

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
JEFF DOBSON	:	
	:	
Appellant	:	No. 2099 EDA 2021

Appeal from the Judgment of Sentence Entered September 20, 2021
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0001612-2019

BEFORE: McLAUGHLIN, J., McCAFFERY, J., and PELLEGRINI, J.*

MEMORANDUM BY PELLEGRINI, J.:

FILED JUNE 28, 2022

Jeff Dobson (Dobson) appeals from the judgment of sentence imposed by the Court of Common Pleas of Delaware County (trial court) after he was convicted of firearms not to be carried without a license, persons not to possess firearms, possession of a controlled substance and possession of drug paraphernalia.¹ On appeal, he challenges the denial of his suppression motion, arguing that the police lacked reasonable suspicion to suspect that he was armed and dangerous to justify a pat-down search that yielded the

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 6106(a)(1), 6105(a)(1), 35 P.S. §§ 780-113(a)(16) and (a)(32).

discovery of a firearm and later, pursuant to a search incident to arrest, drugs. After review, we affirm.

I.

Because Dobson's sole issue contests the denial of his suppression motion, we take our facts from the testimony of Officer Jerome Duncan (Officer Duncan), the only witness at the suppression hearing.

On the night of August 19, 2018, just before 10:30 p.m., Officer Duncan of the Chester City Police Department was on patrol in a marked police car when he was dispatched for shots fired at West 6th Street and Lloyd Street. **See** N.T., 1/9/20, at 8. Officer Duncan arrived within minutes and began to canvass the area. **Id.** at 9. While doing so, he saw a maroon sedan go through the red light at the intersection of 7th Street and Lloyd Street. **Id.** at 9. Upon seeing the traffic violation, Officer Duncan activated his lights and got behind the sedan to initiate the traffic stop. **Id.** at 10. The sedan began to slow down and pull over to the right-hand side of the road but did not come to a complete stop. **Id.** at 10. Instead, the sedan continued south on Lloyd Street, going only about 5 mph. **Id.** at 10, 22.

As he followed, Officer Duncan relayed to incoming units that he was trying to stop the sedan. **Id.** at 11. While this was happening, Officer Kleinfeld² was in another police vehicle at 6th Street and Lloyd Street. **Id.** As

² Officer Kleinfeld's first name was not given at the hearing.

the sedan approached, Officer Kleinfeld activated his lights and pulled out into the middle of Lloyd Street, forcing the sedan to make a right-hand turn into a parking lot for Dorian Court apartments, where it pulled into a parking space. **Id.** at 12.

Officer Duncan drove to the apartments' other exit to "stop or cut off the vehicle if it was indeed fleeing." **Id.** As he did so, Officer Duncan saw the sedan had parked and that the driver was now out of the car speaking to Officer Kleinfeld. **Id.** At that time, Officer Duncan noticed that the sedan had two other occupants: Dobson in the front passenger seat and someone else in the backseat. **Id.** at 16.

The officers ran the occupants' information through their system and discovered that the driver had a suspended license for DUI while the rear passenger had an active warrant, meaning the sedan would need to be towed. **Id.** at 17-18. Once the rear passenger was in custody, Officer Duncan asked Dobson to step out of the car and advised him that he would do a pat-down search for officer safety. **Id.** During the pat-down, Officer Duncan immediately recognized that a bulge above Dobson's right knee was a firearm. **Id.** at 19. Once the firearm was removed, Officer Duncan asked Dobson if he had a license to carry, to which he replied he did not. **Id.** at 20. At that point, Dobson was arrested and transported to the Chester City Police Department. **Id.** at 21. There, the police searched Dobson and discovered that he had cocaine in his underwear. **Id.**

Before trial, Dobson moved to suppress the firearm and drugs discovered through the pat-down search and subsequent search incident to arrest. At the suppression hearing, the Commonwealth asked Officer Duncan why he tried to stop the sedan. He answered:

I was stopping the vehicle mainly because – primarily because it ran a violation right in front of me. It committed a traffic violation right in front of me. Then as it committed the traffic violation it wouldn't stop for police which raised suspicion especially because we just had a shots fired call in that area.

Id. at 13.

He added that the area of the shots fired call (6th and Lloyd) was only "300, 500 feet" away from where he first saw the sedan. He also testified that the area is designated a high-crime area in the city of Chester, including "violent crimes, shootings, shots fired, high drug area." **Id.** at 14. He explained that he knows it is a high-crime area through his personal experience from responding to about 5 to 10 shots fired calls in the area within two years, along with information received from other officers, the narcotics division and roll call. **Id.** at 14-15.

The Commonwealth also asked him about the pat-down:

Q Okay. And can you just testify for the Court what specifically did you believe – what fear did you have at that time? Why did you want to pat him down?

A Possibly concealing a weapon of any sort.

* * *

Q Concealing a weapon. And what led you to believe that he could be concealing a weapon?

A Being the area that we were currently in.

Q Okay. And I believe the car fled, correct?

A Correct.

Q Did that also lead you to believe that there could be something suspicious going on in the vehicle including with the occupants?

A Yes.

Id. at 18-19.

Based on Officer Duncan's testimony, the trial court denied Dobson's suppression because there was sufficient reasonable suspicion to conduct a pat-down search of Dobson, explaining:

Here, Officer Duncan testified he responded to the location because of a report of shots fired received minutes before his arrival. Officer Duncan observed the vehicle [Dobson] was a passenger in, travel through a steady red light. When Officer Duncan attempted to conduct a lawful traffic stop, the vehicle slowed but did not stop. Not only did the vehicle refuse to stop for Officer Duncan, but also turned into an apartment complex to avoid another police vehicle blocking its way further down the street. The area is known as a high crime area in the City of Chester. After the stop, Officer Duncan learned through NCIC that the driver had a suspended license for DUI and the rear passenger had an active arrest warrant. The court finds that these circumstances, when coupled with the fact that the stop was conducted in an area known for incidents of violent crime, certainly gave Officer Duncan reason to believe that [Dobson] could be armed such that Officer Duncan was permitted to conduct a pat-down search for officer safety.

Order Denying Defendant's Motion to Suppress, 2/10/20, at 7-8.

After a jury trial, Dodson was found guilty of the offenses mentioned above and was sentenced to an aggregate 6 to 15 years' imprisonment.³ This appeal followed.⁴

³ According to the sentencing order, Dobson was sentenced to 6 to 15 years for persons not to possess firearms (count one), a concurrent 42 to 84 months for firearms not to be carried without a license (count two), a concurrent one to two years for possession of a controlled substance (count four) and a concurrent 3 to 6 months for drug paraphernalia. **See** Sentencing Order, 9/20/21. In its Pa.R.A.P. 1925(a) opinion, though, the trial court states that it imposed a sentence of 42 to 84 months. **See** Opinion, 12/1/21, at 1. Both Dobson and the Commonwealth state the same in their briefs. Because Dobson raises no issues with his sentence, and it does not appear the trial court imposed an illegal sentence, we need not address this discrepancy.

⁴ Our standard of review for an order denying a motion to suppress is as follows.

Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous. Where, as here, the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, "whose duty it is to determine if the suppression court properly applied the law to the facts." Thus, the conclusions of law of the courts below are subject to our plenary review.

Commonwealth v. Mbewe, 203 A.3d 983, 986 (Pa. Super. 2019) (citation omitted).

II.

The sole issue that Dobson raised on appeal is whether the trial court erred in denying his suppression motion because there was a lack of probable cause and/or reasonable suspicion that he was armed and dangerous to justify the search.

A.

There are three categories of interactions between police and citizens:

[T]he first of these is a “mere encounter” (or request for information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an “investigative detention” must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Commonwealth v. Way, 238 A.3d 515, 518 (Pa. Super. 2020) (citation omitted).

Because the encounter here involved an investigative detention, we must determine whether Officer Duncan had reasonable suspicion to stop, detain and pat-down Dobson for officer safety. When evaluating the legality of investigative detentions, Pennsylvania has adopted the holding of **Terry v. Ohio**, 392 U.S. 1 (1968), where the United States Supreme Court held that police may conduct an investigative detention if they have reasonable suspicion that criminal activity is afoot. **In re: D.M.**, 781 A.2d 1161, 1163 (Pa. 2001). These encounters are commonly known as **Terry** stops. To prove reasonable suspicion, “the police officer must be able to point to specific and

articulable facts and reasonable inferences drawn from those facts in light of the officer's experience." **Commonwealth v. Cook**, 735 A.2d 673, 677 (Pa. 1999). "The determination of whether an officer had reasonable suspicion that criminality was afoot so as to justify an investigative detention is an objective one, which must be considered in light of the totality of the circumstances." **Commonwealth v. Walls**, 53 A.3d 889, 893 (Pa. Super. 2012).

This Court has explained:

It is well settled that an officer may pat-down an individual whose suspicious behavior he is investigating on the basis of a reasonable belief that the individual is presently armed and dangerous to the officer or others. To validate a **Terry** frisk, the police officer must be able to articulate specific facts from which he reasonably inferred that the individual was armed and dangerous. In determining whether a **Terry** frisk was supported by a sufficient articulable basis, we examine the totality of the circumstances.

Commonwealth v. Gray, 896 A.2d 601, 605-06 (Pa. Super. 2006). Under that standard then, police may conduct a limited pat-down of a person's outer clothing "in an attempt to discover the presence of weapons which may be used to endanger the safety of police or others." **Commonwealth v. Wilson**, 927 A.2d 279, 285 (Pa. Super. 2007) (citation and internal quotation marks omitted).

In making this determination of whether there was reasonable suspicion,

we must give due weight...to the specific reasonable inferences the police officer is entitled to draw from the facts in light of his

experience. Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Commonwealth v. Young, 904 A.2d 947, 957 (Pa. Super. 2006) (internal citations and quotation marks omitted).

The ***Terry*** totality of the circumstances test also applies to traffic stops or roadside encounters in the same way that it applies to typical police encounters. ***See Commonwealth v. Mesa***, 683 A.2d 643, 646 (Pa. Super. 1996). Moreover, the principles of ***Terry*** apply to all occupants of a stopped vehicle, not just the driver. ***See id.*** (applying principles of ***Terry*** to determine whether police were permitted to conduct pat-down search of passenger in vehicle that was stopped pursuant to motor vehicle violation). Indeed, “roadside encounters, between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect.” ***In re O.J.***, 958 A.2d 561, 564 (Pa. Super. 2008) (*en banc*) (citing ***Michigan v. Long***, 463 U.S. 1032, 1049, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983)).

Finally, as this Court has recognized, “[a]n overt threat by the suspect or clear showing of a weapon is not required for a frisk.” ***Commonwealth v. Mack***, 953 A.2d 587, 591 (Pa. Super. 2008). Indeed, “[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief

that his safety or the safety of others was in danger.” ***Commonwealth v. Cooper***, 994 A.2d 589, 592 (Pa. Super. 2010) (citation omitted).

B.

With these principles in mind, we turn to Dobson’s argument that Officer Duncan lacked reasonable suspicion to conduct a pat-down search. Dobson first disputes that the sedan fled from Officer Duncan after he activated his lights. On this point, he emphasizes that the sedan traveled only one block from the red light to where it turned into the apartments. He also notes that the sedan did not speed away from Officer Duncan; instead, the sedan slowed down to 5 mph. Dobson observes that he did not drive the sedan, nor did get out of the car when it finally came to a stop. Dobson also emphasizes that Officer Duncan admitted that before the pat-down search, he did not see any firearms or drugs in plain view in the car. He likewise agreed that Dobson complied with all instructions while he was seated inside the sedan and did not try to run. Further, Dobson notes, there was no evidence that he ever appeared nervous or made any furtive movements while he was in the sedan.

While Dobson is correct that Officer Duncan did not observe any suspicious actions by him individually, we still find that based on the totality of the circumstances, there was sufficient reasonable suspicion for a pat-down search. Indeed, there were several circumstances that, while not dispositive on their own or individually applicable to Dobson, combined to support reasonable suspicion for the pat-down search.

First, Officer Duncan was on routine patrol at nighttime when he responded to a report of shots fired at West 6th Street and Lloyd Street in the city of Chester. **See** N.T., 1/9/20, at 8. Based on his personal experience, that area is a “high crime drug area as well as violent area,” which, though not sufficient by itself to support reasonable suspicion, may be considered in examining the totality of the circumstances. **See In re D.M., supra** at 1163-64 (citation omitted).

Second, after arriving within “a couple minutes,” Officer Duncan saw the sedan go through a red light. **See** N.T., 1/9/20, at 9. Notably, Officer Duncan saw the traffic violation take place at the intersection 7th Street and Lloyd Street—only a block away from the shots fired report. He added that there were no other vehicles at the time he arrived. **Id.** at 11. Thus, because of its temporal and geographic proximity to the shots fired report, coupled with the traffic violation, Officer Duncan believed that the sedan “could have” been involved in the shooting. **Id.** at 13.

Third, rather than stop when Officer Duncan activated his emergency lights, the sedan “began to slow down and pull over to the right” but would not come to a complete stop, as it continued to travel south down Lloyd Street with Officer Duncan following behind. **Id.** at 10. While Dobson disputes that the sedan was fleeing because it was going only 5 mph, the sedan still failed to stop when Officer Duncan tried to stop the car on Lloyd Street after it went through the red light.

Fourth, and perhaps more importantly, the sedan also failed to stop when Officer Kleinfeld pulled out into the middle of the road, effectively cutting off the sedan from traveling any farther on Lloyd Street. *Id.* at 12. However, rather than stop with Officer Kleinfeld to its front and Officer Duncan to its back, the sedan made a right turn into Dorian Court. Again, even if this did not arise to the level of erratic or dangerous driving, the sedan's failure to yield to two marked police vehicles with their lights activated was a factor that Officer Duncan could consider under the circumstances.

Fifth, after the sedan came to a stop and parked, the driver did not wait for the officers and got out to speak to Officer Kleinfeld. Putting aside that the fact that the driver immediately exited the sedan, the situation then turned into a nighttime vehicle stop, which is another factor to take into consideration. *See Commonwealth v. Zhahir*, 751 A.2d 1153, 1157 (Pa. 2000) (holding that time of day is relevant to a reasonable suspicion analysis); *In re O.J., supra* at 566 (holding the officer's "protective search was constitutionally valid," in part, because "[t]he vehicular stop occurred at night, which creates a heightened danger that an officer will not be able to view a suspect reaching for a weapon").

Again, while any one of these circumstances in isolation would not establish reasonable suspicion that Dobson was armed and dangerous, we examine the totality of the circumstances, which is not limited to an examination of only those facts that clearly indicate criminal conduct. *See*

Young, supra. To recap, Officer Duncan immediately responded to a shots fired report in a high-crime area at night and observed a car go through a red light and then fail to stop when he activated lights and further failed to stop for another police vehicle that cut it off. We have found similar circumstances were enough to support reasonable suspicion for a pat-down search. **See, e.g., Commonwealth v. Raglin**, 178 A.3d 868, 873 (Pa. Super. 2018) (holding police had reasonable suspicion to pat-down defendant where gunshot sensor alerted shots fired in high crime area, defendant was near the area, and defendant's evasive behavior when police arrived).

Finally, Dobson devotes a considerable portion of his argument to analogizing this case to **Commonwealth v. Arrington**, 233 A.3d 910 (Pa. Super. 2020). **See** Dobson's Brief at 26-34. We find the analogy inapt. There, police were on patrol at 2:00 a.m. in a high-crime area when they observed defendant's vehicle in the incorrect lane of travel. Suspecting the defendant was possibly DUI, the police pulled over the vehicle and removed the defendant, following which they conducted a search of the vehicle and found a firearm in a shoe box on the back seat. This Court ultimately concluded that the officers lacked reasonable suspicion to conduct a protective weapons search of the vehicle, emphasizing that, although the stop occurred at night in a high-crime area, the police neither observed any weapons in plain view nor saw the defendant make any furtive movements. **See Arrington, supra** at 917.

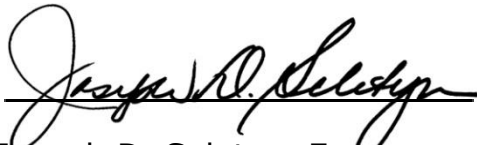
Here, in contrast, the police were responding to a shots fired call and saw the only vehicle in the area commit a traffic violation and then fail to stop for two police vehicles when they tried to pull the car over. Unlike **Arrington**, where the sole factors for reasonable suspicion were the stop occurred at night in a high-crime area, the police here responded to a potentially dangerous situation and then observed a car in which Dobson was a passenger fail to stop when the police tried to pull it over. Accordingly, we find **Arrington** inapplicable, and conclude that the trial court did not err in denying Dobson's motion to suppress evidence.

Judgment of sentence affirmed.

Judge McLaughlin joins the memorandum.

Judge McCaffery files a dissenting memorandum.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/28/2022