

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. 03-11593**  
: **vs.** : **CRIMINAL**  
: **FRANK L. FLIPPEN,** :  
: **Defendant** : **Motion to Suppress**

**OPINION AND ORDER**

This matter came before the Court on the Defendant's Motions to Suppress filed on December 18, 2003 and March 10, 2004. The relevant facts follow.

At about midnight on October 14, 2003, the Williamsport Police received a report of a robbery, which had occurred at 1220 Vine Avenue that involved a home invasion by two (2) perpetrators, both black, each with a handgun. The Williamsport Police were sent to investigate. The dispatch was a triple tone dispatch, which means the robbery had just occurred. Officer Raymond Kontz and Officer Debra Wasilauski responded to the scene to speak with the two (2) victims at the residence. The victims told the officers that a black female and a black male came into their residence. Each perpetrator carried a handgun. The male had a silver and black semiautomatic pistol. Both perpetrators pointed their guns at the victims, Shawn MacDonald and Andrew Weyant. Money and a bankcard were taken from the victims. The responding Officers took a detailed description of perpetrators, which was relayed to officers in the field. Officer Kontz reported that the black male was approximately six (6) feet tall and weighted 200 pounds. He wore a white polo shirt with horizontal stripes, possibly yellow or blue. The female wore fleece shirt and a white hat and her hair was sticking out from under the hat. In response to the robbery, the Williamsport Police and

other police in the area, including the Penn College Police,<sup>1</sup> set up a perimeter looking for the perpetrators of the robbery.<sup>2</sup>

At about 12:22 a.m., a call came into the Williamsport Police Department reporting a burglary at an apartment located at 1107 West Fourth Street. This radio call was also a triple tone call. This location is in the vicinity of the 1100 block of Vine Avenue. Lt. David Bailey was the watch commander of the midnight to 8:00 a.m. shift on October 14, 2003. He was the Senior Officer on duty. He was aware of the robbery report on Vine Avenue. Lt. Bailey traveled in his vehicle to 1107 West Fourth Street. Upon arriving at the front of the apartment building, he saw an excited group of individuals, who told him the individuals involved in the burglary were in back of the building in a small red car and that they were leaving the scene. Lt. Bailey immediately radioed to all officers that a red vehicle with the possible perpetrators of the burglary was going south or east or west on Vine Avenue so a vehicle stop could be made.<sup>3</sup> Lt. Bailey talked with Samuel Smith who was one of the alleged victims of the burglary. Mr. Smith indicated that the individuals who committed the burglary were in a red vehicle in back of the building and that the vehicle was leaving the scene.

Lt. Bailey then ran to the back of the row-house apartment building to check on the suspect vehicle where he met Matt Smith, brother of Samuel Smith. Matt Smith was outside a small red car that contained three black individuals. Lt. Bailey confirmed from Mr. Smith that he had called in the burglary report. Mr. Smith advised the Officer that, contrary

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1 Penn College, a local institution of higher learning affiliated with the Pennsylvania State University, is situated in the same neighborhood as the locations of the crimes in this case.

2 The facts in this opinion are taken from the testimony of the Officers at the Suppression hearing held March 12, 2004 and the police reports and affidavits entered into evidence at the hearing.

3 The Court assumes that in Lt. Bailey's radio dispatch concerning the travel of the suspect vehicle he was

to what Samuel Smith told him, the individuals in the car were not the ones involved in the burglary, because he knew the driver Frank and they were just looking for a party. Based on this comment, Lt. Bailey allowed the small car with the three (3) occupants to leave the scene. Lt. Bailey radioed to other officers that they should not stop this vehicle if they encountered it.

However, just as the vehicle left, Lt. Bailey engaged Matt Smith in some further conversation as to how well Mr. Smith knew Frank, the driver of the vehicle. Mr. Smith did not know Frank's last name. Mr. Smith indicated all he knew about Frank was that he had a class with him. Based on the limited knowledge offered by Matt Smith, Lt. Bailey felt that the small red vehicle should be stopped by other police units to further investigate this matter and he radioed the message to stop this vehicle to determine the identity of the occupants.

Lt. Bailey proceeded to investigate the burglary. Sam Smith provided the registration numbers for the vehicle, which Mr. Smith had written on his hand. He established from Matt and Samuel Smith how the perpetrators entered the apartment through a window and he was told that a Dell laptop computer was taken. Lt. Bailey also learned that the Penn College police had stopped the suspect car and confirmed the registration of the stopped car matched the registration information provided by Samuel Smith.

