The omnibus motion contains only a motion to suppress. A hearing on the motion was held on November 9, 2015.

I. Background

A. Trooper Tyson Havens' Testimony

Tyson Havens (Havens) has been a Pennsylvania State Police (PSP) trooper for 22 years. He is currently assigned to the PSP criminal investigation unit. At approximately 7 p.m. on May 9, 2015, Havens and his partner were in an unmarked state police vehicle in the area of Sixth Avenue and High Street in Williamsport. Havens has “made more arrests than [he] can remember” in the area of Sixth and High. He has made undercover drug buys in the area, which is one of the “biggest spots in Williamsport to buy drugs.” Havens has made “dozens of gun arrests” not far from Sixth and High.

Havens saw a man and a woman in a pickup truck in a gas station at Sixth and High. They were “unkept” and disheveled. The Defendant approached the truck, “looked around,” and then entered the back seat of the truck. Havens has made undercover drug buys in the same manner, so he thought that he may be seeing the beginning of a drug transaction. “Seconds after” the Defendant entered, the truck exited the gas station and turned left onto Seventh

Avenue. The truck then turned on Park Avenue without a turn signal, so Havens stopped the truck. The man was in the driver's seat, and the woman was in the front passenger seat. The Defendant was in the truck's back seat.

Havens had the man exit the truck. The man had pinpointed pupils, which is an indication of opiate use. The man said that he took methadone and that there were needles in the truck. A pat-down of the man did not reveal any weapons. The woman then exited the truck. Havens allowed the woman to leave after he found out that she did not have any weapons or contraband.

The Defendant was still in the truck. He appeared nervous, and his hands were trembling. His eyes were "heavy" and "glassy." Havens regularly encounters people who are under the influence of drugs, and he thought that the Defendant was high. Havens could smell the odor of marijuana in the area of the Defendant, who admitted that he had marijuana.

There has been heightened gun crime in Williamsport, and when Havens deals with drug transactions, there is a big concern that somebody could have a weapon. Havens told the Defendant that he was going to conduct a pat-down. Havens has felt dime bags of marijuana numerous times, and during the pat-down, Havens felt bags of marijuana in the Defendant's right front pants pocket. Havens told the Defendant that he believed there was marijuana in his pocket. He asked the Defendant if he could reach into the pocket and get the suspected marijuana. After the Defendant said yes, Havens reached into the pocket and pulled out marijuana.

B. Arguments

The Defendant argues that the pat-down was unlawful because Trooper Havens lacked the requisite reasonable suspicion that the Defendant was armed and dangerous. He contends

that there were no facts to indicate that the Defendant was armed and dangerous. He argues that reasonable suspicion is not established by the observation of a black man looking around before entering the back of a truck.

The Commonwealth argues that Havens had reasonable suspicion that the Defendant was armed and dangerous. It notes that Havens believed that he had intercepted a drug transaction. It also notes that the Defendant was nervous and the driver had said there were needles in the truck. In addition, the Commonwealth argues that pat-down was lawful because Havens had the requisite probable cause to arrest the Defendant. It contends that Havens had probable cause because the Defendant admitted that he had marijuana.

II. Discussion

“To be constitutionally valid, a warrantless arrest must, of course, be supported by probable cause.” Commonwealth v. Evans, 685 A.2d 535, 537 (Pa. 1996). “Probable cause to arrest exists when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances. Furthermore, probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent [persons] act.” Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008) (citations and quotation marks omitted).

Here, before Trooper Havens conducted the pat-down, the Defendant admitted that he had marijuana. The Defendant saying that he had marijuana provided Havens with probable

cause to arrest the Defendant for possession of marijuana. Therefore, at the moment the Havens began the pat-down, he could have lawfully arrested the Defendant.

“It is well established that a warrantless search incident to a lawful arrest is reasonable, and no justification other than that required for the arrest itself is necessary to conduct such a search.” Commonwealth v. Ingram, 814 A.2d 264, 272 (Pa. Super. 2002). Here, the pat-down was lawful since Havens could have searched the Defendant.

III. Conclusion

The pat-down was lawful because Trooper Havens could have lawfully arrested and searched the Defendant.

ORDER

AND NOW, this _____ day of December, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Omnibus Pre-Trial Motion, which was filed on September 15, 2015, is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge