

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**CHRISTOPHER MULLEN,
Defendant**

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**No. 852-2009
CRIMINAL DIVISION**

OPINION AND ORDER

Defendant filed a Motion to Suppress on August 21, 2009. A hearing on the Motion was held on October 26, 2009. The Defendant raises three issues in his Motion: (1) the officers lacked reasonable suspicion to stop the Defendant; (2) the search of the Defendant was done without an arrest warrant; and (3) the search of the Defendant's residence was conducted without a search warrant, an arrest warrant, or legal consent and there was no exception to the warrant requirement justifying the search.

Background

The following is a summary of the facts presented at the Suppression Hearing. Around 5:55 p.m., on April 6, 2009, Trooper Tyson Havens (Havens) and Corporal Michael Simpler (Simpler) of the Pennsylvania State Police (PSP) were traveling westbound on Washington Boulevard in Williamsport when they observed a blue Cadillac traveling eastbound with heavy window tint. Simpler made a 3-point turn in order to make a traffic stop on the vehicle. Havens watched the vehicle and observed it make a turn into the Turkey Hill Mini Market parking lot. The troopers followed the vehicle and activated their emergency lights inside the parking lot.

Havens testified that as they entered the parking lot, he observed the passenger of the vehicle exit the vehicle and close the door. Simpler pulled the police cruiser behind the vehicle

and Havens immediately approached the passenger side and told the passenger, later identified as the Defendant, Christopher Mullen, to get back into the vehicle as they were performing a traffic stop. Havens related that he told the Defendant to get back into the vehicle at least four times. Havens explained that the Defendant faced him, became animated in that he appeared to be excited, agitated, raised his voice, and protested. The Defendant then began to back pedal, which Havens explained indicated to him the Defendant may flee. Havens noticed a large amount of cash falling out of the Defendant's pocket so he secured some of it. Havens explained that the Defendant continued to walk backwards with his hands up and started to look away from him which indicated to him that the Defendant was going to run. Havens reached out and grabbed the Defendant's neck in an attempt to secure him, but the Defendant resisted and ran away from the troopers down Railway street. Havens gave chase to the Defendant and observed him hit the side of a vehicle traveling south on Railway street and then turn and run north. At this point, Havens slipped on gravel and hit his ribcage on the curb, which knocked the wind out of him. Due to his injury, Havens discontinued the chase.

Simpler testified that as Havens was ordering the Defendant back into the vehicle, he approached the driver's side and ordered the driver who was beginning to exit the vehicle to get back in. Simpler stated that because of the heavy tint on the windows, he was surprised when he discovered there had been three people in the vehicle. Simpler also related he observed Havens wrestling with the Defendant and saw the Defendant run. Simpler explained that Havens became injured in his pursuit of the Defendant, so he (Simpler) pursued the Defendant when he witnessed him re-approach the Turkey Hill Market and cut across behind it. Simpler explained that the Defendant proceeded to jump down a seven foot retaining wall and seek refuge in the bushes behind the Enterprise building where he was ultimately found. Simpler then took the

Defendant into custody and conducted a search incident to arrest. Upon searching the Defendant, Simpler found a small amount of marijuana and three thousand dollars in cash. Simpler also testified that the vehicle was stopped before; however, they did not know it was the same one until it was pulled over. Simpler explained that the troopers were not precluded from stopping the vehicle just because it had been stopped before, as there continued to be a Vehicle Code violation. Simpler finally explained that the vehicle was titled to someone in the Defendant's family.

Upon the Defendant's arrest, the vehicle was impounded and based upon the smell of marijuana emitting from the vehicle, the fact that the Defendant fled, the amount of cash and a small amount of marijuana found on the Defendant's person, a search warrant was obtained. Upon execution of the search warrant, several bags of marijuana were found along with 20 rocks of crack cocaine, some of which was found under the seat where the Defendant had been sitting. In the glove box, a bullet and a key to a safe were found.

Havens was re-called to testify regarding the search of the Defendant's residence. Havens explained that Nadine Bryant (Mother) and another individual, later determined to be William Bryant (Stepfather) showed up at the PSP Barracks unannounced. Havens related that he spoke with the Bryants regarding the traffic stop and towing of the vehicle, while seated at a table in the lunchroom. Havens related that the Defendant's address is the same as the Bryant's and asked Mother if drugs and cash were at her house. Havens also asked her if she would consent to a search of the home and that she did not have to give her consent. Havens testified that she said she did not consent to a search, but as they continued to discuss it and after discussing it with her husband, Mother did give her consent. Havens also explained that when the troopers arrived to search the residence they told her she did not have to consent, but she said she did and let them

into the residence. Upon search of the residence, marijuana residue and a handgun were found in a drawer in an entertainment center in the living room. After these items were found, the search was stopped and the troopers applied for a search warrant.

Havens explained that while the Bryants were at the PSP Barracks an officer was watching, noting who went in and out of the residence. Havens testified that he never told Mother that her children would be taken into custody or that she would be criminally charged if she did not consent. Finally, he never told her they would search even if she did not consent.

Mother testified that she was informed by her cousin that Defendant, her son had been chased by police. She called the PSP and found out Defendant was at the Barracks and went there with her husband. Mother further related that she and her husband went into a lunchroom at the Barracks with Havens where they were asked for consent to search their house. She explained that she told him no at first, but Havens continued to ask and told her they would come and search anyway and that troopers were already outside her house. Bryant also testified that Havens told her she would be charged criminally and her children would be taken away from her if something was found in the house and she did not consent. She believed that Havens asked her for consent to search approximately three times. Bryant admitted that Havens did not yell at her or threaten her in anyway and was, in fact, polite to her because she felt he wanted something from her. Ultimately she feared being arrested and having her children taken, so she gave her consent.

Stepfather testified that when asked for consent he told Havens no. He explained that Havens told them there was an officer outside their house, they would be charged if they did not consent and anything was found, and they would be liable for whatever is found in the house

upon execution of a warrant. Stepfather also related he was worried about what his Parole Agent would say. He told Mother to do what she needed to do and left the decision up to her.

The Defendant testified on his own behalf. He related that he was the front seat passenger in the vehicle and that when he got out of the vehicle there were no sirens, lights, or police cruiser in the parking lot. The Defendant testified that as he was walking away from the vehicle towards the store he was counting his money. He explained that he heard Havens yell at him when he was about to go into the store, so he walked back to the vehicle and towards Havens. The Defendant related that Havens told him to get back in the car and he asked Havens why they were pulled over to which Havens responded “a traffic stop.” The Defendant then testified that Havens grabbed the money that was coming out of his pocket and grabbed at his neck and that he did not back pedal but eventually got scared and ran. The Defendant also testified that he knows both of the troopers from a prior traffic stop in the same vehicle. The Defendant explained that the vehicle has been driven by multiple people and not stopped. Finally, the Defendant testified that he overheard the troopers telling others that they were off to get Chinese food for lunch but they saw him (Defendant) and wanted to see “what Mullen was up to.”

Havens was called on rebuttal and testified that the troopers were on the way to get lunch when they saw the vehicle, but did not know it was the vehicle the Defendant is known to utilize until they saw the Defendant exiting it.

Defense Counsel provided the Court with a copy of a surveillance video taken by the Turkey Hill Mini Market. The video shows the Defendant exiting the vehicle and then the troopers pulling into the parking lot. The video depicts the entire encounter between the troopers and Defendant in the Turkey Hill lot.

Discussion

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 Troopers lacked reasonable suspicion to stop the Defendant

The Defendant alleges the troopers lacked reasonable suspicion to stop and order him back into the vehicle. Specifically, the Defendant asserts that because he had exited the vehicle prior to the officers conducting the traffic stop, that the officers needed reasonable suspicion that criminal activity was afoot in order to stop him.

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, “[n]o person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle.” 75 Pa.C.S. § 4524.

The Pennsylvania Superior Court in Commonwealth v. Pratt, determined that pursuant to Pennsylvania v. Mimms, 434 U.S. 106 (1977) and Maryland v. Wilson, 519 U.S. 408 (1997), “a police officer may lawfully order a passenger who has exited and/or attempted to walk away from a lawfully stopped vehicle to re-enter and remain in the vehicle until the traffic stop is completed, without offending the passenger's rights under the Fourth Amendment.” 930 A.2d 561, 567 (Pa. Super. Ct. 2007). Nor does an “officer’s instructions to a passenger of a lawfully

stopped vehicle to re-enter and remain in the vehicle” violate Article I, Section 8 of the Pennsylvania Constitution. Pratt, 930 A.2d at 567. The Pratt Court recognized the great safety concerns for police officers and that the concern for safety of the officers “outweighs the marginal intrusion on personal liberty.” The Court went on to say

that allowing police officers to control all movement in a traffic encounter, and, in particular, eliminate the possibility of a passenger, who has an obvious connection to the vehicle's driver, from distracting or otherwise interfering with an officer engaged in a traffic stop, whether by exiting the car and remaining at the scene, or attempting to leave the scene for unknown reasons, is a reasonable and justifiable step towards protecting their safety.

Pratt, 930 A.2d at 567-68.

