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In Re: Interest of W.D.

IN THE INTEREST OF W.D., IV  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Juvenile Action No. J0029203

*Motion to suppress cocaine found on juvenile during a Terryfrisk for weapons*

1. Where a police officer reasonably believes that a pedestrian has violated the Motor Vehicle Code, the pedestrian has a duty to stop and give information to the officer who requests it. 75 Pa.C.S.A. 6308(b).
2. The officer had reasonable suspicion or probable cause to believe the juvenile had violated the Code provision which prohibits pedestrians from walking on the travel portion of a roadway.
3. The juvenile was not subject to a full-blown arrest when the officer approached him in order to obtain the background information necessary to issue a citation for a Code violation.
4. The officers' need to stabilize the situation, which included the juvenile assuming a fighting stance and disruptive nearby individuals, justified the Terry frisk for weapons during which the juvenile pulled an object from his pocket.

Appearances:

Angela R. Krom, Esq., *Assistant District Attorney*

Carrie M. Bowmaster, Esq., *Counsel for Juvenile*

OPINION

Herman, J., April 15, 2003

Introduction

Before the court is a motion to suppress filed by counsel for the juvenile. The motion requests the court to suppress physical evidence in the nature of cocaine, which was found on the juvenile's person subsequent to an encounter with Chambersburg Borough Police Officers.

The court held a hearing on the matter on February 14, 2003 and subsequently requested the Commonwealth and counsel for the juvenile to provide the court with written argument on the issues raised by the juvenile's motion. The court has received and reviewed those briefs and based on the arguments of counsel and the evidence presented at the suppression hearing, the court hereby denies the motion.

Findings of Fact

On December 14, 2002, Patrolman Robert Peterson of the Chambersburg Borough Police Department approached the juvenile in an effort to issue a citation for a violation of Section 3544 of the Motor Vehicle Code. This section regulates pedestrians walking along or on a highway. The penalty for violation of this provision is a fine of \$500.00 and the offense is a summary offense. Peterson took this action as a result of the juvenile's refusal to remove himself from the traveled portion of an alley that Peterson was attempting to pass through with his police cruiser. After refusing to move the juvenile then walked up to the front of the cruiser and brushing up against it moved around to the passenger side. Peterson testified the window was down and he advised the juvenile not to walk in the roadway. The officer's admonition was met with an immediate, "Fuck you." Peterson drove through the alley and around the block to return to the location of the violation to cite the juvenile.

The juvenile was immediately uncooperative and refused to provide the required identification for issuing the citation and would not remain in the location of the incident. Another person was present with the juvenile and encouraged the juvenile not to comply with Patrolman Peterson's request for information. The encounter occurred near the juvenile's home and the juvenile began walking to the area of his residence. Patrolman Peterson approached him, took him by the arm and led him a short distance to an area where his police vehicle was parked.

During this time the juvenile's mother had also appeared from the juvenile's residence and began shouting at Patrolman Peterson and demanding information as to what the matter was about. Also during this time several other officers had arrived on the scene to assist Patrolman Peterson.

As the juvenile was led to the area of the police cruisers, Corporal Swartz gave the officers an order to place the juvenile in the police cruiser until the appropriate information was obtained. At this point the juvenile had assumed a combative or fighting stance and the officers reacted by directing him to place his hands on the trunk of the police vehicle. As one of the officers began a pat down search, the juvenile reached into an interior pocket and retrieved an item, which the officers could not identify at first. The juvenile was directed to drop the item and at that point a struggle began between the juvenile and officers. During the struggle, the juvenile released the item from his hand and the officers discovered small plastic baggies containing what appeared to be crack cocaine.

Eventually the juvenile was brought under control by four officers and was handcuffed and placed in the police cruiser and transported to the Chambersburg Borough Police Department.

#### Discussion of the Issues

Counsel for the juvenile has averred in the motion to suppress and through written argument that the juvenile was unlawfully arrested for the specific reason that under the circumstances of this case an arrest without a warrant is not authorized. Specifically counsel argues that neither Rule 400 nor Rule 440 of the Pennsylvania Rules of Criminal Procedure regarding procedure in summary cases approves instituting a summary proceeding by way of arrest without a warrant. We note however that both rules authorize an arrest without a warrant when the law otherwise authorizes that arrest.

The juvenile argues that such arrests are authorized only when the specific section of the Pennsylvania Motor Vehicle Code, which provides the basis for a violation, authorizes an arrest without a warrant. In support of this position the juvenile cites *Commonwealth v Bullers*, 536 Pa. 84, 636 A.2d 1326 (1994). In *Bullers* the arrest was held to be unlawful due to lack of statutory authorization for a warrantless arrest. However, unlike the *Bullers* case, there is statutory authorization in this case. Section 6308 (a) of the Code imposes a duty on any pedestrian who is reasonably believed to have violated the code to stop and give information to any police officer who makes such a request. The apparent purpose of this provision is to enable police officers to obtain sufficient information to process a violation of the code.

However, contrary to the position of the juvenile, we do not believe the juvenile was subject to a full-blown arrest until he reached into his pocket. Patrolman Peterson was entitled to maintain sufficient contact with the juvenile to enable him to identify the juvenile and get enough information to issue the citations. Implied in Section 6308(a) is a concomitant duty on the part of the investigating police officer to obtain the information the operator or pedestrian is required to give. We believe Section 6308 is sufficient statutory authority for a police officer to briefly detain a citizen to get necessary information when the officer has reasonable suspicion or probable cause to believe a violation of the motor vehicle code has occurred. It is clear from the record that Patrolman Peterson had probable cause to believe the juvenile violated the provisions of the vehicle code prohibiting pedestrians from walking on the traveled portion of a roadway.

At this point the court must determine what, if any, further measures a police officer may take if a citizen does not comply with a request for information. We believe the officers' actions in deciding to place the juvenile in the police cruiser which necessitated a protective search complied with *Terry v. Ohio*, 392 U.S. 1,

88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The same measures were sanctioned by the Pennsylvania Superior Court in the case of *Commonwealth v. Rehmeyer*, 349 Pa. Super. 176, 502 A.2d 1332 (1985). In this case the defendant was frisked for weapons because the officer was giving him a ride home as a courtesy. The Superior Court noted Professor LaFave's observations of the Terry rationale:

In today's complex society, police are "charged with the protection of constitutional rights, the maintenance of order, the control of pedestrian and vehicular traffic, the mediation of domestic and other non-criminal conflicts, and supplying emergency help and assistance." La Fave, *Street Encounters and the Constitution*; Terry, Sibron, Peters and Beyond, 67 Michigan L.Rev. 40, 61-62 (1968). *Accord Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973) (police engage in community caretaking functions). If during the execution of these tasks an officer determines that "[a] reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger," the officer may conduct a protective pat-down search. Terry, 392 U.S. at 27, 88 S.Ct. at 1883. The officer is empowered to neutralize the danger posed by the party with whom he is dealing. The search must be limited to the accomplishment of the goal which justified its commencement, namely, protection of the officer. The officer's action must be confined to a pat-down search for the discovery of weapons. *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968)."

*Commonwealth v. Rehmeyer*, supra, at 1335.

In *Rehmeyer* the court determined that the officer had probable cause but we do not believe that *Terry v. Ohio* requires probable cause. Reasonable suspicion may be appropriate under certain circumstances. Nonetheless we believe Patrolman Peterson had probable cause in this case to believe a violation of the Motor Vehicle Code had occurred.

Counsel for the juvenile appears to argue that what may have been a justified investigative detention initially was turned into a full-blown arrest by the officer's unwillingness to release the juvenile after his refusal to cooperate. The juvenile maintains the officers should have attempted to obtain the information needed from other sources. This is rank second-guessing of police procedure and the record does not support the conclusion that such information was readily available and reliable, or that the steps taken in light of the juvenile's outright refusal to cooperate were not necessary. To the contrary the record shows that not only was the juvenile being obstructive but the others present including his mother were encouraging the juvenile and adding to the disruption. Corporal Swartz saw the need to stabilize the situation and ordered the juvenile to be placed in the police cruiser. At this point the juvenile assumed a fighting stance. In response the officers directed him to place his hands on the trunk of the cruiser so that they could safely place him in the cruiser. While conducting a weapons frisk the juvenile went into his jacket pocket and pulled out an unknown object. The officers directed him to release the object and he refused. A struggle ensued and the cocaine was dislodged from the juvenile's hand and he was subdued.

We believe the officers' actions were necessary to allow them to pursue the investigation without concern for their safety. The appellate courts in the Commonwealth have sanctioned very similar protective measures in several cases. See *Commonwealth v. Rehmeyer*, 502 A.2d 1332 ( Pa. Super 1985); *Commonwealth v. Valentine*, 748 A.2d 711 (2000); *Commonwealth v. Gwynn*, 555 Pa. 86, 723 A.2d 143 (1998); *In the Interest of CCJ*, 799 A.2d 116 ( Pa. Super 2002). While the legal basis for the initial detention may differ in these cases the protective measures taken subsequent to the lawful detentions comported with Constitutional requirements set out in the *Terry v. Ohio* line of cases. We conclude the Chambersburg Borough Police officers' action in frisking the juvenile for weapons was justified. This action resulted in the juvenile giving up the contraband, which formed the basis for the petition filed with the juvenile court. For the reasons stated herein the court will enter an order denying the juvenile's motion to suppress.

#### ORDER OF COURT

Now this 15th day of April 2003, the court hereby denies the juvenile's motion to suppress for the reasons stated in the attached Opinion and the court directs the Franklin County Probation Department to schedule an adjudication hearing at the earliest possible time.