

[J-133-98]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN THE INTEREST OF D.M.	:	No. 14 E.D. Appeal Dkt. 1997
APPEAL OF: D.M.	:	
	:	Appeal from the Judgment of the Superior
	:	Court entered on July 31, 1996 at No.
	:	2779PHL95 affirming the Order entered
	:	on July 21, 1995 in the Court of Common
	:	Pleas of Philadelphia County, Juvenile
	:	Division, at 4098-95-6.
	:	
	:	
	:	Re-Submitted: June 17, 1998
	:	
	:	
	:	

OPINION OF THE COURT

MR. JUSTICE CASTILLE

DECIDED: April 1, 1999

This is an appeal from the Order of the Superior Court affirming the trial court's order adjudicating appellant delinquent. The issue before this Court is whether, pursuant to the Fourth Amendment to the United States Constitution, the Superior Court properly upheld the trial court's denial of appellant's motion to suppress physical evidence obtained pursuant to a stop and frisk.¹ Because we find that police possessed the requisite reasonable suspicion to stop and frisk appellant for weapons, we affirm.

¹ In his brief, appellant also raises a claim under Article I, Section 8 of the Pennsylvania Constitution. We note that appellant's claim under the Pennsylvania Constitution is waived. The record reveals that appellant waived his state constitutional claim by failing to raise it in his statement of matters complained of before the Superior Court. Pa.R.A.P. 302; Pa.R.A.P. 1925(b). Accordingly, because appellant's claim

Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Commonwealth v. Cortez, 507 Pa. 529, 532, 491 A.2d 111, 112, cert. denied, 474 U.S. 950 (1985). When reviewing rulings of a suppression court, we must consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Id. Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. Id.

Here, the trial court found that on June 6, 1995, at approximately 8:40 p.m., Officer Walter Williams of the Philadelphia Police Department was on routine patrol on the west end of 30th Street and Grays Ferry Avenue when he received a radio call regarding several black males involved in a robbery at 22nd and South Streets. The officer responded to the call and immediately proceeded to the location of the reported robbery. Approximately one or two minutes after receiving the call, a short distance from the crime scene, the officer observed appellant and three other black males walking north "very quickly" on 22nd Street. They were the only individuals in the vicinity. As the officer looked in the direction of the four individuals, they immediately changed their direction.

The officer conducted an investigatory stop of appellant and his companions. Officer Marcus Robinson arrived at the scene and conducted a pat-down search of appellant. Officer Robinson felt an object shaped like a handgun and asked appellant

(...continued)

under Article I, Section 8 has not been properly preserved for this Court's review, our decision is based

what it was. Appellant admitted that it was a handgun. Officer Robinson retrieved the loaded .32 caliber revolver, placed appellant under arrest and charged him with violations of the Uniform Firearms Act, 18 Pa. C.S. §§ 6106, 6108.²

Appellant filed a motion to suppress the handgun. Following a hearing, the trial court denied the motion and adjudicated appellant delinquent. The trial court placed appellant on probation with intensive supervision. The Superior Court affirmed.

Appellant now asserts that the trial court erred in denying his motion to suppress the gun because under the Fourth Amendment to the United States Constitution, police lacked reasonable suspicion to effectuate the investigatory stop. We disagree.

An officer who lacks the level of information required for probable cause to arrest need not "simply shrug his shoulders and allow a crime to occur or a criminal to escape." Adams v. Williams, 407 U.S. 143, 145 (1972). Where an officer reasonably suspects that criminal activity is afoot, the officer may temporarily freeze the status quo by preventing the suspect from leaving the scene in order to ascertain his identity and gather additional information. Terry v. Ohio, 392 U.S. 1, 21 (1968). The officer may also conduct a quick frisk for weapons if he reasonably fears that the person with whom he is dealing may be armed and dangerous. Id. The question of whether reasonable suspicion existed at the time of an investigatory detention must be answered by examining the totality of the circumstances to determine whether there was a particularized and objective basis for suspecting the individual stopped of criminal activity. United States v. Cortez, 449 U.S. 411, 417 (1981). There is no ready test for

(...continued)
solely on Fourth Amendment principles.

² Police escorted the robbery victim to the scene. The victim indicated that none of the four youths were involved in the robbery.

determining reasonableness other than by balancing the need to search or seize against the invasion to which the search or seizure entails. Terry, 392 U.S. at 21. Police are generally justified in stopping an individual when relying on information transmitted by a valid police bulletin. United States v. Hensley, 469 U.S. 221, 232 (1985).

