

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA, | : |
| | : |
| vs. | : NO. 1891-2006 |
| | : |
| CHRISTOPHER HAYES, | : CRIMINAL ACTION - LAW |
| | : |
| Defendant | : MOTION TO SUPPRESS EVIDENCE |

DATE: March 14, 2007

OPINION and ORDER

Before the court for determination is Defendant Christopher Hayes's Motion to Suppress Evidence filed January 17, 2007. Hayes asserts that the evidence seized as a result of the search of the white Cadillac he was driving must be suppressed since his consent to the search was not valid. Hayes argues that his consent was not valid because Officer Jeffrey Hughes illegally detained him, and thereby tainted his consent.

The Motion to Suppress Evidence will be granted. Hayes was subject to an investigative detention that was not supported by reasonable suspicion and there was not a sufficient break in the causal chain between this illegal detention and Hayes's consent so as to demonstrate that the illegal detention was not exploited to obtain that consent. As such, the evidence seized pursuant to the search of the white Cadillac must be suppressed.

I. BACKGROUND

A. Facts

1. The Initial Contact

On April 22, 2006, at approximately 3:00 a.m., Officer Jeffrey Hughes, a patrolman with the Old Lycoming Township Police Department, was at the tail end of his shift. Officer Hughes was dressed in full uniform and driving a marked police cruiser. Officer Hughes was heading north on Lycoming Creek Road toward the Mobil gas station to fuel up his cruiser before returning to police headquarters.

As Officer Hughes made his way north on Lycoming Creek Road, he noticed a white Cadillac also heading in the same direction. The movement of the white Cadillac drew Officer Hughes's attention. Officer Hughes observed the white Cadillac move from the right lane to the passing lane then back to the right lane without using a turn signal. As the white Cadillac moved in and out of the northern lanes of traffic, Officer Hughes also noticed that the white Cadillac had a cracked left tail light.

Officer Hughes continued to follow the white Cadillac north on Lycoming Creek Road. As they moved north, Officer Hughes observed the white Cadillac drift right and cross the fog line by a distance of approximately the full width of the vehicle. It was at this point that Officer Hughes decided to stop the white Cadillac. Officer Hughes activated his emergency lights, and he and the white Cadillac pulled over to the side of the road. Officer Hughes parked his cruiser behind the white Cadillac.

2. The Traffic Stop of the White Cadillac

When Officer Hughes pulled over the white Cadillac, it was raining and the temperature was between forty and fifty degrees. The time of the traffic stop was approximately 3:15 a.m. Officer Hughes waited in his cruiser for backup to arrive before approaching the white Cadillac. Officer Kriner, also a member of the Old Lycoming Township Police Department, arrived approximately one minute after Officer Hughes had pulled over the white Cadillac. Officer Kriner stopped and parked his marked police cruiser behind Officer Hughes's cruiser.

Officer Hughes and Kriner exited their cruisers and approached the white Cadillac together. Officer Hughes approached from the driver's side. Officer Kriner took up a position on the passenger side of the white Cadillac.

There were four occupants in the white Cadillac – the driver, front passenger, and two passengers in the rear seat. Defendant Christopher Hayes was the driver of the white Cadillac. When Officer Hughes reached the driver's side door of the white Cadillac, he noticed that the driver's window was open a crack, about two inches. Hayes told Officer Hughes that the window did not work, so he opened the driver's door to talk to Officer Hughes. Officer Hughes directed Hayes to exit the white Cadillac and join him at the rear of the vehicle. There, Officer Hughes told Hayes why he stopped him. Hayes responded by telling Officer Hughes that he was lost and was looking for Bing's Motel. Officer Hughes asked Hayes for his driver's license, insurance information, and vehicle registration. Similar identification information was requested from the passengers of the white Cadillac.

Hayes told Officer Hughes that he did not have his driver's license with him. Hayes told Officer Hughes that his name was "Mike Spencer" and gave him a date of birth and Philadelphia address. Hayes also told Officer Hughes that he did not own the vehicle. According to Hayes, his cousin Eric owned the white Cadillac. Hayes did not know Eric's last name, and was not able to provide it until he retrieved the white Cadillac's vehicle registration and was able to look at the name on the registration.

Hayes was not the only one having difficulty providing Officer Hughes with identification information. None of the three passengers in the white Cadillac had identification. Instead, all three passengers provided Officer Hughes with their names and dates of birth.

Officer Hughes returned to his cruiser after having obtained the information from Hayes and the three passengers. Officer Hughes processed the names to determine driver's license status and to see if there were any outstanding warrants for the individuals in the white Cadillac. The search revealed no outstanding warrants and turned up no driver's licenses on record for the three passengers. However, the search did reveal that "Mike Spencer's" driver's license was suspended.

Officer Hughes exited his cruiser and returned to the white Cadillac. Again, he had Hayes join him at the rear of the white Cadillac. Officer Hughes told "Mike Spencer", that is Hayes, that his license was suspended. Hayes expressed disbelief and told Officer Hughes that he had paid his fine. It was during Officer Hughes return to the white Cadillac that the front passenger provided him a new name and one of the passengers in the rear seat a new date of birth. Officer Hughes returned to his cruiser to check the new name and date of birth.

3. The Arrival of the Green Mini-van

Upon reaching his cruiser, Officer Hughes noticed that a green mini-van had pulled in front of the white Cadillac. Realizing that he and Officer Kriner were already outnumbered by two to one, Officer Hughes radioed for additional back up. Within minutes, a marked police cruiser from the Williamsport Bureau of Police arrived with two uniformed officers and parked behind Officer Kriner's cruiser. Once the additional back up arrived, Officer Hughes ran a search on the new name and date of birth provided by the passengers of the white Cadillac. The search revealed that the front passenger, Leo Gardner, had numerous convictions for drug and firearms offenses. Officer Hughes again exited his cruiser, but this time he approached the green mini-van instead of the white Cadillac.

Officer Hughes made contact with the occupants of the green mini-van. He was informed that they had been traveling with Hayes and had been waiting for him at Bing's Motel. Officer Hughes told the occupants that Hayes would be done with the traffic stop shortly. Officer Hughes asked the occupants for identification. Upon receiving this information, Officer Hughes returned to his cruiser to process it in order to determine driver's license status and to see if there were any outstanding warrants for the occupants.

The search revealed no driver's license problems or outstanding warrants for the occupants of the green mini-van. Officer Hughes filled out a citation charging Hayes with driving while under suspension. He then exited his cruiser and approached the white Cadillac. Officer Hughes and Hayes again met at the rear of the white Cadillac. Officer Hughes gave the citation to Hayes and told him that he was free to leave. Officer Hughes also asked Hayes if any of the other

passengers had a driver's license or learner's permit since Officer Hughes was unable to locate a driver's license or learner's permit that corresponded to any of the identification information that the passengers of the white Cadillac had provided him. Hayes gave Officer Hughes a new last name for one of the passengers for him to check under.

After this, Officer Hughes went to the green mini-van and returned the identification information to the occupants. Officer Hughes made his way back toward the white Cadillac, and upon reaching the driver's side door, Officer Hughes motioned with his arm for Hayes to join him at the rear of the vehicle once again.

When Hayes reached the rear of the white Cadillac, Officer Hughes advised him that he was free to leave, but he would have to park the white Cadillac since his driver's license was suspended and no one in the white Cadillac had a valid driver's license or learner's permit. At this time, the green mini-van was still parked in front of the white Cadillac. Hayes asked Officer Hughes how he could get his driver's license back, and Officer Hughes told Hayes to contact the Pennsylvania Department of Transportation. Hayes also asked Officer Hughes for directions to Bing's Motel, and Officer Hughes provided Hayes with the directions. The two parted company and returned to their vehicles. Just as Officer Hughes reached the front bumper of his cruiser and Hayes had opened the driver's side door of the white Cadillac and was about to get in, Officer Hughes turned around and said, "Mr. Spencer." Hayes looked back toward Officer Hughes and walked to the rear of the white Cadillac where all of their previous conversations had taken place. This occurred at approximately 5:00 a.m., almost two hours after the initial stop of the white Cadillac.

4. Hayes's Consent to Search the White Cadillac

Once Hayes had met Officer Hughes at the rear of the white Cadillac, Officer Hughes asked Hayes if there was any contraband in the vehicle. Hayes told Officer Hughes that there was not and said he could look if he wanted. Officer Hughes then retrieved the Old Lycoming Township Police Department's standard form for voluntary consent searches. Officer Hughes gave the form to Hayes and had him review it.

The form advised Hayes that he had the right to refuse a search of his vehicle, that he could require the production of a search warrant before the vehicle was searched, that any evidence located during the search may be used against him, that he had the right to withdraw his consent to the search at any time, and that by signing the form he was voluntarily permitting the search of his vehicle.

Hayes reviewed the form for about one minute before attempting to sign it. When Hayes tried to sign the form, it ripped because it had become wet from the rain. Officer Hughes provided Hayes with a new voluntary consent form that was identical to the one Hayes had just reviewed, and Hayes signed it. Although Officer Hughes never asked Hayes if he was literate or his level of education, Officer Hughes did ask Hayes if he understood what he had signed, to which Hayes responded yes. It was approximately 5:15 a.m. when Hayes signed the consent form.

After Hayes signed the voluntary consent form, he was placed in the back of Officer Hughes's cruiser to keep out of the rain while the search of the white Cadillac was conducted. The other three passengers were similarly asked to exit the white Cadillac and to wait in the backs of

the other police cruisers. After the passengers from the white Cadillac were placed in the backs of the cruisers, the green mini-van left.

5. The Search of the White Cadillac

Officer Hughes returned to the white Cadillac and began his search. He discovered two prescription pill bottles on the floor of the front passenger area. The bottles contained several types of pills and had their labels removed. Officer Hughes also discovered a clear plastic bag on the passenger side of the rear floor that contained suspected marijuana residue. Officer Hughes had attempted to search the glove box, but it was locked. Hayes told Officer Hughes that he did not have a key for the glove box and he did not want Officer Hughes to force the lock. Officer Hughes asked Hayes to consent to a K-9 sniff of the white Cadillac, which he did.

A K-9 unit from the Williamsport Bureau of Police arrived and began to search the white Cadillac. The dog alerted to the possibility of narcotics being in the white Cadillac. Specifically, the dog alerted to the glove box, the rear seat, and the front center console. Officer Hughes terminated the search of the white Cadillac once the K-9 alerted to the possibility of drugs in the vehicle. Officer Hughes had the white Cadillac towed back to the Old Lycoming Police Department Headquarters. Hayes was released and left the scene once a ride arrived.

Officer Hughes later obtained a search warrant for the white Cadillac. A search conducted pursuant to the search warrant revealed two loaded handguns in the glove box of the white Cadillac. The search also revealed a plastic baggie located under the rear seat of the white Cadillac that contained six rocks of crack cocaine.

B. Hayes's Argument

In the Motion to Suppress Evidence, Hayes asserts that the evidence seized as a result of the search of the white Cadillac must be suppressed because his consent to the search was not valid. Hayes argues that his consent was not valid because it was tainted by an illegal detention. Hayes does not contend that Officer Hughes's initial traffic stop was illegal. But, Hayes does contend that this valid detention had ended and he was detained illegally a second time when Officer Hughes called out "Mr. Spencer" as Hayes was about to get in the white Cadillac. Hayes argues that when he responded to Officer Hughes by going back to the rear of the white Cadillac he did so because a reasonable person in those circumstances would not have felt free to ignore Officer Hughes and leave. As such, Hayes argues that he was subject to a second investigative detention. Hayes further argues that Officer Hughes did not have reasonable suspicion to support such a detention. Consequently, Hayes argues that the second detention was illegal and tainted his consent to a search of the white Cadillac. As such, Hayes argues that any evidence obtained as a result of a search of the white Cadillac must be suppressed.

II. ISSUE

There is one central issue before the court with two main sub-parts. It is:

1. Must the evidence seized as a result of the search of the white Cadillac be suppressed?
 - a. Did Hayes validly consent to a search of the white Cadillac?
 - (1) Was Hayes illegally detained by Officer Hughes prior to consenting to a search of the white Cadillac?
 - (i) Had the initial traffic stop concluded by the time Officer Hughes called out "Mr. Spencer"

as Hayes was about to get in the white Cadillac?

