IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1634 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
CHAKHANNA SMITH,	:	
Defendant	:	Omnibus Pre-Trial Motion

OPINION AND ORDER

Before the Court are Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus, contained in his Omnibus Pre-Trial Motion, filed December 7, 2006. A hearing on the motion was held January 12, 2007, at the conclusion of which the Court allowed time for the filing of briefs. Defendant's brief was filed January 25, 2007; the Commonwealth filed a brief on January 29, 2007.

Defendant was charged with three drug offenses and two summary Vehicle Code violations, after a vehicle stop on August 25, 2006, led to the discovery of cocaine in the glove box and an incriminating phone call placed to Defendant's cell phone. In his Motion to Suppress, Defendant contends the police were without the necessary reasonable suspicion to stop his vehicle, the police were without the necessary reasonable suspicion to conduct an investigatory detention, the police were without probable cause to effectuate his arrest and the subsequent search of the vehicle, undertaken with the vehicle owner's consent, was thus invalid, and, finally, that the interception of the cell phone call was illegal. These will be addressed seriatim.

At the hearing in this matter, Pennsylvania State Police Trooper Tyson Havens testified to having effected a stop of Defendant's vehicle after observing it to be traveling at what appeared to be an excessive rate of speed, and clocking it (by following it) at 35 mph in a 25 mph zone. The Court finds such to be a sufficient basis on which to effectuate a vehicle stop,

as the trooper had articulable, reasonable grounds on which to base a belief that Defendant was violating the Vehicle Code.[1]

With respect to Defendant's argument that the trooper lacked the necessary reasonable suspicion to conduct an investigative detention, Defendant contends that neither furtive movements nor excessive nervousness provide a sufficient basis upon which to conduct an investigatory detention. The Court finds Defendant's argument misplaced. The investigative detention was based on the vehicle stop for speeding, and was in progress when the events occurred which led to Defendant's arrest on the drug charges. Trooper Havens testified that after stopping Defendant's vehicle, and while he remained in his own vehicle parked behind Defendant's vehicle, he observed Defendant lean toward the passenger side, further than would be necessary to get into the glove box, and stay there "quite a while", until the trooper approached his vehicle. When Trooper Havens asked Defendant for his identification, etc., Defendant presented a Pennsylvania Identification Card. Trooper Havens then asked Defendant to remain in his vehicle while he returned to his own vehicle to check the identification. According to the trooper, Defendant appeared very nervous, and was talking on two cell phones simultaneously, even while interacting with Trooper Havens. In addition, in spite of Trooper Havens' request of Defendant to remain in his vehicle, Defendant attempted three times to exit his vehicle. Each time, Trooper Havens walked back to Defendant's vehicle and asked him to remain inside. Further, at some point while Trooper Havens was running the check on Defendant's identification, Defendant called someone nearby over to the vehicle and handed her the keys.[2] When Defendant became animated, and made movements which made Trooper Havens nervous, the trooper called for back-up. When back-up arrived, Defendant was asked to exit his vehicle and was patted down in a search for weapons. Nothing was found but when Trooper Havens proceeded to do a "wingspan" search of the vehicle, and discovered the glovebox was locked, Defendant began yelling and tried to walk away. At that point, Trooper Henschel, who had arrived as back-up, placed Defendant in handcuffs for officer safety. When Trooper Havens asked Trooper Henschel to attempt to retrieve the keys to

[1] The Court rejects Defendant's argument that without proof that the trooper's speedometer had recently been checked for accuracy, the stop was illegal. While such proof may be necessary for a speeding *conviction*, a traffic stop requires only reasonable suspicion, not beyond-a-reasonable-doubt proof.

Defendant's vehicle, Defendant stated that there were drugs in the glovebox. Defendant was then placed in the back of the State Police vehicle and read his Miranda rights. Defendant's vehicle was towed to the state police barracks, the vehicle's owner was contacted and consented to a search of the vehicle, the vehicle was searched, and cocaine was discovered in the glovebox.

