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OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

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A mere encounter with the defendant developed into an investigative detention when the defendant informed police officers he was a juvenile and part of a firearm was sticking out of the defendant's pocket. These facts supported reasonable suspicion that the defendant was committing a crime and the subsequent pat-down was legal.

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Opinions

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Commonwealth of Pennsylvania v. Toma Martin

Criminal Appeal—Criminal Trials—Search and Seizure—Suppression

Police officers warrantless entry into Defendant's residence was not a violation of the Fourth Amendment due to exigent circumstances and officer's safety. At the entrance, officers smelled burnt marijuana and an evanescent nature of Suboxone strips. Furthermore, Defendant lied to the officers about how many people were within the residence. After the protective sweep, officers indicated that a search warrant would be sought unless consent was given to search the apartment. Defendant gave consent, where drugs and drug paraphernalia was found within the apartment. The initial entry was found not to be a violation of the Fourth Amendment because of the exigent circumstances surrounding destruction of marijuana and Suboxone strips and the need for officer safety.

No. CC 202002196. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Borkowski, J.

OPINION

PROCEDURAL HISTORY

Appellant was charged by criminal information (CC 202002196) with one count each of: possession with the intent to deliver a controlled substance[1]; possession of a controlled substance[2]; possession or distribution-marijuana or hashish[3]; possession of drug paraphernalia[4]; and criminal use of communication facility.[5]

Appellant filed a suppression motion which was denied after a hearing on November 16, 2021. On November 16, 2021, Appellant proceeded to a stipulated non-jury trial and was found guilty on November 30, 2021, of possession of a controlled substance, possession or distribution-marijuana or hashish, and possession of drug paraphernalia with the counts of possession with the intent to deliver a controlled substance and criminal use of communication facility having been withdrawn by the Commonwealth.

On November 30, 2021, Appellant was sentenced as follows:

Count two: possession of a controlled substance – one year probation;

Count three: possession or distribution-marijuana or hashish – no further penalty; and

Count four: possession of drug paraphernalia -one year probation to run concurrent with the sentence imposed at count two.

This timely appeal follows.

STATEMENT OF ERRORS ON APPEAL

Appellant's claims are set forth below exactly as Appellant presented them:

> I. Whether the Court of Common Pleas erred and/or abused its discretion in denying Appellant's motion to suppress where:
>
> a. Officers executed an illegal search and seizure of Appellant's residence and person without a warrant, without Appellant's consent, and without exigent circumstances.
>
> b. Officers executed an illegal search and seizure of Appellant's residence and person without probable cause due to the odor of marijuana and never asked Defendant if she was a licensed medical marijuana patient.
>
> II. Whether there was insufficient evidence to support the conviction regarding possession of controlled substance, possession of small amount of marijuana, and possession of drug use paraphernalia where:
>
> a. Contraband was accessible to other persons in the residence at the time of recovery by police officers.
>
> b. Defendant did not possess nor constructively possess contraband.

FINDINGS OF FACT

At Appellant's non-jury trial on November 16, 2021, the following was submitted:

> MS. GOLEBIEWSKI: Judge, the Commonwealth moves to incorporate the suppression testimony into the non-jury trial. We've also reached a stipulation with the defense to admit the lab.
>
> I've marked that as Commonwealth Exhibit 3. So that is lab No. 20LAB01582. And that would show that the 142 stamp bags submitted to the Allegheny County Medical Examiner's crime Lab are fentanyl and acetyl fentanyl.
>
> THE COURT: Any objection to the admission of that document?
>
> MR. CHRISTMAS: No, Your Honor.
>
> THE COURT: All right.
>
> MR. CHRISTMAS: May I have a moment, Your Honor, to talk to her?
>
> THE COURT: Correct the record earlier. I said the suppression hearing was held November 18. Anything e1se, Mr. Christmas?
>
> MR. CHRISTMAS: We do have another stipulation.
>
> MS. GOLEBIEWSKI: Yes, Your Honor. We're also going to stipulate to the affidavit of probable cause in this case.
>
> THE COURT: Including the document admitted at the suppression, hearing, the consent to search, as part of the evidence in this case?
>
> MS. GOLEBIEWSKI : Yes, Your Honor.
>
> THE COURT: Okay. Is that accurate, Mr. Christmas?
>
> MR. CHRISTMAS: That is accurate, Your Honor.

THE COURT: Any evidence that you want to submit by stipulation, Mr. Christmas?

MR. CHRISTMAS: No, Your Honor. Defense rests. We would make argument.

(N.J.T. 6-7).[6]

On November 29, 2021, this Court issued the following findings of fact and conclusions of law with respect to the suppression motion:

THE COURT: That on September 8th of 2019 Mt. Lebanon Police Department received an assistance call from Washington County regarding theft and assault that occurred in Washington County, Washington County being a contiguous and neighboring county with Allegheny, the municipality of Mt. Lebanon being one of the southernmost political subdivisions of Allegheny County.

In any event, Office Daniel McBride of the Mt. Lebanon Police Department, who had experience as of the date of this offense, approximately ten years[’] experience both in Ocean City, Maryland and the last four with Mt. Lebanon, he has experience involving hundreds of drug citations and/or investigations including identification and investigation of heroin, marijuana, cocaine, Ecstasy and MDMA.

As he was working a shift on September 8, 2019 he received a call from his superiors and/or dispatch regarding assistance as to the alleged theft and assault in Washington County. He was contacted by Lieutenant Sober regarding that assist request and information thereto. The report that he received were that there were two females who were involved in that theft and assault of a male in Washington County. One of them was the Defendant in this case, Toma Martin, and the belief was that Ms. Martin was a resident of Mt. Lebanon.

The request to follow up confirmed that Ms. Toma Martin was a resident of Mt. Lebanon living in Apartment 401 at 100 Academy Avenue. There was also information that the vehicle involved in this incident in Washington County was a red Jeep and the object or subject of the theft was clothing, a shoe article, Nike athletic shoes, as well as Suboxone strips from the victim.

Office McBride proceeded to 100 Academy Avenue where he was met by a fellow officer, Officer Rutowski. When they arrived at 100 Academy Avenue, which is an apartment building, the officers immediately noticed that there was a red Jeep parked in front of the apartment building and it was registered to a female named Jessica.

The officers looked through the windows of the Jeep and they saw the described pair of black Nike sneakers in the vehicle. They did not notice at that juncture any Suboxone strips. The officers went up to Apartment 401 and knocked on the door in an attempt to contact Ms. Martin or Jessica, the owner of the red Jeep. The officers approached the door, and before they knocked on the door, they could hear voices inside the apartment, at least one male and at least one female voice inside the apartment. They knocked on the door multiple times over the course of a couple minutes without response.

There was a body cam video introduced as Commonwealth's Exhibit No. 1 that substantially corroborated Police Officer McBride's account of the events. They heard the voices and muffled sounds inside even after they were knocking. Eventually the door was opened by Ms. Martin and immediately the officers noticed an overwhelming odor of burnt marijuana emanating from the apartment as soon as the door was open.

The officers started to make inquiry of Ms. Martin instructing her to leave the door open for their safety as well as the marijuana emanating from the apartment and also the evanescent nature of the Suboxone strips. Ms. Martin was evasive and actually lied to the police officers about the number and amount of persons in the apartment indicating that the only other person in the apartment building and in the apartment itself was a female. She was nervously looking over her shoulder during the course of this conversation.

The officers wanted to have the door open to make sure that nothing else was going on at that time in the apartment. They wanted to speak to her about potentially giving her consent to search the apartment and also to make certain that no evidence was destroyed if, in fact, the door was closed as they stood in the hallway. The apartment building itself was a known source of complaints for drug activity over the years, which is also a concern for Officer McBride. Again, this is approximately 1:18 in the morning by the time that this unfolded at the door of Apartment 401, which Ms. Martin was the leaseholder on. She acknowledged during the course of this contact that she was not only the leaseholder but the sole occupant.

At this juncture there was entry into the apartment and the officers found two individuals in the bedroom. They were thus, in addition to Ms. Martin, there were three other persons; present including Jessica, the owner of the red Jeep and a potential suspect from the events in Washington County.

The officers removed everyone from the apartment during the course of their protective sweep. There was one bedroom, a living room-kitchen combination and of course a bathroom and shower. During the protective sweep they noticed a cannister of marijuana in plain view near the mattress in the living room floor. It should be noted that the apartment was very sparsely furnished, and in addition to the bedroom, the mattress on the living room floor was basically the only other furniture.

The protective sweep was completed and they waited for other officers to arrive. Officer McBride began speaking with Jessica, who acknowledged that she was the owner of the vehicle outside. Jessica did indicate that she was in Washington County and she knew the victim who had called in the complaint. She acknowledged that they could recover the shoes from the vehicle and they did. She also acknowledged that she didn't know if the Suboxone was in there, but she did consent to a search of the vehicle of which was completed and the shoes were retrieved but no Suboxone.

During this period of time Defendant Martin was secured in the hallway outside the apartment with the officers again noting that after the protective sweep that Ms. Martin and Jessica, as well as the two others, were removed from the apartment into the hallway.

> The apartment being secured, the quick conversation of Jessica and in search of the red Jeep being completed the officer, that is Officer McBride, went on to address the issue of the Suboxone and the marijuana that were still outstanding. It was explained to the Defendant that they were going to get a search warrant for the apartment, but she did have the opportunity to consent. She initially refused to consent, but upon further reflection she decided that she would consent to the search of the apartment. A formal consent to search form was executed by the Defendant which was introduced into evidence as Commonwealth's Exhibit No. 2. The execution included, of course, her signature and that was approximately at 2:00 a.m.
>
> The Court notes that all these significant events all unfolded between 1:28 a.m. and at 2:00 the consent to search form was executed. It was additionally signed by Officer McBride. The Defendant acknowledged that there would be paraphernalia, including needles in the apartment normally associated with the use of heroin. Various items, drug paraphernalia and drugs themselves as charged in the indictment were located in the apartment which Ms. Martin acknowledged as her apartment and also by virtue of being the leaseholder and that she was the only one in the apartment.
>
> The Court finds in this incident that the course of conduct by the police responding to the request from authorities and Washington County was appropriate and that their conduct and investigation was reasonable and expected. The Court also finds that their conduct, once they were at the residence by knocking trying to secure further information to advance the investigation was appropriate and reasonable, and once the door would be open to the apartment, they were overwhelmed by the odor of burnt marijuana, that the intrusion in this incident for officers' safety and the evanescent nature of both marijuana and unaccounted for Suboxone strips was reasonable not letting Ms. Martin shut the door and as events unfolded and eventually secured her consent during that relatively short period of time and that there was no [infirmity] under the Constitution of this Commonwealth as well as that of the United States of America. Consequently, as noted, the Court denies the motion to suppress.

(F.F.C.L. 2-9).[7]

DISCUSSION

I.

Appellant alleges in her first claim that the Court of Common Pleas erred and/or abused its discretion in denying her motion to suppress. Specifically, Appellant alleges that the officers executed an illegal search and seizure of Appellant's residence and person without a warrant, without Appellant's consent, and without exigent circumstances. Further, Appellant alleges the officers executed an illegal search and seizure of Appellant's residence and person without probable cause due to an odor of marijuana and never asked Appellant if she was a licensed medical marijuana patient. This claim is without merit.

The Pennsylvania Supreme Court has enunciated the standard of review for a trial court's denial of a motion to suppress as follows:

> 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.... [W]e must consider only the evidence of the prosecution and so much of the evidence of the defense as remains uncontradicted when read in the context of the record as a whole. Those properly supported facts are binding upon us and we may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Thompson, 985 A.2d 928, 931 (Pa. 2009) (citations and quotations omitted).

Warrantless searches are presumptively unreasonable under the Fourth Amendment, subject to several well delineated exceptions. One such exception permits the police to briefly detain individuals for an investigation, maintain status quo, and where appropriate, conduct a frisk for weapons where reasonable suspicion that criminal activity is afoot is found. Terry v. Ohio, 392 U.S. 1(1968).

