

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1270-2008
vs. : CRIMINAL
:
BART KARAISZ, : Opinion and Order re
Defendant : Defendant's Motion to
: Suppress

OPINION AND ORDER

This matter came before the Court on Defendant's Motion to Suppress. The motion was originally scheduled for a hearing before the Honorable Nancy L. Butts on February 27, 2009. At that time, Judge Butts and counsel for both parties discussed the fact that the undersigned took testimony on a suppression motion raising the same issues filed by Stuart Enos, one of the passengers in the vehicle Defendant was driving. Everyone agreed that the undersigned would decide the motion based on the record created at the hearing on Mr. Enos' suppression motion. With this background in mind, the relevant facts follow.

On May 6, 2008 at approximately 4:30 p.m., Trooper Tyson Haven of the Pennsylvania State Police stopped the vehicle Defendant was driving, because two pine air fresheners hung from the rear view mirror. Trooper Havens spoke to Defendant, who seemed extremely nervous. Defendant identified himself as Jonathan Karaisz. Also, present in the car was front seat passenger Shadet Vallesha Warren and a backseat passenger, who 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. Defendant was clearly not six feet tall; he was only about 5 foot, 7 inches. The officer also found several

wanted hits on the name and date of birth of Jonathan Karaisz. The officer then placed Defendant under arrest for providing false identification. A search of the Defendant's person found \$495.00 in cash and a wireless cellular telephone. Defendant then 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 Defendant'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 Defendant since February 5, 2008, and he 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 Defendant's person. The dog hit on the envelope containing the cash.

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 Defendant 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 Stewart Enos’ 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. Mrs. 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 Mrs. 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 Mr. Enos, he asked Mrs. Enos whether there were any illegal drugs inside the residence. When Mrs. 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. Mrs. 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.

Trooper Havens testified that Mrs. Enos was completely cooperative. Mrs. 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. Mrs. 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 Mrs. 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. Mrs. 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. Mrs. 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 Mr. Enos's person revealed a small bag of crack cocaine packaged similar to the cocaine found in the home and vehicle. He was then transported to the Pennsylvania State Police barracks in Montoursville where he was advised his Miranda rights. Mr. Enos agreed to speak with the trooper and he admitted Defendant 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 Defendant and that Defendant was the crack cooker.

The Commonwealth stapled Ms. Barlow's written consent to search her vehicle, Mrs. Enos' written consent to search the residence, and Mr. Enos' custodial written statement that contained a waiver of his Miranda rights and his handwritten statement in a packet marked as Commonwealth's Exhibit 2.

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. Defendant providing false identification to the police

The first statement made was Defendant telling the police he was Jonathan Karaisz. The Court finds this statement was a direct result of the unlawful vehicle stop and must be suppressed.

2. Cell phone and currency seized from Defendant's person

Since Defendant was wanted by the Pennsylvania State Parole for a parole violation, Trooper Havens could arrest Defendant and search him incident to that lawful arrest. Therefore, the Court finds that the search of Defendant's person and seizure of the cell phone and currency are not fruits of the poisonous tree and will not be suppressed.

3. Mr. Enos providing the police with a false name

During the vehicle stop, Mr. Enos told the police his name was Dexter Young. 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. Enos’ rights were violated when the police detained him and questioned him, Defendant is not entitled to suppression of his statements.¹

4. Drugs found in the trunk of the vehicle

The Court finds this evidence is not subject to suppression. 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 a 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. The police lawfully discovered the drugs in Ms. Barlow’s vehicle based on her consent to search. Ms. Barlow indicated she did not know anything about the drugs found in her vehicle. The police then investigated who had access to the vehicle or were passengers in the vehicle. From the interview of Shadet Warren, the police learned that the other passenger in the vehicle was an individual known to Ms. Warren as “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.

¹ This ruling is without prejudice to raising other issues of admissibility at trial, such as relevancy and hearsay objections.

Furthermore, even if the Enos' rights had been violated by the search of their residence, Defendant's rights were not violated so he would not be entitled to suppression.

6. Mr. Enos' statement to the police after the search of his residence

Mr. Enos 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. Furthermore, Defendant's rights were not implicated by the police questioning of Mr. Enos, so even if the questioning had violated Mr. Enos' rights, Defendant would not be entitled to suppression.

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)
James Protasio, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)