

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**DAMIEN S. HARTSFIELD,
Defendant**

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CR-347-2016

SUPPRESSION

OPINION AND ORDER

On November 22, 2016, the Defendant filed a Motion to Suppress Evidence. A hearing on the motion was held January 30, 2017.

Background

Damien Hartsfield (Defendant) is charged in a criminal information filed March 11, 2016, with two counts of Delivery of a Controlled Substance (heroin)¹; one count of Possession with Intent to Deliver²; one count of Criminal Use of a Communication Facility³; one count of Possession of a Controlled Substance (heroin)⁴; and one count of Dealing in Proceeds of Unlawful Activities⁵. The charges arise out of an incident that occurred on February 7, 2016, in Clinton Township of Lycoming County, Pennsylvania.

Testimony of Pennsylvania State Trooper Tyson Havens

On February 7, 2016, Trooper Tyson Havens (Havens) was conducting surveillance at the Surplus Outlet at 5464 Route 15 Highway, Montgomery, PA. Havens testified that he had received an email on February 4, 2017, from Corporal Eisenhower, then head of the Vice Narcotics Unit at Troop F Montoursville, reporting

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 18 Pa.C.S. § 7512.

⁴ 35 P.S. § 780-113(a)(16).

⁵ 18 Pa.C.S. § 5111(a)(1).

that the manager of the Surplus Outlet store, Thomas Wingert, had contacted him complaining of drug activity in the parking lot of the store (lot). The manager reported to police that a small red compact car or SUV arrives and appears to conduct drug transactions.

On 2/7/2017, Havens testified that he received a telephone call from Trooper Russ Burcher (Burcher) specially assigned to the Safe Streets Task Force that he was aware that the parking lot of the Surplus Outlet at 5464 Rt 15 Highway in Clinton Township, Lycoming County, was being utilized to distribute heroin. Burcher related that the heroin dealers have more than one customer arrive and park in the lot. The dealer will arrive and distribute heroin to multiple buyers parked in the lot. Burcher further advised that the heroin dealers are often times black males from Philadelphia operating rental vehicles with out of state registrations.

On 2/7/2016, Havens signed out an undercover vehicle and parked the vehicle at the Family Dollar plaza (plaza) where he could observe activity in the lot. Troopers McDermott and Dammer were stationed behind an antique store on Route 15 in their marked PSP vehicle to provide backup if needed. Havens observed a blue BMW with a white male and white female passenger at 5:42 p.m. parked at the plaza. The blue BMW was parked when Havens arrived to conduct surveillance. At 5:46 p.m. a silver Dodge Caravan with two white female passengers parked by the blue BMW.

Havens observed no parties get out of their respective vehicles. At approximately 6:00 p.m. a white Ford Explorer with Florida tags driven by a black male drove into the Surplus Outlet parking lot. Havens remained in his parked vehicle, observed the Ford pull in and the BMW and Dodge move out of their respective

parking spaces, and follow the Ford Explorer into the Surplus Outlet lot. After about 45 seconds observing some activity on the passenger side of the vehicle, the Ford Explorer departed south, the same way it had entered the lot and the other two vehicles activated their brake lights. Havens testified that the three vehicles were the only vehicles in lot on the date and time in question.

Havens notified Dammer and McDermott that he believed a drug transaction had just occurred and that the Ford Explorer was attempting to depart the lot. Havens also testified that in his experience drug transactions occur quickly. He testified that he planned to stop and detain the vehicle as he thought it might be a particular individual that had just fled from PSP and that this individual was known to have guns.

Havens drove north into the entrance of the lot with his high beams activated. He blocked the Ford Explorer. Havens testified that all three state troopers present at the scene detained the vehicle. At the scene, Havens arrested the driver (Defendant) of the Ford Explorer. He patted down the Defendant for weapons and an initial search of the vehicle at the scene recovered \$612 and black rubber bands. The troopers in the marked unit took Defendant into custody. The other two vehicles attempted to leave the lot at a high rate of speed and Havens attempted to intercept them. Rebecca Eiswerth and Scott Mull were the passengers in the BMW. The two female passengers from the Dodge Caravan attempted to flee on foot however at Havens' request they came back. Havens spoke with three of the four passengers (not Mull).