As this Court has previously stated in its F.F.C.L., the course of conduct by the police responding to the request from authorities and Washington County was appropriate. Their conduct and investigation were reasonable under the circumstances, and the warrantless entry into the apartment was necessary to ensure officer safety. Further, their actions were necessary due to the exigency of the potential destruction of evidence given the immediate evanescent nature of the marijuana and unaccounted for Suboxone strips. See Commonwealth v. Bostick, 958 A.2d 543, 558 (Pa.Super. 2008); F.F.C.L. 9.

In this circumstance the Court properly denied the motion to suppress as there was no illegal search and seizure of Appellant's residence and person. As such, there was no violation of the Constitution of this Commonwealth or Constitution of the United States of America. This claim is without merit.

II.

Appellant alleges in her second claim that there was insufficient evidence to support the conviction regarding possession of controlled substance, possession of a small amount of marijuana, and possession of drug use paraphernalia. Specifically, Appellant alleges that the contraband was accessible to other persons in the residence at the time of recovery by police officers, and Appellant did not possess nor constructively possess contraband. This claim is without merit.

The standard of review for sufficiency of the evidence claims has been thusly stated:

> The standard we apply when reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence.

Commonwealth v. Gray, 867 A.2d 560, 567 (Pa. Super. 2005).

The statute of possession of controlled substance states as follows:

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

[…]

(16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

[…]

35 Pa.C.S.A. §780-113(a)(16).

The statute of possession or distribution-marijuana or hashish states as follows:

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

[…]

(31) Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale.

[…]

35 Pa.C.S.A. §780-113(a)(31).

The statute of possession of drug paraphernalia states as follows:

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

[…]

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

[…]

35 Pa.C.S.A. §780-113(a)(32).

Contrary to Appellant's assertion that there was insufficient evidence which failed to prove beyond a reasonable doubt her convictions for possession of controlled substance, possession of small amount of marijuana, and possession of drug use paraphernalia because the contraband was accessible to other persons in the residence at the time of recovery by police officers, and Appellant did not possess nor constructively possess contraband, the record clearly supports those convictions.

Specifically, the Trial Court found the testimony of the Officer McBride, a very experienced police officer, credible in his account of the events that transpired on September 8-9, 2019. Appellant conceded that she was the leaseholder of the apartment where narcotics, marijuana, and paraphernalia were found and admitted to officers prior to the search that paraphernalia would be found in her apartment. Based upon the totality of the circumstances, the Trial Court determined that although other individuals were located in the residence upon the police arriving and conducting their protective sweep and that the items in question were not found on the Appellant's person, the record clearly supported that given Appellant was the leaseholder, her statements regarding being the only person staying in the residence, and her admission as to what would be found during the search all supported that there was sufficient evidence to show she had access and the ability to exercise dominion and control over the items recovered. See Commonwealth v. Jackson, 659 A.2d 549, 550-551 (Pa. 1995)(holding that the defendant's convictions for narcotics related offenses based on constructive possession were supported by the evidence as the defendant lived at and was the lessee of the apartment where narcotics were found, owned items in the apartment in which narcotics were found, and used and had access to areas of the apartment where narcotics and paraphernalia were found). As such, the record unequivocally supports Appellant's convictions for possession of a controlled substance, possession of marijuana, and paraphernalia. This issue is meritless.

CONCLUSION

Based upon the foregoing, the judgment of sentence imposed by this Court should be affirmed.

BY THE COURT:
/s/Borkowski, J.

[1] 35 Pa.C.S.A. §780-113(a)(30);

[2] 35 Pa.C.S.A. §780-113(a)(16);

[3] 35 Pa.C.S.A. §780-113(a)(31);

[4] 35 Pa.C.S.A. §780-113(a)(32);

[5] 18 Pa.C.S.A. §7512(a).

[6] The designation "N.J.T." followed by numerals refers to the Non-Jury transcript, dated November 16, 2021.

[7] The designation "F.F.C.L" followed by numerals refers to the Finding of Fact and Conclusions of Law transcript, November 29, 2021.

Commonwealth of Pennsylvania v. Jymein Chandler

Criminal Appeal—Criminal Trials—Search and Seizure—Investigative Detention—Reasonable Suspicion

A mere encounter with the defendant developed into an investigative detention when the defendant informed police officers he was a juvenile and part of a firearm was sticking out of the defendant's pocket. These facts supported reasonable suspicion that the defendant was committing a crime and the subsequent pat-down was legal.

No. CC 1157-2020. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Mariani, J.—April 7, 2022.

OPINION

This is a direct appeal wherein the defendant, Jymein Chandler, appeals from the judgment of sentence of September 20, 2021. The defendant was convicted after a non-jury trial of Aggravated Assault, Persons Not to Possess Firearms, Firearms Not to be Carried Without a License, Possession of Firearms by a Minor and Resisting Arrest. This Court imposed a mandatory minimum term of imprisonment of not less than 10 nor more than 20 years relative to the conviction of Aggravated Assault. No further penalty was imposed at the remaining counts. This timely appeal followed.

The facts underlying the instant appeal are as follows:

On November 15, 2019, detectives with the Allegheny County Police Department were working a crime suppression detail in Homestead, Pennsylvania due to a recent spate of shootings in the area. At approximately 7:55 p.m. on that date, detectives were driving on 16th Avenue and observed the defendant walking on 16th Avenue with his hands in his pockets. Detective Mikelonis observed the defendant's right arm at a canted angle in his right coat pocket. Based on 19 years of training and experience, Detective Mikelonis believed the angle of the defendant's right arm was consistent with carrying a firearm. The detectives approached the defendant and asked him if they could speak with him. The defendant responded by telling the detectives he was 17 years old and they couldn't talk to him or search him. While speaking with the detectives, the defendant removed his left hand from his coat pocket but he did not remove his right hand. Detective Mikelonis approached the defendant from his right side and noticed the barrel of a firearm protruding through the defendant's pocket. Detective Mikelonis advised the defendant that he was going to pat him down. Detective Mikelonis immediately felt the firearm and he alerted his partner, Detective Capp. The defendant did not remove his right hand from his pocket. Because the defendant had advised that he was 17 years-old, he was not legally permitted to carry a firearm. Detectives immediately advised the defendant that he was under arrest. The defendant attempted to pull away and flail and the defendant struck Detective Capp in the head with his closed left fist. Detective Mikelonis tried to pull the defendant's right arm out of his pocket but the defendant resisted. As Detective Mikelonis pulled the defendant's right hand out of the pocket, he observed a firearm in the defendant's right hand. The defendant continued punching Detective Capp and, while fighting, he threw the firearm.

The defendant then reached for Detective Mikelonis' taser and attempted to pull it from the holster. At that point, Detective Mikelonis informed the defendant that he would tase him if he didn't stop resisting. The defendant responded by saying "fuck your taser." While Detective Capp was trying to restrain and take the defendant into custody, the defendant continued to struggle with him. As Detective Capp tried to control the defendant, Detective Capp fell to the ground and the defendant fell on top of him. Detective Capp suffered a fractured bone in his ankle and he was unable to put weight on the ankle for two months. The defendant spit in Detective Capp's face. The defendant was then taken into custody. A loaded Taurus PT 111 Pro 9mm handgun was recovered from the scene.

The defendant first argues that this Court erroneously denied his suppression motion. The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures, thereby ensuring the "right of each individual to be let alone." Commonwealth v. Blair, 394 Pa. Super. 207, 575 A.2d 593, 596 (Pa.Super. 1990). To secure this right, courts in Pennsylvania require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens as those interactions become more intrusive. See Commonwealth v. Beasley, 2000 PA Super 315, 761 A.2d 621, 624 (Pa. Super. 2000). The 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. See Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75L.Ed.2d 229 (1983); Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). 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. Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984); Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); Commonwealth v. Ellis, 541 Pa. 285, 662 A.2d 1043, 1047 (1995). Finally, an arrest, or 'custodial detention', must be supported by probable cause. Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979); Commonwealth v. Rodriguez, 532 Pa. 62, 614A.2d 1378 (1992).

As set forth above, a mere encounter between police and a citizen need not be supported by any level of suspicion, and carries no official compulsion on the part of the citizen to stop or to respond. See Beasley, 761 A.2d at 624. No constitutional provision prohibits police officers from approaching citizens in public to make inquiries of them.

If, however, the police action becomes too intrusive, a mere encounter may be regarded as an investigatory detention or seizure. See Id. To determine whether a mere encounter rises to the level of an investigatory detention, it must be discerned whether, as a matter of law, police have conducted a seizure of the person involved. See Commonwealth v. Mendenhall, 552 Pa. 484, 715 A.2d 1117, 1119 (Pa. 1998).

An investigative detention occurs when a police officer temporarily detains an individual by means of physical force or a show of authority for investigative purposes. See Ellis, supra; see also Commonwealth v. Lopez, 415 Pa. Super. 252, 258, 609 A.2d 177, 180, appeal denied 533 Pa. 598, 617 A.2d 1273 (1992). See also Commonwealth v. Lewis, 535 Pa. 501, 636 A.2d 619 (1994). Such a detention constitutes a seizure of a person and thus activates the protections of the Fourth Amendment and the requirements of Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). In order to determine whether a particular encounter constitutes a seizure or detention, "a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' request or otherwise terminate the encounter." Lewis, 535 Pa. at 509, 636 A.2d at 623 (quoting

Florida v. Bostick, 501 U.S. 429, 439, 115 L. Ed. 2d 389, 111 S. Ct. 2382 (1991)). Moreover, it is necessary to examine the nature of the encounter. Circumstances to consider include, but are not limited to, the following: the number of officers present during the interaction; whether the officer informs the citizen he or she is suspected of criminal activity; the officer's demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked. See Beasley, 761 A.2d at 624.

If police interaction is deemed an investigatory detention, it must be supported by reasonable suspicion that criminal activity is afoot. In such a situation, an officer is justified in briefly detaining the suspect in order to investigate. Commonwealth v. Packacki, 901 983, 988 (Pa. 2006); see also Commonwealth v. E.M., 558 Pa. 16, 735 A.2d 654, 659 (Pa. 1999)(police officer may conduct brief investigatory stop of individual if officer observes unusual conduct which leads him to reasonably conclude, in light of his experience, that criminal activity may be afoot). Police officers are permitted to conduct a vehicle stop if the officer has reasonable suspicion to believe that a violation of the Motor Vehicle Code is occurring or has occurred. Commonwealth v. Holmes, 14 A.3d 89, 95 (Pa. 2011). Police officers may request both drivers and their passengers to exit a lawfully stopped car or to remain in a lawfully stopped care without reasonable suspicion that criminal activity is afoot. In such situations, it is not unreasonable for an officer to request that the passengers in a lawfully stopped car exit the vehicle so that the safety of the officer is, if not insured, at least better protected. Commonwealth v. Pratt, 930 A.2d 561, 564 (Pa.Super. 2007)

In this case, this Court believes that the initial interaction between the detectives and the defendant was a mere encounter. The detectives were simply driving in their police vehicle and asked to speak to the defendant. The defendant's liberty was not restricted and he was under no compulsion to speak with the detectives. This Court also believes that the interaction transformed into an investigatory detention after the defendant informed the detectives that he was 17 year old and Detective Mikelonis believed he observed a firearm sticking out from the defendant's pocket. At this point, Detective Mikelonis informed the defendant that Detective Mikelonis was going to perform a pat-down. This Court believes that the investigatory detention was firmly supported by reasonable suspicion that criminal activity was afoot. The defendant's own words provided reasonable suspicion that the defendant was 17 years old. Detective Mikelonis' observation of a firearm concealed on defendant's person provided reasonable suspicion that the defendant was committing a crime. The investigative detention was legal.

The defendant next argues that the evidence was not sufficient to convict him of Aggravated Assault. The standard of review for sufficiency of the evidence claims is well settled:

> the standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all the evidence actually received must be considered. Finally, the trier of fact[,] while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Thompson, 106 A.3d 742, 756 (Pa.Super. 2014); Commonwealth v. Lehman, 820 A.2d 766, 772 (Pa. Super. 2003).

The defendant complains that the evidence was insufficient to convict him of aggravated assault, 18 Pa.C.S.A. §2702(a)(1). As it applies to this case, that provision states

> (a) Offense defined. --A person is guilty of aggravated assault if he:
>
> (1) attempts to cause serious bodily injury to another or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.

