

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 ANNEMARIE SCOTT : NO. 16-264
 :

MEMORANDUM

SURRICK, J.

OCTOBER 3, 2016

Presently before the Court is Defendant's Motion to Suppress Evidence. (ECF No. 20.)

For the following reasons, the Motion will be denied.

I. BACKGROUND

On June 28, 2016, a grand jury returned an indictment charging Defendant Annemarie Scott with possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1), 924(e). (ECF No. 9.) Defendant entered a plea of not guilty. (ECF No. 12.)

On September 6, 2016, Defendant filed the instant Motion to Suppress Evidence. (Suppress Mem., ECF No. 20.) On September 19, 2016, Government filed a Response. (Suppress Resp., ECF No. 22.) On September 22, 2016, a hearing was held on the Motion. (ECF No. 23.) At the hearing, the Government presented the testimony of Philadelphia Probation Officer Aixa Benitez, Philadelphia Police Officer Richard Hough, and Philadelphia Police Officer Thomas Bellon. The testimony of these witnesses was credible.

II. FINDINGS OF FACT

On April 1, 2016, Probation Officer Benitez came to believe that one of the offenders on her caseload, Demetrius Pride, was in possession of a firearm. (Hr'g Tr. 5-8, ECF No. 24.) Officer Benitez saw a photograph of a hand holding a firearm on what she believed to be

Demetrius Pride's Instagram account. The account displayed the name "puddahraww.au." (*Id.* at 8; Gov. Ex. G-1.) Officer Benitez had seen "plenty of pictures" of Pride on "puddahraww.au" in the past, and she understood that "Puddahraww" was Pride's nickname. (Hr'g Tr. 21.) Officer Benitez suspected that Pride was the person holding the firearm in the Instagram photo. (*Id.* at 8.) Since Officer Benitez suspected that Pride was in possession of a firearm, as his probation officer she had the authority to search his home without a warrant. (*Id.* at 13). Pride was aware that Officer Benitez had this authority because he had signed a firearms surrender policy. (*Id.* at 14.) That same day, Officer Benitez and her partner, Officer Taylor, conducted a home visit at Pride's home. (Hr'g Tr. 9). Police Officers from the 25th District escorted the probation officers to Pride's home, which is located at 437 Saint Luke Street, Philadelphia, Pennsylvania. (*Id.*) They were escorted by the police because there was a possibility of a firearm in the home. (*Id.*)

When Officer Benitez arrived at 437 Saint Luke Street, she pounded on the door repeatedly announcing "Probation! Probation!" (*Id.* at 12.) Officer Benitez heard movement inside the house, however nobody inside the house opened the door. (*Id.* at 11.) After approximately fifteen minutes, when nobody answered the door, Officer Benitez and her partner left the area. (*Id.* at 12.)

While Officer Benitez was pounding on the front door, police officers Hough and Bellon were positioned at the rear of the house to see if anyone attempted to leave through the back door. (*Id.* at 38-39.) When Officer Benitez was knocking on the front door, Officer Hough heard movement coming from within the house. (*Id.* at 39.) Nobody left the house through the back door. (*Id.* at 40.)

As the police officers were leaving the house, Officer Hough saw a man on his cell phone observing the scene and talking into the phone. (*Id.* at 40-41.) Officer Hough believed that the man may be talking to someone inside the house because earlier, when Officer Hough arrived at the house, he heard the same man say “Yo they’re out front.” (*Id.* at 41, 55-56.) Officer Bellon believed that this man was in contact with occupants within the house to tell them the police were leaving. (*Id.* at 80.) In Officer Bellon’s experience, people often serve as lookouts, and based on his observations he believed the man was serving as a lookout. (*Id.* at 80-81.) The neighborhood where 437 Saint Luke Street is located is very dangerous. (*Id.* at 10, 36.) Officer Hough has responded to “homicides, shootings, robberies, burglaries, [and] thefts” in that area. (*Id.* at 36.)

