

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-12,135
:
:
vs. : CRIMINAL DIVISION
: Motion to Suppress
CLINT MARTIN WALKER, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant’s Motion to Suppress, filed March 22, 2002. A hearing on the Motion was held April 22, 2002.

Defendant has been charged with possession with intent to deliver cocaine, possession with intent to deliver marijuana¹, possession of cocaine, possession of marijuana, possession of drug paraphernalia and driving while operating privilege suspended. The charges arose after Defendant was questioned by police in the parking lot of the Sunshine Six Pack store on Broad Street in Montoursville, the police learned that his license was suspended but had observed him driving a vehicle, and a subsequent search of that vehicle and his residence turned up the drugs in question. In his Motion to Suppress, Defendant contends the initial detention of Defendant was without supporting reasonable suspicion, that the search of his person was not supported by the requisite belief that he was armed and dangerous, and that the search of the vehicle was not supported by valid consent. The Court does not reach the latter issues, as it appears there indeed was no reasonable suspicion for the stop, which does appear to be properly classified as an “investigative detention”.

In order to determine whether a particular encounter constitutes an investigative detention, and thus a “seizure”, rather than a mere encounter, all circumstances surrounding the encounter must be considered to determine whether the police conduct would have communicated to a reasonable

person that he was not free to decline the officer's request or otherwise terminate the encounter. Commonwealth v Vasquez, 703 A.2d 25 (Pa. Super. 1997); Commonwealth v Lewis, 636 A.2d 619 (Pa. 1994). If an encounter is indeed determined to constitute a seizure, such must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity. Commonwealth v Vasquez, *supra*. From the evidence introduced at the suppression hearing, the Court finds that the questioning of Defendant constituted a seizure, rather than a mere encounter.

The encounter began when officer Kurt Hockman, of the Montoursville Borough Police, observed Defendant loading things into a van outside of his residence. He then positioned his vehicle in a parking lot across the street in order to continue to observe Defendant. According to Officer Hockman, the residence was in an area of suspected drug activity. Officer Hockman saw Defendant get into the van and pull away from the residence and Officer Hockman then followed him. He observed Defendant pull the van into the parking lot of a small market, stay for several minutes, come out without apparently having purchased anything, and drive away. Officer Hockman again followed Defendant and observed him pull into an adjacent small market, the Sunshine Six Pack, get out of his van and go into the store. Officer Hockman pulled his police vehicle into the parking lot of the Sunshine Six Pack and parked the police vehicle next to the pay phone at the corner of the building. Along the way from Defendant's residence to the Sunshine Six Pack, Officer Hockman alerted other officers on patrol in Montoursville that he was watching Defendant and those officers proceeded to the area of the store. Officer Hagemyer arrived in the vicinity and parked across the street from the store, remaining in his vehicle to observe Defendant. Officer Bonnell arrived in the vicinity and actually pulled into the parking lot of the Sunshine Six Pack, exiting his vehicle upon his arrival. According to Officer Hockman, from the time Officer Hockman pulled into the store's parking lot until Officer Bonnell pulled into the parking lot, Officer Hockman observed Defendant go into the store, come back out of the store, make a telephone call on the pay phone, overheard part of the conversation which included a request by Defendant to whomever he called to "come pick me up", saw Defendant go back into the store and then come out of the store again, this time talking on a cell phone. At that

¹ This charge was dismissed by the District Justice after the preliminary hearing.

point Officer Bonnell pulled into the parking lot and exited his vehicle, approaching Defendant. Officer Hockman also at that point exited his vehicle and approached Defendant, and Officer Hagemyer, positioned across the street, exited his vehicle and proceeded across the street toward the two officers and Defendant. Officer Bonnell asked Defendant if he had waved at him and Defendant responded “no”. Officer Bonnell asked Defendant if he needed his help. Defendant responded that he did not need his help, that if he needed any help he would have asked Officer Hockman, although he did not refer to him by name, simply indicating “him”, apparently referring to Officer Hockman, who had been sitting in the parking lot observing Defendant all the while. Officer Bonnell then asked Defendant for his name and Defendant gave his name. Officer Bonnell then asked Defendant what he was doing there and Defendant indicated he had ordered some food and was waiting for his girlfriend to pick him up. Officer Hagemyer then went into the store, and confirmed that Defendant had indeed ordered food. Meanwhile, Officer Bonnell ran a check on Defendant’s name, learned his license was suspended, and indicated such to Officer Hockman who then began issuing him a citation for driving under suspension. Officer Bonnell then began asking questions of Defendant regarding registration of the van, learned that the van was leased by his girlfriend, had County Communications contact the leasing company, who asked that the van be secured, as Defendant did not have permission to drive the van. The officers requested consent to search the vehicle from the leasing company, which was granted. Defendant was then released and the van was taken to the Montoursville Borough Office. Upon searching the vehicle, cocaine was discovered. The officers then proceeded to Defendant’s residence, arrested Defendant, obtained his consent to search his residence and discovered marijuana.

Examining the situation as a reasonable person in Defendant’s shoes, the Court believes such a person would not have felt free to decline the officer’s request or otherwise terminate the encounter. While ordering his food and making several telephone calls, Defendant was aware of Officer Hockman’s presence, in full uniform in a marked police vehicle, close enough where he could overhear Defendant’s conversation. Across the street from Defendant a second officer had arrived and began observing Defendant’s behavior. All of a sudden, three officers, all of them in full uniform and who all arrived separately in marked police cruisers, approached Defendant at once. One of the officers asked Defendant if he had waved at him and if he needed his help, even though Defendant had

not waved to the officer.² After answering the officers' questions and indicating that he did not wave to him and that he did not need his help, the officer continued to question Defendant, even though he was still engaged in a conversation on his cell phone, asking his name and what he was doing there. Indeed, Defendant testified at the suppression hearing that he felt he was not free to leave, particularly in light of the officer's tone of voice. Considering Officer Hockman's indication that he followed Defendant in order to be able to find a reason to stop him, and that he had communicated such to the other officers, the Court believes the officer's manner and tone of voice very likely could have conveyed such a sense of compulsion to answer.

As an investigative detention, or seizure, the encounter must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity. The only basis for the encounter given by the officer was that Defendant went into and out of a store without apparently purchasing anything, went into and out of another store without apparently purchasing anything, and called someone to come pick him up even though he had driven to the store. Even combined with Officer Hockman's testimony that Defendant's residence was located in an area of suspected drug activity, the basis given by the officer does not constitute a reasonable suspicion that criminal activity is afoot. The investigative detention was therefore unjustified and all evidence obtained as a result therefrom must be suppressed as having been obtained in violation of Defendant's constitutional rights.

ORDER

AND NOW, this 7th day of May, 2002, for the foregoing reasons, Defendant's Motion to Suppress is hereby granted and all information and evidence obtained as a result of the encounter shall not be admissible at trial.

By the Court,

² Although the testimony in this regard is conflicting, the Court credits Defendant's testimony that he did not wave to the officer. Officer Hagemyer testified that he was watching Defendant and did not see him wave to Officer Bonnell. Further, Officer Hockman was sitting in the parking lot right next to Defendant and Defendant would have had no reason to wave to Officer Bonnell. While Officer Bonnell may have believed Defendant had waved at him, the Court considers the matter from Defendant's point of view.

Dudley N. Anderson, Judge

cc: DA
Michael Morrone, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson