

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1935 - 2006
:
vs. : CRIMINAL DIVISION
:
BILAL JUSTICE, :
Defendant : Motion to Suppress

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress, filed December 27, 2006. A hearing on the motion was held February 12, 2007. At the conclusion of the hearing, the Commonwealth requested five days to provide the Court with a memorandum addressing the legal issues involved. That request was granted, and Defendant was also given five days thereafter in which to respond. The Commonwealth's Memorandum was submitted on February 21, 2007. The Defendant responded by Memorandum submitted February 27, 2007.

Defendant was charged with escape, flight to avoid apprehension, theft, receiving stolen property, false identification to law enforcement authorities, and public drunkenness, after an encounter with two State Police troopers on May 11, 2006, during which Defendant was arrested for DUI and providing false identification.¹ At issue here is whether the initial interaction was an investigatory detention, which requires a showing of reasonable suspicion of criminal activity, or whether such was a mere encounter, in which an officer may engage a citizen without having a reasonable suspicion of criminal activity.²

According to Trooper Franklin Harvey, at approximately 1:30 a.m. on May 11, 2006, he and Trooper Tyson Havens were on patrol in the area of Timberland Estates³ when they noticed a blue Chevy Lumina in the parking lot of the apartment complex, sitting in a parking space with the lights on and the engine running. In order to check on the status of the occupants,

¹ The first four charges resulted from Defendant's flight while handcuffed after the troopers left the scene to chase two other occupants of the vehicle who ran away.

² Once the trooper detected a strong odor of alcohol coming from Defendant's person, as explained infra, the trooper did have the requisite reasonable suspicion of criminal activity necessary to further detain Defendant, inasmuch as Defendant was sitting in the driver's seat of an automobile with the engine running. Thus, it is only the initial interaction which need be addressed.

Trooper Harvey parked his police vehicle several car lengths away, and he and Trooper Havens approached the Lumina.⁴ Trooper Harvey tapped on the driver's side window and Defendant opened the driver's door, explaining that the window would not roll down. Trooper Harvey asked Defendant if everything was all right, and when Defendant indicated everything was okay, that they were just sitting there, Trooper Harvey detected an odor of alcohol coming from Defendant's person, and observed that his eyes were bloodshot and glassy. As Trooper Harvey suspected that Defendant was intoxicated, he asked him for identification. At that point, the interaction clearly became an investigatory detention, but as noted above, such was supported by reasonable suspicion. It is the initial act of approaching the vehicle and inquiring of Defendant whether everything was all right that must be analyzed.

The Supreme Court has utilized the following test to assess the level of interaction for particular instances: "[A] court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." Commonwealth v. Wilmington, 729 A.2d 1160, 1172 (Pa.Super. 1999) quoting Florida v. Bostick, 501 U.S. 429, 439 (1991). Circumstances to consider include: the number of officers present during the interaction; whether the officer informs the citizen that he is suspected of criminal activity; the officer's demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked. Commonwealth v. Boswell, 721 A.2d 336 (Pa. 1998). Thus, a seizure does not occur simply because a police officer approaches an individual and asks a few questions. On the other hand, circumstances that might indicate a seizure would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. Commonwealth v. McCleave, 750 A.2d 320 (Pa. Super. 2000), citing United States v. Mendenhall, 446 U.S. 544 (1980).

In the instant case, the Court finds the initial interaction to be a mere encounter. Defendant was simply asked whether everything was all right. Considering the lateness of the

³ Trooper Harvey testified that the area was considered a high crime area.

hour, and the fact that it was a high crime area, such an inquiry would not lead the reasonable citizen to feel he was not free to leave at that point. Further, the troopers had parked several car lengths away in the parking lot, and thus Defendant would have been able to move his vehicle from its parking spot had he chosen to do so. While Trooper Havens also approached the vehicle and stood on the passenger side, there was no evidence this was undertaken in a threatening manner, and considering that it was late at night, there was nothing unusual about the trooper's assistance. Indeed, there is no evidence to indicate that Defendant was even aware of Trooper Havens' presence on the other side of the vehicle.

Defendant's reliance on Commonwealth v. Mulholland, 794 A.2d 398 (Pa. Super. 2002) is misplaced. In that case, the officer parked his cruiser in front of the defendant's vehicle and blocked his means of egress, and also shone his spotlight on the vehicle. In the instant case, the troopers parked several car lengths away and did not block Defendant's exit at all,⁵ and also did not turn on any of the lights on their vehicle. Trooper Harvey did testify to having shone a flashlight into the car upon his approach, but considering the lateness of the hour, and the fact it was a high crime area, there is nothing unusual about using a flashlight, nothing that would indicate to a reasonable citizen that he was not free to leave.⁶

Accordingly, having concluded the initial interaction was a mere encounter, and the subsequent detention having been supported by reasonable suspicion, the Court finds no need to suppress any evidence obtained as a result of the encounter.

⁴ Trooper Havens approached the passenger side of the vehicle.

⁵ While Defendant contends that when he first opened his door to speak with the trooper, "Trooper Harvey immediately stood in the doorway blocking the driver's exit from the vehicle", and that he "ordered the driver to remain seated and physically pushed him in to the vehicle a couple of times", Trooper Harvey testified that these actions occurred only after he determined that the driver was intoxicated and had decided to detain him for a possible DUI.

⁶ There is no evidence that the flashlight was used other than to determine that there were indeed people in the car; it was mentioned only at the preliminary hearing and not at the hearing on the motion to suppress.

ORDER

AND NOW, this 28th day of February 2007, for the foregoing reasons, Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson