

Commonwealth v. Smith
Commonwealth v. Williams

COMMONWEALTH OF PENNSYLVANIA v. JARED V. SMITH, Defendant
Criminal Action No. 426-2002
COMMONWEALTH OF PENNSYLVANIA v. COREY WILLIAMS, Defendant
Criminal Action No. 432-2002
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch

*Search and Seizure - Investigative detention, Custodial detention, Reasonable suspicion; Custodial Interrogation
- Miranda warnings, Investigative detention; On-Scene Identifications*

1. Depending upon whether the stop was an investigatory detention or a custodial detention will determine whether the Commonwealth must establish reasonable suspicion or probable cause.
2. An investigatory detention must be supported by reasonable suspicion.
3. A custodial detention must be supported by probable cause.
4. An investigatory detention carries an official compulsion to stop and respond, but the detention is temporary.
5. A custodial detention arises when the conditions and/or duration of an investigative detention become so coercive as to be the functional equivalent of an arrest.
6. The method of detention and the investigative methods used to confirm or dispel suspicion in this case clearly indicate an investigative detention occurred.
7. Officer Kauffman had reasonable suspicion when the defendants matched the description of the suspects, they matched the number of suspects reported, they matched the race of the suspects reported, they were the only ones in the area, they came from the same directions as the Seven-Eleven and they were driving precariously.
8. Custodial interrogation occurs when a person has been taken into custody or his freedom of action is deprived in any significant way, or the individual is placed in a situation where he reasonably believes that his freedom of action or movement is restrained.
9. Questioning of suspects during an investigative detention prior to arrest is an attempt to elicit incriminating statements when Officer Kauffman asked the suspects where they were coming from and where they were headed.
10. When determining the reliability of an on-scene identification, the Court's analysis should include a review of the opportunity of the witnesses to view the criminal at the time of the crime, the witnesses' degree of attention, the accuracy of their prior descriptions, the level of certainty demonstrated at the confrontation and the time between the crime and confrontation.
11. A time of one-hour between the crime and the confrontation does not eliminate the reliability of the witnesses.

Appearances:

Angela R. Krom, *Assistant District Attorney*

Eric J. Weisbrod, Esq.

James K. Reed, Esq.

OPINION

Walker, P.J., December 23, 2002

Procedural History

Defendants Jared V. Smith and Corey L. Williams are charged with robbery, theft by unlawful taking, criminal conspiracy, unlawful restraint, simple assault, receiving stolen property, prohibited offensive weapons, possession of firearm by minor and firearms not to be carried without a license for actions alleged to have occurred on March 3, 2002.

Defendants filed omnibus pre-trial motions seeking to suppress all evidence obtained as a result of the illegal detention, all statements made prior to the reading of the *Miranda* warnings and the on-scene identification made by the two eyewitnesses. An omnibus hearing was conducted on October 31, 2002.

At the conclusion of the hearing, the Court asked the Commonwealth, Defendant Smith and Defendant Williams to submit briefs in support of their respective positions. Although the hearing for both defendants was conducted at the same time, each defendant, through counsel, submitted arguments to the Court. The Commonwealth submitted responses to both defendants' briefs.

The Court has reviewed the transcripts from the proceedings of omnibus hearing conducted on October 31, 2002, those items entered into evidence at the hearing, Defendant Smith's brief in support of motion to suppress, Defendant Williams' letter brief in support of motion to suppress, the Commonwealth's brief in opposition to defendants' motions to suppress and the applicable law.

Factual Summary

On or about March 3, 2002, at about 4:30 a.m., two men entered the Seven-Eleven convenience store in Washington Township, Franklin County and demanded money at gun point. Two people were present in the convenience store at the time of the robbery. One was a store employee, Beverly Baer, and the other was the store employee's husband, Charles Baer.

The men approached Charles Baer, who was standing behind the coffee bar grinding coffee. One of the men ordered Mr. Baer on the ground and then proceeded to duct tape Mr. Baer. Mr. Baer identified this man as between five ten and six feet tall, weighing about 170 pounds, young, black male, wearing a stocking over his head and a dark shirt. Mr. Baer described the second man, the one who held the gun, as about the same height and weight, young, black male wearing a dark shirt, dark pants and a black ski mask. Mr. Baer also testified that he was able to observe, while he was on the floor, that the one suspect wore white sneakers while the other suspect wore dark sneakers, but he was unable to determine which suspect wore which.

