

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-967-2008
vs. : CRIMINAL
:
STEWART D'WHITMAN ENOS, : Commonwealth's Motion to Reconsider
Defendant : Order Granting Defendant's Motion to
: Suppress

OPINION AND ORDER

The Court heard evidence on Defendant's Motion to Suppress Evidence on November 7, 2008. The Court issued an Opinion and Order on February 3, 2009, granting Defendant's Motion to Suppress all the evidence in this case. The Court found that the police stop of the vehicle, which Defendant rode in as a passenger on May 6, 2008, was unlawful.¹ In light of the initial illegality, the Court suppressed all the subsequent evidence as fruits of the poisonous tree. In the Court's Opinion and Order dated February 3, 2009, the Court found that the Commonwealth waived any argument on the fruits issue for failure to submit a brief on the issue. The Court entered a briefing schedule by Order of November 3, 2008, giving the Commonwealth until December 12, 2008 to file its brief. When the Commonwealth failed to file its brief by December 12, 2008, the Court's law clerk in January 2009 telephoned the District Attorney's office about the brief. When the brief was still not forthcoming the Court entered its Opinion and Order dated February 3, 2009.

The Commonwealth filed its Motion to Reconsider on February 5, 2009, which motion included the Commonwealth's brief on the fruits issue. The motion explained

¹ Trooper Haven of the Pennsylvania State Police stopped the vehicle, which Defendant rode in as a passenger on May 6, 2008 at 4:30 p.m. because two pine air fresheners hung from the rear view mirror. The Court did not find that this created a sufficient basis for the stop of the vehicle. No evidence showed that the air fresheners materially obstructed the view of the driver.

that the brief was prepared, but was inadvertently not filed.

In light of the significance of the fruits issue, the Court scheduled and heard argument on this issue on February 20, 2009. The Court accepted the Commonwealth's representation in regard to the filing of the brief, and allowed argument to proceed to the merits on this issue. Since the Court did not fully consider this issue previously, the Court must do so at this time.

The Court notes initially that the Commonwealth concedes the Court's finding that Trooper Haven's stop of the vehicle in which Defendant rode as a backseat passenger on May 6, 2008 was unlawful as not based on sufficient information to justify a Terry stop of the vehicle. The remaining issue in question focuses on whether the subsequent evidence of the continuing police investigation was a fruit of the initial unlawful vehicle stop.

To decide this issue the Court must discuss the facts of the subsequent police investigation, which occurred after the stop of the vehicle.

Post Vehicle Stop Evidence

On May 6, 2008 at the time of the vehicle stop Trooper Havens spoke to the driver, who seemed extremely nervous. The driver identified himself as Jonathan Karaisz. Also, present in the car was front seat passenger Shadet Vallesha Warren. The backseat passenger identified himself as Dexter Robert Young, Jr. The registered owner of the vehicle was Angela Barlow, who was not present at the Terry stop.

Trooper Havens ran everyone's information through NCIC/CLEAN and learned that Jonathan Karaisz was listed on his driver's license as six feet tall. The individual identifying himself as Jonathan Karaisz was clearly not six feet tall. The officer also found several wanted hits on the name and date of birth of Jonathan Karaisz. The

officer then placed the driver under arrest for providing false identification. A search of the driver's person found \$495.00 in cash and a wireless cellular telephone. The driver provided his actual name as Bart Karaisz and when the trooper ran his name and date of birth through NCIC/Clean it was revealed that he was wanted by the Pennsylvania State Parole for a parole violation. The trooper then had the vehicle transported to the Pennsylvania State Police barracks in Montoursville. Upon returning to the barracks, the trooper entered the vehicle into evidence along with the items seized from Karaisz's person.

On May 8, 2008, the registered owner of the vehicle, Angela Barlow, arrived at Montoursville Pennsylvania State Police barracks to speak with the police. Ms. Barlow signed a waiver of rights form and consented to a search of the vehicle. The search revealed a sandwich bag with 28 glassine bags containing crack cocaine. The police also found a brown paper bag containing #2 apple bags containing crack cocaine. A cellular telephone was found in the glove compartment.

