

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	:	
COMMONWEALTH OF PENNSYLVANIA	:	CP-41-CR-0001327-2017
v.	:	
	:	
EMARY MICHELLE NAJDEK,	:	SUPPRESSION
Defendant	:	

Emary Michelle Najdek (Defendant), through Counsel, filed a Motion to Suppress on October 3, 2017. A hearing was held on November 6, 2017.

Background

Defendant is charged with Delivery of a Controlled Substance (cocaine)¹, an ungraded felony; Possession with Intent to Deliver² an ungraded felony; and Criminal Use of a Communication Facility³, a felony of the third degree. The charges arise out of motor vehicle stop occurring in Old Lycoming Township, Lycoming County, Pennsylvania on June 24, 2017.

Testimony

Testimony of Officer Clinton Gardner

Officer Clinton Gardner (Gardner) is a Williamsport Bureau of Police officer who for the last 15 months has been involved with patrol interdiction. He has assisted in 150 narcotics investigations in his two years as an officer.

On June 24, 2017, he was in uniform in a marked unit patrolling in a high narcotics trafficking area. He was traveling eastbound on Park Avenue when he

¹ 35 P.S. § 780-113(a)(30).
² 35 P.S. § 780-113(a)(30).
³ 18 Pa.C.S. § 7512.

observed a red Ford Edge (vehicle) traveling northbound on Walnut. The vehicle dropped a female passenger off and then turned westbound onto Park Avenue. The passenger (Defendant) did not appear to say goodbye to the vehicle driver. Gardner testified that the driver of vehicle “ignored my presence.” Gardner radioed Officer Bell who was patrolling in an unmarked police vehicle. Gardner testified that he and Bell frequently work interdiction together. Gardner was unable to run information on the vehicle, as he did not observe the vehicle plate.

Gardner also testified that the Defendant was out of his sight quickly as “she walked eastbound on Park and then the first alley right by the Elks she turned south”. Gardner testified that his goal was to further surveil the vehicle and see what it was going to do. He maintained radio contact with Bell. Gardner testified that he advised county to notify Old Lycoming Township when he came aware that Bell was conducting an interview of the vehicle driver in the parking lot of the Advanced Auto Parts on Dewey Avenue. Gardner could not recall whether he called to ask for Old Lycoming Township’s assistance or to make them aware that two Williamsport Bureau of Police officers were conducting an investigation in their jurisdiction.

Testimony of Officer Bell

Officer Joshua Bell (Bell) has been an officer with the Williamsport Bureau of Police for six years. He worked with the Pennsylvania Attorney General regarding narcotics enforcement and returned to the Williamsport Bureau of Police in January 2017.

His experience includes working in crime suppression, interdiction, undercover, and managing controlled purchases of illegal drugs using confidential

informants. He has received training from the Attorney General, the Pennsylvania State Police, and the Federal Bureau of Investigation (FBI) in the trafficking of narcotics in Pennsylvania as well as criminal interdiction techniques and case law. The FBI, in conducting wiretaps involving narcotic trafficking, has deputized him.

Bell testified to his experience with drug abusers and those who sell drugs. He has dealt with both almost equally. He interviews and debriefs traffickers and users about the nature of how transactions are conducted. He has participated in 300-400 investigations, his own and assisting others.

On June 24, 2017, Bell was on patrol, assigned to day shift. He was operating an unmarked unit, A5, red SUV. Bell testified that the A5 looks similar to a police car. Bell was in uniform and patrolling in the center of Williamsport from Campbell Street to Market Street. This is a high crime area and the officers try to saturate the area. Bell testified that over the summer, foot traffic tended to shift into the zone between Park and Walnut where Gardner was patrolling that day. Bell testified to the observations that Gardner made and reported to him. Gardner observed a vehicle dropping off female; a relatively short interaction, where the Defendant exited the car and began walking south while, the vehicle (a Ford Edge) traveled westbound on Park Avenue.

Bell testified that he and Gardner decided to follow these individuals as they found the observed behavior consistent with the purchase of narcotics. Bell testified that in criminal interdiction there is a minimal amount of time to observe somebody's actions and what short interactions officers observe, they must then decide whether to pursue further. Gardner observed Defendant walking away from the car; the

Defendant proceeded away from vehicle after exiting and no goodbyes were exchanged. Bell also testified that Gardner reported to him that the vehicle driver was reluctant to make eye contact with Gardner. Bell testified that though a quick departure without saying goodbye and a driver not looking at a police officer are not criminal in themselves, when they are observed in area where a lot of narcotic transactions are taking place they heighten officers' suspicion. Though nobody observed Defendant being picked up, the officers believed that the Defendant was acting as a hook. Bell testified that a hook aids others in delivering narcotics and that the hand-to-hand transaction occurs in the car and it all happens relatively fast.