(ii) If the initial traffic stop had concluded, did Officer Hughes subject Hayes to a mere encounter or an investigative detention when he called out “Mr. Spencer” as Hayes was about to get in the white Cadillac?

(iii) If Officer Hughes subjected Hayes to a subsequent investigative detention, did Officer Hughes have reasonable suspicion to support such a detention?

(2) If Officer Hughes subjected Hayes to a subsequent investigative detention that was not supported by reasonable suspicion, was there a sufficient break in the chain of causality between this illegal detention and Hayes’s consent such that the illegal detention was not exploited to obtain the consent?

b. Was the search of the white Cadillac conducted pursuant to the search warrant valid?

III. DISCUSSION

The evidence seized from the white Cadillac, specifically, the two prescription pill bottles and the pills they contained, the clear plastic bag containing suspected marijuana residue, the two loaded handguns, and the plastic bag containing six rocks of crack cocaine, must be suppressed. Hayes did not validly consent to a search of the white Cadillac. Officer Hughes subjected Hayes to an investigative detention that was not supported by reasonable suspicion when he called out “Mr. Spencer” as Hayes was about to get in the white Cadillac. There was not a sufficient break in the causal chain between this illegal detention and Hayes’s consent so as to demonstrate that his consent was obtained without the illegal detention having been exploited. The search of the white

Cadillac conducted pursuant to the search warrant was not valid because the evidence of that search was the fruits of the illegal search conducted pursuant to Hayes's invalid consent.

A. Legal Background

1. Motion to Suppress Evidence Standard of Review

When a motion to suppress evidence has been filed, the Commonwealth bears both the burden of production and persuasion to prove that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 581(H); *Commonwealth v. West*, 834 A.2d 625, 629 (Pa. Super. 2003), *app. denied*, 889 A.2d 1216 (Pa. 2005). The Commonwealth bears the burden of establishing by a preponderance of the evidence that the challenged evidence is admissible. *Commonwealth v. Lindblom*, 854 A.2d 604, 605 (Pa. Super. 2005), *app. denied*, 868 A.2d 1198 (Pa. 2005); *Commonwealth v. Smith*, 784 A.2d 182, 186 (Pa. Super. 2001).

2. Search and Seizure General Rules and Principles

A primary purpose of both the Fourth Amendment to the United States Constitution and Article I, Section Eight of the Pennsylvania Constitution "... 'is to protect citizens from unreasonable searches and seizures.'" *Commonwealth v. Smith*, 835 A.2d 5, 9 (Pa. 2003) (quoting *In re D.M.*, 781 A.2d 1161, 1163 (Pa. 2001)). The Fourth Amendment provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV. Article I, Section Eight provides that:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant

to search any place or to seize and person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const. Art. I, § 8. The Fourth Amendment and Article I, Section Eight do not prohibit all searches and seizures only unreasonable ones. *Commonwealth v. Beaman*, 880 A.2d 578, 582 (Pa. 2005).

Except for a few established exceptions, warrantless searches and seizures are considered to be unreasonable. *Commonwealth v. Hughes*, 836 A.2d 893 (Pa. 2003); *Commonwealth v. Cleckley*, 738 A.2d 427, 429 (Pa. 1999). One such exception is when a person consents to a search. *Cleckley*, 738 A.2d at 429; *Commonwealth v. Blasioli*, 685 A.2d 151, 156 (Pa. Super. 1996), *aff'd*, 713 A.2d 1117 (Pa. 1998). In order for the consent to be valid, it must be unequivocal, specific, and voluntary. *Commonwealth v. Gibson*, 638 A.2d 203, 207 (Pa. 1994); *Commonwealth v. Edwards*, 735 A.2d 723, 725 (Pa. Super. 1999). The Commonwealth bears the burden of proving that consent was voluntarily given to a warrantless search. *Commonwealth v. Acosta*, 815 A.2d 1078, 1083 (Pa. Super. 2003), *app. denied*, 839 A.2d 350 (Pa. Super. 2003).

B. Hayes did not Validly Consent to a Search of the White Cadillac

1. Consent General Rules and Principles

Assessing the validity of consent is a two step process. First, the court must assess the constitutional validity of the citizen-police encounter which gave rise to the consent. *Commonwealth v. Freeman*, 757 A.2d 903, 906 (Pa. 2000); *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000); *Commonwealth v. Johnson*, 833 A.2d 755, 759 (Pa. Super. 2003), *app. denied*, 847 A.2d 1280 (Pa. 2004). Second, the court must assess the voluntariness of the consent.

Freeman, 757 A.2d at 906; *Strickler*, 757 A.2d at 888; *Johnson*, 833 A.2d at 759. If the underlying citizen-police encounter is found to be lawful, then the voluntariness of the consent becomes the exclusive focus. *Freeman*, 757 A.2d at 906; *Strickler*, 757 A.2d at 888-89; *Johnson*, 833 A.2d at 759-60. However, where “... a consensual search has been preceded by an unlawful seizure, the exclusionary rule requires suppression of the evidence obtained absent a demonstration by the government both of a sufficient break in the causal chain between the illegality and the seizure of evidence, thus assuring that the search is not an exploitation of the prior illegality, and of voluntariness.” *Strickler*, 757 A.2d at 889; *see also*, *Freeman*, 757 A.2d at 906; *Johnson*, 833 A.2d at 760.

2. The Initial Traffic Stop had End by the Time Officer Hughes Called Out “Mr. Spencer”

The initial traffic stop had ended by the time Officer Hughes called out “Mr. Spencer” as Hayes was about to get in the white Cadillac. Prior to calling out “Mr. Spencer,” Officer Hughes had concluded his investigation as would relate to the reason for the traffic stop. An investigative detention may only last as long as is necessary to confirm or dispel the reasonable suspicion an officer has. *Stickler*, 757 A.2d at 889. Officer Hughes pulled Hayes over because of his erratic driving. During the traffic stop Officer Hughes made contact with Hayes, and there were no signs that Hayes’s erratic driving was the result of him being under the influence of drugs or alcohol. However, Officer Hughes did determine during his investigation that “Mr. Spencer’s” driver’s license had been suspended. In light of this, Officer Hughes cited Hayes for driving while under suspension and then told him he was free to leave. Officer Hughes’s investigation into possible violations of the Motor Vehicle Code ended when he cited Hayes and told him he was free to

leave. Once the investigation had ended, Officer Hughes had no authority to continue to detain Hayes. Therefore, as a matter of law, the initial traffic stop had ended.

Also, a reasonable person would have felt free to leave just prior to Officer Hughes calling out “Mr. Spencer.” Before speaking those two words, Officer Hughes had given Hayes his citation for driving while under suspension and told him he was free to leave. Pennsylvania courts have held that similar factual circumstances have indicated an end to the initial traffic stop and justified a person in believing that it had so ended. *See, Freeman*, 757 A.2d at 907 (traffic stop ended when trooper returned defendant’s driver’s license and vehicle registration card, gave the defendant a written warning, and told the defendant she was free to leave); *Commonwealth v. Moyer*, 2006 Pa. Super. 379 (Pa. Super. 2006) (traffic stop ended when trooper issued the defendant a warning, returned his driver’s license and vehicle registration, and told him he was free to leave); *Commonwealth v. Jones*, 874 A.2d 108, 117 (Pa. Super. 2005) (traffic stop ended when officer returned identification card and rental car agreement to defendant and told him he was free to leave); *Johnson*, 833 A.2d at 761 (traffic stop ended when trooper returned the driver his driver’s license, issued him a citation, and told him that he was free to leave); *Commonwealth v. Ortiz*, 786 A.2d 261, 266 (Pa. Super. 2001), *app. denied*, 797 A.2d 912 (Pa. 2002) (traffic stop ended when the officer returned the defendant’s license and vehicle registration and told him he was free to leave). Likewise, a reasonable person in Hayes’s position would have discerned a distinct end point to the initial traffic stop. Accordingly, the initial traffic stop had ended prior to Officer Hughes calling out “Mr. Spencer.”

Since the initial traffic stop had ended, the encounter between Officer Hughes and Hayes after Officer Hughes called out “Mr. Spencer” must be analyzed to determine what type of encounter it was. The type of encounter will determine what level of suspicion, if any, was required to justify detaining Hayes further. This, in turn, will affect whether Hayes’s consent to the search of the white Cadillac was valid.

3. Officer Hughes Subjected Hayes to an Investigative Detention when he Called out “Mr. Spencer”

a. Seizure General Rules and Principles

“Not every encounter between a citizen and the police is so intrusive as to amount to a “seizure” triggering constitutional concerns.” *Commonwealth v. Smith*, 835 A.2d 5, 9 (Pa. 2003); *see also, Commonwealth v. Wright*, 672 A.2d 826, 829 (Pa. Super. 1996). A seizure occurs when a police officer, by means of physical force or a display of authority, restrains the liberty of a citizen. *Commonwealth v. Dowds*, 761 A.2d 1125, 1129 (Pa. 2000); *Wright*, 672 A.2d at 829. In order to determine when a seizure has taken place, courts have employed an objective test. A court must examine the totality of the circumstances, with no single factor dictating the outcome, to determine whether a reasonable person would believe he was free to leave. *Commonwealth v. Blair*, 860 A.2d 567, 572 (Pa. Super. 2004); *Commonwealth v. McCleave*, 750 A.2d 320, 324 (Pa. Super. 2000); *see also, Jones*, 874 A.2d at 116 (a court must examine all of the circumstances to determine whether police action would have made a reasonable person believe he was not free to go and was subject to the officer’s orders). If, under the totality of the circumstances, a reasonable person would not believe he was free to leave, then a seizure has occurred. *Johnson*, 833 A.2d at 762.

“To secure the rights of citizens to be free from intrusions, courts in Pennsylvania require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens as those interactions become more intrusive.” *Johnson*, 833 A.2d at 760. There are three common categories of encounters between a police officer and a citizen. *Commonwealth v. Polo*, 759 A.2d 372, 375 (Pa. 2000).

The first is a mere encounter. A mere encounter can be any formal or informal interaction between a citizen and a police officer. *Commonwealth v. Krisko*, 884 A.2d 296, 299 (Pa. Super. 2005), *app. denied*, 895 A.2d 1260 (Pa. 2006). A mere encounter carries no official compulsion to stop or respond to the officer. *Polo*, 759 A.2d at 375; *Commonwealth v. Campbell*, 862 A.2d 659, 663 (Pa. Super. 2004), *app. denied*, 882 A.2d 1004 (Pa. 2005). As such, it need not be supported by any level of suspicion. *Polo*, 759 A.2d at 375; *Commonwealth v. Matos*, 672 A.2d 769, 775 (Pa. 1994).

The second category of encounters is an investigative detention. An investigative detention does carry an official compulsion to stop and respond to the police officer. *Krisko*, 884 A.2d at 299. An investigative detention subjects a citizen to a stop and a period of detention, but it does not involve such coercive conditions as to constitute the functional equivalent of an arrest. *Polo*, 759 A.2d at 375; *Campbell*; 862 A.2d at 663; *McCleave*, 750 A.2d at 324. However, an investigative detention does constitute a seizure. *Jones*, 874 A.2d at 116. As such, an investigative detention must be supported by reasonable suspicion. *Polo*, 759 A.2d at 375; *Commonwealth v. Barber*, 889 A.2d 587, 593 (Pa. Super. 2005).

The third and final category of encounters is arrest or custodial detention. An arrest must be supported by probable cause. *Polo*, 759 A.2d at 375; *Campbell*, 862 A.2d at 663; *McCleese*, 750 A.2d at 324.

In determining whether a seizure has occurred in our present factual context, several factors must be considered:

the existence and nature of any prior seizure; whether there was a clear and expressed endpoint to any such prior detention; the character of the police presence and conduct in the encounter under review (for example – the number of officers, whether they were uniformed, whether police isolated subjects, physically touched them or directed their movement, the content or manner of interrogatories or statements, and “excesses” factors stressed by the United State Supreme Court); geographic, temporal and environmental elements associated with the encounter; and the presence or absence of express advice that the citizen-subject was free to decline the request for consent to search.

Freeman, 757 A.2d at 906-07; *see also*, *Moyer*, 2006 Pa. Super. 379 at __ ; *Ortiz*, 786 A.2d at 266.

“In general, when determining whether a seizure has occurred “...a full examination must be undertaken of all coercive aspects of the police/citizen interaction.” *Freeman*, 757 A.2d at 907.

Under the facts presented, this court finds that Officer Hughes subjected Hayes to an investigative detention without reasonable suspicion when Officer Hughes called out “Mr. Spencer.”

b. Hayes would not have Felt Free to Leave

A reasonable person in Hayes's position would not have felt free to leave when Officer Hughes called out "Mr. Spencer" as Hayes was about to get in the white Cadillac. When Officer Hughes called out "Mr. Spencer," he did so within the shadow of the initial traffic stop, and the initial traffic stop would shade how a reasonable person would view Officer Hughes's utterance of those two words.

Officer Hughes's investigation during the initial traffic stop followed a pattern. Officer Hughes would request information from Hayes and the occupants of the white Cadillac, obtain some information, go to his cruiser to process that information, and then return to the white Cadillac to obtain more information. In light of his previous experience with Officer Hughes, Hayes would have reasonably inferred from Officer Hughes's calling out of his name that Officer Hughes still had further inquiries to make of him.

When Officer Hughes called out "Mr. Spencer," he did so when there was a noticeable police presence on scene. There were three marked police cruisers parked in a line behind Hayes and the white Cadillac. Officer Hughes's cruiser, which was parked directly behind the white Cadillac, had its emergency lights activated. There were a total of four police officers dressed in full uniform on scene. While only Officers Hughes and Kriner approached the white Cadillac, the presence of the other two officers was apparent.

Officer Hughes's apparent desire to continue the investigation and the combination of the police presence would not have allowed a reasonable person in Hayes's position to conclude that he was free to leave. As noted by the Pennsylvania Supreme Court:

'The transition between detention and a consensual exchange can be so seamless that the untrained eye may not notice that it has occurred.

The undetectability of that transition may be used by police officers to coerce citizens into answering questions that they need not answer, or to allow a search of a vehicle that they are not legally obligated to allow.

Many people believe that they are validly in a police officer's custody as long as the officer continues to interrogate them. The police officer retains the upper hand and the accoutrements of authority. That the officer lacks legal license to continue to detain them is unknown to most citizens, and a reasonable person would not feel free to walk away as the officer continues to address him.'

Strickler, 757 A.2d at 892 (quoting *State v. Robinette*, 653 N.E. 2d 695, 698 (Ohio 1995)). A reasonable person in Hayes position would have concluded that Officer Hughes wanted to continue the investigation by making further inquiries of him and he had the obvious power to back up that desire. A reasonable person in Hayes's position would have conclude the speaking of his "name" by Officer Hughes, who stood at his cruiser near where he had previously questioned Hayes and without further words, such as, "Pull off to the right," or, "Have a good night," was a clear command to come to the his position for further questions or instructions. Therefore, the circumstances presented to Hughes conveyed that he was not free to leave and ignore Officer Hughes.

There are two facts that could arguably have led a reasonable person in Hayes's position to conclude that he was free to leave. The first is that Officer Hughes expressly told Hayes that he was free to leave. Moments before Officer Hughes called out "Mr. Spencer" he had told Hayes that he was free to leave. This was the second time that Officer Hughes told Hayes that he was free to leave. The first time occurred when Officer Hughes gave Hayes the citation for driving while

under suspension. It is what followed this first time that would have colored how a reasonable person would view the second time.

When Officer Hughes first told Hayes he was free to leave, he also asked Hayes if any of the other passengers had a driver's license or learner's permit since the information they had provided him produced no results. Hayes provided Officer Hughes with a new last name for one of the passengers. After this, Officer Hughes went to the green mini-van to return the occupants' identification information. Meanwhile, Hayes remained at the scene, despite being clearly told that he was free to leave. Hayes likely remained in spite of this advisement because he reasonably could have inferred from his past dealings with Officer Hughes that he should remain while Officer Hughes continued his investigation and checked out the new last name Hayes had just given him.

A similar conclusion could have reasonably been reached after Officer Hughes told Hayes he was free to leave the second time. A few seconds after Officer Hughes told Hayes that he was free to leave for the second time, however, Officer Hughes called out "Mr. Spencer." The clear implication made by Officer Hughes calling out "Mr. Spencer" was that he had further questions for Hayes and that his investigation had not concluded. Like before, if Officer Hughes had further questions, then Hayes reasonably could have concluded that he was required to stay while Officer Hughes continued his investigation. As such, the effect of Officer Hughes telling Hayes he was free to leave is mitigated by the factual circumstances.

The second fact that could arguably have led a reasonable person in Hayes's position to conclude that he was free to leave is that Hayes was expressly informed that he had the right not to consent to a search of the white Cadillac. But, the fact that Hayes knew of his right to refuse

consent must be tempered by the surrounding factual circumstances. A reasonable person in Hayes's position would not have felt free to exercise that right with four police officers in three marked police cruisers holding him for over two hours investigating a broken tail light on a dark road in the rain and when he was told twice that he was free to leave, but yet the police continued to detain and question him. Thus, the fact that Hayes had been informed of his right to refuse consent to a search of the white Cadillac does little, in light of the circumstances, to militate against the conclusion that a reasonable person would not have felt free to leave.

Accordingly, Hayes was seized when Officer Hughes called out "Mr. Spencer" as Hayes was about to get into the white Cadillac and leave. , When this occurred, however, Officer Hughes did not subject Hayes to such coercive conditions as to constitute the functional equivalent of an arrest. As such, Officer Hughes subjected Hayes to an investigative detention when he called out "Mr. Spencer" as Hayes was about to get in the white Cadillac.