The trooper then questioned Ms. Barlow about the items found and she claimed she knew nothing about them. She stated she had known Karaisz since February 5, 2008. Karaisz had spent the night before the vehicle stop at her residence.

The trooper then had a drug dog do a sniff of a number of envelopes, one containing the money seized from Mr. Karaisz's person. The dog hit on the envelope containing the cash taken from Mr. Karaisz's person.

On May 20, 2008, Trooper Havens interviewed Shadet Warren, the front seat passenger during the vehicle stop. She revealed on the day of the traffic stop, May 6, she met up with Mr. Karaisz at Hepburn and High Streets in Williamsport. An individual she knew as "Stu" then joined them and he was the rear seat passenger. The trooper asked if she

observed the driver or Stu place anything in the vehicle trunk and she advised that Stu got into the trunk of the vehicle, but she didn't see what he did. She related she didn't know anything about the drugs. She related Stu lived in Victoria Garden apartments, apt. 7, with his "baby's mom." Shadet Warren also told Trooper Havens that she had had conversations with another individual who led her to believe that Stu was a drug dealer.

On May 22, 2008, Trooper Havens followed up on his investigation by proceeding to Defendant's apartment at Victoria Gardens. He and several other officers arrived at the apartment at 11:55 p.m. and knocked on the door. The door was answered by a female, Ijanaya Enos. Ms. Enos was wearing a robe and was unclothed beneath the robe. She invited the trooper in with another officer, but she indicated she wanted a chance to close up her robe.

Trooper Havens asked her if she knew an individual named "Stu". She related that "Stu" was Stewart Enos, her husband. She indicated her husband resided with her and she provided a description of him, which matched the person who previously identified himself at the traffic stop as Dexter Young.

The trooper explained that he believed her husband was a passenger in a vehicle in which the police had found drugs. He also informed her that her husband provided the trooper with the name Dexter Young at the traffic stop. The trooper asked Ms. Enos if her husband was present in the residence and she indicated he was not. He then asked her if he could do a walk through of the residence to confirm this and she agreed.

When the trooper did not find Defendant, he asked Ms. Enos whether there were any illegal drugs inside the residence. When Ms. Enos said there weren't, he talked to her about whether she would consent to a search of the apartment. He informed her she did

not have to consent to the search, but he also made her aware that if she did not consent to the search he could apply for a search warrant. Ms. Enos then orally agreed to a search of the residence. The trooper then had his partner, Trooper Bedell go to their vehicle to obtain a written consent to search form. Trooper Bedell read her the form and she signed the written consent form. See Commonwealth Exhibit 2.

Trooper Havens testified that Ms. Enos was completely cooperative. Ms. Enos, who testified as a defense witness at the suppression hearing, testified that she was threatened by the troopers with the loss of her children who would have been removed from the household if she didn't cooperate with the state police. Ms. Enos testified with an angry and aggressive demeanor on the witness stand, denying she gave any voluntary cooperation to the state police. The Court in this regard did not find her to be credible. It appeared she was putting on a show for her husband who was present at the suppression hearing.

The search of the residence revealed a significant amount of crack cocaine and marijuana and packaging material on top of the kitchen cabinets and in a bedroom chest.

When Trooper Havens found the drugs in the home he asked Ms. Enos where her husband was. Ms. Enos had a phone number where he could be reached. The trooper then suggested a ruse to Ms. Enos for her to tell her husband to come back to the home telling him about the search and that his wife would be arrested and the children could be taken from them if he didn't return to the residence. Ms. Enos agreed to this because she was angry that her husband had drugs in the apartment.

First, Ms. Enos called her mother-in-law to talk to her. She then called Mr. Enos and told him that she'd be arrested and the children taken if he didn't return to the

residence. Ms. Enos then handed the phone to the trooper and the trooper told him to come directly to the resident and to bring the drugs and money with him. Mr. Enos arrived at the residence about 15 minutes later whereupon the trooper placed him under arrest.

A search of Defendant's person revealed a small bag of crack cocaine packaged similar to the cocaine found in the home and vehicle. Defendant was then transported to the Pennsylvania State Police barracks in Montoursville where he was advised his Miranda rights. Defendant agreed to speak with the trooper and he admitted Karaisz had advised him at the time of the traffic stop that there was cocaine in the vehicle trunk. He further related that the crack cocaine found in his residence belonged to both he and Karaisz and that Karaisz was the crack cooker. He admitted he and Karaisz sold the crack cocaine in the Williamsport area.

DISCUSSION

At this point, the Commonwealth is conceding that the stop of the vehicle was unlawful. The question is whether all or part of the subsequent evidence is "fruit of the poisonous tree." In the seminal case of Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), the United States Supreme Court rejected a "but for" test and stated the following:

We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

371 U.S. at 487-88, 83 S.Ct. at 417, 9 L.Ed.2d at 455.

Numerous items of evidence were seized and several statements were made in

the course of the investigation. The Court will address each separately.

1. Bart Karaisz providing false identification to the police

The first statement made was Bart Karaisz telling the police he was Jonathan Karaisz. Defendant is not entitled to suppression of this evidence. An individual may not vicariously assert the violation of another's rights under the United States Constitution or under Article 1, Section 8 of the Pennsylvania Constitution. *Commonwealth v. Hawkins*, 553 Pa. 76, 718 A.2d 265 (Pa. 1998)(defendant was not entitled to suppression of drugs seized from co-defendant's mouth); see also *Commonwealth v. Shaw*, 494 Pa. 364, 371 n.4, 431 A.2d 897, 901 n.4 (Pa. 1981), quoting *United States v. Payner*, 447 U.S. 727, 100 S.Ct. 2439, 2444, 65 L.Ed.2d 468 (1980)("a court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful search or seizure violated the *defendant's own* constitutional rights."). Therefore, regardless of whether Mr. Karaisz' rights were violated when the police detained him and questioned him, Defendant is not entitled to suppression of his statements.²

2. Cell phone and currency seized from Bart Karaisz' person

As with Mr. Karaisz' providing false identification to the police, Defendant is not entitled to suppression of the cell phone and currency seized from Mr. Karaisz' person, because Defendant does not have a personal privacy interest in another person's body and he cannot vicariously challenge an alleged violation of Mr. Karaisz' rights.

3. Enos provide police with false name

During the vehicle stop, Defendant told the police his name was Dexter Young. The

² This ruling is without prejudice to raising other issues of admissibility at trial, such as relevancy and hearsay objections.

Court finds this evidence is fruit of the poisonous tree and would suppress it from being used at Defendant's trial.

4. Drugs found in the trunk of the vehicle

The Court finds this evidence is not subject to suppression for two reasons. First, the Court questions whether Defendant's rights were violated by the search of a vehicle in which he had no possessory or ownership interest. Second, the Court finds the signed consent of the owner, Angela Barlow, to search the vehicle was sufficiently independent of the illegal vehicle stop to purge the taint so that the evidence would not be considered fruit of the poisonous tree.

5. Drugs discovered and seized during the search of the Enos residence

The Court finds this evidence is not subject to suppression. The illegal vehicle stop occurred on May 6, 2008. From the interview of Shadet Warren, the police discovered Defendant's name was Stu and he lived in an apartment at Victoria Gardens. On May 22, 2008, the police went to the Enos residence to determine whether "Stu" lived there. After the police determined that it was Stu's residence, they asked Mrs. Enos if they could search the premises for controlled substances. Mrs. Enos voluntarily consented to the search. The Court finds any taint of the initial stop was purged by Mrs. Enos' consent given over two weeks after the stop.

6. Defendant's statement to the police after the search of his residence

Defendant signed a written waiver of his Miranda rights and provided a statement to the police after the police lawfully searched his residence pursuant to Mrs. Enos' consent. This statement was not the product of the illegal stop.

ORDER

AND NOW, this ____ day of May 2009, after review of the Commonwealth's Motion for Reconsideration and the evidence presented in this case, the motion is **GRANTED IN PART AND DENIED IN PART**. The Court **DENIES** the Commonwealth's motion with respect Defendant providing a false name and suppresses that evidence. In other respects, the Court **GRANTS** the Commonwealth's motion and finds the remaining evidence is not subject to suppression with respect to this defendant.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)