Bell decided to follow the vehicle driver traveling west on Park Avenue. Bell followed the vehicle for several minutes. The vehicle started leaving the city. Bell testified that "they start to get nervous when being followed and vacate the city." Bell followed the vehicle west on Park Avenue to Foy Avenue. It was around that time that Bell was going to break contact and then Bell saw the vehicle pull into Advance Auto Parts. When he realized he had opportunity to contact the Defendant he made contact with Old Lycoming Police Department to alert them that he was in their jurisdiction and to send an officer. Though Bell was not in his primary jurisdiction he continued to follow because he and Gardner believed that a felony drug transaction just took place.

Bell made contact with the vehicle operator in the Advanced Auto Parts parking lot. He situated the A5 perpendicular and 20 feet behind the vehicle of interest. Bell approached the vehicle driver and confronted him about the interaction Gardner had observed in Williamsport. Bell's emergency lights were not activated.

Bell determined that the vehicle was registered to “Joshua Reynolds” who was the driving his vehicle that date. Bell asked Reynolds about the interaction, who the female was, and how he knew her. Reynolds initially stated that it was just a girlfriend. When Bell asked him for her name, he said “Emary” “Neidig”. The first person Bell thought of was “Emary Najdek” (Defendant) as Bell knows her and it is a fairly uncommon name. Bell was familiar with Defendant from an interaction in this courtroom several years ago where she testified on behalf of another defendant and Bell had pulled Najdek over in a traffic stop.

Bell testified that Reynolds told him that he knew Defendant for several years. He stated he picked her up at the Elks on Park Avenue and they had traveled to a sub shop. When queried as to the name of the sub shop, Reynolds avoided the question. Then he said “the one in town”. Reynolds was unable to tell Bell what area or what the place looked like. Reynolds was unable to provide any specifics about the Defendant, about where they had gone or why, and ultimately the details provided did not corroborate the sandwich shop story.

Bell asked Reynolds if there were any narcotics or contraband in the vehicle. Reynolds said “no” and asked him a couple of times and Reynolds reaffirmed it. Bell asked Reynolds to consent to a search. He consented. Bell asked “There is nothing in your car?” and stated “You understand that you are allowing me to search”. Bell testified that Reynolds reaffirmed consent.

Bell conducted the consent search. During the search, Gardner arrived on the scene. Gardner talked to Reynolds while Bell was conducting the search. Bell noticed two items of interest in the vehicle: a bottle cap, which users mix heroin in or

put a socket in the center of to use as a pipe to ingest marijuana or crack cocaine. He also saw a gun holster in a woman's purse. There was no firearm in the holster. Bell asked Reynolds if he possessed firearms or drug paraphernalia. Reynolds bladed his body from view. Bell testified that most of the time when a person blades his body from view, he is concealing something in that area. The blading movement is unintentional and is a "red flag" to officers.

Reynolds as he turned started to reach into right front pocket; Bell could see a bit of a bulge in his pocket. It was clear that he had items in his pocket because he was manipulating them with his hands. Reynolds started to remove things. Bell observed a corner of plastic baggie that Bell recognized as cellophane. Bell knows that is how crack cocaine is packaged. Drug suppliers wrap the crack cocaine in cellophane and melt it to make a "baggie."

Bell patted the front of Reynolds pocket and asked him what he had. Bell could feel the metal socket. Old Lycoming Police arrived on the scene at this time. Bell took Reynolds into custody and conducted a search pursuant to arrest. In Reynolds right front pocket Bell found a bottle cap with socket with burnt mesh screening. It looked to Bell like bottle cap with socket was used to smoke crack cocaine. Bell also found three clear bags of a white rock like substance (cocaine), and a glass container with three pills that were found to be suboxone pills; and used suboxone wrappers. Following the search pursuant to arrest, Reynolds remained in police custody and was transported to police headquarters. Reynolds received his Miranda⁴ warnings that he subsequently waived. Reynolds said he knew Defendant for several years and purchased cocaine from her three times in the past. Reynolds

⁴ Miranda v. Arizona, 396 U.S. 868 (U.S. 1969).

gave police the Defendant's phone number. He said that on that date he called and texted Defendant and asked her for "hard" (crack cocaine). Reynolds told police that he picked her up at Elks, drove to Auto Zone, drove to Second Street where she got drugs, and then he dropped her off again. Reynolds stated that he had paid Defendant \$20 cash for her taking him to purchase the drugs and an additional \$80 for the cocaine. Reynolds was released at that time.