Mrs. Baer also testified at the hearing about the incident in question. When the two men entered the store, she was located in the back of the store. One of the men with a silver gun with a black handle came to her and ordered her to get the money out of the register and lottery drawer. She described this man as about five ten with a gray stocking over his head. He wore a black-hooded sweatshirt, a striped shirt underneath the sweatshirt, light colored pants, light colored sneakers and gloves. When she went out to the register, she noticed her husband, who was on the ground, and the second suspect. She described this man as slender, about average height, wearing dark colored clothing and a ski mask. She could not say for certain that the two individuals were black, but only able to identify that they had dark complexions.

After duct taping Mrs. Baer, the two men left with the cash from the register and lottery drawer, including some wrapped coins, and the videotape from the surveillance camera. Neither Mr. Baer nor Mrs. Baer observed the suspects escape route or mode of transportation. Mr. Baer worked himself free and dialed 911. He freed his wife. Mrs. Baer spoke with the Franklin County dispatcher and confirmed the robbery.

Officer Kauffman of the Waynesboro Police Department received the dispatch. He traveled to the square, knowing full well that if the suspects fled the scene, they would come from that direction. The dispatcher informed Officer Kauffman about the description of the suspects, as reported by Mr. and Mrs. Baer. He then observed two black males in a maroon vehicle coming from the direction of the Seven-Eleven

at about 4:30 in the morning. Based upon his experience, Officer Kauffman knew that traffic, at this time in the morning, was light to non-existent.

He pulled out to follow the individuals and await more information. Officer Kauffman testified that the vehicle was driven in a very precarious manner. He believed that the driver was either lost or driving under the influence. Eventually, the driver stopped the vehicle "sharply" and parked on West King Street. Officer Kauffman, in his unmarked vehicle, pulled behind the maroon vehicle. He prepared to casually approach the vehicle, but was struck with a bit of caution. He drew his weapon and ordered the suspects to place their hands outside the window of the vehicle.

Officer Kauffman waited for back up before approaching the vehicle. The officers ordered the two suspects out of the vehicle. Officer Kauffman conducted a pat-down of the two suspects for any weapons and placed the two suspects in handcuffs. Officer Kauffman explained that there was an incident in Washington Township and that he was detaining them until he received more information. While waiting for officers from Washington Township, Officer Kauffman "made conversation" with the suspects by asking them where they were coming from and what was their route of travel.

About one hour later, an on-scene identification was conducted. Mr. and Mrs. Baer were brought to the scene to determine whether the two suspects were the robbers. Each was brought in a different vehicle. They observed the suspects in handcuffs, one in front of the vehicle and the other behind the vehicle. They confirmed that the two men detained by the police met the description of the men whom had robbed them at gun point.

Both men were arrested and charged with the above listed crimes. Defendant Smith and Defendant Williams filed Omnibus Motions seeking to suppress all evidence obtained as a result of an illegal detention, all statements made prior to the reading of Miranda warnings, and the on-scene identification by the two eyewitnesses. A hearing for both defendants together was conducted on October 31, 2002. At the conclusion of the hearing, the Court asked all parties to submit a brief in support of their respective positions. Each party timely submitted the briefs.

In his brief in support of his pre-trial omnibus motion to suppress, Defendant Smith argued that the physical evidence obtained as a result of the seizure of the defendants should be suppressed because the defendants were placed under arrest without probable cause. Defendant Smith argued that the interaction between Officer Kauffman and the defendants constituted a custodial detention and, therefore, required probable cause. Defendant Smith believed it to be a custodial detention because they were taken out of the vehicle at gun point, patted down and placed into handcuffs. Based upon these facts, Defendant Smith argued that the stop and seizure constituted a custodial detention.