Sgt. William Chubb of the Penn College police was in his vehicle with his partner, Officer Devon Thompson. They received the radio request for assistance from the Williamsport police for both the robbery and burglary incidents. The location of both incidents was close to Penn College so they had concurrent jurisdiction with the

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projecting possible routes of travel away from the scene of the crime.

Williamsport police. Thus, he looked for the vehicle described by Lt. Bailey in his radio dispatch. Shortly after Lt. Bailey allowed the small red vehicle to leave the apartment parking lot, Penn College Police Chief Clay Bies, who was in the area on foot, radioed Sgt. Chubb that he saw the subject vehicle travel through the Bi Lo parking lot to West Fourth Street. Sgt. Chubb then observed the vehicle's heading north on Susquehanna Street. At that time, they began to follow the vehicle, which they had tracked from the time Lt. Bailey permitted the vehicle to leave the back of 1107 West Fourth Street.

About this time Lt. Bailey radioed that they need not stop the vehicle. However, in matter of seconds Lt. Bailey radioed that the vehicle should be stopped as it could possibly be involved in the burglary incident. Therefore, Sgt. Chubb stopped the vehicle in the 900 block of Park Avenue.<sup>4</sup> The vehicle registration matched the registration provided by Lt. Bailey on the radio.

After stopping the vehicle, Sgt. Chubb approached the driver and asked for license, registration and insurance information. The operator did not have a license or identification and stated it was in his mother's car. The operator gave his name as Frank Flippen. Three black individuals were in the vehicle. Upon observing the individuals, Sgt. Chubb "immediately" knew two of the occupants matched the description of the robbery on Vine Avenue. Mr. Flippen matched the description of the male robber and the black female, who was wearing a white hat, matched the description of the female robber. Sgt. Chubb and Officer Thompson then handled the stop as a "high risk" stop and they advised the suspects to keep their hands where the officers could see them. They also called the Williamsport

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<sup>4</sup> Officer Devon Thompson testified or cross-examination that the subject vehicle was driving suspiciously and went through several stop signs. He also said the vehicle was traveling above the speed limit. The Court is hesitant to accept this additional information because it was neither testified to by Sgt. Chubb nor contained in

police for back up.

Sgt. Raymond Kontz of the Williamsport Police Department, who earlier had responded to the robbery and interviewed the victims, immediately appeared at the scene of the stop since he was coming from Vine Avenue. He confirmed the vehicle occupants matched the description of the robbery suspects, including the clothing described by the robbery victims. He agreed the matter should be treated as a felony stop and he ordered the individuals in the vehicle to separately exit the vehicle. The officers had the occupants leave the doors of the vehicle open upon exiting the vehicle so the officers could confirm no one else was present in the vehicle.

Subsequently, Sgt. Chubb walked closer to the vehicle whereupon he clearly observed a lap top computer and a chrome handgun, which matched the description of the gun used in the robbery. The computer was under the front passenger seat. Part of the computer was visible where it was placed under the seat. The gun was seen underneath the driver's seat. Both were clearly seen by all the officers when they walked around the vehicle. Sgt. Kontz was aware a laptop computer had been stolen in the burglary at the apartment at 1107 West Fourth Street. Lt. Bailey also arrived at the scene of the vehicle stop and observed the laptop computer in the vehicle. The victims of the robbery were called to the scene and they identified Frank Flippen and the female passenger as the two individuals who had robbed them at gunpoint. At that time, the police placed the defendant under arrest and had his vehicle towed to the police garage. The Williamsport police obtained a search warrant for the vehicle and seized several items, including two handguns, the laptop

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his police report. Officer Thompson did not write a police report in this matter.

computer and a bandana, pursuant to the search warrant.<sup>5</sup>

The basic issue raised by Defendant Flippen in his suppression motion is the constitutional validity of the stop of his motor vehicle. He argues the stop was unlawful and he requests the Court suppress all evidentiary facts derived from the initial stop of his vehicle.

