

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-304-2009
vs. :
: Opinion and Order re
CHRISTOPHER WILLIAMS, : Defendant's Omnibus Pretrial Motion
Defendant :

OPINION AND ORDER

This matter came before the Court on Defendant's Omnibus Pretrial Motion.

The relevant facts follow.

In the afternoon of January 12, 2009, Trooper Tyson Havens and Trooper Michael Simpler were traveling west on State Route 2014 (hereinafter SR 2014), approaching the section of Third Street known as the Golden Strip near the intersection with Country Club Road. The troopers observed a new, dark colored Chevy Impala with New York tags traveling east on SR 2014. The passenger in the vehicle spun around to look at the police when the Impala proceeded past their marked police car. The troopers decided to turn around and follow the vehicle.

In the area of the on ramp for I-180 west, the driver of the Impala turned on his right turn signal. The vehicle exited the roadway as if to proceed onto I-180 west, but at the last minute jerked back onto SR 2014. The driver never turned off his right turn signal. The Impala proceeded on SR 2014 for approximately $\frac{3}{4}$ of a mile until it reached the intersection with Old Montour Road. The vehicle turned onto Old Montour Road and into the Super 8 Motel parking lot where it parked in a handicapped parking stall. The vehicle did not have handicapped tags or a handicapped placard displayed.

The troopers conducted a traffic stop of the vehicle for a turn signal violation. Trooper Havens approached the driver and Trooper Simpler approached the passenger.

Trooper Havens asked the driver for identification. The driver was identified as Keith Holmes from a Pennsylvania photo identification card. Defendant was the passenger.

Trooper Havens asked the driver where he was heading, and the driver responded to was heading to the mall. The trooper then asked why he entered the Super 8 parking lot. The driver indicated that his cell phone was not working and he planned to use the pay phone at the motel. Trooper Havens asked the driver to try to use the cell phone. The driver complied and the cell phone worked. The driver had indicated to Trooper Havens that his address was in Philadelphia. Trooper Havens asked him if he was staying at the Super 8 motel. The driver said he was not staying there; he was staying at a residence on Berger Street. Defendant also was asked if he was staying at the motel and he said he was not. Defendant volunteered information that he was on probation in Philadelphia for drug charges and he was allowed to be in Williamsport.

A check of the registration for the vehicle revealed it was a Hertz rental car from Philadelphia. The person that rented the vehicle in Philadelphia was not present in the vehicle at the time of the stop. One of the troopers spoke to the rental agency, which when told of the situation asked the troopers to take custody of the vehicle.

One of the troopers checked the prior criminal histories of both individuals. Both men had prior criminal histories for drug deliveries and firearm violations. Neither individual had a valid driver's license.

During the conversation with Trooper Havens, the driver placed his right hand along his right side several times. After the first time, Trooper Havens asked both individuals to keep their hands where he could see them. When the driver made a quick motion between his legs, Trooper Havens became concerned for his safety. He grabbed the

driver's hands and ordered the occupants out of the vehicle. Trooper Havens patted the driver down for weapons. He felt a large object in the driver's pants that felt like a large amount of cash. He asked the driver what he had in his pocket. The driver said it was cash. Trooper Havens asked him to show it to him, but told him he did not have to. The driver agreed. The large object was \$5,000 in cash wrapped in rubber bands. The driver's wallet was on the seat. The driver displayed his wallet, which contained an additional \$291. The driver also had two cell phones.

Trooper Simpler asked Defendant to show him what he had in his pockets. Trooper Simpler also told Defendant he did not have to do so. Defendant agreed to show the trooper what was in his pockets. Defendant pulled out his wallet; it contained \$685. Defendant also had a cell phone in his lap.

When Trooper Davis arrived on the scene, Trooper Havens went inside the Super 8. Trooper Havens asked the hotel clerk, Dimpel Patel, if she recognized Defendant and the driver of the vehicle. Ms. Patel Trooper Havens the room was rented in the driver's name, he had checked in on Friday, January 2, 2009, and he paid cash each night. Ms. Patel also indicated two people were staying in the room. Although she did not have any face to face dealings with the driver or Defendant, she indicated she saw a big built individual in the lobby and at the car that morning and Defendant was the only big built guy at the hotel at that time. Therefore, while she could not positively identify Defendant as the person she saw in the morning, she believed he was the same person she saw earlier.

Trooper Havens went upstairs to Room 309 and stood in the hallway outside the door.

Trooper Simpler secured the vehicle, the cash and the cell phones and took

them back to the barracks. Defendant and the driver were released from the scene.

Sometime thereafter, Trooper Havens heard heavy breathing and saw Defendant in the hallway. It was apparent he had just run up the stairs. When Defendant looked up and saw Trooper Havens, he stopped. At that point Trooper Havens heard the driver yell up the stairway to Defendant, "They're getting a search warrant. Let's go." Defendant turned around and left.

Back at the barracks, Trooper Bedell and his drug dog Ellie were called to conduct an exterior sniff of the vehicle. Ellie hit on the trunk and rear passenger area of the vehicle. No drugs were found in the vehicle, so the troopers requested a warrant for Room 309.

The Commonwealth introduced the application and affidavit of probable cause for the search warrant as Commonwealth Exhibit 2. During the search of Room 309, the troopers discovered a plastic baggie containing 26 small baggies of crack cocaine; 5 empty baggies; an empty oxycodone prescription bottle in the driver's name; a baggie containing approximately one pound of marijuana; and a Nokia cell phone and charger.

At some point, Trooper Havens wasn't sure whether it was while he was preparing the search warrant or after they executed the search warrant and returned to the barracks, Defendant's cell phone rang numerous times and Trooper Havens answered it. The callers asked for "L." Trooper Havens told the callers he was not "L," he was "T." The callers told Trooper Havens they wanted to buy cocaine. With one caller named Brucie, Trooper Havens arranged a buy. When Brucie appeared, Trooper Havens read him his Miranda rights and interviewed him. Trooper Havens learned that "L" was the driver of the vehicle.

On January 16, 2009, Trooper Bedell had Ellie conduct a scan of the cash seized in this case. Trooper Bedell was assisted by Corporal Shadle so neither he nor Ellie would know which envelopes contained the suspect currency. First, Trooper Bedell had Ellie scan control currency.¹ The scan was conducted using 6 envelopes. The control currency was put in one envelope and paper would be put in the other 5 envelopes. Ellie did not alert on any of the envelopes. Then Corporal Shadle replaced one of the envelopes containing paper with one containing suspect currency. The \$685 from Defendant's wallet was placed in envelope number 5. Ellie alerted on envelope number 5. A similar procedure was utilized and similar results achieved for the \$5,000 taken from the driver's person and the \$291 taken from the driver's wallet. Trooper Bedell admitted on cross-examination that he learned through training and has heard that most money in circulation has a drug odor on it.

On February 2, 2009, Defendant was arrested and charged with conspiracy to deliver crack cocaine, possession with intent to deliver crack cocaine, possession of crack cocaine, possession of a small amount of marijuana, and possession of drug paraphernalia.

Defendant filed an omnibus pre-trial motion seeking suppression of all evidence because the vehicle stop was unlawful; Defendant's detention was unlawful; there was no probable cause to obtain the search warrant; and all evidence was seized without probable cause. Defendant also requested habeas corpus relief in his omnibus motion.

Defendant first asserts that the vehicle stop was unlawful and merely a pretext to attempt to discover drugs. The Court cannot agree. Trooper Havens testified that the driver turned on the vehicle's right turn signal and the vehicle moved into the lane of traffic designated for entry onto I-180 west. Suddenly, and without activating the left turn signal,

¹ The control currency was money that had never been in circulation.

the driver veered the vehicle left, back onto SR2014 so it could proceed straight ahead toward Montoursville. Trooper Havens testimony shows he had reason to believe the driver violated the vehicle code by changing lanes without an appropriate signal of his intention to move left from the on-ramp lane back to the lane for SR2014, see 75 Pa.C.S. §3334.

The Court also finds the stop was not merely a pretext. Defense counsel argues that the police could only request a driver's license and registration, run a computer check and issue a citation in this case, because they did not have reasonable suspicion of illegal drug transactions or any other crime. The Court cannot agree. Neither the driver nor Defendant had a valid driver's license. The vehicle was a rental from Philadelphia with New York license plates. Neither the driver nor Defendant was on the lease agreement. The police had reasonable suspicion, and likely probable cause, to believe the driver of the vehicle was committing the crime of unauthorized use of a motor vehicle. The police questioning regarding of the occupants regarding where they were intending to go and why they were in Williamsport were not unreasonable inquiries given the fact that neither occupant had a valid driver's license and neither was on the lease agreement. The more the police investigated the situation and the more lies the occupants told the police, the police developed reasonable suspicion that the occupants were engaged in drug activity. This suspicion was heightened when the troopers ran a criminal history check of the occupants and discovered both had criminal histories for firearm and drug offenses.

Moreover, during a lawful traffic stop, the police are permitted to order the occupants out of the vehicle for officer safety. *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882, 886 (1997); *Commonwealth v. Pratt*, 930 A.2d 561 (Pa.Super. 2007); *Commonwealth v. Brown*, 439 Pa.Super. 516, 654 A.2d 1096 (Pa. Super. 1995). While the troopers did not

immediately order the occupants out of the vehicle, they were justified in doing so when, despite Trooper Havens' instructions to the occupants to keep their hands where the troopers could see them, the driver kept reaching to his right and then suddenly reached between his legs. Once the occupants were out of the vehicle, the troopers patted them down for weapons. There was a large object in the driver's pocket that appeared to be a large amount of cash. Trooper Havens asked the driver to show him what was in his pockets, but told him he did not have to. The driver agreed to show the trooper and pulled out a roll of \$5,000 in cash that was held together with rubber bands. The driver also had two cell phones and a wallet containing \$291. Similarly, Trooper Simpler asked Defendant to show him what he had in his possession and told Defendant he was not required to do so. Defendant agreed and showed Trooper Simpler his wallet, which contained \$685. Defendant also had a cell phone, which had been in his lap when he was in the passenger seat of the vehicle.

Unfortunately, the Court does not believe the troopers had probable cause to seize Defendant's cell phone or the cash from Defendant's wallet. A warrantless seizure is per se unreasonable unless probable cause is established and the seizure falls within a specifically enumerated exception to the warrant requirement. See *Commonwealth v. Wright*, 599 Pa. 270, 301, 961 A/2d 119, 137 (Pa. 2008). The cell phone and money were not contraband. At the time that the items were seized, the police had not seen any suspected controlled substances or packages that appeared to be controlled substances. They also had not smelled the odor of any suspected controlled substances, or brought in the drug dog yet. Although they had reasonable suspicion to believe the occupants of the vehicle were engaged in drug activity, that suspicion did not ripen into probable cause until after Ellie alerted on the vehicle. According to the affidavit of probable cause for the search warrant, the vehicle

stop occurred at 1425 hours or 2:45 p.m. Trooper Bedell testified that Ellie did an exterior sniff of the vehicle at approximately 1700 hours or 5:00 pm. when the vehicle was at the impound lot. By that time, the occupants had been released from the scene and left the area of the hotel.

The Court also finds the fact the occupants were released significant to the probable cause determination. If the police had probable cause to believe the occupants of the vehicle were engaged in drug activity at the time the items were seized from Defendant, they would not have released Defendant; instead, they would have arrested him for drug offenses and seized the items incident to his arrest.

The Court also cannot say that these items would have been inevitably seized pursuant to Defendant's arrest on these charges because the vehicle stop occurred on January 12 and Defendant was not arrested until February 2.

Since Defendant voluntarily showed Trooper Simpler the cash in his wallet and the phone was in plain view in Defendant's lap, the Court finds the Commonwealth can present testimony that Defendant possessed a cell phone and several hundred dollars in cash at the time of the vehicle stop. The Court, however, would preclude the Commonwealth from introducing the cash or the cell phone as evidence in Defendant's trial. The Court would also preclude the Commonwealth from introducing evidence obtained as a result of the seizure of the cell phone in Defendant's trial, i.e., the Court would preclude the Commonwealth from presenting testimony about Trooper Havens answering Defendant's cell phone and the testimony of any witness discovered as a result of Trooper Havens

answering Defendant's cell phone at Defendant's trial.²

Defendant claims the police did not have probable cause to obtain a search warrant and search Room 309. The Court cannot agree.

“Probable cause exists where the facts and circumstances within the officers’ knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed.” *Commonwealth v. Gibson*, 536 Pa. 123,130, 638 A.2d 203, 206 (1994). It is only the probability, and not a *prima facie* showing, of criminal activity that is the standard of probable cause. *Commonwealth v. Quiles*, 422 Pa. Super. 153, 167, 619 A.2d 291, 298 (1993)(en banc).

