

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

KASIF DUVAL

Defendant

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CR: 867-2010
CRIMINAL DIVISION

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on September 1, 2010, which included a Petition for Writ of Habeas Corpus and a Motion to Suppress. At the time of the hearing on the Omnibus Motion on November 5, 2010, the Petition for Writ of Habeas Corpus was dismissed for failure of Defense Counsel to provide transcripts. The only remaining issue for the Court to consider is the Motion to Suppress.

Background

On October 22, 2009, Officer Justin Snyder (Snyder) and Corporal Kris Moore (Moore) of the Williamsport Bureau of Police initiated a traffic stop on a gold Buick for a traffic violation for having dark tinted windows. Snyder and Moore observed two occupants in the vehicle. The front seat passenger was identified as Kasif Duval (Defendant) of Philadelphia. Snyder identified the Defendant when he recognized two distinctive tattoos on the Defendant's face, a tattoo that said CB1300 and a tattoo of tear drops. Snyder recognized the Defendant's tattoos because they were described by a confidential informant as tattoos belonging to a person involved in a controlled purchase of drugs. Snyder was told to watch the Defendant and then a short period of time later was told to take the Defendant into custody. The Defendant was taken

into custody as it was determined that the Defendant was wanted on felony drug charges from Williamsport. The Defendant was searched incident to arrest and no contraband was immediately found on his person. Snyder placed the Defendant in the back of the police vehicle and advised the Defendant that the back seat area of the vehicle had been searched prior to shift and no contraband was found. Thus, the Defendant was advised that any contraband found in the vehicle after his transport would be contraband that the Defendant put there. The Defendant was then transported to City Hall. Upon the Defendant's removal from the vehicle, a clear plastic sandwich bag containing suspected marijuana was found wedged into the fold of the seat of the vehicle. The suspected marijuana later field tested positive for marijuana.

Discussion

Defense Counsel contends that a suppression of the evidence seized in this case is warranted because the initial stop of the vehicle and the subsequent search of the Defendant were both unlawful.

Defense Counsel contends that the initial stop of the vehicle was done without reason to believe that the occupants of the vehicle committed a violation of the vehicle code. The vehicle in this case was stopped for dark tinted windows, which is a potential violation of 75 Pa.C.S.A. 4524 (e)(1) “[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.” In order to stop a vehicle for a violation of the vehicle code, an officer must have a reasonable belief that a violation has occurred. See Commonwealth v. Benton, 665 A.2d 1030 (Pa. Super. 1995). At the Hearing on the Motion to Suppress held on November 5, 2010, before the Honorable Nancy L. Butts, Snyder testified that

the tinting on the windows was so dark that you could not see the occupants inside the vehicle. Therefore, it appears as though the initial stop of the vehicle was done with good reason to believe that the occupants of the vehicle had in fact committed a violation of the vehicle code.

Defense Counsel also argues that after the initial stop of the vehicle, the subsequent search of the Defendant was also unlawful. Defense Counsel believes the search was unlawful as it was done without a warrant or consent, or beyond the scope of any consent given. A police officer is justified in stopping and searching an individual in two instances: 1) the officer has probable cause to arrest based on knowledge of facts and circumstances gained from first hand information or a reliable informant; 2) the officer observes unusual and suspicious conduct reasonably leading the officer to believe that criminal activity is afoot. See Commonwealth v. Hart, 403 A.2d 608, 610 (Pa.Super.1979).

The facts of this case show no violation of the Defendant's Fourth Amendment rights. As discussed above, the initial stop of the vehicle was done with probable cause. Once Snyder and Moore approached the vehicle, Snyder recognized the Defendant as a person involved with controlled purchases of drugs. After Snyder recognized the Defendant, he informed Moore that the Defendant was previously involved in controlled purchases of drugs. Snyder was advised to watch the Defendant and then a short period of time later he was told to place the Defendant under arrest. Snyder recognized the Defendant based on a description given by a confidential informant. The confidential informant described a person involved in controlled purchases of drugs as having a tattoo that said CB1300 and a tattoo of tear drops. The Defendant has both the CB1300 tattoo and the tear drops tattoo. The tattoos are distinctive and Snyder has never seen another person with them. The unique nature of the tattoos is significant and distinguishes this case from circumstances where an individual is stopped and searched absent probable cause. See

Commonwealth v. Hicks, 253 A.2d 276 (Pa. 1969) where an individual's similar age and race to a person wanted by the police were insufficient reasons to stop and search that individual. Furthermore, the Commonwealth stated at the hearing on the Suppression Motion that the confidential informant who provided the information about the distinctive tattoos was a reliable informant. The confidential informant provided information in the past that led to at least one other conviction. Therefore, based on these facts, the Court believes that the circumstances in this case show that the police did have probable cause to arrest and search the Defendant subsequent to arrest.

ORDER

AND NOW, this ____ day of November, 2010, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Michael Morrone, Esq.
Amanda Browning, Esq. (Law Clerk)