Defendant Smith also argued that the oral statements made by the defendants at the scene of the stop should be suppressed as they were elicited while the defendants were subject to custodial interrogation and the defendants were not read their *Miranda* warnings prior to the questioning. Defendant Smith argued that the two suspects were deprived of their freedom of action. Also, the defendants had a reasonable belief that their freedom of action or movements was restrained by such interrogation because they were forced from their vehicle at gun point, patted-down and handcuffed. Based upon these facts, Defendant Smith argued that the statements elicited by Officer Kauffman prior to Miranda warnings should be suppressed.

Finally, Defendant Smith argued that the on-scene identification should be suppressed because it was obtained following an illegal detention and because it was unduly suggestive. Defendant Smith argued that the on-scene identification was unduly suggestive because the two eyewitnesses were interviewed together, Mr. Baer mistakenly testified that one suspect had his hands at his side when other testimony clearly indicated that both suspects were handcuffed, and their observations of the suspects at the convenience store were obscured by the fact that one had a ski mask and the other had a stocking over his head. Based upon these facts, Defendant Smith argued that the on-scene identification was unduly suggestive and should be suppressed.

In his letter brief in support of his pre-trial omnibus motion to suppress, Defendant Williams argued that he was arrested without probable cause at the time of the initial stop. Because Defendant Williams' argument is essentially the same as Defendant Smith's argument, the Court's response to Defendant Smith's argument applies to Defendant Williams.

On the other hand, the Commonwealth presents a different argument based upon the same facts. The Commonwealth argues that the interaction between Officer Kauffman and the defendants constituted an investigative detention and, therefore, the officers needed reasonable suspicion. The Commonwealth argued that Officer Kauffman had reasonable suspicion because he knew that the store was robbed at gun point by two black males, the robbery occurred moments prior to the initial dispatch he heard, the

store was about three to four miles east of his location, the maroon vehicle came from the east, headed west, the vehicle was occupied by two black males, and the vehicle was being driven in a manner that suggested the occupants were either lost or intoxicated. As a result, Officer Kauffman had sufficient reasonable suspicion to execute an investigatory detention.

In its brief in opposition to defendants' motion to suppress, the Commonwealth proffers that because the defendants fail to allege what statements should be suppressed, the Commonwealth was unable to respond.

Finally, the Commonwealth argued that the on-scene identification was not unduly suggestive because both eyewitnesses were able to give general descriptions of what the two suspects looked like and specific descriptions on what they were wearing, both witnesses were certain about their identifications and the time between the identification and the crime was relatively short. Based upon these facts, the Commonwealth argued that the on-scene identification should be suppressed.

The Court has reviewed the transcripts from the proceedings of omnibus hearing conducted on October 31, 2002, those items entered into evidence at the hearing, Defendant Smith's brief in support of motion to suppress, Defendant Williams' letter brief in support of motion to suppress, the Commonwealth's brief in opposition to defendants' motions to suppress and the applicable law.

This opinion and order results from such review.

Discussion

Before the Court are three (3) legal questions. First, the Court must decide if the interaction between Officer Kauffman and the defendants constituted an investigative detention or a custodial detention and whether it was supported by reasonable suspicion or probable cause. Second, the Court must decide whether the oral statements made by the defendants should be suppressed given the fact that the defendants were not read their *Miranda* warnings. Finally, the Court must decide if the on-scene identifications made by the eyewitnesses were unduly suggestive and, therefore, precluded from trial.

Defendant Smith has raised these three legal questions in his motion to suppress and his brief in support of his motion to suppress. Defendant Williams raised the issue of illegality of the detention at the site of the on-scene identification. This issue raised by Defendant Williams is essentially the same as Defendant Smith's first legal question. Consequently, the Court will decide the validity of Defendant Smith's first legal question and the Defendant Williams issue together. In addition, although not raised in his brief, the Court will allow Defendant Williams to "piggyback" on Defendant Smith's arguments because the facts and circumstances are relatively the same and the Court heard the pre-trial omnibus motion for both defendants during one hearing.

I. Should the physical evidence obtained as a result of the seizure of the defendants be suppressed when the defendants were detained for about one hour to secure an on-scene identification?

Defendant Jared Smith argues that the physical evidence obtained as a result of the seizure of the defendants should be suppressed because the defendants were placed under arrest without probable cause in violation of his rights under the Fourth Amendment of the United States Constitution and Article I § 8 of the Pennsylvania Constitution. Defendant Smith argues that the stop and seizure of the defendants constituted a custodial detention and was not supported by probable cause.