After providing Eiswerth with Miranda warnings, Havens proceeded to a videotaped interview with Eiswerth where she stated that she would call a cell phone number. She would ask if the person was "good". If this person were "good", he told

her to meet him in the lot. Eiswerth told Havens that she ate the 5 bags (\$50 worth) of heroin that she purchased that day just prior to being intercepted by Havens. The driver of the Dodge Caravan, Jennifer Burns, who was also given Miranda warnings and also consented to a videotaped interview, provided Havens with the same cellular number as Eiswerth had given to call to arrange heroin purchases in the lot. Both told Havens that they do not order a specific amount over the phone; they just ask "are you good?". Havens recovered one bag of heroin from Burns and an additional nine bags from her passenger.

Discussion

Whether evidence seized from Defendant's person or his vehicle was seized in violation of his rights under Article 1 Section 8 of the Pennsylvania Constitution and under the Fourth Amendment to the United States Constitution.

Defense Counsel argues that the vehicle stop occurred without reasonable suspicion.

Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to "specific and articulable facts" leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.

COMMONWEALTH V. BROWN, 606 PA. 198, 996 A.2D 473, 478 (2010) (CITATIONS OMITTED).

Here the Court finds that Havens did have reasonable suspicion that criminal activity was afoot. Havens had two named sources of information regarding suspected drug activity in the Surplus Outlet parking lot. One was from the civilian manager of the store who contacted police regarding suspected drug activity in the lot. Havens

received more specific information from law enforcement (Burcher) as outlined in his testimony above.

When Havens went to surveil the area in response to this credible information, he observed activity substantially similar to what had been reported to him: i.e. multiple vehicles arrive waiting for a drug dealer. The drug dealer arrives, servicing more than one customer at one location; Surplus Outlet was not open for business at the time of the observed activity. There were no other vehicles in the lot but for the BMW, the Dodge and the Ford. Havens observed no interaction between the two parked vehicles while they were parked in the plaza. When the white Ford Explorer with Florida tags came into the parking lot, both cars pulled out of their respective places near Havens and followed the Explorer into the lot parking near it.

Though Havens could not see the activity specifically, the entire exchange among the three vehicles lasted less than one minute. He knows from his experience that drug transactions are very quick and based upon his training and experience what he did see was consistent with a drug transaction. It was lawful for him to detain the driver of the Ford Explorer to investigate whether Defendant was engaged in criminal activity. Moreover, the protective frisk of the Defendant for weapons was lawful given that he believed Defendant may be a person currently fleeing from the PSP who was known to have guns.

Defense Counsel argues that a warrant should have issued before the vehicle search as the police did not have probable cause to search the vehicle nor were there exigent circumstances present since the Defendant had been taken into custody and

the vehicle had been immobilized. In Commonwealth v Gary⁶, the Supreme Court of Pennsylvania held, consistent with the United States Supreme Court, that the impracticability of obtaining a warrant, unforeseen events, or any other exigent circumstances --- beyond the inherent ready mobility of a motor vehicle – are not required for application of the automobile exception to the warrant requirement. Gary at 112. In other words, the bright line rule provided by the US. Supreme Court applies in Pennsylvania: police officers may search a motor vehicle if they have probable cause for the search. Gary at 124. Given the statements of the purchasers of heroin to Havens that day coupled with his personal and articulable observations of the suspected drug transaction, Havens had probable cause to believe that it was indeed Defendant, the driver of the white Ford Explorer, that had delivered controlled substances. As such the search of his motor vehicle was pursuant to probable cause and did not require a warrant.

⁶ Commonwealth v. Gary, 625 Pa. 183, 91 A.3d 102 (2014).

ORDER

AND NOW, this 10th day of April, 2017, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Peter Campana, Esq.
Melissa Kalas, Esq.
Gary Weber, Esq. Lycoming Law Reporter