

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

COMMONWEALTH

v.

**DONOVAN FENTY,
Defendant**

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No.: 04-11,095

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress filed November 4, 2004. Defendant is charged with Intent to Deliver, Possession of a Controlled Substance, Possession of Drug Paraphernalia and Required Lighting. These charges stem from a vehicle stop of Defendant by Williamsport Bureau of Police (WBP) on June 19th 2004. The Officer stopped the Defendant for a lighting requirement violation, issued a warning and told him he was free to leave. The Officer then asked Defendant's permission to search the vehicle and Defendant consented. Officer did search the vehicle and found two bags of cocaine.

Defendant argues that the search was improper since it was pursuant to an invalid consent. The consent was invalid, the argument continues, since the detention at the time the consent was given was in violation of Defendant's Fourth Amendment rights. Defendant's argument is basically that the investigatory stop for the lighting violation was improper. Further, even if the original stop was proper, after the Officer informed Defendant he was free to go, the subsequent interaction between Officer and Defendant was no longer lawful and resulted in an invalid consent.

“The Fourth Amendment inquiries in consent cases entail a twoprong [sic] assessment: first, the constitutional validity of the citizen/police encounter giving rise to the consent and, second, the voluntariness of said consent.” *Commonwealth v. Johnson*, 2003 Pa.Super 365, 833 A.2d 755, 759 (2003). “Where the purpose of an initial, valid traffic stop has ended and a reasonable person would have believed that he was free to leave, the law characterizes a subsequent round of questioning by the officer as a mere encounter.” . . . “However, where the purpose of an initial traffic stop has ended and a reasonable person would not have believed that he was free to leave, the law characterizes a subsequent round of questioning by the police as an investigative detention or arrest.” *Id.* at 760-61. To justify a new investigative detention or arrest, an officer must show a new reasonable suspicion or probable cause, respectively. In the absence of a new reasonable suspicion or probable cause, the detention is unlawful and the consent is invalid unless there is a showing of a break in the causal chain between the illegality and seizure of evidence. *Id.*; see also *Commonwealth v. Freeman*, 563 Pa. 82, 757 A.2d 903 (2000).

In the present case, Defendant first contends that he was improperly stopped as an initial matter because the lighting violation was mere pretext to legitimize a stop. The Court need not determine the validity of the initial stop, since the Officer’s conduct constituted an end to the original purpose of the stop but conveyed to the Defendant that he was not in fact free to leave. The Officer stopped Defendant pursuant to the most mundane of violations: a failed light above the vehicle’s plate. The Officer issued a warning and told the Defendant he was

free to leave. At that point, the purpose of the stop had clearly ended. However, the officer never left the scene, nor did he assure the Defendant that he was free to deny the request to search the vehicle. The Officer verbally instructed the Defendant that he was free to leave, but there is no other evidence to convince the Court that a reasonable person would have concluded that the encounter was over and that he could truly 'walk away'. The encounter occurred at night, the officer clearly represented an authority and did not behave as if his requests were optional or pursuant to a "mere encounter." Defendant had been stopped by a police officer and clearly did not feel free to deny the Officer's request to search. Therefore, the initial stop's purpose had ended and the Defendant was the subject of a second investigatory detention. There is no evidence of formation of a new reasonable suspicion to justify this detention. In fact, the officer testified that he had no reason to believe that there was any "guns or drugs," the stated object of his search.

In conclusion, a consensual search must be pursuant to a valid citizen-police encounter. Where the purpose of an initial stop has ended but a reasonable person would not have felt free to leave, subsequent police activity is characterized as (at least) an investigatory detention. Investigatory detentions require reasonable suspicion new or unique to this second encounter. Defendant never felt free to walk away from his encounter with the Officer on the night in question. The officer was continuously in his presence and did not make any assurances or conveyances that the Defendant could deny his request to search. Officers may not simply utter that a subject is "free to leave" as a means of characterizing all subsequent events as a "mere encounter" when, in reality, the subject still feels very much detained by the

officer. Finally, there was not a new reason or unique circumstance to create reasonable suspicion to search the vehicle. The Defendant's consent was pursuant to an unlawful detention and the evidence obtained was in exploitation thereof.

ORDER

AND NOW, this ____ day of January, 2005, for the reasons set forth above, the Court GRANTS the Defendant's Motion to Suppress. It is ORDERED and DIRECTED that the evidence obtained pursuant to the Search of Defendant's vehicle be SUPPRESSED.

By the Court,

Nancy L. Butts, Judge J.

xc: DA (RF)
Mary Morris, Esquire
Hon. Nancy L. Butts
Law Clerk
Gary Weber, Esquire