While the Court agrees that neither furtive movements nor excessive nervousness provide a sufficient basis upon which to conduct an investigatory detention, Commonwealth v. Reppert, 814 A.2d 1196 (Pa. Super. 2002), as stated above, the detention was based on the speeding violation, not the furtive movements or nervousness. Once detained, Defendant's furtive movements and nervousness properly contributed to the trooper's decision to conduct a patdown and wingspan search, but as the original detention had yet to conclude, nothing more than the original speeding violation was necessary to continue the detention.

With respect to Defendant's contention the police were without probable cause to arrest him, Defendant specifically argues that his statement alone, without "the body of the crime", was insufficient. While the "corpus delecti" must be proven prior to admission of a confession at trial, Commonwealth v. Daniels, 422 A.2d 196 (Pa. Super. 1980), there is no similar requirement to establish probable cause to arrest. Probable cause to effectuate an arrest exists when the facts and circumstances within the knowledge of the arresting officer are reasonably trustworthy and sufficient to justify a person of reasonable caution in believing that the arrestee has committed an offense, and probable cause for a warrantless arrest requires only the *probability*, and not a *prima facia* showing, of criminal activity. Commonwealth v. Rickabaugh, 706 A.2d 826 (Pa. Super. 1997). Indeed, the Supreme Court has held sufficient to establish probable cause to arrest, the uncorroborated confession of an accomplice which implicates the suspect. Commonwealth v. Zook, 615 A.2d 1 (Pa. 1992). Here, where Defendant himself stated that he had drugs in the glovebox, probable cause to arrest for possession of drugs was established.

Inasmuch as the detention and subsequent arrest were lawful, the Court finds no basis on which to suppress the drugs found in the search of the glovebox.

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[2] The vehicle stop was conducted in a residential neighborhood.

With respect to the interception of the cell phone call, Trooper Havens testified that after he arrested Defendant, he took possession of Defendant's two cell phones, and that while en route to the barracks, one of the phones rang, he answered it, the caller asked for "Cheech", Trooper Havens told the caller "Cheech" was not available and he was handling his calls, the caller requested "100", and Trooper Havens then made arrangements to meet the caller. Follow-up led to the caller's admission that he had been attempting to purchase $100 worth of cocaine from Defendant. Defendant contends that by answering the phone, Trooper Havens violated his right to privacy and/or violated the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. Sections 5701 *et seq*. The Wiretap Act has been held inapplicable to this situation, however, Commonwealth v. Di Silvio, 335 A.2d 785 (Pa. Super. 1975), and claims of violations of the right to privacy have been rejected by the Court in similar situations. For instance, in Commonwealth v. Lucchese, 335 A.2d 508 (Pa. Super. 1975), while executing a search warrant at Lucchese's home, one of the officers answered a telephone call for Lucchese. The unidentified caller, after some preliminary conversation, said: "Get this, Milwaukee, 240 to 2; Chicago, 150 to 120; Knicks, 150 to 120; Cincinnati, 240 to 200; Atlanta, 120 to 1." The Court held that evidence of such conversation was admissible to prove lottery and bookmaking charges. In Commonwealth v. Bufalini, 302 A.2d 352 (Pa. Super. 1973), while the police were conducting a search pursuant to a search warrant, a telephone call was answered by one of the officers. The caller asked to speak with appellant, was told by the officer that appellant was busy, and then gave the officer the following message: "No. 463 on the old and new stock for $ 1. and No. 352 on the old stock for a dollar." The Court noted that it had consistently held that evidence of intercepted conversations which indicates the placing of bets at the place called is admissible to prove lottery and bookmaking charges. Since in those cases the officers were lawfully in the places to which the calls were made (because of the search warrants), and in the instant case the police were lawfully in possession of Defendant's cell phones, having seized them incident to his arrest, the Court believes the holdings of Lucchese and Bufalini apply. Therefore, the evidence obtained as a result of the trooper's having answered Defendant's cell phone need not be suppressed.

In his Petition for Writ of Habeas Corpus, Defendant contends that without the challenged evidence, there is insufficient evidence to support the charges. Since the challenged evidence has been ruled admissible, however, the petition lacks merit, and will be dismissed.

ORDER

AND NOW, this 7th day of February 2007, for the foregoing reasons, the Motion to Suppress and the Petition for Writ of Habeas Corpus are both hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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