

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

ARNELL MONROE

Defendant

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**No. 256-2008
CRIMINAL**

OPINION AND ORDER

Before this Honorable Court is the Defendant’s Motion to Suppress filed April 9, 2008. A hearing on the Motion was held on July 29, 2008. Prior to the hearing, Defendant orally moved to amend his motion to challenge probable cause to arrest and to request the suppression of any statements made by the Defendant following his arrest. Over objection of the Commonwealth, the motion to amend was granted.

Background

The following is a summary of the facts presented at the Suppression hearing. On January 30, 2008, around 8:00 p.m, Sergeant Timothy Miller (“Miller”)¹ and Officer Dustin Reeder (“Reeder”) of the Williamsport Police of Bureau of Police were on stationary patrol working for the Special Operations Group Crime Suppression Team, in an area well known for heavy drug and prostitution activity. The Officers were in an unmarked police unit² in the 700 block of Hepburn Street when they observed a black male, later identified as Arnell Monroe (“Defendant”), walking south in the 800 block of Hepburn Street towards a second black male

¹ Miller testified he was qualified as an expert on drug transactions.

² Miller testified the unmarked unit was immediately recognizable as a police unit.

and a black female standing behind a silver vehicle. The three individuals engaged in a brief verbal encounter, and then the black female got into the front passenger seat, the second black male into the driver's seat, and the Defendant into the rear passenger seat. The Defendant stayed in the vehicle about thirty seconds to one minute. During this time, the Officers, through their binoculars, observed a handshake and some sort of exchange between the driver and Defendant, which they suspected was a drug transaction.

Immediately after the exchange, the Defendant exited the vehicle and walked to the west side of Hepburn Street and continued to walk south in the direction of the officers. As Defendant was walking, Miller pulled his unmarked cruiser from its parking spot and decided to drive north to see if he could identify the Defendant. Miller testified that while he was rolling down his window at about two or three car lengths away from the Defendant, he observed Defendant reach into his puffy coat and throw something white on the ground. Miller put the vehicle in reverse and yelled at the Defendant to stop so that he may investigate what was thrown. Miller in full uniform, exited the vehicle and commanded Defendant to stop; however, Defendant kept his hands in his pockets of his puffy coat, which caused Miller to be concerned about his safety. Miller took the Defendant to the ground at gun point, and then conducted a pat down, in which he felt what he believed were sandwich bags tied in the corners. Miller placed Defendant under arrest and a search incident to arrest was conducted in which Miller found a cell phone and two \$20 bills were on Defendant. Miller also identified the black male as the Defendant, Arnell Monroe.

At the time the Miller was taking the Defendant into custody, Reeder went to look in the grass. In the grass, Reeder found two large sandwich bags, tied in knots in the corners, with what the Officers suspected to each contain an 8 ball of powder cocaine.³

Defendant was taken back to City Hall where a booking sheet was completed. Miranda⁴ warnings were not given prior to completion of the booking sheet. As part of the booking process, Reeder asked Defendant if he was addicted to narcotics and if he was under the influence of any narcotics. The Defendant responded in the negative. Miller testified that the questions are for the safety of the officers and the Defendant. Miller alleged the question involving addiction is used to determine if medical attention is needed as well helping the Officers determine if in their opinion the Defendant should be charged with Possession with the Intent to Deliver.

While at City Hall, Defendant pleaded with the Officers, stating he wanted the two individuals from the silver vehicle interviewed. Defendant alleged the second black male was a friend and the female was the second black male's girlfriend and that they were originally going to give Defendant a ride but the black female was mad so they changed their minds.

Discussion

Abandonment

Defendant alleges that his initial contact with police constitutes a seizure not supported by reasonable suspicion and therefore the contraband discarded from his pocket should be suppressed. In opposition, the Commonwealth argues that the Officers had reasonable suspicion

³ The suspected cocaine field tested positive for cocaine.

⁴ Miranda v. Arizona, 384 U.S. 436, (1966).

to believe the Defendant was involved in criminal activity and that the contraband was abandoned property lawfully found by the Officers.

According to the Pennsylvania Supreme Court, ““where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.”” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

The Pennsylvania Supreme Court “has defined three forms of police-citizen interaction: a mere encounter, an investigative detention and a custodial detention.” Commonwealth v. Boswell, 721 A.2d 336, 340 (Pa. 1998). A mere encounter between police and a citizen “need not be supported by any level of suspicion, and carries no official compulsion on the part of the citizen to stop or to respond.” Commonwealth v. Riley, 715 A.2d 1131, 1134 (Pa. Super. Ct. 1998), appeal denied 737 A.2d 741 (1999). “No constitutional provision prohibits police officers from approaching a citizen in public to make inquiries of them.” Boswell, 721 A.2d at 339-40.