Here, the information available to the officer at the time he made the stop provided at least the minimum level of objective justification necessary for an investigative stop. The officer was on routine patrol and received police radio information that a gunpoint robbery had just taken place involving four or five black males. About one minute later, he observed four black males walking north "very quickly," one-half block away from the crime scene. These males were the only males that the officer observed in the vicinity of the crime. Upon seeing the police vehicle, the group abruptly began walking in the opposite direction. The officer testified that based on the information he had received, the proximity of the crime scene, and the immediate change in direction, he believed that the four males were involved in the robbery. Consequently, he conducted an investigatory detention of the males.

Under these circumstances, the officer did not act on the basis of a mere "hunch" or "inchoate and unparticularized suspicion" when approaching appellant. Terry, 392 U.S. at 27. Here, appellant and his companions matched the number of suspects broadcast in the report; they matched the race of the suspects; they were the only individuals observed in the vicinity of the robbery; they were seen a mere one-half block away within approximately one minute of the crime; and they acted evasively when they saw the police vehicle.

Furthermore, the fact that the police radio report came from the crime victim herself, not from an anonymous source, imparted a high degree of reliability to the report. Under these circumstances, the officer clearly possessed reasonable suspicion for an investigatory stop. The officer would have been derelict in his duties had he not detained the group which was very possibly armed and retreating after having committed a violent armed felony mere moments earlier. Further, the officer's investigation could not have been safely pursued had he not patted the group down for weapons since the radio call alerted police to a gunpoint robbery. "There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime should have to ask one question first and take the risk that the answer might be with a bullet." Terry, 392 U.S. at 33. Pursuant to Terry, the officer's pat-down of appellant was proper. In light of the report that the robbery had been committed with a gun, "a reasonably prudent man under the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry, 392 U.S. at 20.

In Commonwealth v. Powers, 484 Pa. 198, 398 A.2d 1013 (1979), this Court held that under the Fourth Amendment, police had probable cause to arrest three black men following a flash police radio broadcast regarding a stabbing. The broadcast stated that four or five black males were involved, including one in a green army fatigue jacket with the hood pulled up, one in a white tee shirt, and one six foot four inches tall in a brown overcoat and red knit cap. In upholding the denial of the appellant's motion to suppress, this Court stated: "While it may be true, as appellant argues, that many young black men in the 24th and Berks Streets area wear green army jackets and white tee shirts, nevertheless the discovery of the three youths, together on the street, in the neighborhood to which the suspects had fled, ten to fifteen minutes after the crime had

occurred, where the three youths fit descriptions of the suspects and where there were no other persons matching those descriptions in the area, presented a combination of circumstances which was surely sufficient to justify a reasonable belief that they could well be the guilty parties. Thus probable cause existed to arrest appellant." Id. at 203, 398 A.2d at 1015.

Since the circumstances of Powers included neither the close spacial nor temporal proximity present in the instant case, nor the suspicious change of direction at the sight of the police, it is clear that the circumstances here substantiate reasonable suspicion under the authority of Powers. Here, the officers spotted the exact number of suspects in a far less remote time frame, the suspects were observed close to the crime scene, the suspects matched the description given by the victim, and there were no other persons matching the description observed in the area. Although the description of the suspect's clothing was not as detailed as the description given in Powers, the issue in Powers was whether police had probable cause to arrest. Here, the issue is whether police were justified in acting under the lesser standard of reasonable suspicion.

The federal courts which have examined facts similar to the facts of the instant matter have found not only the requisite amount of reasonable suspicion, but have also frequently found that even the more exacting standard of probable cause was satisfied. In United States v. Nelson, 931 F.Supp. 194 (W.D.N.Y. 1996), aff'd, 131 F.3d 132 (2d Cir. 1997), the court held that police not only had reasonable suspicion to stop the defendant, but also possessed probable cause to arrest him where an officer received a

radio report that fellow officers were chasing an individual a few blocks away.³ The officer drove to the scene and was informed that the fugitive was a black male wearing dark clothing and that he had run down a certain alleyway. The officer drove his vehicle to the area where he guessed the fugitive might be heading. Shortly thereafter, a black male wearing dark clothing ran in front of the vehicle. The officer apprehended the suspect. The court held that the appearance of the defendant, who fit the suspect's description, in an area where the officer surmised that the suspect might be heading, as well as his running into the street, "more than justified" the officer in pursuing and arresting the defendant. Id. at 197.