To support his contention, Defendant Smith points out that Officer Kauffman seized the defendant and the driver of the vehicle (Defendant Williams) at gun point only with the knowledge that a robbery had been committed, suspects were two black males and that they had a silver handgun. The defendants were patted down, handcuffed and forced to stand outside their vehicle for almost an hour. The defendants argue that these facts clearly suggest the stop and seizure of the defendants constituted a custodial interaction, if the Court applied the criteria in Commonwealth v. Allen, 681 A.2d 778, 452 Pa. Super. 200 (Pa. Super. Ct. 1996).

The Commonwealth believes that the interaction between the defendants and Officer Kauffman constituted an investigative detention. To support its contention, the Commonwealth points out that Officer Kauffman knew that the Seven-Eleven in Washington Township had been robbed at gun point by two young black males with a silver gun, the robbery had occurred moments prior to the initial dispatch, the Seven-Eleven was approximately three (3) to four (4) miles east of his location, the maroon vehicle passed him within minutes of the dispatch, the maroon vehicle came from the direction of the Seven-Eleven, the vehicle was occupied by two young black males and the vehicle was driven in a manner that suggested that the occupants were either lost or intoxicated. Based upon these facts, the Commonwealth argues that Officer Kauffman had sufficient reasonable suspicion to initiate an investigative detention and gather additional information.

Both the Commonwealth and the defendants correctly identify the key issue before the Court and the case most often cited to by courts when addressing this question. The Court's analysis must focus on whether the stop and seizure constituted an investigative detention or custodial detention. Depending upon whether the stop was an investigatory detention or a custodial detention will determine whether the Commonwealth must establish reasonable suspicion or probable cause. An investigatory detention must be supported by reasonable suspicion and a custodial detention must be support by probable cause. See Commonwealth v. Ellis, 662 A.2d 1043, 1047, 541 Pa. 285, 294 (Pa. 1995).

An investigative detention carries an official compulsion to stop and respond, but the detention is temporary. Commonwealth v. DeHart, 745 A.2d 633, 636 (Pa. Super. Ct. 2000). 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. Allen, 681 A.2d at 782, 452 Pa. Super. at 207, *quoting* Commonwealth v. Ellis, 662 A.2d 1043, 1047, 541 Pa. 285, 293 (Pa. 1995).

In contrast, a custodial detention arises when the conditions and/or duration of an investigative detention become so coercive as to be the functional equivalent of an arrest. Allen, 681 A.2d at 782, 452 Pa. Super. at 208, *citing* Commonwealth v. Douglas, 539 A.2d 412, 372 Pa. Super. 227 (Pa. Super. Ct. 1988).

The determination of whether a detention is an investigative detention or a custodial detention is based upon the totality of the circumstances. In making this determination, the Court should consider the basis of the detention (crime suspected and the grounds for suspicion), the duration of the detention, the location of the detention (public or private), whether the suspect was transported against his will (how far and why), the method of detention, the show, threat or use of force and the investigative methods used to confirm or dispel suspicion. Allen, 681 A.2d at 782, 452 Pa. Super. at 208, *quoting* Commonwealth v. Gommer, 665 A.2d 1269 (Pa. Super. Ct. 1995).

Based upon the circumstances, the Court finds that the interaction between Officer Kauffman and the defendants constituted an investigative detention. First, Officer Kauffman knew that an armed robbery had recently occurred and two young black males were suspected. The officer saw two young black males coming from the direction of the Seven-Eleven in Washington Township in a maroon vehicle about the time it would take a vehicle to get to the square in Waynesboro, where Officer Kauffman was patrolling. Subsequently, Officer Kauffman followed the two young black males in the maroon vehicle. He noticed that the pattern of the vehicle indicated that the driver was either intoxicated or lost.

