

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 v. : **No. 2000-2007**
 : **CRIMINAL**
 RAYMOND JONES, JR., :
 Defendant :

OPINION AND ORDER

Before this Honorable Court is the Defendant’s Motion to Suppress filed February 14, 2008. A hearing on the Motion was held on April 15, 2008.

Background

The following is a summary of the facts presented at the Suppression hearing. On November 1, 2007, around 10:00 p.m, while on proactive patrol, Williamsport Police Officers Jeremy Paulhamus (“Paulhamus”) and Justin Snyder (“Snyder”) observed a red Mercury Grand Marquis (“vehicle”) driving east bound on Germania St. with no license plate light. The Officers followed the vehicle and conducted a traffic stop in the 300 block of Hughes St. Snyder approached the driver and Paulhamus approached the passenger. The driver provided Snyder with insurance and vehicle registration information, but was unable to provide a driver’s license. The driver said she had a valid license but had left it at home. Snyder obtained all of her biographical information and then returned to the police cruiser. Snyder identified the driver as Kim P. Short (“Short”) using the JNET system. He also determined that Short’s license had been suspended.

In the meantime, Paulhamus approached the passenger and asked him for identification to which he responded, "I don't have any ID on me." Paulhamus then asked the passenger for his name and date of birth to which he responded, "I'm Ishamel Short. This is my aunt." He also gave his date of birth as June 24, 1970. Paulhamus ran a check on JNET and could not find any record of an Ishamel Short, with that date of birth in Pennsylvania. Paulhamus explained that JNET records consist of information on anyone who has an ID, driver's license or has ever gotten a ticket in the Commonwealth. Paulhamus testified that it is the Williamsport Bureau of Police's procedure to positively identify everyone in the vehicle before allowing the vehicle to leave the scene.

Both officers then made a second approach to the vehicle. Snyder approached and asked Short to step out of the vehicle. Snyder showed Short the license plate light that was not working and told her that her license was suspended. Snyder informed Short that he would be issuing her a traffic citation for driving with a suspended license. He then asked Short who the passenger was to which she replied, "Ishamel Short" and that he was her nephew. Simultaneously, Paulhamus approached the passenger again and asked for his name and date of birth, to which the passenger gave the same information.

When the Officers returned to the police cruiser, Snyder wrote out a citation for Short. Paulhamus again attempted to confirm the passenger's information and could not find any record. Paulhamus informed Snyder that the passenger could be giving a false name. The Officers agreed that they would talk to the passenger again to obtain a positive ID on him before Snyder would issue the citation to Short.

The Officers approached the vehicle for a third time. Paulhamus asked the passenger to step out of the car and then asked him to stand on the sidewalk so he wasn't standing in the

street. The passenger complied and then reached back into the vehicle to hand Short a cell phone. Paulhamus explained that he was unable to verify the passenger's information. Paulhamus then asked the passenger if he had a PA photo ID to which he said "No." Paulhamus asked further if the passenger lived in Williamsport and he responded, "I stay at my aunt's at 415 Anthony St., but I live back and forth between New Jersey." He further stated that, "I do have a NJ ID with my picture on it." At this time, Paulhamus radioed Lycoming County Communications ("LCC") the name Ishamel Short, DOB 6/24/1970, and asked them to run him for wants, warrants, and identification or driver's license records in PA and New Jersey. A LCC dispatcher informed Paulhamus that she found no record for the name or DOB that he provided.

Paulhamus then informed the passenger that he believed the passenger was providing him with a false name. Paulhamus asked him to be truthful now if he had given a false name before. The passenger insisted that his name was Ishamel Short. Paulhamus informed the passenger that his intent was to detain him pending a fingerprint Suspect ID to verify his identity. At that time, the passenger looked west and began running west on Hughes St. The Officers yelled stop, and then pursued on foot. The passenger continued to run west on Hughes and crossed Franklin St, running behind McNamee's Bar and through the parking lot, towards Hughes St. Snyder then observed the passenger reach towards his front waist area with his hands. Snyder thought the passenger was reaching for a gun, but then Snyder observed several smaller items fall to the ground from his front waist area.¹ The passenger then started to stumble and fall to the ground, Snyder ordered him to stop and stay on the ground. The passenger refused and tried to start running, at this time Snyder tried to take the passenger to the ground, but because of running full speed, they both hit the side of the building before hitting the ground. When on top of the

¹ The items were later identified as drugs in plastic baggies.

passenger, Snyder attempted to handcuff him but could not. The passenger continued to fight. Paulhamus began assisting with the struggle. The struggle continued until other officers arrived on the scene and took control of the situation. Both Paulhamus and Snyder suffered minor injuries and damage to their uniforms.

Following his arrest, the passenger was taken to City Hall where he was tentatively identified as Raymond Bowen Jr. However, the Officers later determined that the passenger's true identity was Raymond Jones, Jr., the Defendant in this case.

Discussion

Detention

Defendant alleges that the initial stop and subsequent seizure of the Defendant and any statements made by the Defendant were in violation of his Constitutional rights, as Miranda warnings were not given. In opposition, the Commonwealth argues that the Officers had probable cause for a traffic stop, and that the police could detain the Defendant in order to determine his identification. Further, the Commonwealth argues that the Officers had a duty to make sure the vehicle was transported in a legal way, and since the driver had a suspended license, they could ascertain from the Defendant whether he could legally operate the vehicle.

According to the Pennsylvania Superior Court, “the police can require both the driver and the passengers in the vehicle to identify themselves during a routine traffic stop regardless of whether there is reasonable suspicion that the passengers are engaged in criminal activity.” Commonwealth v. Campbell, 862 A.2d 659, 664 (Pa. Super. Ct. 2004); See also, Commonwealth v. Brown, 654 A.2d 1096, 1102 (Pa. Super. 1995), appeal denied, 664 A.2d 972 (1995). The Court further held that it was not an unreasonable intrusion of the protected rights of the

passenger to ask for identification. Id. In Commonwealth v. Flores-Rivas, 2007 Pa. D. & C. Dec. LEXIS 23, 1, 5-6 (Lehigh, 2007), the Defendant a passenger in a lawfully stopped vehicle was detained in order to confirm his identification after giving a false name. The Court, relying on Campbell, found that the initial questioning of the Defendant was proper. Further, The Pennsylvania Superior Court has determined that

“[e]ven when a police officer's initial stop or pursuit of an individual is not based upon either a reasonable suspicion of crime or probable cause, subsequent actions by the detainee during the encounter may be the basis for a lawful arrest and the subsequent denial of a suppression motion regarding evidence seized after the arrest.

Commonwealth v. Hall, 929 A.2d 1202, 1207 (Pa. Super. Ct. 2007), (citing Lynch, 773 A.2d at 1246-48).

The Court finds that the Officers had probable cause to conduct a traffic stop of the vehicle in which the Defendant was a passenger. Since the police can require “the passengers in a vehicle to identify themselves” without suspicion of criminal activity, Paulhamus’s actions in attempting to identify the Defendant were not improper. Campbell, 862 A.2d at 664. Further, Defendant’s false statements regarding his identification and date of birth gave Paulhamus the right to detain the Defendant in order to determine his proper identification. Defendant’s subsequent flight from the scene also gave Paulhamus probable cause to arrest.

Abandonment

Defendant also argued that the seizure of any physical evidence on the Defendant or discarded by the Defendant was done without consent or a search warrant. The Commonwealth argues that the evidence was thrown down and therefore, abandoned.

According to the Pennsylvania Superior Court, “a defendant has no standing to contest the search and seizure of items which he has voluntarily abandoned.” Commonwealth v. Tillman, 621 A.2d 148, 150 (Pa. Super. Ct. 1993). The Supreme Court has determined that abandonment is a question of intent, which

may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered. Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

Commonwealth v. Shoatz, 366 A.2d 1216, 1220 (Pa. 1976) (and cases cited therein). In

Pennsylvania the theory of abandonment has been adopted only “when it is shown that the seized evidence was not discarded as a result of unlawful police coercion.” Shoatz, 366 A.2d at 1220.

The testimony of the Officers establishes that their actions were not coercive.

Paulhamus’s actions in questioning the Defendant regarding his identify and subsequently informing Defendant he would be detained to confirm his identity was not unlawful. The Defendant’s flight from the scene after being informed he would be detained was not coerced by the Officers. The baggies of drugs which were dropped from the waistband after the Officers viewed the Defendant reaching in that area was a clear intent to relinquish both control of the drugs as well as any expectation of privacy. Therefore, as the evidence was abandoned by the Officers and their actions were lawful, the motion for suppression is denied.

ORDER

AND NOW, this ____day of April 2008, based on the foregoing Opinion, it is

ORDERED and DIRECTED as follows:

- I. Defendant's Motion to Suppress statements made by the Defendant and observations made by the Defendant is DENIED.
- II. Defendant's Motion to Suppress evidence discarded by the Defendant is DENIED.

By the Court,

Nancy L. Butts, Judge

cc. DA (HM)
Michael C. Morrone, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)