4. The Subsequent Investigative Detention was Illegal

a. Reasonable Suspicion General Rules and Principles

"[T]he inquiry into the establishment of reasonable suspicion requires a lesser showing in terms of quantity, content, and reliability than that which would be needed to establish probable cause." *Commonwealth v. Tucker*, 883 A.2d 625, 630 (Pa. Super. 2005). In order to establish reasonable suspicion, a police officer "... must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, ... that criminal activity was afoot and that the person he stopped was involved in that activity." *Commonwealth v. Reppert*, 814 A.2d 1196, 1204 (Pa. Super. 2002). "The inquiry will

not be satisfied by an officer's hunch or unparticularized suspicion." *Ibid.* (emphasis omitted). The inquiry into whether a police officer possessed reasonable suspicion is an objective one and centers on whether "... the facts available to the officer at the moment of the [intrusion] warrant a man of reasonable caution in the belief that the action taken was appropriate." *Tucker*, 883 A.2d at 630 (change in original); *Commonwealth v. Rosas*, 875 A.2d 341, 347 (Pa. Super. 2005), *app. denied*, 897 A.2d 455 (Pa. 2006) (same). The determination of whether a police officer possessed reasonable suspicion must be based upon the totality of the circumstances. *Commonwealth v. Rogers*, 849 A.2d 1185, 1189 (Pa. 2004); *Tucker*, 883 A.2d at 630.

Reasonable suspicion does not require that the activity at issue be unquestionably criminal before a police officer may investigate. *Rogers*, 849 A.2d at 1190. "Rather, the test is what it purports to be – it requires a suspicion of criminal conduct that is reasonable based upon the facts of the matter." *Ibid.* Reasonable suspicion is dependent upon both the content and the degree of reliability of the information possessed by a police officer, as both quantity and quality are considered in evaluating the totality of the circumstances. *Commonwealth v. Lohr*, 715 A.2d 459, 461 (Pa. Super. 1998).

In examining the totality of the circumstances, "[a]mong the factors to be considered in forming the basis for reasonable suspicion are tips, the reliability of the informants, time, location, and suspicious activity, including flight." *In re M.D.*, 781 A.2d 192, 197 (Pa. Super. 2001) (quoting *Commonwealth v. Lynch*, 773 A.2d 1240, 1244 (Pa. Super. 2001)). Two important factors that must be considered in evaluating whether reasonable suspicion exists are the police officer's knowledge and experience. *Reppert*, 814 A.2d at 1204. In evaluating the totality of the

circumstances, “ ‘... due weight [must be given] to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” *Tucker*, 883 A.2d at 630 (quoting *Rogers*, 849 A.2d at 1189)) (change in original). Even so, a court must be mindful “... that the officer’s judgment is necessarily colored by his or her primary involvement in the ‘often competitive enterprise of ferreting out crime.’” *Reppert*, 814 A.2d at 1204 (quoting *In re D.E.M.*, 727 A.2d 570, 578 n. 19 (Pa. Super. 1999)).

b. Officer Hughes did not have Reasonable Suspicion

Officer Hughes did not have reasonable suspicion to detain Hayes *when* he called out “Mr. Spencer” as Hayes was about to get in the white Cadillac. “When [an] investigative detention follows a lawful traffic stop, an officer must demonstrate cause for suspicion *after* the end of the initial stop, and independent of any basis on which he conducted the prior stop.” *Jones*, 874 A.2d at 117(emphasis added); *see also*, *Johnson*, 833 A.2d at 763. “The second police/citizen interaction must be evaluated independently to determine if reasonable suspicion existed based on factors arising *after* the end of the initial stop.” *Moyer*, 2006 Pa. Super. 379 at ___ (emphasis in original). A defendant’s conduct during the terminated initial stop, standing alone, may not provide the basis to support the subsequent detention, even though the defendant’s conduct “‘may have merited further inquiry,’” because when the officer ends the first detention and tells the defendant he is free to leave the officer vitiates any grounds he had to hold the defendant further. *Johnson*, 833 A.2d at 763 (quoting *Ortiz*, 786 A.2d at 266)). Without some new observations of suspicious conduct, the defendant’s continued detention would be illegal. *Moyer*, 2006 Pa. Super. 379 at ___.

Officer Hughes did not observe any conduct after the initial traffic stop had ended that would reasonably allow him to conclude that criminal activity was afoot and that Hayes was involved in that activity. The initial traffic stop ended when Officer Hughes told Hayes he was free to leave, told him how to get his license back, and gave him directions to Bing's Motel. At this point, Hayes walked back to his vehicle and Officer Hughes walked back to his. There was nothing suspicious about Hayes conduct during this conversation with Officer Hughes at the rear of the white Cadillac or when he was walking back to the vehicle. For instance, there was no evidence presented that Hayes was being evasive, that he made any furtive movements, or that he ran back to the car. Instead, Officer Hughes testified at the evidentiary hearing on the Motion to Suppress Evidence that Hayes was calm throughout the conversation at the rear of the white Cadillac. Simply put, there was nothing that occurred between the end of the initial traffic stop and when Officer Hughes called out "Mr. Spencer" that would give rise to reasonable suspicion – Hayes just walked back to his car. *See, Moyer*, 2006 Pa. Super. 379 (officer did not have reasonable suspicion to justify second investigatory detention because he did not observe any suspicious activity after the conclusion of the first investigatory detention); *Ortiz*, 786 A.2d 261 (same).

Although the conduct Officer Hughes observed during the initial traffic stop would have merited further inquiry during the initial traffic stop, it cannot be used to support the subsequent investigative detention. During the initial traffic stop, the passengers of the white Cadillac gave Officer Hughes numerous and various personal identification information. Officer Hughes would take this information, process it, and then inform the passengers that the information they had

provided him was not sufficient. The passengers of the white Cadillac would then provide Officer Hughes with different identification information, and the dance would begin again. Arguably, one could conclude that the passengers of the white Cadillac were being evasive about something. No doubt, Officer Hughes would have been aware through his training and experience of the drug trafficking and related violence that has plagued this area. Officer Hughes no doubtedly also would have been aware that there is a strong connection between these ills and individuals coming to this area from the city of Philadelphia. This knowledge coupled with the evasiveness of the white Cadillac's passengers would have (and possibly did) establish a reasonable suspicion which would have justified Officer Hughes inquiring into whether there was contraband in the white Cadillac and seeking consent to search the vehicle. Officer Hughes, however, chose not to pursue any further investigation once he told Hayes he was free to go and ended the traffic stop. Absent any suspicious activity observed after the traffic stop ended, the passengers' evasive conduct cannot be considered in the totality of the circumstances.

If Officer Hughes had observed suspicious activity after the initial traffic stop had ended, then the evasive conduct of the white Cadillac passengers could have been included in the totality of the circumstances analysis. Such was the case in *Commonwealth v. Johnson* and *Commonwealth v. Jones*. In *Johnson*, a trooper with the Pennsylvania State Police conducted a traffic stop of a vehicle for a speeding violation. 833 A.2d at 757. After the driver of the vehicle had stopped, he exited the vehicle and approached the trooper's cruiser in a hurried manner. The trooper instructed the driver to stop and place his hands on the cruiser's hood. The trooper conducted a pat down of the driver and felt a large wad of cash in the driver's pocket. The trooper

asked the driver how much cash was there, and the driver responded about \$2,300. *Ibid.* The trooper then directed the driver to return to his vehicle.

A little later, the trooper approached the passenger side of the vehicle. Once there, the trooper observed unrolled cigar papers and tobacco spread about the interior of the vehicle. *Johnson*, 833 A.2d at 758. The trooper asked for a driver's license and was handed one. He took it and returned to his cruiser to prepare the citation for speeding. The trooper returned to the vehicle, handed the citation to the driver, explained to him his rights and obligations regarding the citation, and told the driver he was free to leave. *Ibid.*

Before letting the driver leave, the trooper asked the driver if he would mind answering some questions. *Johnson*, 833 A.2d at 758. The driver agreed, and the trooper asked him where he had been, how long he had been there, and where he was going. The driver responded that he had been in Philadelphia intending to stay for the weekend, but could not pay for a hotel, so he decided to return to Pittsburgh. The trooper found this suspicious considering the large amount of cash the driver had in his possession. *Ibid.* The trooper also observed that the driver appeared extremely nervous during this conversation, that his lips were shaking, and that he was speaking very rapidly. *Ibid.* The trooper then asked the driver if there was anything illegal in the vehicle and if he could search it. The driver consented to the search, and the trooper went to his cruiser to obtain a consent form. When the trooper returned, the driver changed his mind and told the trooper that he wanted to leave. Despite the driver's statement, the trooper continued to question him and his two passengers, one of which was the defendant, about the money. *Ibid.*

While he was doing this, the trooper observed a glass vial on the driver's seat that appeared to contain crushed vegetable matter. *Johnson*, 833 A.2d at 758. The trooper collected the vial and after examining it suspected it to contain marijuana. The trooper handcuffed the driver and the two passengers with the intent of holding them until he could determine what the substance in the vial was. *Ibid*. After handcuffing the three, the trooper searched each of them. During the search of the defendant, the trooper found ten glass vials in his right front pocket that contained vegetable matter similar to the other vial. *Ibid*. The defendant was subsequently arrested and a further search incident to that arrest revealed seven more vials concealed on his person.

The defendant sought suppression of the vials asserting that the trooper detained him without having reasonable suspicion. *Johnson*, 833 A.2d at 758. The Pennsylvania Superior Court held that, although the defendant was subjected to an investigative detention following the end of the initial traffic stop, the trooper had reasonable suspicion to justify the detention. *Id.* at 764. The Superior Court found that the trooper had observed suspicious activity after the initial traffic stop had ended in that the trooper had observed the driver to be visibly nervous when asked if there was anything illegal in the vehicle and gave a less than credible reason for his departure from Philadelphia. *Ibid*. The Superior Court noted that while these two facts on their own may not have been sufficient to establish reasonable suspicion when they are considered with the observations the trooper made during the initial traffic stop (the large amount of cash and the cigar papers strewn about the vehicle) reasonable suspicion existed. The Superior Court held that when an officer makes observations after the initial stop has concluded the totality of the circumstances analysis requires a court to locate what happened prior to and after the initial stop to determine

whether reasonable suspicion existed at the time of the subsequent detention. *Ibid.* The Superior Court went on to say: “Given that a court must examine “the totality of the circumstances,” we find that the suppression court did not err in examining Trooper Overcash’s observations from prior to the second detention because nothing in the language of *Freeman* or *Ortiz* expressly or implicitly limits the totality of the circumstances to those observations occurring only *after* the initial encounter had ended.” *Id.* at 765 (emphasis in original).

In *Jones*, an officer with the Fleetwood Police Department conducted a traffic stop of a vehicle after observing it cross the center yellow line four times. 874 A.2d at 112. The officer made contact with the defendant, who was driving, and requested his driver’s license, vehicle registration, and proof of insurance. The defendant provided the officer with a New York non-driver identification card and a rental car agreement. *Ibid.* The officer ran a computer check on the identification card information, but the check was unable to verify that information. The officer then interviewed the defendant and his two passengers individually. The defendant told the officer that they were returning from New York after having been there a few hours, one passenger said they were returning from New York after they had been there “for a while,” and the other passenger said that the three had been in New York for one week. *Ibid.* While talking to the defendant, the officer noticed that the defendant was preoccupied and continuously focused his attention on the front passenger side of the vehicle.

After the interviews, the officer returned the rental agreement to the defendant and told him he was free to leave. But, the officer believed that the group was trafficking narcotics based upon his drug interdiction training and their inconsistent statements. *Jones*, 874 A.2d at 113. Before

letting the group leave, the officer asked the defendant for consent to search the vehicle. The defendant appeared nervous and stalled before refusing to consent to the search. *Ibid*. The officer then advised the defendant that he would call for a drug dog to come and sniff the vehicle for narcotics. Following this, the defendant consented to a dog sniff. A subsequent search of the vehicle revealed narcotics located in the front passenger area of the vehicle. *Ibid*.

