

SUPERIOR COURT OF PENNSYLVANIA

Commonwealth v. Harper, 248 Pa. Super. 344

375 A.2d 129 (Pa. Super. Ct. 1977) · Decided June 29, 1977

SUMMARY

The Pennsylvania Superior Court affirmed Anthony Wayne Harper’s judgment of sentence for his involvement in a knife attack on a trolley passenger. The court held that the prompt hospital identification was not unduly suggestive and that police lawfully detained potential suspects based on probable cause until the victim could identify the attackers.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Price, Judge; Watkins, President Judge; Jacobs, J.; Hoffman, J.; Cercone, J.; Price, J.; Van der Voort, J.; Spaeth, J.
JURISDICTION	Pennsylvania
DECIDED	June 29, 1977
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harper appealed his criminal judgment of sentence, arguing that the victim's hospital identification should have been suppressed as unduly suggestive and as the fruit of an illegal arrest.
STANDARD OF REVIEW	The court reviewed the admissibility of the identification and the legality of the detention and arrest under the applicable constitutional and probable-cause standards.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Anthony Wayne Harper v. Commonwealth of Pennsylvania

TOPICS

- criminal procedure
- probable cause
- suppression of evidence
- evidence

PRACTICE AREAS

- criminal procedure
- criminal evidence
- eyewitness identification
- probable cause

QUESTIONS PRESENTED

1. Whether the hospital identification procedure was unduly suggestive and therefore inadmissible.
2. Whether the identification was inadmissible as the fruit of an illegal arrest because police temporarily detained several possibly innocent men before the victim identified Harper.
3. Whether police had probable cause to detain the persons who reasonably fit the description of the attackers and, after the victim's identification, probable cause to arrest Harper.

HOLDINGS

1. The hospital identification was admissible because the record showed no undue suggestiveness. The police reasonably obtained an immediate identification before the seriously injured victim was taken into surgery, and the procedure provided an impromptu lineup rather than a one-on-one confrontation preceded by a police judgment that Harper was the perpetrator.
2. No illegal arrest occurred when police temporarily detained all persons who reasonably fit the description of the attackers until an identification could be made.
3. Probable cause to arrest Harper existed once the victim identified him as one of the attackers.

KEY QUOTATIONS

“Therefore, he was justified in momentarily detaining all persons who reasonably fitted the description of the attackers until an identification could be made.” (at 347)

“Thus, the police officers in this case acted not only reasonably; they acted with commendable skill and efficiency.” (at 348)

FACTUAL BACKGROUND

A trolley passenger was stabbed eleven times by two of three men who had boarded the trolley in Philadelphia. Police quickly learned that the men had boarded a nearby bus and detained six men on the bus and one man from the street, all of whom generally fit the description of the attackers. Less than an hour after the attack, police presented the men individually to the seriously wounded victim at the hospital, where the victim identified Harper and Henry Wyatt as two of the attackers before the victim underwent emergency surgery.

PROCEDURAL HISTORY

After a knife attack on a trolley passenger, police detained several persons who matched the general description of the attackers and presented them individually to the victim at the hospital. The victim identified Harper and another man. Harper challenged the identification and arrest procedure on appeal. The Superior Court of Pennsylvania affirmed the judgment of sentence.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Hall, 456 Pa. 243, 317 A.2d 891 (1974)
- Commonwealth v. Ray, 455 Pa. 43, 315 A.2d 634 (1974)
- Commonwealth v. Jenkins, 232 Pa. Super. 523, 335 A.2d 463 (1975)
- Commonwealth v. Santiago, 229 Pa. Super. 74, 323 A.2d 826 (1974)
- Commonwealth v. Wyatt, 242 Pa. Super. 628, 360 A.2d 665 (1976)

OPINION

PRICE, J.

248 Pa. Super. 344 (1977) 375 A.2d 129 COMMONWEALTH of Pennsylvania v. Anthony Wayne HARPER, Appellant. Superior Court of Pennsylvania. Submitted June 22, 1976. Decided June 29, 1977. *346 Albert J. Cepparullo, Assistant Public Defender, Philadelphia, for appellant. Steven H. Goldblatt, Assistant District Attorney, Philadelphia, for appellee.

Before WATKINS, President Judge, and JACOBS, HOFFMAN, CERCONE, PRICE, VAN der VOORT and SPAETH, JJ. PRICE, Judge: If Larry Jackson had foreseen the ordeal that awaited him, it is safe to assume that he would not have ventured forth into the night of October 14, 1974. At 11:30 p.m. on that night, Mr. Jackson boarded a west-bound trolley at Thirty-seventh Street and Lancaster Avenue in Philadelphia.

He assumed a seat in the relatively empty rear of the vehicle. At Forty-second Street, three black males boarded the trolley and took the seats immediately in front of and beside Mr. Jackson. While en route, one of the men, later identified as Henry Wyatt, turned to Mr. Jackson and asked his destination. Mr. Jackson replied that he would disembark at Fifty-second Street.

When asked his destination by Mr. Jackson, Henry Wyatt replied, "That's cool." Mr. Jackson had never seen any of the three men before. Just before the trolley reached Fifty-second Street, two of the men began an unprovoked and savage knife attack on Mr. Jackson, stabbing him eleven times in the chest, arms, hands, and leg.

As a result of this attack, emergency surgery lasting five hours was necessary to save Mr. Jackson's life. He lost five pints of blood and sustained severe nerve damage to his hands and arms. Mr. Jackson was able to leave the hospital after seven weeks. When the trolley reached Fifty-second Street, the three culprits fled.

The other passengers also ran from the trolley, and their screams attracted the attention of Philadelphia Police Officer Frederick Hoesle, who quickly summoned backup and emergency vehicles. Officer Hoesle learned from the passengers that the three men had boarded a bus *347 across the street. When reinforcements arrived, Officer Hoesle boarded the bus and discovered six black men between the ages of eighteen and twenty-five.

These men, along with one from the street, were taken to the hospital, and less than one hour after the attack had occurred, were paraded individually before Mr. Jackson. Mr. Jackson identified appellant and Henry Wyatt as two of the attackers.[1] Appellant contends that the hospital identification should have been suppressed because it was unduly suggestive.

However, there is no evidence of undue suggestiveness in this case. The severity of Jackson's wounds and the amount of blood he had lost convinced the police officers that an immediate identification was necessary. Certainly, it was reasonable of the police to obtain the identification before Mr. Jackson was rushed to surgery. Furthermore, appellant was given the advantage of an impromptu line-up.

Thus, the procedure in this case cannot be characterized as a one-on-one confrontation occurring after "the eyewitness knows of a prior police judgment that the confronted citizen is the person who committed the crime." *Commonwealth v. Hall*, 456 Pa. 243, 250, 317 A.2d 891, 894 (1974). Appellant also contends that the identification was inadmissible because it was the fruit of an illegal arrest.

However, no illegal arrest occurred in this case. Officer Hoesle had probable cause to believe that the perpetrators of a vicious attack were on the bus. Therefore, he was justified in momentarily detaining all persons who reasonably fitted the description of the attackers until an identification could be made. *Commonwealth v. Hall*, *supra*; *Commonwealth v. Ray*, 455 Pa. 43, 315 A.2d 634 (1974).

Once the victim identified appellant, probable cause for the arrest existed. Further comment is demanded by the unusual facts of this case. The lawfulness of the identification and the arrest procedure in this case are significantly dependent on the *348 reasonableness of the police conduct.

In appellant's first argument, he contends that the identification procedure was unduly suggestive, and that the confrontation should have been delayed until a formal line-up could be arranged. In his second argument, he contends that the arrest was illegal because seven possibly innocent men were detained.

The heinous nature of the crime and the small number of suspects made the conduct of the police very reasonable. Appellant's observation that innocent men were being detained was a factor necessitating and justifying a prompt identification procedure. Normally, in determining the need for prompt identification, a police officer must weigh the inherent accuracy and reliability of prompt identifications against the safeguards provided by counselled, formal lineups.

This court has discussed the balance between these alternatives on many occasions. See, e.g., *Commonwealth v. Jenkins*, 232 Pa.Super. 523, 335 A.2d 463 (1975); *Commonwealth v. Santiago*, 229 Pa.Super. 74, 323 A.2d 826 (1974).

In this case, thrown into the balance was the officer's knowledge that at least four completely innocent men were being detained from continuing their daily lives. Thus, the police officers in this case acted not only reasonably; they acted with commendable skill and efficiency.

The judgment of sentence of the lower court is affirmed. HOFFMAN and SPAETH, JJ., concur in the result. NOTES [1] Henry Wyatt's conviction was affirmed by this court in a per curiam order. Commonwealth v. Wyatt, 242 Pa.Super. 628, 360 A.2d 665 (1976).

The identity of the third participant in the attack is unknown.