

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**KHALIL LOGAN,
Defendant**

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**No. 726-2009
CRIMINAL DIVISION**

OPINION AND ORDER

Defendant filed a Motion to Suppress on September 25, 2009. A hearing on the Motion was held on October 19, 2009. The Defendant raises three issues in his Motion: (1) the officers lacked reasonable suspicion to stop the vehicle; (2) the officer lacked reasonable suspicion to conduct a pat-down of the Defendant; and (3) the search of the vehicle was done without a warrant, exigent circumstances, or consent.

Background

The following is a summary of the facts presented at the Preliminary Hearing on April 28, 2009. Around 4:30 p.m., on April 1, 2009, Officer Jeremy Brown (Brown) of the Williamsport Bureau of Police and Sergeant Timothy Miller (Miller) observed a green van parked in the 100 block of the Newberry Estates apartment complex. Brown testified that he noticed there were at least two black males in or around the vehicle. Brown related he saw, who was later identified as the driver of the vehicle and the Defendant, Khalil Logan walk around the front of the van and was approaching an apartment. Brown explained that the Defendant noticed them (officers) as they were driving by slowly and decided not to go into the apartment but turned around and headed back to the van. At the same time, the officers saw another black male exit the apartment and walk to the green van and get inside. The van drove off around the

complex and as it was coming back on Wayne Ave, Brown could see the van at the stop sign on Wayne Ave and Dove Street, whereupon Brown observed the van turn east without first using its turn signal. Preparing to cite the operator for failure to use a turn signal, Brown testified that they attempted to catch up to the van, which they did with only a couple of vehicles between them. Brown explained that they followed the vehicle until they got close enough to activate their emergency lights and siren on Poplar Street just off of West Fourth Street as the vehicle was traveling north. The van pulled over and the officers made contact.

Brown testified that he made contact with the driver and Miller made contact with the front-seat passenger. Brown related he observed at least two other occupants in the van but could barely see them because the windows were tinted heavily from the rear of the driver-side windows back. Brown explained that he could just see the other occupants' bodies and that they were moving some, but could not tell what they were wearing or what, if anything, they may be holding. Brown related the Defendant provided him with identification and he and Miller went back to the patrol vehicle.

Brown explained that he and Miller were very concerned about the back seat passengers because they could not see them. The officers decided they would re-approach, pat them down and confirm that they did not have any weapons before proceeding with the traffic stop. As the officers re-approached the van, Brown opened up the sliding door at the rear of the van and advised the occupants that they would be patted down for weapons. As Brown opened the door, he detected an odor of marijuana. Brown explained that the odor of marijuana indicated to him that marijuana was currently present in the vehicle and/or recently smoked. Brown patted down the Defendant and the rear passengers and placed them into custody. Brown looked at Miller who advised him that there was marijuana in plain view in the front area of the van floor. Due to

the odor of marijuana and marijuana being in plain view the officers arrested all four of the occupants and applied for a search warrant.

Prior to searching the vehicle, the Defendant gave Brown the telephone number of his girlfriend who was the registered owner of the vehicle. Brown called the Defendant's girlfriend who gave verbal consent to a search of the vehicle. Later that day, she also came to City Hall and signed a waiver. After obtaining consent, Brown executed a search of the vehicle and initially found in the search, between the exterior and the interior of the passenger front door, a large amount of cash and large baggies. Upon further search, in the headliner of the vehicle, Brown found money and four clear plastic sealed baggies, which contained a total of 41 small zip lock bags of crack cocaine. Three of the baggies were found directly above the driver's seat where the Defendant would have been located.

Discussion

The Officer lacked reasonable suspicion to make a vehicle stop

The Defendant alleges the stop of his vehicle was done without reasonable suspicion to believe that criminal activity was afoot and that he was involved in said criminal activity.

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)).

Police Officers are authorized to stop a vehicle whenever they have “reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred.” Commonwealth v. Hall, 929 A.2d 1202, 1206 (Pa. Super. Ct. 2007) citing 75 P.S. § 6308(b). According to the Pennsylvania Motor

Vehicle Code, “[u]pon a roadway no person shall turn a vehicle . . . without giving an appropriate signal . . .” 75 Pa.C.S. § 3334.

The Court finds the officers had reasonable suspicion that a violation of the Vehicle Code had occurred. Brown testified that he saw the van turn east at the stop sign on Wayne Ave and Dove Street without first using its turn signal. As it is a violation of the Vehicle Code to turn without first giving the appropriate signal, the officers had reasonable suspicion to conduct a traffic stop.

The officer conducted a pat-down without reasonable suspicion

The Defendant next asserts that the subsequent pat-down was done without reasonable suspicion to believe that criminal activity was afoot and that he was involved in said criminal activity.

According to the Pennsylvania Superior Court, “following a lawful traffic stop, an officer may order both the driver and passengers of a vehicle to exit the vehicle until the traffic stop is completed, even absent a reasonable suspicion that criminal activity is afoot.” Commonwealth v. Pratt, 930 A.2d 561, 564 (Pa. Super. Ct. 2007). Also, according to the Pennsylvania Superior Court, “the Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.” Bryant, 866 A.2d at 1146 (citing Commonwealth v. Dennis, 433 A.2d 79, 82 (Pa. Super. 1981)). “On the contrary, Terry and its progeny recognize that the essence of good police work is for the police to adopt an intermediate response where they observe a suspect engaging in ‘unusual and suspicious behavior.’” Bryant, 866 A.2d at 1146 (citing Dennis, 433 A.2d at 81 n.6, 82). The analysis used in determining whether reasonable

suspicion exists for an investigatory stop, is the same under both Article I, § 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution. See Commonwealth v. Lynch, 773 A.2d 1240, 1244 (Pa. Super. Ct. 2001). The standard is whether the officers “observed unusual and suspicious conduct by such person which may reasonably lead [them] to believe that criminal activity is afoot.” Dennis, 433 A.2d at 81 n.5, (quoting Commonwealth v. Galaydna, 375 A.2d 69, 71 (Pa. Super. Ct. 1977)); See also Lynch, 773 A.2d at 1245.

The Court finds that the officers had reasonable suspicion to conduct a pat-down of the occupants of the vehicle. Under Pennsylvania law, officers are permitted to order the driver and all passengers out of the vehicle. In this case, when the officers opened the door to order the passengers out, they immediately smelled an odor of marijuana. The odor of marijuana provided the officers with at least reasonable suspicion that the occupants of the vehicle had recently smoked marijuana or that marijuana was present in the vehicle. Although, the Defendant asserts that the officers had intended a pat-down prior to re-approaching, that argument lacks merit. The officers’ decision to pat-down was justified when they opened the van door and smelled an odor of marijuana emitting from the vehicle, which provided them with the level of suspicion necessary to conduct the pat-down. Therefore, the Court finds the officers had reasonable suspicion to conduct a pat-down of the Defendant.

The search of the vehicle was done without a warrant, exigent circumstances, or proper consent

Finally, Defendant asserts that the subsequent search of the vehicle was done without a warrant, exigent circumstances, or proper consent.

“Under both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, a search . . . which is conducted without a warrant, is deemed to be per se unreasonable.” Commonwealth v. Witman, 750 A.2d 327, 338 (Pa. Super. Ct. 2000). However, valid consent “may render an otherwise illegal search permissible.” Id. “To establish a valid consensual search, the prosecution must first prove that the consent was given during a legal police interaction, or if the consent was given during an illegal seizure, that it was not a result of the illegal seizure; and second, that the consent was given voluntarily.” Commonwealth v. Newton, 943 A.2d 278, 283-84 (Pa. Super. Ct. 2007) (quoting Commonwealth v. Reid, 811 A.2d 530, 545 (Pa. 2002)).

The Court finds that the officers obtained proper consent prior to searching the vehicle. The testimony reveals that the Defendant provided Brown with the telephone number for his girlfriend who was the owner of the vehicle. The Defendant’s girlfriend then voluntarily gave Brown verbal consent to search. Further, that same day she came to City Hall and signed a waiver of consent. The Court finds that the Defendant’s girlfriend not only properly consented once but reaffirmed her consent by signing the waiver. Therefore, as the officers had proper consent, the motion shall be denied.

ORDER

AND NOW, this ____ day of November 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Suppression Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA
Michael C. Morrone, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)