The defendant sought suppression of the narcotics on the basis that he was subjected to an illegal second investigative detention when the officer asked for consent to search the vehicle. *Jones*, 874 A.2d at 115. The Pennsylvania Superior Court held that while the defendant was subject to a second investigative detention that detention was supported by reasonable suspicion. *Id.* at 117. The Superior Court noted that the officer had observed suspicious conduct after the conclusion of the initial traffic stop. The Superior Court found that the officer had observed the defendant to be nervous and stalled before answering the officer's request for consent to search. This suspicious conduct allowed the conduct from the initial traffic stop to be brought into the totality of the circumstances analysis. The Superior Court held: "Under the totality of these circumstances, including [defendant's] nervousness and stalling, combined with the group's prior inconsistent statements, the unverifiable information on [defendant's] identification card, and Officer Ulshafer's experience and drug interdiction training, we conclude Officer Ulshafer had specific and reasonable suspicion of criminal activity." *Ibid*.

Unlike the trooper and officer in *Johnson* and *Jones*, Officer Hughes did not observe any suspicious conduct after the initial traffic stop had ended. As such, the suspicious conduct Officer Hughes observed during the initial traffic stop cannot be included in the totality of the

circumstances analysis. Consequently, the only conduct we may consider in evaluating whether reasonable suspicion existed when Officer Hughes subjected Hayes to the subsequent investigative detention is Hayes's conduct after the end of the initial traffic stop. There was nothing remotely suspicious about this conduct; accordingly, Officer Hughes did not have reasonable suspicion to justify the subsequent investigative detention of Hayes.

5. The Illegal Detention was Exploited to Obtain Hayes's Consent

There was not a sufficient break in the causal chain between the subsequent illegal detention and Hayes's consent so as to demonstrate that the illegal detention was not exploited to obtain Hayes's consent. The illegal investigative detention was used to obtain Hayes's consent. The illegal detention provided Officer Hughes with an opportunity to obtain Hayes's consent to a search of the white Cadillac. Without the illegal investigative detention, there would have been no opportunity, and consequently, no consent to the search. *See, Commonwealth v. Wimberly*, No. 1295-2005 (Lycoming Cty. 2005) (5/24/05 Opinion and Order regarding Defendant's Omnibus Pre-trial Motion) (illegal protective sweep into the bedroom of an apartment was exploited to obtain consent to a pat down search when absent the illegal protective sweep there would have been no opportunity to obtain the consent).

The fact that Hayes was advised of his right to refuse to consent to the search does not provide a sufficient break in the causal chain. The circumstances surrounding this advice make it unlikely that a reasonable person would have felt free to exercise that right. The consent was sought seconds after Hayes was illegally detained. Hayes was on a dark road in the rain, with four uniformed officers in three marked police cars. He had been detained for a traffic stop for almost

two hours, and was told twice that he could leave, but yet he was still detained. A reasonable person in Hayes's position would have to think, "If they won't let me go after they say I can, what are the chances that I can refuse to let them search the car when they tell me I can." As such, it is unlikely that Hayes would have reasonably felt free to exercise his right to refuse consent to a search of the white Cadillac.

Accordingly, the Commonwealth has failed to establish a sufficient break in the causal chain between the illegal detention and Hayes's consent so as to demonstrate that the illegal investigative detention was not exploited in order to obtain Hayes's consent. Therefore, the evidence seized as a result of the consent search must be suppressed. Having determined that the consent search was illegal, the court will now address the search conducted pursuant to the search warrant.

C. The Evidence Seized as a Result of a Search of the White Cadillac Conducted Pursuant to the Search Warrant Must be Suppressed

The evidence seized as a result of the search of the white Cadillac conducted pursuant to the search warrant must be suppressed as the fruits of the illegal consent search. "The "fruit of the poisonous tree doctrine excludes evidence obtained from, or acquired as a consequence of lawless official acts" *Commonwealth v. Brown*, 700 A.2d 1310, 1318 (Pa. Super. 1997). The fruit of the poisonous tree doctrine does not require suppression of all evidence that comes to light but for the illegal actions of the police. *Commonwealth v. Cunningham*, 370 A.2d 1172, 1176 (Pa. 1977); *Commonwealth v. Cephas*, 291 A.2d 106, 109 (Pa. 1972). Evidence will be suppressed as the fruit of the poisonous tree if it has come to light by way of exploiting the illegal action.

Cunningham, 370 A.2d at 1177; *Cephas*, 291 A.2d at 109; *Commonwealth v. Abbas*, 862 A.2d 606, 616 (Pa. Super. 2004).

Pursuant to Hayes's consent, Officer Hughes searched the white Cadillac and discovered the pill bottles, pills, and clear plastic bag containing suspected marijuana residue. Following this search, Officer Hughes asked Hayes for his consent to a K-9 sniff of the white Cadillac, which Hayes provided. The consent to this search is invalid for the same reasons that Hayes's consent to the earlier search was invalid. When the K-9 sniff was conducted, the dog alerted to the possibility of narcotics in the white Cadillac. Thus, the two consent searches provided probable cause to believe that narcotics were in the white Cadillac.

This probable cause was used to obtain the search warrant. Absent the information gained through the two consent searches, there would have been no probable cause to believe that narcotics were in the white Cadillac and a search warrant would not have been issued. As such, the two consent searches were exploited and the evidence obtained through that exploitation must be suppressed.

The invalid consent searches led directly to the discovery of the two loaded handguns and the plastic bag containing six rocks of crack cocaine in the white Cadillac. This evidence was found after a search of the white Cadillac conducted pursuant to a search warrant. The search warrant was obtained based upon probable cause that was discovered through the invalid consent searches.

Accordingly, the two loaded handguns and the clear plastic bag containing six rocks of crack cocaine must be suppressed.

IV. CONCLUSION

Hayes's Motion to Suppress Evidence is granted and all of the evidence seized from the white Cadillac must be suppressed.

ORDER

It is hereby ORDERED that Defendant Christopher Hayes's Motion to Suppress Evidence filed January 17, 2007 is GRANTED. All evidence seized from the white Cadillac is hereby SUPPRESSED.

Specifically, the two prescription pill bottles and the pills they contained, the clear plastic bag containing suspected marijuana residue, the two loaded handguns, and the plastic bag containing six rocks of crack cocaine is SUPPRESSED.

BY THE COURT,

William S. Kieser, Judge

cc: Janan Tallo, Esquire
District Attorney (MK)
Judges
Gary L. Weber, Esquire (Lycoming Reporter)
Christian J. Kalas, Esquire