

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-386-2017
v.	:	
	:	
DARNELL H. KELLAM,	:	SUPPRESSION
Defendant	:	

OPINION AND ORDER

On April 19, 2017, Defendant filed a Motion to Suppress styled as an Omnibus Pretrial Motion. A hearing on the motion, over objection by the Commonwealth, was held on June 20, 2017.

Background

Defendant is charged with one count of Persons not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms¹, one count of Receiving Stolen Property², one count of Firearms Not to be Carried Without a License³, and one count of Possession with Intent to Deliver (Heroin)⁴. All of Defendant's charges arose out of an encounter with Williamsport police on February 10, 2017.

Testimony of Officer Joshua Bell

At the time of the Defendant's arrest, Bell had over five years of experience as a law enforcement officer with the Williamsport Bureau of Police, having joined the Bureau in August of 2011. Bell had additional law enforcement experience prior to his tenure with the Williamsport police, including narcotic agent training through the Attorney General's office and significant experience with narcotic interdiction policing.

¹18 Pa.C.S. § 6105.
²18 Pa.C.S. § 3925.
³ 18 Pa.C.S. § 6106.
⁴ 35 P.S. § 780-113(a)(30).

On February 10, 2017, Bell was operating a marked patrol car and was patrolling the area of Campbell Street and High Street when he observed a black Nissan Altima travelling south on Campbell Street. Bell observed that the vehicle was equipped with heavy window tint which prevented him from observing the interior of the vehicle. Bell recognized that the color, make, and model of the car, along with the heavy window tint, matched the description of a vehicle that a confidential informant had previously indicated was involved in trafficking heroin from Philadelphia to Williamsport. The confidential informant who shared this information with Bell had made a number of controlled purchases for Bell in the past during his narcotic interdiction efforts. Bell's prior interdiction efforts had a strong record of corroborating the information obtained from this informant.

Bell effected a vehicle stop due to the heavy window tint on the vehicle in the area of Market Street and Little League Boulevard. Upon talking with the Defendant and collecting the Defendant's license, vehicle registration, and insurance, verified that the driver was the owner of the vehicle, and that the area of registration was Philadelphia.

While Bell was speaking to the Defendant from outside of the driver's side window, Bell's attention was drawn to several rubber bands hanging from the windshield wiper control arm. Bell recognized from his experience in narcotics trafficking investigations that these rubber bands were often used to bundle large amounts of money, and that in his experience, a vehicle control arm is a common location for drug traffickers to keep such rubber bands. Bell later testified that he had encountered rubber bands fashioned this way in vehicle stops that have led to arrests

between eight and ten times prior to his encounter with the Defendant in the present case.

When Bell asked the Defendant what the rubber bands were for, he responded that he just “had them,” and that Bell was the first officer who ever asked him about the rubber bands. Bell asked the Defendant where he was coming from, to which the Defendant responded that he had been visiting family. Bell asked the Defendant where his family lived, and the Defendant responded “Louisa.” Motor Vehicle Recording (MVR) at 4:09. Bell asked the Defendant what block of Louisa his family lived on, and the Defendant responded, “Right there where everything be happening.” Id. at 4:18. Bell recognized the area the Defendant was referring to as the area colloquially known as the “400 block,” an area known for its high criminal drug activity. Bell asked the Defendant for confirmation, whether he was talking about the 400 block, and the Defendant confirmed it. Id. at 4:21.

Bell returned to his patrol car with the Defendant’s license and vehicle documentation, and proceeded to contact county control to conduct a criminal history inquiry of the Defendant. At this time, another officer with the Williamsport Bureau of Police arrived at the scene. Dispatch advised Bell that the Defendant had been arrested multiple times in the past several years for firearms violations and narcotics violations. Bell returned to the Defendant’s vehicle and asked the Defendant to step out of the vehicle. Defendant, Officer Bell, and the second officer relocated to a space in between the two marked patrol cars.

Bell proceeded to advise the Defendant that that he was aware of the Defendant’s criminal history, and made the Defendant aware of his concern that the

Defendant had either firearms or narcotics on his person or in his vehicle. Bell asked the Defendant if he was in possession of any narcotics or firearms either on his person or in his vehicle, and the Defendant responded that he was not. Bell then asked the Defendant, "Alright, is there any issue with me looking?" while pointing at the Defendant's vehicle, and the Defendant replied, "Nope." MVR at 18:35.

Taking the Defendant's response as consent to perform a vehicle search, Bell began walking towards the passenger compartment of the Defendant's vehicle. When the Defendant asked Bell if he could return to his vehicle, Bell directed the Defendant to stand next to the second officer on the scene while he performed the search. As Bell continued to approach the driver door of the Defendant's vehicle, the Defendant said, "Oh, you're gonna check the car?" to which Bell responded, "Yeah." MVR at 18:40.

During the search, Bell observed that the Defendant was in possession of three cellular phones, which he recognized as an additional indicia of drug sale activity. Bell also observed that the headliner of the vehicle appeared as though it had previously been pulled away from its corresponding connection point with the roof of the vehicle. Bell knew from previous narcotics investigations that the inside of a vehicle's headliner is a common location to conceal contraband.

Finally, Bell exited the driver's side door of the vehicle, walked around the vehicle, and began searching via the passenger's side door. Bell observed that part of the panel of the center console was loose and appeared to have been previously removed. Bell pulled on the panel slightly, causing it to fall off. Concealed under the air vent, Bell located a firearm and identified its serial number. Dispatch advised Bell

that the firearm, a .40 caliber Ruger pistol, had been reported stolen out of Milton, Pennsylvania. In the same area where he located the pistol, Bell also found a green bag containing a clear sandwich bag, which Bell recognized as being commonly used as a distribution bag for controlled substances. Bell proceeded to take the Defendant into custody.

Once in custody, a search of the Defendant incident to arrest yielded three blue wax bags of heroin in the Defendant's left sock, \$1,100 concealed in the Defendant's underwear, an additional \$125 in the Defendant's pockets, and packages of black rubber bands often used to bundle heroin for sale in the Defendant's shoe.

Discussion

1) *Whether the Vehicle Search was a Valid Consent Search.*

Both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution guarantee individuals protection from unreasonable searches and seizures. Pursuant to the Warrant Clause of the Fourth Amendment, "searches by the state shall be permitted only upon obtaining a warrant issued by a neutral and detached magistrate." Commonwealth v. Perry, 798 A.2d 697, 699 (Pa. 2002). Warrantless searches are therefore unreasonable for constitutional purposes. Commonwealth v. Bell, 871 A.2d 267, 273 (Pa. Super. 2005). There are, however, a number of exceptions to the warrant requirement. One such exception is when an individual voluntarily provides a law enforcement officer with consent to perform a warrantless search. Commonwealth v. Strickler, 757 A.2d 884, 888 (Pa. 2000).

In order to prove that a consensual search was performed lawfully, the Commonwealth must prove two elements: first, “that the consent was given during a legal police interaction.” Bell, 871 A.2d at 273. Second, “the Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice -- not the result of duress or coercion, express or implied, or a will overborne -- under the totality of the circumstances.” Strickler, 757 A.2d at 901. Therefore, if the underlying encounter is lawful, the voluntariness of the consent “becomes the exclusive focus.” Strickler, 757 A.2d at 888-89.

a. Whether the Underlying Police Interaction was Lawful.

In Rodriguez v. United States, 135 S. Ct. 1609 (2015), the Supreme Court considered the admissibility of methamphetamine found during a consent search performed after a traffic stop was effected on the defendant for illegally driving on the shoulder of a highway. The Court in Rodriguez held that “[a]n officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, *absent* the *reasonable suspicion* ordinarily demanded to justify detaining an individual.” Id. at 1615 (emphasis added). The Court in Rodriguez held additionally that the “the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop,” id. at 1614, and that the “[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” Id.

As such, the analysis in the present case first turns to whether the search that led to the discovery of contraband was performed within the timeframe in which the

tasks tied to the traffic infraction were or should have been completed. If the search was performed outside of this valid timeframe, the extended duration of the traffic stop was only lawful if independent reasonable suspicion existed which authorized the extended duration of the stop.

In the present case, the interaction between Officer Bell and the Defendant certainly extended beyond the amount of time in which Officer Bell reasonably should have issued a citation to the Defendant for the initial justification for the stop: his heavy window tint. While no explicit rule exists which stipulates a particular duration of time which is acceptable to effect a traffic stop, the Pennsylvania Supreme Court added clarity in Commonwealth v. Ellis⁵, which held in relevant part:

The key factor to be examined in determining if a detention lasts too long to be justified as an investigative stop, is whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.

Id. In the present case, the traffic stop effected on the Defendant took significantly longer than it needed to due to Officer Bell's interest in pursuing drug trafficking and firearms violations, despite the fact that the traffic stop was effected as a result of the Defendant's window tint. Bell makes his intentions for the stop clear through the Motor Vehicle Recording of the stop, in which Bell makes comments such as "Where he was coming from, it looks like he might have just delivered," MVR at 8:11, and "I got intel that that car right there was bringing up heavy amounts of heroin." Id. at 8:30. Because the search was not performed within the timeframe in which the tasks tied to the traffic infraction were or should have been completed, the underlying traffic stop was only lawful if it was supported by independent reasonable suspicion.

