IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH	:	
	:	
v.	:	No.: 01-10,179
	:	
DYHUE INGRAM,	:	
Defendant	:	

OPINION AND ORDER

On January 5, 2001, Defendant was charged with Possession with the Intent to Deliver a Controlled Substance and related offenses arising out of a motor vehicle stop by Officer Richard Shearer of the Hughesville Police Department. Defense Counsel filed a Motion to Suppress Evidence on March 30, 2001. After one continuance granted by this Court, the rescheduled Motion was dismissed for the defendant's failure to attend the suppression hearing on June 25, 2001. Subsequently, a bench warrant was issued for the defendant's failure to appear for Criminal Case Monitoring on July 31, 2001. The Defendant was apprehended on the warrant and brought before the Court on January 17, 2003. Present Defense Counsel retyped and re-filed the original Motion to Suppress on April 9 2003. An evidentiary hearing on the re-filed suppression motion was held June 30, 2003.

Initially, the Commonwealth argues that the Defendant's motions should be dismissed because they were filed long outside of the time permitted by the Pennsylvania Rules of Criminal Procedure for filing such

motions under Rule 579. The Commonwealth also argues that the Defendant filed a substantially similar motion on March 16, 2001 that was dismissed on June 25, 2001 when the Defendant failed to appear at the date and time set for the original motions. Additionally, the Commonwealth cites Pa.R.Crim.P. 581(J), which provides that if the court determines that evidence shall not be suppressed, that decision is final and conclusive. This Court finds that although the original suppression motion was dismissed over two years ago the motion was not dismissed on the merits. The Court therefore does not believe that the earlier decision should be final and conclusive. The Court will therefore deny the Commonwealth's oral Motion to Dismiss.

The testimony presented at the hearing was as follows. Officer Richard Shearer of the Hughesville Borough Police Department testified that on January 5, 2001 he made a vehicle stop on a vehicle in which Defendant was a passenger. The driver was unable to provide any registration or insurance information, but the Defendant informed the officer that he, Defendant, was the owner of the vehicle. Defendant then did provide Shearer with an improperly completed title to the vehicle, purporting to show a transfer of the vehicle to him from a Duane Smart. Shearer issued citations to the driver and then offered a ride to the driver and the Defendant since they would not be permitted to continue driving their uninsured and unregistered vehicle. The Defendant and his driver accepted the offer and got into the back of the heated police cruiser because it was a cold night. Shearer testified that before they left the scene he asked the Defendant if he could search the vehicle prior

to leaving it by the side of the roadway. Shearer also asked whether there was anything in the vehicle that "shouldn't be there." Shearer testified that the Defendant responded, "No, search it." Shearer searched the vehicle and discovered six small cigarettes of marijuana or "roaches", in an area, which would have been within reach of both the driver and Defendant. Shearer seized these items and then, without mentioning them to the Defendant or his companion, transported Defendant and the driver to the police station where they were permitted to make telephone calls in an attempt to secure transportation. While Defendant and the driver were making telephone calls, Shearer field tested the roaches and discovered that they tested positive for marijuana. Officer Shearer then placed the Defendant and the driver under arrest. He mirandized the Defendant and then proceeded to strip search him, discovering in his crotch area a clear plastic bag containing seventeen (17) smaller plastic bags which contained a substance which field tested positive for cocaine. Defendant testified that the events unfolded in a manner substantially similar to those described by Officer Shearer except that he emphatically claimed that at no time did he give the officer permission to search his vehicle.

Defendant's issues are threefold: first, Defendant asserts that, at the time of the vehicle stop giving rise to these charges, he made incriminating statements which should be suppressed as they were elicited in violation of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Second, Defendant complains that the vehicle in which he was riding was

illegally searched and therefore items found within the vehicle should be suppressed. Finally, Defendant asserts that because the officer lacked probable cause to arrest him, the officer illegally conducted a search of him incident to arrest and the evidence found must be suppressed.

MOTION TO SUPPRESS STATEMENTS

Defendant does not specify in his motion which statements he seeks to have suppressed. He refers to the first three charges of the information having been filed "based in part on . . . statements alleged to have been made by the defendant while in police custody but prior to his arrest." This Court will presume that the statements referred to are those which reference the Defendant's ownership of the vehicle, made while the Defendant was seated in the passenger seat of the vehicle and while the officer was gathering information for the purpose of issuing traffic citations. It is clear from the record that the Defendant was not read any Miranda warnings prior to the time that he made the statement. However, it is equally clear from the record that at the time the statements were made, the officer's purpose in obtaining the information was to verify the registration and insurance status of the vehicle, upon which he had just conducted a vehicle stop. The issue for the Court is whether the facts of this case are such that the Defendant was entitled to be read his Miranda rights prior to being asked for any information.

An initial stop of a vehicle to investigate a Motor Vehicle Code violation does not constitute an arrest. Commonwealth v. Schatzel, 724

A.2d 362, 365 (Pa.Super. 1998). ("Traffic stops, like Terry stops, constitute investigative rather than custodial detentions, unless under the totality of circumstances the conditions and duration of the detention become the functional equivalent of an arrest.") quoting Commonwealth v. Gommer, 445 Pa. Super. 571, 665 A.2d 1269, 1274 (Pa. Super. 1995), appeal denied, 546 Pa. 676, 686 A.2d 1308 (1996). Commonwealth v. Proctor, 441 Pa.Super. 176, 657 A.2d 8, 11 (Pa.Super. 1995). The Miranda decision established that a person must be warned of his Fifth Amendment rights before any "custodial interrogation" takes place, and that "custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda, 384 U.S. at 444, 86 S.Ct. at 1612. In this case, the Court finds that the Defendant's detention at the time when he made statements to the police concerning his ownership of the vehicle in which the marijuana was eventually found does not rise to the level of a custodial detention. At the time the statements were made, the Defendant was a passenger in a vehicle that had been stopped because of a traffic violation. The stop occurred by the side of the road, was brief in duration, and did not involve the transfer of either the Defendant or the driver to another location prior to the statement. There was no testimony from either the officer or the Defendant that there was any show, threat or use of force. The Court therefore determines that the statements were not coerced.

MOTION TO SUPPRESS EVIDENCE (SEARCH OF THE VEHICLE)

The Defendant next contends that the marijuana roaches found in the vehicle must be suppressed as "the fruits of an unwarranted and unlawful search." He claims that the search of the vehicle in which he was a passenger violates his rights under both the Fourth Amendment of the United States Constitution and Article 1, § 8, of the Pennsylvania Constitution. He supports this conclusion with his assertion during his testimony at the hearing in this matter that at no time did he give Officer Shearer consent to search the vehicle.

The Fourth Amendment to the United States Constitution protects the citizens of our country against unreasonable searches and seizures, including those entailing only a brief detention. United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) (opinion announcing the judgment of the Court). The Pennsylvania Constitution's counterpart to the Fourth Amendment, Article I, § 8, "guard(s) individual privacy rights against unreasonable searches and seizures more zealously than the federal government does under the Constitution of the United States." Commonwealth v. Melilli, 521 Pa. 405, 555 A.2d 1254 (1989). The purpose of exclusionary rule under the Fourth Amendment is to deter police misconduct. However, the purpose of exclusionary rule under Article I, § 8 is to protect the implicit right to privacy, which is guaranteed under the Pennsylvania Constitution. Commonwealth v. Mason, 535 Pa. 560, 637 A.2d 251 (1993).

First, the Court notes that a search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); Commonwealth v. Perry, 569 Pa. 499, 798 A.2d 697 (2002). Voluntary consent is one such established exception under both the United States and the Pennsylvania Constitutions. See Schneckloth, supra, Commonwealth v. Gibson, 536 Pa. 123, 638 A.2d 203 (1994). Fourth Amendment inquiries in cases where the Defendant raises the issue of consent involve assessment first of the constitutional validity of the encounter between the Defendant and the police which gives rise to the consent**;** and, ultimately, an assessment of whether the consent was voluntary. Gibson at 132, 207; see also Commonwealth v. Cleckley, 558 Pa. 517, 738 A.2d 427 (1999). Similarly, in Pennsylvania, "(w)here the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus.

In this case, there is no issue as to the lawfulness of the underlying encounter. A police officer in the Commonwealth of Pennsylvania may stop a vehicle where he or she has observed a violation of the Vehicle Code. 75 Pa.C.S. Section 6308. The question then becomes whether the consent to search the vehicle obtained by the officer from the Defendant was voluntarily given. When evaluating voluntariness of consent, the totality of the circumstances must be evaluated.

Commonwealth v. Strickler, 563 Pa. 47, 757 A.2d 884 (2000). No hard and fast list of factors showing voluntariness of consent exists. However, the Court should consider "1) the defendant's custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant's knowledge of his right to refuse to consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel." Commonwealth v. Gillespie, 821 A.2d 1221 (Pa. 2003), *citing* Commonwealth v. Cleckley, 558 Pa. 517, 738 A.2d 427 (1999). The Pennsylvania Supreme Court holds that "in evaluating a consensual encounter that follows a traffic or similar stop, a central consideration will be whether the objective circumstances would demonstrate to a reasonable citizen that he is no longer subject to domination by police," Strickler, id., at 75, 899, and provided that 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." Id. at 79, 901.

After review of the facts, the Court finds that the Defendant was not in custody at the time that he granted consent to search the vehicle. The Defendant and the driver of the vehicle had been told that they would not be permitted to drive the vehicle any further because it was not insured. They were offered a ride in the police cruiser and were in the cruiser when

the officer asked if he could search the vehicle. He was not compelled in any way to accept the offer of a ride. It is also clear from the testimony that the officer did not coerce the Defendant into consenting to a search, nor was the Defendant in a state of duress at the time that consent was requested. At the time of the hearing, the Court found the Defendant to be a reasonably intelligent individual. While testifying, it was clear that he could easily understand the questions posed to him and their implications. It can also be drawn from the testimony of both the officer and the Defendant that the Defendant was quite cooperative with the officer at the time of the vehicle stop. When Shearer could not establish the registration and insurance information on the vehicle while speaking with the driver, the Defendant offered the information to him. He later accepted the offer of a ride from the scene because the uninsured car could not be driven. They were not constrained in any way to accept the officer's offer of a ride from the scene. The Court is satisfied the Commonwealth has met its burden in this case of showing that the consent to search was the product of essentially free and unconstrained choice.

MOTION TO SUPPRESS EVIDENCE (SEARCH OF DEFENDANT)

Lastly, Defendant asserts that Officer Shearer lacked enough lawfully obtained evidence to form probable cause to believe that the Defendant had committed a crime and had no right to arrest him or search him incident to that arrest. Defendant reaches this conclusion by claiming that Officer Shearer had no probable cause to arrest the Defendant after

issuing the traffic citations to the driver of the vehicle in which he was riding. For the reasons set forth above, the Court makes a specific finding that at the time that the Defendant was seated in the police cruiser he was not under arrest. Rather, the Defendant was availing himself of a ride to the police station to use the telephone since he could not leave the scene in the uninsured vehicle. The fact that Shearer found the marijuana in the car after the Defendant and his companion were in the police cruiser does not change this determination. It is clear from the testimony of both the officer and the Defendant that he was not placed under arrest until after the officer had field-tested the roaches and found that they tested positive for the presence of marijuana. However, Defendant also alleges that there is no evidence, which establishes his constructive possession of the alleged contraband, and consequently no probable cause to arrest.

The Pennsylvania Supreme Court has defined constructive possession as "the ability to exercise a conscious dominion over the illegal substance: the power to control the contraband and the intent to exercise that control." Commonwealth v. Valette, 531 Pa. 384, 613 A.2d 548 (1992), citing Commonwealth v. Macolino, 503 Pa. 201, 206, 469 A.2d 132, 134 (1983). Additionally, the Pennsylvania Supreme Court has held that “(c)onstructive possession may be found in one or more actors where the item in issue is in an area of joint control and equal access.” Commonwealth v. Murdrick, 510 Pa. 305, 507 A.2d 1212 (1986).

In this case, the Court finds that the marijuana discovered by the Shearer during the search of the vehicle was in an area in which both the Defendant and the driver exercised dominion and control. Additionally, the Defendant had volunteered the information that he considered himself to be the owner of the vehicle. The Court finds that, taken together, the Defendant's constructive possession of the marijuana is properly inferred from the totality of the circumstances. Defendant's constructive possession of the contraband as well as the positive field test obtained by the officer constitutes probable cause for Defendant's arrest on the first two charges of the complaint.

ORDER

AND NOW, this 11th day of August, 2003, based upon the foregoing, it is ORDERED and DIRECTED that the Commonwealth's oral motion to dismiss the Defendant's Motions to Suppress filed April 15, 2003 as untimely or in the alternative to dismiss his motions under Pennsylvania Rule of Criminal Procedure 581(J) is DENIED. It is further ORDERED and DIRECTED the Defendant's Motions to Suppress as filed on April 15, 2003 are DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (RF)
James Cleland, Esquire
Judge Nancy L. Butts
Court Scheduling
Gary Weber, Esquire
Diane L. Turner, Esquire