When Officers Bellon and Hough saw the man on the phone, they moved to an area where they could see the front of Pride’s home. (*Id.* at 81.) As they did this they saw Crystal Pride exit the residence. (*Id.*) Officers Hough and Bellon then left their vehicle and walked up to the front porch to speak with Crystal Pride. (*Id.* at 42.) Officer Hough asked her if anyone else was inside of the home, and she responded that only her child was inside. (*Id.*)

As Officer Hough was talking to Crystal Pride, Defendant walked out of the house. (*Id.*) When Defendant saw Officer Hough she seemed startled, her eyes grew large and she took a deep breath. (*Id.* at 43.) Defendant was clutching a canvas bag tightly under her arm. (*Id.* at 43.) Defendant stated that she needed to catch a bus and attempted to walk between Crystal Pride and Officer Bellon. (*Id.* at 43.) Officer Hough told Defendant to sit down, and Defendant sat down on the front steps. (*Id.* at 44.) He also asked Defendant to put her bag down behind her. (*Id.*) Officer Hough told Defendant that she needed to sit down for a few minutes because they were attempting to conduct a probation check. (*Id.*) Officer Hough told Defendant that the

probation officers were returning because contact had been made with people inside the home. (*Id.*) Defendant then asked Officer Hough if she could use the restroom. Officer Hough said he could not let Defendant go back inside the house. (*Id.*) The third time Defendant asked to use the restroom, Officer Hough said that she could use the restroom, however she could not take the bag inside with her. (*Id.*) Defendant did not use the restroom and did not again ask to use the restroom after Officer Hough told her that she would have to leave her bag outside. (*Id.* at 45.)

As a result of Defendant's conduct related to the bag, Officer Hough believed that the bag may contain a gun that Defendant was trying to remove from the house. Officer Hough then decided to conduct a pat-down of the bag. (*Id.*) When he picked up the bag, it was heavy and he felt a heavy object at the bottom of the bag. (*Id.*) Officer Hough then felt the bottom of the bag and could feel the outline of a semiautomatic handgun. (*Id.*) He then opened the bag and found a Glock 26 handgun. (*Id.* at 45-46.) There were other objects in the bag, in addition to the firearm. (*Id.* at 66; Def. Ex. D-1.) The bag contained a cell phone, paperwork, cocaine, a fabric gun holster, a CD, a belt, and several pieces of clothing. (Hr'g Tr. 66-68.)

After conducting a pat-down of Defendant's bag and retrieving the firearm, Officer Hough accompanied the probation officers as they conducted a walkthrough of 437 Saint Luke Street. (*Id.* at 46.) Officer Hough stood near the front door as the probation officers checked the basement and first floor in order to prevent persons from running out the front door. (*Id.*) As the probation officers went to search the upstairs floor, Officer Hough walked up the stairs first for protective reasons. (*Id.*) As Officer Hough went up the stairs, he saw Demetrius Pride laying on the bed in the front bedroom. (*Id.* at 47.)

III. CONCLUSIONS OF LAW

Defendant moves to suppress the firearm that Officer Hough found in her bag.

Defendant argues that the law enforcement officers (1) impermissibly prevented Defendant from leaving 437 Saint Luke Street and (2) unconstitutionally seized Defendant's bag and squeezed it. (Suppress Mem. 3.)

A. Detention

Defendant argues that when law enforcement prohibited her from leaving the residence, they violated her Fourth Amendment right to be free from unreasonable seizures. (*Id.* at 2.) Defendant contends that this seizure was unconstitutional because the police officers did not have probable cause or reasonable suspicion to believe that she was engaged in criminal activity. (*Id.* at 2-3.) The Government argues that the police officers were permitted to detain Defendant even without reasonable suspicion or probable cause because she was present at the location where they were conducting a search. (Suppress Resp. 4.) The Government also argues that, in any event, based upon the totality of the circumstances, the police officers had reasonable suspicion to believe that Defendant was engaged in criminal activity. (*Id.* at 7.)

In *Michigan v. Summers*, the Supreme Court held that police officers are permitted to detain persons on the premises of the area to be lawfully searched if “both the law enforcement interest and the nature of the ‘articulable facts’” support the detention. 452 U.S. 692, 702 (1981). The Supreme Court has limited such detention to only those who are “at the scene of the search and not at a later time in a more remote place.” *Bailey v. United States*, 133 S. Ct. 1031, 1042 (2013). The police officers in *Summers* detained the defendant as he was “descending the front steps” of his home. 452 U.S. at 693. Here, as in *Summers*, Defendant was detained as she walked out the front door of the house and attempted to leave. (Hr’g Tr. 42-43.) Officer Hough

asked Defendant to sit down and she sat down on the front steps of the residence next to Pride's home. (*Id.* at 44.) These front steps are directly connected to the front steps of Pride's residence. Defendant was detained within the "immediate vicinity of the premises to be searched." *Bailey*, 133 S. Ct. at 1041.

In addition to the physical proximity of the detention to the area being searched, the detention must be justified by the law enforcement interests at play. The *Summers* court identified three law enforcement interests to consider when deciding whether a detention was justified: (1) "preventing flight in the event that incriminating evidence is found"; (2) "minimizing the risk of harm to the officers"; and (3) the interest in "the orderly completion of the search," which is furthered if "the occupants of the premises are present." 452 U.S. at 702-03. Analyzing these interests, we are satisfied that the police officers lawfully detained Defendant.

Initially, the police officers in this case had an interest in preventing Defendant from fleeing the area to be searched because there was a possibility that she would seek to remove Pride's firearm from the house. Preventing flight serves to ensure that occupants do not attempt to take evidence from the home that is being searched. *Bailey*, 133 S. Ct. at 1040 ("Allowing officers to secure the scene by detaining those present also prevents the search from being impeded by occupants leaving with the evidence being sought or the means to find it."). Here, Defendant walked out the front door only after the probation officers and accompanying police officers were leaving the home after knocking on the door for fifteen minutes without a response. The police officers had been told by Crystal Pride that the only person in the house was her child. After being told this, Defendant walked out the front door. Defendant looked startled when she saw Officer Hough, and she was tightly clutching her bag. (Hr'g Tr. 43.) Given these

facts, there was certainly a reasonable possibility that Defendant was attempting to remove evidence from the premises.

Next, the police officers had an interest in protecting themselves as well as others in the area. The *Summers* court noted that when police officers are searching a home for narcotics, it is the “kind of transaction that may give rise to sudden violence” and the “risk of harm to both the police and occupants is minimized if the officers routinely exercise unquestioned command of the situation.” 452 U.S. 702-03. Here, the police were located in a high-crime area and were helping to investigate whether a convicted felon was in possession of a firearm. The Supreme Court has emphasized that a search for weapons calls for a heightened degree of security. *Muehler v. Mena*, 544 U.S. 93, 100 (2005) (highlighting the “safety risk inherent in executing a search warrant for weapons”). Since Demetrius Pride was suspected of possessing a firearm, the police officers had an interest in the safety and protection of themselves and other persons in the area.

Finally, the police officers had an interest in the orderly completion of the search, namely that occupants leaving the residence not interfere with the search. In interpreting this interest, the Supreme Court has observed that “[i]f occupants are permitted to wander around the premises” they could “hide or destroy evidence.” *Bailey*, 133 S. Ct. at 1040. In this case, the police officers suspected that a man on the street was communicating with persons inside the home to update them on the police presence. Moreover, Defendant exited the home after Crystal Pride specified that nobody other than her child was in the house. (Hr’g Tr. 42.) These facts, in conjunction with Defendant’s actions, create the real possibility that Defendant was attempting to interfere with the search by removing the firearm. Considering all the circumstances, the police officers were clearly justified in detaining Defendant.

In addition, the police officers had reasonable suspicion to detain Defendant.

“Reasonable suspicion is ‘a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.’” *United States v. Valentine*, 232 F.3d 350, 353 (3d Cir. 2000) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). A police officer must be able to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” a stop and frisk of an individual. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). The Supreme Court has recognized that “nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.” *Wardlow*, 528 U.S. at 124. The Third Circuit has stated that “[t]he test is one of reasonableness given the totality of the circumstances, which can include [the defendant’s] location, a history of crime in the area, [the defendant’s] nervous behavior and evasiveness, and [the officer’s] ‘commonsense judgments and inferences about human behavior.’” *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003) (quoting *Wardlow*, 528 U.S. at 124-25).

A review of this record demonstrates that when Officer Hough stopped Defendant as she was coming out the front door of Pride’s house and asked for her to sit down, he had reason to suspect that Defendant may be engaged in criminal activity. The neighborhood that 437 Saint Luke Street is located in is a high crime area. Officer Hough had investigated homicides, burglaries, robberies and theft in the area, and it is “one of the more dangerous parts of the 25th District.” (Hr’g Tr. 36.) The officers had reason to believe that Pride unlawfully possessed a firearm. In Officer Hough’s experience, if there was a firearm in the home, the persons inside the home would try to get rid of it as soon as law enforcement left the premises. (*Id.* at 41.) Officer Hough and Officer Bellon had reason to believe that the man they saw on the street was warning the occupants inside the house of police presence. When Officers Hough and Bellon

saw Crystal Pride exit the home, they approached her and asked her if there was anyone else inside the home. After Crystal Pride stated that there was nobody besides her child in the home, Defendant walked out of the front door. (*Id.* at 42.) Defendant appeared startled, and was tightly clutching her bag close to her body. (*Id.* at 42-43.) In assessing the situation, the police used their training and judgment to determine that Defendant was attempting to hide something from the officers. (*Id.* at 45.) Given the totality of the circumstances, a reasonable officer could certainly believe that Defendant was attempting to evade the police and was trying to carry the firearm out of the home undetected.

B. Frisk

Defendant asserts that the officer's frisk of her bag was unconstitutional under the Fourth Amendment. (Suppress Mem. 4.) The Government argues that Officer Hough could permissibly feel the outside of Defendant's bag because he had reasonable suspicion to believe the bag may contain a firearm. (Suppress Resp. 9.)

A police officer is entitled to conduct a limited search if a police officer "observes unusual conduct which leads [an officer] reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous" *Terry*, 392 U.S. at 30. Once an officer has reasonable suspicion that a person's bag contains a firearm, an officer can feel the outside of the bag and can subsequently search the bag if he believes it could contain a weapon. *See Wardlaw*, 528 U.S. at 122, 126 (finding that no Fourth Amendment violation occurred during the officer's *Terry* stop when he "squeezed the bag [the defendant] was carrying and felt a heavy, hard object similar to the shape of a gun," opened the bag, and took out a handgun); *United States v. White*, 425 F. App'x 184, 187 (3d Cir. 2011) ("It was reasonable for [the police officer] . . . to touch the bag . . . and, upon

feeling objects that in his experience and judgment told him were contraband, to open it.”); *United States v. Wilkerson*, No. 09-272, 2010 WL 500440, at *4 (E.D. Pa. Feb. 5, 2010) (holding that once the officer had a “justifiable concern that the bag contained a dangerous weapon” it was permissible for the police officer to feel the bag and search it to “ascertain whether it did, in fact, contain a weapon”).

Here, Officer Hough did have a justifiable concern that Defendant was concealing a weapon in her bag. In addition to Defendant’s nervous and evasive behavior as she attempted to leave the house, she acted suspiciously while she was sitting on the steps. Defendant repeatedly asked the officers if she could use the restroom. (Hr’g Tr. 44.) However, once Officer Hough told her that she could use the restroom, and that she could not take her bag with her, she did not ask to use the restroom again. (*Id.* at 44-45.) Clearly, these facts would lead a reasonable officer to suspect that there was something illegal inside of the bag.

Officer Hough picked up the bag and immediately felt that it was heavy. (*Id.* at 45.) He could feel that there was a heavy object at the bottom of the bag. (*Id.*) When he felt the bag, he could feel what felt like the outline of a handgun. (*Id.*) Based on the weight and feel of the bag, Officer Hough had reason to believe that the bag did in fact contain a firearm. He then opened the bag to determine whether the bag contained a firearm. It did. Officer Hough’s conduct was entirely reasonable under the circumstances. The firearm that Officer Hough pulled out of Defendant’s bag was legally seized.

Officers Hough had reasonable suspicion to search Defendant’s bag, and upon finding Defendant’s handgun, had probable cause to arrest Defendant. The stop, search, and arrest of Defendant were all legally justified.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Suppress will be denied.

An appropriate Order follows.

BY THE COURT:

/s/R. Barclay Surrick
U.S. District Judge

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ORDER

AND NOW, this 3rd day of October, 2016, upon consideration of Defendant's Motion to Suppress (ECF No. 20), and all papers submitted in support thereof and in opposition thereto, it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

/s/R. Barclay Surrick
U.S. District Judge