⁵ 662 A.2d 1043 (Pa. 1995).

In Commonwealth v. Rogers, 849 A.2d 1185, 1191 (Pa. 2004), the Pennsylvania Supreme Court explained the standard of reasonable suspicion as follows:

A police officer may detain an individual in order to conduct an investigation if that officer reasonably suspects that the individual is engaging in criminal conduct. This standard, less stringent than probable cause, is commonly known as reasonable suspicion. In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. In making this determination, we must give due weight to the specific reasonable inferences the police officer is entitled to draw from the facts in light of his experience. Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police.

Id. In Bell, 871 A.2d at 273, the Pennsylvania Superior Court analyzed whether sufficient reasonable suspicion existed, in the totality of the circumstances, to justify a warrantless consent search of a vehicle that resulted in the finding of controlled substances within the vehicle. In its analysis, the Court simply and succinctly reasoned that, “[t]he information supplied by the confidential informant and Appellant’s appearance in the gray Toyota as predicted provided Detective Frey with a reasonable, articulable suspicion that Appellant was engaged in illegal narcotics activity.” Id.

The number of indicia leading Officer Bell to have reasonable suspicion of criminal activity in the present case is greater than, and substantively similar to, the information that led to a holding that reasonable suspicion existed in Bell. In the present case, like in Bell, Officer Bell had received information by a dependable confidential informant regarding the make, model, color, and area of registration of a

vehicle engaged in drug trafficking, and it was that exact vehicle that Officer Bell effected a stop on.

Further, Officer Bell recognized the rubber bands wrapped around one of the vehicle's control arms, and, through his experience in narcotics interdiction, recognized the rubber bands as objects often used to wrap large bundles of currency obtained through drug transactions. Finally, when asked where he was coming from, the Defendant advised Officer Bell that he was coming from "Louisa [Street]" adding, "right there where everything be happening." MVR at 4:18. Being familiar with the "400 block" as an area of heavy narcotic crime and recognizing that the Defendant had the same familiarity with the area buttressed Officer Bell's reasonable and articulable suspicion that the Defendant was engaged in criminal conduct. Because reasonable suspicion existed to justify the extended duration of the traffic stop, the analysis of the validity of the consent search depends entirely on whether the Defendant's consent was proffered voluntarily.

b. Whether Consent was Involuntary, Coerced, or the Result of an Overborne Will.

The Pennsylvania Supreme Court in Strickler set out to develop a comprehensive, though not necessarily exhaustive, list of factors which bear on the voluntariness of an individual's consent to search without a warrant. Id. at 897-902. Included in the Strickler factors are: (1) the presence or absence of excessive displays of authority by the police; (2) physical contact between the officer and the subject, or direction of the subject's movements; (3) the demeanor of the officer(s); (4) the location of the encounter; (5) the manner of officer expression in

addressing the subject; (6) the contents of officer interrogatories; (7) whether the subject was told he was free to leave; and, (8) the maturity, sophistication, and mental state of the defendant. Id.

The Motor Vehicle Recording of the traffic stop, which displays audio and visual footage of the traffic stop from start to finish, makes effective analysis of the aforementioned eight factors possible. There was certainly no assertion of excessive authority on the part of either Officer Bell or the other present officer. At no point was the Defendant spoken to in a way which would indicate that the officers were attempting to use their positions of authority to coerce the Defendant into consenting to be searched. Along the same corollary, the officers were calm and considerate while speaking to the Defendant, never raising their voices or becoming combative with the Defendant.

While it is true that the Defendant was asked to step out of his vehicle and join the two officers along the side of the road prior to the search, the traffic stop took place alongside a busy public road where a number of pedestrians were able to view the events as they transpired. A public setting, where a Defendant can find comfort in the knowledge that witnesses would likely be available in the event of wrongdoing on the part of law enforcement, certainly militates towards finding that the interaction between the officers and the Defendant was not coercive, and that it did not elicit a coerced consent to search the Defendant's vehicle.

The Defendant was told neither that he was free to leave the premises nor that he was free to refuse. Officer Bell averred at the Defendant's Omnibus Pre-Trial Hearing that this was because, with regards to the former, the Defendant was not

in fact free to leave. As noted by the court in Strickler, 757 A.2d at 901, “while knowledge of the right to refuse to consent to the search is a factor to be taken into account, the Commonwealth is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.” Id.

Regarding the final Strickler factor, at the time of his arrest, the Defendant was an adult man with experience with the adversarial criminal system. Nothing about the way that the Defendant interacted with law enforcement gave any indication that he was not of sound mind at the time of his arrest.

The only mitigating factor present is the fact that once Officer Bell asked the Defendant if he had any drugs or firearms on his person or in his vehicle and the Defendant said no, and then the Defendant answered that he didn’t mind if Officer Bell checked, Officer Bell began walking towards the Defendant’s car and the Defendant asked Officer Bell two unorthodox questions. First, the Defendant asked Officer Bell if the Defendant could remain in his car during the search, to which Officer Bell directed the Defendant to wait with the other officer while he performed the search. Then, the Defendant asked, “wait, you’re gonna search my car?” Officer Bell answered affirmatively, and the Defendant shrugged and walked towards the other officer.

Though the Commonwealth would posit that the Defendant’s second question was asked only because he was surprised that the Officer was going to follow through with his request to search, the Defendant’s two questions in tandem raise doubt as to whether the Defendant was aware of what he had consented to moments before. When Officer Bell asked a bifurcated question—whether the

Defendant had any contraband (1) on his person, or (2) in his vehicle, and proceeded to ask if the Defendant minded if he checked, it is not unreasonable to conclude that the Defendant intended to consent to a search of his person but not to a search of his vehicle. If the Defendant did not know to which area he was consenting to a search, the Defendant could not have “unequivocally and specifically consent[ed] to the search.” Commonwealth v. Reid, 811 A.2d 530, 544 (Pa. 2002).

Because it is “the Commonwealth [which] bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice,” Strickler, 757 A.2d at 901, and reasonable minds could differ as to the Defendant’s specific and unequivocal consent to a search of his vehicle, this Court finds that the Commonwealth has not satisfied its burden with regards to the voluntariness of the Defendant’s consent to search. Therefore, the police would have needed a search warrant to search the Defendant’s vehicle.

Whether Sufficient Probable Cause to Search Existed to Negate the Search Warrant Requirement.

The federal exception to the warrant requirement for automobile searches was adopted in Commonwealth v. Gary, 91 A.3d 102 (Pa. 2014). In Gary, the Pennsylvania Supreme Court held that “Article I, Section 8 of the Pennsylvania Constitution affords no greater protection than the Fourth Amendment to the United States Constitution,” and that therefore the most appropriate course of action regarding the automobile exception was to adopt it as it exists as a federal exception, which “allows police officers to search a motor vehicle when there is

probable cause to do so and does not require any exigency beyond the inherent mobility of a motor vehicle.” Id. at 104.

Probable cause exists “if the facts and circumstances within the officer's knowledge are sufficient to warrant a man of reasonable caution to believe that the suspect has committed or is committing a crime.” Bell, 871 A.2d at 273 (*citing Commonwealth v. Rogers*, 849 A.2d 1185, 1192 (Pa. 2004)). In Bell, the court depended largely on the expertise and veteran tenure of the detective, a tip received from a “reasonably trustworthy source,” and the behavior of the defendant while he was interacting with the officer.

Similarly, in the present case, there are several important characteristics of the interaction between Officer Bell and the Defendant that necessitate a finding by this Court that the probable cause present exceeded the threshold requirement to effect a vehicle search based on probable cause. First, Officer Bell had significant tenure and specialized training as a narcotics interdiction officer. Second, Officer Bell received a tip from a dependable confidential informant which corroborated all of the details of the car, including its place of registration. Third, Officer Bell further recognized the rubber bands, and he was familiar with the purpose of the rubber bands as objects often used to wrap bundles of currency obtained through drug transactions. Fourth, the Defendant advised Officer Bell that he was coming from the an area of Williamsport known for its significant volume of narcotic crime. Fifth, and finally, Officer Bell received information from dispatch which showed the Defendant's extensive criminal record, including charges for both drugs and firearms. The criminal background that Officer Bell discovered corroborated what

he would have expected of the driver of the car that matched the description received from the officer's dependable confidential informant.

Because sufficient probable cause existed to negate the warrant requirement to search the Defendant's car, this Court must find that Officer Bell's search of the Defendant's car was lawful, violating neither the Fourth Amendment of the United States Constitution nor Article I, Section 8 of the Pennsylvania Constitution and that the contraband discovered as a result need not be suppressed.

ORDER

AND NOW, this 18th day of July, 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: PD (MW)
DA (KO)