

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 04-10,699
:
vs. : CRIMINAL
:
TYRONE WILLIAMS, : Motion to Suppress
Defendant :

ORDER

AND NOW, this ___ day of November 2004, the Court DENIES the defendant's Motion to Suppress Evidence. The Court finds the cases cited by defense counsel are distinguishable from the case at bar. Defense counsel relied on Commonwealth v. Freeman, 563 Pa. 82, 757 A.2d 903 (Pa. 2000), Commonwealth v. Key, 789 A.2d 282 (Pa.Super. 2001), and Commonwealth v. Lopez, 415 Pa.Super. 252, 609 A.2d 177 (Pa.Super. 1992). In Key, the officers informed the defendant that he was being **stopped** as part of an investigation into drug activity and they had his background checked. These facts led the Superior Court to conclude that a reasonable person would believe the police were restraining his freedom of movement. In Lopez, the defendant was not free to leave because the police officer still had possession of the defendant's license and the leasing agreement for the truck he was driving. In Freeman, while the officer told the defendant she was free to leave, the officer subsequently ordered her out of her vehicle and questioned her further prior to requesting her consent to search. The Pennsylvania Supreme Court found that the defendant was seized by the police officer at the time he requested her consent to search.¹

1 The Freeman case is difficult to apply and interpret because it acknowledges that the initial traffic stop was legitimate under the constitution, but then finds an unlawful seizure occurred minutes later based on "the transition to and character of the subsequent interaction." 563 Pa. at 90. Most important to the Freeman Court was that the state trooper, after questioning the defendant, asked the defendant to step out

Here, the police told the defendant he was free to leave and the defendant had taken a step or two away before the police asked whether they could search him. Thus, unlike Freeman, Lopez, and Key, the defendant was not seized or restrained by the police when they asked if they could search him. Furthermore, during his taped interview at the police station, the defendant admitted the police told him he was free to leave, he consented to the search and the only thing the police did to obtain his consent was ask him whether they could search him. Based on the evidence presented at the suppression hearing, including the defendant's videotaped statement, the Court finds the defendant was not seized or detained by the police at the time they asked for his consent and the defendant gave his consent knowingly and voluntarily.

By The Court,

Kenneth D. Brown, P.J.

cc: Nicole Spring, Esquire (APD)
Henry Mitchell, Esquire (ADA)
Work file
Gary Weber, Esquire (Lycoming Reporter)

of her vehicle prior to the request for consent. In the instant case, the police told the defendant he could leave, but then they asked the defendant whether they could search him. The Court does not believe simply making this request to the defendant turned the interaction into a seizure.