Discussion

Whether the stop of Vehicle driver was made without jurisdiction.

The Defense argues that that the Municipal Police Jurisdiction Act 42 Pa.C.S. § 8951 *et seq.* precluded Officers Gardner and Bell from conducting narcotics investigations outside their primary jurisdiction. The Commonwealth responds that paragraph (a)(5) of the general rule governing statewide municipal police jurisdiction authorized the outside of primary jurisdiction police action:

Where the officer is on official business and views an offense, or has probable cause to believe that an offense has been committed, and makes a reasonable effort to identify himself as a police officer and which the offense is a felony, misdemeanor, breach of the peace or other act which presents an immediate clear and present danger to persons or property.

42 Pa.C.S. § 8953. Statewide municipal police jurisdiction.

According to the statutory section cited by the Commonwealth, the officers would have needed to have viewed or have a probable cause to believe that a felony, misdemeanor or breach of a peace took place that presented an immediate clear and present danger to persons and property to act outside their jurisdiction. The Commonwealth presented in its argument to the Court that the encounter between Joshua Reynolds and police was a mere encounter and alternatively was supported

by reasonable suspicion, however the Commonwealth did not argue that there was probable cause during the initial interaction:

Probable cause is made out when "the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." The question we ask is not whether the officer's belief was "correct or more likely true than false." Rather, we require only a "probability, and not a *prima facie* showing, of criminal activity." In determining whether probable cause exists, we apply a totality of the circumstances test.

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

A police officer's experience may fairly be regarded as a relevant factor in determining probable cause...the officer must demonstrate a nexus between his experience and the search, arrest, or seizure of evidence. Thompson at 935. The Court finds that the officers did have the requisite probable cause to arrest Reynolds at the time of the initial interaction. Though Bell described his interaction as a mere encounter, that eventually led to arrest, the Court finds that Bell had the probable cause to arrest Defendant at the time of the initial contact in the Advanced Auto Parts parking lot.

The totality of the circumstances include that the alleged observed drug transaction occurred in high narcotic trafficking area that where officers frequently patrol and investigate. The officers testified with specificity as to the investigations they have made and their experience working in interdiction. Gardner has been involved with 150 drug investigations and Bell has more extensive training. The Court finds Bell specifically credible in establishing the nexus between his experience and the arrest of Reynolds. He described the nature of the driving transaction and how

hooks like Defendant are alleged to operate within this specific region of Williamsport. The observed behavior, of a female getting out of a vehicle and not saying goodbye to a driver, in another area might be purely innocent but in the trained and experienced eye of the drug interdiction officer it appears to be a method of drug delivery.

As the Court finds that Officers Bell and Gardner had probable cause to arrest Defendant if they had interceded upon him within their primary jurisdiction of the City of Williamsport, it finds that they had the requisite probable cause to arrest Defendant outside their primary jurisdiction in Old Lycoming Township. The drug epidemic, and specifically the heroin crisis in Pennsylvania, present a clear and immediate danger such that when officers have personal knowledge of facts and circumstances that would warrant a prudent man to believe that an offense has been committed based on their experience in interdiction and their experience patrolling this particular area of Williamsport they had probable cause to arrest Reynolds for involvement with a felony drug transaction.

Defense Counsel argues the stop of Reynolds was illegal and therefore all the evidence collected as a result of it must be suppressed. Comomnwealth v. Shabazz, 166 A.3d 278 (Pa. 2017) (evidence derived from an illegal seizure constitute fruit of the poisonous tree unless the taint is removed). Because the Court finds police action to be legal, there is no taint to be removed and the evidence will not be suppressed.

Conclusion

As the initial encounter with Joshua Reynolds was supported by the required level of suspicion, probable cause, for Bell to act outside of his jurisdiction, the evidence collected as a result of that interaction will not be suppressed.

ORDER

AND NOW, this 11th day of January, 2018, for the reasons stated in the foregoing opinion, the Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Nicole Spring, Esquire
Nicole M. Ippolito, Esquire
Gary Weber, Esquire