The Court finds the troopers did not need reasonable suspicion that criminal activity was afoot in order to stop the Defendant. As the troopers were conducting a valid traffic stop, they were permitted to order the Defendant to re-enter and remain in the vehicle; no additional reasonable suspicion was required for such a request. Therefore, the troopers did not need any additional reasonable suspicion when they ordered the Defendant back into the vehicle. As the Defendant’s constitutional rights were not violated, the Motion shall be denied.

The search of the Defendant was done without an arrest warrant

The Defendant next asserts that the troopers violated his constitutional rights by searching his person without an arrest warrant.

According to the United States Supreme Court ““it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.”” United States v. Robinson, 414 U.S. 218, 226 (1973) (quoting Chimel v. California, 395 U.S. 752 (1969)). Further, the Supreme Court of Pennsylvania states

that “officers ‘ . . . when making a lawful arrest with or without a search warrant [may] discover and seize any evidence, articles or fruits of crime found upon the prisoner or upon the premises under his control at the time of his lawful arrest’” Commonwealth v. Aljoe, 216 A.2d 50, 53 (Pa. 1966) (quoting Commonwealth v. Gockley, 192 A.2d 693, 699 (1963)).

The Court finds that the search of the Defendant’s person was valid as it was conducted pursuant to a lawful arrest. The Defendant was ordered to re-enter the vehicle as part of a lawful traffic stop, but instead chose to flee, which gave the troopers probable cause to arrest. The search of the Defendant’s person was done subsequent to a lawful arrest and therefore, an arrest warrant was not required. As the search was conducted pursuant to a lawful arrest, the Motion shall be denied.

The search of the Defendant’s residence was conducted without a search warrant, an arrest warrant, or legal consent and there was no exception to the warrant requirement

Finally, Defendant asserts that the search of his residence was conducted without a search warrant, arrest warrant, legal consent or some exception to the warrant requirement justifying the search of his things at his residence.

“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 law is settled that a warrantless search may be made with the voluntary consent of a third party who possesses “common authority over or other sufficient relationship to the premises or effects sought to be inspected.” United States v. Matlock, 415 U.S. 164, 168-172, (1974). “Common authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority which justifies the third party consent does not rest upon the law of property, with its attendant historical and legal refinements, . . . but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.” Matlock, supra, 415 U.S. at 173, n.7; Commonwealth v. Lowery, 451 A.2d 245, 248 (Pa. Super. Ct. 1982) (citing Commonwealth v. Garcia, 387 A.2d 46 (1978)). There was un rebutted testimony that Nadine Bryant had the apparent authority to consent to the search of the residence, the Court finds that the police were permitted to obtain consent to search from Defendant’s mother and the consent on its face is valid. However, Defendant contends that even if his mother was empowered to consent to a search of his room, the consent was the result of police coercion and hence was invalid.

To be effective, a consent to search must be voluntarily given with a total absence of duress or coercion, express or implied. Commonwealth v. Harris, 239 A.2d 290, 293 (1968); Commonwealth v. Pichel, 323 A.2d 113 (1974). “No one factor is determinative in a voluntariness inquiry. . . . It is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced. It is this careful sifting of

the unique facts and circumstances of each case that is evidenced in our prior decisions involving consent searches.” Commonwealth v. Lowery, 305 Pa. Super. 66, 74 (Pa. Super. Ct. 1982) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 233 (1973)). In evaluating the voluntariness of a custodial consent, the courts have sensibly looked at a variety of factors which indicate a voluntary decision [consent to search]. Commonwealth v. Dressner, 336 A.2d 414, 415 (Pa. Super. Ct. 1975). In reviewing consents, pertinent factors have been “the education, intelligence and experience of the consenter . . .” and “if . . . [the consenter’s] background indicates his understanding of investigating procedures.” Id. at 158.

In the case at bar, Mother approached the State Police to determine the whereabouts of her son. While at the Barracks she had the opportunity to speak with Trooper Havens with her husband present. She stated that she recognized that Havens wanted something from her so he was on “his best behavior”. While Mother stated that she was afraid of being charged and Stepfather was worried about the effect on his State Parole, those are not sufficient facts to rise to the level of coercion or duress. The Court is satisfied that Mother and Stepfather both knew by education and experience exactly what Havens was explaining to them. While on the stand, both by her demeanor and words, Mother clearly knew that although there were other officers watching her residence, she would need to meet them to allow them to go inside and could have changed her mind to refuse the search at anytime, simply by not returning to her residence. However, once there, she was again advised by Havens that she could still refuse, which she did not dispute. Therefore, the Court finds the troopers received valid consent from Mother to search the residence in which the Defendant resided. As the Court has found a valid consent to search, it does not need to discuss the other issues of lack of an arrest warrant or exception to the warrant requirement raised.

ORDER

AND NOW, this ___ day of December 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)