"Serious bodily injury" means "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S. § 2301. "A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa.C.S. § 901(a). An attempt under § 2702(a)(1) requires a showing of some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury. See Commonwealth v. Matthew, 909 A.2d 1254, 1257 (Pa. 2006).

Proof that serious bodily injury was inflicted is not required to prove aggravated assault. The Commonwealth need only prove that an attempt was made to cause such injury. Commonwealth v. Rosado, 684 A.2d 605, 608 (Pa.Super 1996) citing Commonwealth v. Elrod, 392 Pa. Super. 274, 277, 572 A.2d 1229, 1231 (1990), appeal denied, 527 Pa. 629, 592 A.2d 1297 (1990) . See also Commonwealth v. Fierst, 423 Pa. Super. 232, 241, 620 A.2d 1196, 1201 (1993) (when no serious bodily injury resulted from the defendant's actions, a charge of aggravated assault may be sustained if the Commonwealth proves that the defendant attempted to cause another person to suffer serious injuries). Where the Commonwealth alleges that the defendant attempted to commit aggravated assault, the Commonwealth must prove specific intent. Commonwealth v. Everett, 408 Pa. Super. 166, 169, 596 A.2d 244, 245 (1991), appeal denied, 530 Pa. 639, 607 A.2d 250 (1992); Commonwealth v. Magnelli, 348 Pa. Super. 345, 349, 502 A.2d 241, 243 (1985). The intent to commit aggravated assault is established when the evidence demonstrates that a defendant intentionally acted in a manner which constitutes a substantial or significant step toward perpetrating serious bodily injury upon another. Rosado, 684 A.2d at 609. The determination as to whether a defendant intended to inflict serious bodily injury must be made on a case-by-case basis. Commonwealth v. Dailey, 828 A.2d 356 (Pa. Super. 2003). The circumstances surrounding the attack are probative of intent. Commonwealth v. Caterino, 678 A.2d 389 (Pa.Super. 1996). In determining whether intent was proven from such circumstances, it is appropriate to consider that "the accused intended the natural and probable consequences of his [or her] actions to result therefrom." Rosado, 684 A.2d at 608.

Specifically, in Commonwealth v. Matthew, 909 A.2d 1254, 1257 (Pa. 2006), citing Commonwealth v. Alexander, 383 A.2d 887 (PA. 1976) the Supreme Court stated, in relevant part, that:

> Alexander created a totality of the circumstances test, to be used on a case-by-case basis, to determine whether a defendant possessed the intent to inflict serious bodily injury. Alexander provided a list, albeit incomplete, of factors that may be considered in determining whether the intent to inflict serious bodily injury was present, including evidence of a significant difference in size or strength between the defendant and the victim, any restraint on the defendant preventing him from escalating the attack, the defendant's use of a weapon or other implement to aid his attack, and his statements before, during, or after the attack which might indicate his intent to inflict injury. Alexander, at 889. Alexander made clear that simple assault combined with other surrounding circumstances may, in a proper case, be sufficient to support a finding that an assailant attempted to inflict serious bodily injury, thereby constituting aggravated assault.

Matthew, 909 A.2d at 1257.

As set forth above, the Commonwealth only needs to present evidence that a defendant intentionally acted in a manner which constituted a substantial or significant step toward perpetrating serious bodily injury upon another. Rosado, 684 A.2d at 609. This Court believes that the evidence in this case established aggravated assault on Officer Capp. The defendant, while resisting arrest, held a firearm in his right hand. He struck Detective Capp in the head with a closed fist. He continued strike Detective Capp, though most of the other strikes were just glancing blows. As the defendant struggled with Detective Capp, Detective Capp fell to the ground with the defendant on top of him. Detective Capp suffered serious injuries to his ankle. The defendant spit in Detective Capp's face. This evidence clearly established that the defendant was attempting to cause serious bodily injury to Detective Capp and, in fact, did cause serious bodily injury to Detective Capp. The defendant's sufficiency challenge thus fails.

For the foregoing reasons, the judgment of sentence should be affirmed.

BY THE COURT:
/s/Mariani, J.