To determine whether a mere encounter has risen to the level of an investigatory detention, or seizure, we must discern whether, as a matter of law, police have conducted a seizure of the person involved. To decide whether a seizure has occurred, we apply the following objective test: 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. In applying this test, it is necessary to examine the nature of the encounter. Circumstances to consider include, but are not limited to, the following: the number of officers present during the interaction; whether the officer informs the citizen they are 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. Otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Commonwealth v. Beasley, 761 A.2d at 621, 624-25 (Pa. Super. Ct. 2000). If the encounter has risen to the level of investigatory detention, the officer “must harbor at least a reasonable suspicion that the person seized is then engaged in unlawful activity.” Id. at 625.

In the instant case, Miller observed Defendant enter a car and engage in some sort of a handshake and exchange, then exit. Miller decided to drive by the Defendant to see if he recognized him which he could do without making contact with the Defendant. As Miller pulled out of his parking spot, in his unmarked, but obvious police unit, he observed the Defendant discard something white from the pocket of his puffy coat. In reviewing the totality of the circumstances, the Court finds based upon the Defendant's behavior when Miller commanded the Defendant to stop, he had at least reasonable suspicion to believe criminal activity was taking place. In addition, Miller's belief was supported by the fact he was in an area known for heavy drug activity and that he had just observed what he believed was a drug transaction.

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. Miller testified that he pulled out of his parking spot in an unmarked, but obvious police unit, to see if

he could identify the Defendant. Miller's attempt to simply identify the Defendant was not unlawful. Then, as he was driving towards the Defendant, Miller observed the Defendant pull something white out of his puffy coat pocket and toss it into the grass. As Miller had not yet approached or made contact with the Defendant, his discarding of the drugs was not coerced. The two bags containing drugs were tossed from Defendant's coat indicating a clear intent to relinquish both control of the drugs as well as any expectation of privacy. Therefore, as the Officers actions were lawful and the evidence was abandoned by the Defendant, the motion for suppression is denied.

Miranda

Defendant also alleges he was subject to custodial interrogation without the benefit of Miranda warnings and therefore, his constitutional rights were violated. The Commonwealth argues in opposition that the information obtained during the booking process is exempt from Miranda's coverage. Further, they argue some of the information gathered from the booking sheet is to assure the health needs of those arrested who may be under the influence of drugs/alcohol and who may need immediate medical attention.

Miranda warnings must be given when a person is subjected to custodial interrogation. See Miranda v. Arizona, 384 U.S. 436 (1966) and Beckwith v. United States, 425 U.S. 341, 344 (1976). "Pennsylvania's test for custodial interrogation is 'whether the suspect is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action of [sic] movement is restricted by such interrogation.'" Commonwealth v. Meyer, 412 A.2d 517, 521 (Pa. 1980) (quoting Commonwealth v. Romberger,

312 A.2d 353, 355 (1973), vacated, 417 U.S. 964 (1974), reinstated on remand, 347 A.2d 460 (1975)).

‘[T]he term ‘interrogation’ under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Commonwealth v. DeJesus, 787 A.2d 394, 401 (Pa. 2001) (quoting Rhode Island v. Innis, 446 U.S. 291 (1980)). According to the Pennsylvania Supreme Court “information obtained via routine questions designed to secure biographical data necessary to complete booking or pre-trial services is exempt from Miranda's coverage.” Commonwealth v. Daniels, 644 A.2d 1175, 1181 (Pa. 1994) (citing Pennsylvania v. Muniz, 496 U.S. 582 (1990)).

In this case, it is clear the Defendant was in custody at the time the booking sheet was completed. Therefore, the issue is whether the Defendant was entitled to Miranda warnings prior to Reeder asking Defendant the standard booking questions; specifically whether asking the Defendant if he is under the influence of drugs/alcohol or addicted to narcotics. The Court finds those questions to be exempt from Miranda's coverage. The Defendant was only subject to express questioning and not to interrogation. The questions were not designed to evoke an incriminating response, rather to determine if the Defendant was in need of immediate medical attention. Therefore, the motion shall be denied.

ORDER

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

ORDERED and DIRECTED as follows:

- I. Defendant's Motion to Suppress evidence discarded by the Defendant is DENIED.
- II. Defendant's Motion to Suppress statements made by the Defendant following his arrest is DENIED.

By the Court,

Nancy L. Butts, Judge

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