In United States v. Short, 570 F.2d 1051 (D.C. Cir. 1978), the court held that there was reasonable, articulable suspicion to initiate an investigatory stop of the defendant, who, along with many young people near the area in question, met the general description of a burglary suspect. The broadcast had advised that the first of the two burglary suspects was a black male approximately 18 to 19 years old, 5'9 to 5'10 tall, 145 to 155 pounds with a short Afro-bush haircut and a dark complexion in a waist-length camel-colored leather jacket and blue trousers. The second suspect was described only as a black male. Several minutes after the broadcast, the officers observed the appellant wearing blue pants and a brown jacket with another black male one-and-a-half blocks from the burglary scene. Appellant and his companion walked away from the officers. The court found that "the description received over the police radio fit many young people in that area of Washington. This was particularly so given the apparent confusion over the precise meaning of "camel-colored." Id. at 1054. Thus,

³ The pursuit began after the individual committed a traffic violation. Police pursued his vehicle and the defendant jumped out of the car and ran, tossing away a loaded gun.

although the police in Short had a general description of the suspect's appearance, including his clothing, the description was not an influential factor in the court's conclusion that the officer had a reasonable, articulable suspicion that the suspect might be connected with the crime such that an investigative stop and frisk was warranted under Terry. Therefore, Short is persuasive for the proposition that the officer here had the requisite reasonable suspicion despite the fact that the officers in the instant matter did not possess a detailed description of what the suspects were wearing.

A large portion of appellant's brief is devoted to citing cases which hold that certain factors present in the instant case, standing alone, are insufficient to constitute reasonable suspicion. Appellant's argument overlooks the mandate that reasonable suspicion must be evaluated based on the totality of the circumstances. It is not the function of a reviewing court to analyze whether each individual circumstance gave rise to reasonable suspicion, but rather to base that determination upon the totality of the circumstances - the whole picture. Cortez, 449 U.S. at 417. The evidence collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. Id.

Appellant cites Commonwealth v. Berrios, 437 Pa. 338, 263 A.2d 342 (1970) for the proposition that the totality of the circumstances presented by the instant case were insufficient to constitute reasonable suspicion. However, in Berrios, this Court invalidated an investigative stop that had been based solely on a report of a shooting involving three men - two "Negroes" in dark clothing and a "Puerto Rican" in light clothing. Twenty minutes after receiving the report, police stopped two men, one black and one Puerto Rican, who were walking on a street three blocks from the crime scene. Thus, after a significant passage of time, police stopped two men, when three had been

reported, only three blocks from where they allegedly committed a crime, which was inconsistent with "flight" since the suspects could have traveled much further in over twenty minutes if they had been trying to flee a crime scene. Further, the suspects in Berrios had been walking in a normal manner and did not change their direction upon viewing police. Here, unlike Berrios, the officer stopped the precise number of suspects, who happened to be the only persons on the street, only one minute after the crime occurred and less than one block from the scene, and the suspects acted as if they were attempting to avoid police.

Appellant also cites Commonwealth v. Hicks, 434 Pa. 153, 253 A.2d 276 (1969), which simply fails to support appellant's argument. In Hicks, police received a report that a suspected burglar was a black male with a mustache in his thirties wearing a brown coat. Police ultimately stopped the appellant four blocks away from the scene and forty-five minutes after the alleged crime, even though he did not have a mustache and was wearing a light-colored coat. This Court held that police lacked reasonable suspicion to conduct the stop, because the appellant did not match the description. In the instant matter, there was no disparity between the description and the officer's observation, the suspects were stopped within minutes of the crime being reported, and within a short distance of the crime scene, and the suspects displayed suspicious, furtive behavior upon viewing police.

We are mindful of the principles that drive the distinction between the reasonable suspicion (which existed here) for an investigative stop and the probable cause required for an arrest. In an investigative stop, the intrusiveness of the police conduct at issue is comparatively negligible. Here, appellant and his companions were detained for a mere two to four minutes until the victim was able to eliminate them as the robbery suspects.

See Commonwealth v. Ellis, 541 Pa. 285, 296, 662 A.2d 1043, 1049 (1995) (police may briefly detain a suspect in order to allow an on-scene identification). Appellant would have been free to leave following the victim's identification had he not possessed an illegal firearm.

In sum, the officer in the instant matter did not stop appellant and his companions based solely on a description of race and gender. Instead, the totality of the circumstances provided the officer with more than sufficient reasonable suspicion to briefly detain appellant and frisk him for weapons. Therefore the gun found on appellant was properly admitted and no new trial is warranted.

For these reasons, we affirm the ruling of the Superior Court.

Mr. Justice Zappala files a dissenting opinion.

Mr. Justice Nigro files a dissenting opinion in which Mr. Chief Justice Flaherty joins.