Where a motion to suppress is filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible. Commonwealth v. Hamilton, 543 Pa. 612, 614 (1996). It is also clear that when the police stop a moving vehicle for investigatory purposes, the vehicle and its occupants are considered “seized and this seizure is subject to constitutional constraints”. Commonwealth v. Bowersox, 450 Pa.Super. 176, 675 A.2d 718, 720 (1996) quoting Commonwealth v. Knotts, 444 Pa.Super. 60, 653 A.2d 216, 218 (1995). To constitute a valid stop and investigative detention, the stop of a vehicle must be justified by an articulable reasonable suspicion that the parties in the vehicle may have been engaged in criminal activity. The reasonable basis or suspicion required to justify a stop is less stringent than probable cause, but the detaining officer must have more than a mere hunch as the basis for the stop. See Commonwealth v. Anderson, 753 A.2d 1289, 1293(Pa.Super. 2000).

In considering the issue presented, the Court will look at the evidence and the

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<sup>5</sup> On cross-examination, Sgt. Kontz said he believed the actual color of the stopped vehicle in question was green. The Court doesn't think this discrepancy is of great moment to the legal issues involved since the registration of vehicle stopped by the Penn College police matched the registration number given by Lt. Bailey on the radio and there was thorough surveillance of the Defendant's vehicle as it left the area of the burglarized apartment and 1107 West Fourth Street until the stop was effected by the Penn College police.

actions of the police officers in a common sense, non-technical manner. The police were responding to two felonies in progress. The two (2) felonies occurred in reasonably close proximity to each other and the police were setting up a perimeter in the area in an effort to apprehend the perpetrators of the crimes before they could safely escape from the vicinity of the crime scenes. Once a suspect is able to escape from a crime area, the chances of solving a crime will greatly diminish. It should also be noted how quickly the events occurred from the time of Lt. Bailey arriving at the scene of 1107 West Fourth Street.<sup>6</sup>

When Lt. Bailey came to the scene of the burglary in progress and talked to one of the victims, Samuel Smith, in front of the apartment building, Mr. Smith told him the perpetrators of the crime were out back and leaving in a small red car. This information would justify an investigative stop of the vehicle to determine whether the occupants were involved in the crime. Thus, Lt. Bailey appropriately radioed to other police units to look for this vehicle.

The case takes a more complex turn however, when Lt. Bailey sees the vehicle in back of the apartment but is told by Matt Smith, the victim's brother, that the people in the vehicle were not involved in the burglary because he knew the driver, which caused Lt. Bailey to let the vehicle leave. However, when Lt. Bailey immediately thereafter closely questioned Matt Smith about how well he knew the Defendant, it became apparent that Matt Smith did not know the Defendant well. It is understandable that Lt. Bailey would again request a brief stop of the Defendant's vehicle to determine the identities of all the parties and investigate the situation further before the vehicle left the vicinity. Although the

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<sup>6</sup> The speed of the events confronting Lt. Bailey was illustrated when the Court questioned the officer. Lt. Bailey referred to the situation when he arrived as being "fast and furious". Lt. Bailey explained that he was,

Court does not believe the police had probable cause to arrest the Defendant at the time of the stop, the Court finds there was enough information to justify the stop under the circumstances of this case.

Once the Penn College police stopped the Defendant's vehicle, the investigative stop quickly developed probable cause that the Defendant and the female in the car were involved in the robbery at 1200 Vine Avenue. This probable cause entitled them to order the car occupants to exit the vehicle, which further led to the plain view observation of a gun that matched the description of one of the guns used in the robbery and a laptop computer consistent with the property stolen in the 1107 West Fourth Street burglary. These observations then led to the identification of the perpetrators of the robbery by the two victims of the robbery.

In conclusion, as stated in the case of Commonwealth v. Freeman, 503 Pa. 82, 757 A.2d 903 (2000):

The question of whether reasonable suspicion existed at the time of a detention must be answered by examining the totality of the circumstances to determine whether there was a particularized and objective basis for suspecting the detainee of criminal activity.

Id. at 90, 757 A.2d at 908. The Court believes when the totality of all the circumstances are considered in the instant case, Lt. Bailey had a reasonable suspicion for making an investigative stop of the Defendant's vehicle. Within moments of this stop, the police made observations of the vehicle's occupants that gave them probable cause to believe that the Defendant and his female companion were involved in the robbery at Vine Avenue.

Accordingly, the following Order is entered:

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"trying to get time to sort it out, there was no time to sort it out."



**ORDER**

AND NOW, this day of May 2004, the Court DENIES the defendant's  
Motion to Suppress.

By The Court,

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Kenneth D. Brown, P.J.

cc: Mary Morris, Esquire  
Robert Ferrell, Esquire (ADA)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)