Eventually, the two suspects pulled over. Officer Kauffman pulled behind them and began to walk toward them. But, he decided that discretion would be the better part of valor, so he drew his weapon and ordered the suspects to place their hand outside the windows of the vehicle. When backup arrived, the two suspects were taken out of the vehicle, patted-down for weapons and placed in handcuffs. The defendants were patted-down and placed in handcuffs for the protection of the officers and the public. The defendants were suspects in an armed robbery that had recently occurred. There could be no doubt that the officers were justified with these actions.

The facts also establish the duration of the detention was not so coercive as to be the functional equivalent of an arrest. Based upon the testimony of Officer Kauffman and the defendants' arguments, the duration, at the most, lasted for about one hour. The evidence at the hearing convinced the Court that this time was necessary to get the two eyewitnesses to the scene to complete an on-scene identification. As soon as the on-scene identifications were complete, the officers placed the two suspects under arrest. At this point, the investigative detention ended.

Beyond Officer Kauffman's initial use of his weapon to ensure his safety, there was no showing, threat or use of force against the defendants. Likewise, the defendants were not transported against their will. In fact, the defendants remained at the scene until their arrest. These facts would further indicate that an investigative detention, and not a custodial detention occurred.

Finally, the method of detention and the investigative methods used to confirm or dispel suspicion clearly indicate an investigative detention occurred. The defendants were held at their vehicle in handcuffs. They were separated. One was in front of the vehicle while the other was behind the vehicle. The officers sought to confirm their suspicions by bringing the only two eyewitnesses to the scene to make on-scene identifications.

As a result, the Court holds, based upon the totality of the circumstances, that the interaction between Officer Kauffman and the defendants constituted an investigative detention.

Upon the determination that the stop constituted an investigative detention, the Commonwealth must establish that the investigative detention was supported by reasonable suspicion. See Pa. R. Crim. P.

581(h)(placing the burden of proof on the Commonwealth after the defendant has raised the issue of admissibility at trial).

To establish grounds for reasonable suspicion, the officer whose impressions formed the basis for the investigative detention must articulate specific facts which, in conjunction with reasonable inferences derived those facts, led him reasonably to conclude, in light of his experience, that criminal activity was afoot. Commonwealth v. Maxon, 798 A.2d 761, 768 (Pa. Super. Ct. 2002). It cannot be satisfied by an officer's hunch or un-particularized suspicion.

Under the circumstances, Officer Kauffman did not act on the basis of a mere hunch. The defendants matched the description of the suspects, they matched the number of suspects reported, they matched the race of the suspects, they were the only ones in the area, they came from the same direction as the Seven-Eleven and they were driving precariously. Under these circumstances, Officer Kauffman, most assuredly, had sufficient reasonable suspicion to conduct an investigative stop.

In a case similar to the case at bar, the Superior Court stated "the officer would have been derelict in his duties had he not detained the group in which was very possibly armed and retreating after having committed a violent armed felony mere moments earlier." In the Interest of D.M., Appeal of D.M., 727 A.2d 556, 558, 556 Pa. 160, 165 (Pa. 1999) (where the Court found that an officer had sufficient reasonable suspicion when he observed four black males walking away from the crime scene, these males were the only males in the area, and their actions conducted an investigative stop). This represents the case before the Court. Officer Kauffman observed two young black males, observed that they were the only ones in the area, their actions of driving precariously and that they came from the same direction as the Seven-Eleven. As a result, the Court is obliged to find that Officer Kauffman had sufficient reasonable suspicion to conduct an investigative stop.

The defendants' reliance on Commonwealth v. Berrios, 263 A.2d 342, 437 Pa. 328 (Pa. 1970), is misplaced. In Berrios, the Court concentrated on the fact that Berrios and his companions acted in a normal manner. The Court found that the two were stopped solely because one was a Negro and the other was a Puerto Rican, and the officers had a report of a shooting involving two Negroes and one Puerto Rican. The officer searched the area and twenty minutes later found Berrios and his companion three blocks away from the scene of the shooting.

The case at bar is remarkably different. Berrios and his companion were acting in a normal manner while Officer Kauffman observed Defendant Smith and Defendant Williams driving precariously. The shooting in Berrios occurred at 9:21 in the morning and the suspects were stopped about twenty minutes later. One would expect people to be walking in that area in the morning. Here, the armed robbery occurred sometime between four and five in the morning. As Officer Kauffman testified, traffic at this time in Waynesboro is light to non-existent. There were no other vehicles in the area. Officer Kauffman knew that the robbery was committed by two young black males. He observed two young black males in the maroon vehicle. Given these facts, plus the ones stated earlier, Officer Kauffman had sufficient reasonable suspicion to conduct an investigative stop.

As such, Defendant Smith and Defendant Williams' pre-trial omnibus motion to suppress the physical evidence obtained as a result of the investigative detention is denied because the defendants' rights under the Fourth Amendment of the United States Constitution and Article I § 8 of the Pennsylvania Constitution were not violated for the reasons stated above.

II. Should the oral statements made by the defendants at the scene of the stop be suppressed because the defendants were not read their *Miranda* warnings until after the on-scene identification was complete?

Defendant Smith argues that any statements elicited by Officer Kauffman after drawing his weapon and placing them under arrest should be suppressed because Officer Kauffman failed to read the defendants their *Miranda* warnings.

Miranda warnings are required any time a person is subject to custodial interrogation. See e.g. Commonwealth v. Mannion, 725 A.2d 196 (Pa. Super. Ct. 1999). Custodial interrogation occurs when a person has been taken into custody or his freedom of action is deprived in any significant way or the individual is placed in a situation where he reasonably believes that his freedom of action or movement is restrained. In the Interest of V.M., 788 A.2d 976, 2001 PA Super. 324 (Pa. Super. Ct. 2001). See also Commonwealth v. Bess, 789 A.2d 757 (Pa. Super. Ct. 2002).

The Court is unsure of what statements the defendants are seeking to exclude. Regardless, this cannot prohibit the Court from answering the legal question of what statements should be precluded. Although the Court found that the interaction between Officer Kauffman and the defendants constituted an

investigative detention, there could be no doubt that both Defendant Smith and Defendant Williams were not free to go.

Officer Kauffman's statement that he was just shooting the breeze with the defendants while they waited for the on-scene identification does not pass muster with the Court. Officer Kauffman asked the defendants where they were coming from, knowing full well that he would use the answer to that question against them. The Court fails to see how the questioning of the suspects at the scene prior to the arrest could be anything but an attempt to elicit incriminating statements.

In this regard, Defendant Smith and Defendant Williams' pre-trial motion to suppress oral statements made by the defendants is granted and all incriminating statements made prior to the *Miranda* warnings are suppressed.

III. Was the on-scene identification made by the two eyewitnesses unduly suggestive, and therefore precluded from trial?

Defendant Smith argues that the on-scene identification made by the two eyewitnesses was the product of an illegal arrest and the unduly suggestive. The defendants argue that because of the illegality of the stop, the on-scene identification should be suppressed as fruit of the unlawful conduct.

As discussed earlier, the Court believes that Officer Kauffman had sufficient reasonable suspicion to conduct an investigative detention. As such, the on-scene identification by the eyewitnesses should not be suppressed as fruit of the unlawful conduct.

Defendant Smith also argues that the on-scene identification should be suppressed because it was unduly suggestive. To support his contention, the defendant points out that the eyewitnesses were questioned together and, therefore, one memory would taint the independence of the other. The defendant also points out that Mr. Baer stated that only one of the suspects was in handcuffs at the time of the identification when Officer Kauffman testified that both suspects were in handcuffs. The defendant also argues that the eyewitnesses' views were obscured because of the ski mask and the gray stockings and eyewitnesses were only able to give general descriptions of the suspects. Based upon these facts, the on-scene identification was unduly suggestive.

When determining the reliability of an on-scene identification, the Court's analysis should include a review of the opportunity of the witnesses to view the criminal at the time of the crime, the witnesses' degree of attention, the accuracy of their prior descriptions, the level of certainty demonstrated at the confrontation and the time between the crime and the confrontation. Commonwealth v. Lee, 396 A.2d 755, 758 (Pa. Super. Ct. 1978).

The Court does not believe that the memory of Mr. Baer was tainted by the memory of Mrs. Baer just because they were questioned together. First of all, they are husband and wife who both need each other during traumatic events. This was obviously a traumatic event. The Court cannot fault Officer Ashway for allowing them to be next to each other during questioning. Second, the Court found that there was nothing in the testimony of Mr. or Mrs. Baer indicating they cooperated in coming up with a description of the suspects. In fact, unlike Mr. Baer, Mrs. Baer was able to give a description of the hooded sweatshirt and the gloves. One would think that if Mr. Baer's memory was tainted by Mrs. Baer, he would have recalled gloves and a hooded sweatshirt. Accordingly, the Court does not agree with the defendants on this point.

The Defendants also point out that Mr. Baer stated only one of the suspects had handcuffs while Officer Kauffman testified that both suspects were in handcuffs, thereby, questioning the reliability of the eyewitness. After reviewing the transcripts, the Court is unaware of any such statement by Mr. Baer. The Court recalls that Mr. Baer testified that he was unsure about whether the suspects were in handcuffs. Regardless, Mr. Baer's uncertainty about the handcuffs indicates that he did not concentrate on the handcuffs when he made his identification. Therefore, just because the suspects were in handcuffs, the on-scene identification was not unduly suggestive. This Court will not disqualify Mr. Baer for not concentrating on the handcuffs.

Finally, the defendants argue that since the eyewitnesses' views were obscured by the ski mask and gray stockings, and they were only able to give a general description of the suspects, the on-scene identification was unduly suggestive. The Court believes that the eyewitnesses' general description was reliable. It was the same description given at the convenience store and at the on-scene identification. Both witnesses were certain that the suspects matched the build and clothing of the two armed robbers. As such, the general description of the eyewitnesses does not automatically disqualify the eyewitnesses.

The time between the crime and the confrontation does not eliminate the reliability of the witnesses. At the most, it was only about one hour between the confrontation and the crime. The pictures

were certainly still pasted on the minds of the two eyewitnesses. They had just witnessed a traumatic event, one that they would not soon forget. This Court is certain that the eyewitnesses' ability to recall was not eliminated because of the one hour between the confrontation and the crime. Accordingly, the on-scene identification was not unduly suggestive.

The Court holds that the defendants' pre-trial motion to suppress the on-scene identification made by Mr. and Mrs. Baer is denied because it was not fruit of illegal conduct and it was not unduly suggestive for the reasons stated above.

Conclusion

After reviewing the transcripts from the proceedings of omnibus hearing conducted on October 31, 2002, those items entered into evidence at the hearing, Defendant Smith's brief in support of motion to suppress, Defendant Williams' letter brief in support of motion to suppress, the Commonwealth's brief in opposition to defendants' motions to suppress and the applicable law, the Court holds that:

A. Defendant Smith and Defendant Williams' pre-trial omnibus motion to suppress the physical evidence obtained as a result of the investigative detention is denied because the defendants' rights under the Fourth Amendment of the United States Constitution and Article I § 8 of the Pennsylvania Constitution were not violated for the reasons stated above in section I.

B. Defendant Smith and Defendant Williams' pre-trial motion to suppress oral statements made by the defendants is granted and all incriminating statements made prior to the *Miranda* warnings are suppressed. for the reason stated above in Section II.

C. The Court holds that the defendants' pre-trial motion to suppress the on-scene identification made by Mr. and Mrs. Baer is denied because it was not fruit of illegal conduct and it was not unduly suggestive for the reasons stated above in Section III.

ORDER OF COURT

December 23, 2002, after reviewing the transcripts from the proceedings of omnibus hearing conducted on October 31, 2002, those items entered into evidence at the hearing, Defendant Smith's brief in support of motion to suppress, Defendant Williams' letter brief in support of motion to suppress, the Commonwealth's brief in opposition to defendants' motions to suppress and the applicable law, the Court holds that:

A. Defendant Smith and Defendant Williams' pre-trial omnibus motion to suppress the physical evidence obtained as a result of the investigative detention is DENIED.

B. Defendant Smith and Defendant Williams' pre-trial motion to suppress oral statements made by the defendants is GRANTED and all incriminating statements made prior to the *Miranda* warnings are SUPPRESSED.

C. The Court holds that the defendants' pre-trial motion to suppress the on-scene identification made by Mr. and Mrs. Baer is DENIED.