The police knew the following information and included it in their affidavit of probable cause: (1) the vehicle was a Hertz rental car from Philadelphia; (2) neither the driver nor Defendant had a valid driver’s license; (3) neither the driver nor Defendant was on the vehicle’s lease; (4) the driver provided a Philadelphia address; (5) the driver lied about his cell phone not working; (6) the driver lied about staying at the Super 8 hotel; (7) Defendant

² Although this case has been joined with the case of *Commonwealth v. Keith Holmes*, CR-467-2009 for trial, the ruling in this case does not preclude the Commonwealth from using this evidence against Mr. Holmes and may provide a basis for the Commonwealth to try these cases separately. The Court notes Mr. Holmes has not filed any motion to suppress evidence and his rights would not be violated by a seizure of evidence from Defendant’s person.

told the police he was currently on probation with Philadelphia County for drug violations; (8) when asked if his probation officer was aware that he was in Williamsport, Defendant did not respond directly, but stated “he was just here a couple of days;” (9) a check of the driver and Defendant’s criminal histories revealed the driver had three prior drug delivery arrest and numerous firearms arrests in the city of Philadelphia and Defendant had two previous drug delivery arrests and numerous other drug related arrests in the city of Philadelphia; (10) the driver of the vehicle would not keep his hands where Trooper Havens could see them; (11) the driver of the vehicle had \$5,000 in cash rolled up in rubber bands on his person; (12) after first claiming the cash was from a deposit, the driver changed his story and advised he was going to open up an account at the mall; (13) Defendant had approximately \$700 in cash; (14) the driver and Defendant had been staying in Room 309 of the Super 8 hotel since Friday, January 2, 2009; (15) the driver paid cash each night for the room; (16) after Defendant left the area of the Super 8 on foot, he returned to the hotel; (17) as Defendant began to walk toward room 309, he looked up and saw Trooper Havens standing in front of the door; (17) at the same time, the driver yelled “they’re getting a search warrant, let’s go;” (18) Defendant then turned around and departed; (19) Ellie, a certified drug detection dog, was utilized to conduct an exterior sniff of the vehicle at the police barracks; (20) Ellie gave a positive indication on the vehicle; (21) no contraband was discovered inside the vehicle; (22) both individuals were from the known drug source city of Philadelphia.

The Court finds the totality of these circumstances provided ample probable cause for the police to believe they would find controlled substances in room 309 of the Super 8 hotel.

Defendant also seeks habeas corpus relief. In his motion Defendant notes the

room was registered to the driver; the phones calls were for L, who the police determined was the driver; and the hotel clerk never saw Defendant enter or leave the hotel room. He then argues that the evidence is insufficient to connect him to the crimes charged. The Court cannot agree. Defendant ignores several pieces of evidence that the Court believes raise a jury issue whether Defendant constructively or jointly possessed the drugs found in Room 309. First and foremost, after being released and leaving the area of the Super 8 hotel, Defendant returned and approached Room 309, but when he saw Trooper Havens standing at the doorway and heard the driver yell “they’re getting a search warrant, let’s go” Defendant turned around and left. Second, although hotel staff may not have seen Defendant enter or leave Room 309, they did see him at the hotel with the driver. Third, Defendant told the police he was currently on probation for a drug offense. Fourth, Defendant whipped his head around when he saw the police cruiser, which was what drew the troopers’ attention to the vehicle in the first place. Fifth, although Defendant did not have as much cash on his person as the driver, he still possessed a significant quantity of cash that, in this Court’s experience, was more than the average law-abiding citizen typically carries. Considering all the circumstances of this case, including the items listed above, the Court believes the jury could infer that Defendant was an accomplice or co-conspirator with the driver, he was staying in Room 309 with the driver, and first and fourth items constituted some evidence of consciousness of guilt.

ORDER

AND NOW, this ____ day of November 2009, in accordance with the foregoing Opinion, the Court GRANTS Defendant's Omnibus Motion in part and DENIES it in part. The Court precludes the Commonwealth from introducing into evidence at Defendant's trial the money and cell phone taken from Defendant and any evidence obtained as a result of answering the cell phone taken from Defendant.

By The Court,

Kenneth D. Brown, President Judge

cc: Mary Kilgus, Esquire (ADA)
Robert Cronin, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file