

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-1627-2009**
 :
HUBERT GRAVES, JR., :
Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on November 3, 2009 with one count of receiving stolen property, a felony of the second degree; two counts of firearms not to be carried without a license, felonies of the third degree; and two traffic summaries. The charges stem from an incident which occurred on October 3, 2009 when, after the vehicle the Defendant was driving was involved in an accident, the Pennsylvania State Police discovered a handgun in the Defendant's glove box and two rifles in the trunk of the vehicle. On December 18, 2009, Defendant filed an Omnibus Pretrial Motion alleging that the search of Defendant's vehicle and seizure of the firearms were in violation of the Defendant's constitutional rights under the State and Federal Constitutions. Defendant requests that the Court suppress the firearms seized as a result of the alleged illegal search.

A hearing was held in connection with Defendant's Motion to Suppress on March 26, 2010. Following the hearing, the Commonwealth filed a Motion to Reopen the Hearing to present additional testimony. The Motion to Reopen was denied following argument on June 2, 2010.

Trooper Matthew McDermott of the Pennsylvania State Police testified on behalf of the Commonwealth. On October 3, 2009 while on routine patrol, Trooper McDermott observed an accident involving the Defendant's vehicle. The accident occurred as Defendant's vehicle was traveling southbound in the left-hand lane on Route 15. The vehicle crossed the

right-hand lane and left the roadway striking the concrete barrier on the west berm of the roadway. It came to a final rest on the right berm and right lane of the southbound lanes although it did not impede traffic due to the fact that the southbound right lane was closed for construction purposes.

Trooper McDermott approached Defendant's vehicle, noticed that the Defendant was injured, obtained identification information from the Defendant and contacted an ambulance to respond to the scene. Defendant informed Trooper McDermott that he must have fallen asleep, causing the crash. Defendant looked for his insurance and registration information in the console of the vehicle but could not find such.

Without obtaining Defendant's consent to search the vehicle and because Trooper McDermott required registration and insurance information to complete a written accident report, he went to the passenger side of the vehicle and opened the glove box for the purpose of locating registration and insurance information. Trooper McDermott explained that he expected the Defendant to be taken to the hospital for his injuries and accordingly, he needed the insurance and registration information.

When Trooper McDermott opened the glove box, he noticed two handguns. Both handguns were found to be loaded with rounds in the chamber. Trooper McDermott cleared the weapons of the ammunition.

Immediately following his seizure of the guns, Trooper McDermott noticed that the Defendant had a large "wad of currency" that he was stuffing in his pants. Trooper McDermott asked the Defendant if he could see the money at which time the Defendant gave it

to him. Defendant explained, in response to a question from Trooper McDermott, that the money was his travel money.

Trooper McDermott also noticed that there were .22 caliber ammunition/cartridges on the floorboard and center console in plain view in Defendant's vehicle. Trooper McDermott asked the Defendant if there were any more guns in the vehicle and Defendant indicated that there were two rifles in the trunk. Trooper McDermott then opened the trunk and retrieved the two rifles.

Trooper McDermott explained that he needed to retrieve the weapons in the trunk because the vehicle had to be towed and the two weapons could pose a danger to the tow truck operator and/or EMS personnel. According to Trooper McDermott, the vehicle was "totaled." The rear axle was snapped and both rear tires were pointed inward.

Defendant contends for various reasons that the search of the vehicle and the seizure of the weapons were without the requisite probable cause and exigent circumstances. The Commonwealth counters that the opening of the glove box was not a search but rather "common police procedure in vehicle accidents" and was within the trooper's rights because he was required to get the information to prepare an accident report. The Commonwealth further asserts that Miranda was not implicated because the Defendant was not undergoing custodial interrogation. Finally, the Commonwealth argues that the search of the trunk and the seizure of the rifles were based on probable cause and exigent circumstances.

A warrantless search or seizure is presumptively unreasonable under the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania

Constitution subject to a few specifically established, well delineated exceptions.

Commonwealth v. Dean, 940 A.2d 514, 519 (Pa. Super. 2008).

One such exception is the limited automobile exception which provides that a warrantless vehicle search and seizure may be justified if based upon both probable cause and the existence of exigent circumstances beyond mere mobility. Commonwealth v. Hernandez, 935 A.2d 1275, 1280 (Pa. 2007).

The first issue to be determined by the Court is whether Trooper McDermott's opening of the passenger door, followed by opening of the glove box, constituted a search. Candidly, the Commonwealth's argument that it was not a search begs logic. Regardless of whether it was "common police procedure," the fact remains that the opening of a vehicle's door followed by the opening of the glove box and checking the contents of the glove box constitutes a search under Pennsylvania law.¹ See Commonwealth v. Talley, 634 A.2d 640 (Pa. Super. 1993).

The next issue concerns whether the trooper had probable cause to search the Defendant's vehicle. The level of probable cause necessary to justify a warrantless search of an automobile is the same as that required to obtain a search warrant. Talley, 634 A.2d at 643 (citing Commonwealth v. Pleummer, 421 Pa. Super. 51, 617 A.2d 718 (1993)). Probable cause exists where the facts and circumstances within the knowledge of the officer are reasonably trustworthy and sufficient to warrant a person of reasonable caution in believing that the person has committed the offense. Commonwealth v. Zook, 615 A.2d 1, 6 (Pa. 1992).

¹ The Commonwealth has not cited any statute, case law or other authority, which would permit the police to open the glove box and search for the registration and insurance information.

At the time that Trooper McDermott searched the glove box, there was not one fact or circumstance as seen through the eyes of a trained police officer that would be sufficient to warrant a person of reasonable caution in believing that the Defendant had committed any criminal offense whatsoever.

Moreover, even if probable cause existed, there were insufficient circumstances beyond the mere mobility of the automobile that would necessitate a warrantless search. Exigent circumstances arise where the need for prompt police action is imperative, either because evidence is likely to be destroyed, or because there exists a threat of physical harm to police officers or other innocent individuals. Commonwealth v. Hinkson, 461 A.2d 616, 618 (Pa. Super. 1983). In this particular case, the Defendant was being treated by emergency personnel, there was no indication that the vehicle posed any threat to the officer or to the public and the vehicle could easily have been secured while a search warrant was obtained. Indeed, law enforcement would have only been minimally burdened in securing a warrant.

Accordingly, because there was insufficient probable cause and exigent circumstances to justify the warrantless search of Defendant's vehicle, the Defendant's Motion to Suppress with respect to the two handguns found in the glove compartment is granted. Similarly, if the Defendant made statements to the officer in response to questions about the handguns, such statements would be suppressed as fruits of the poisonous tree.

Defendant next argues that his statement to Trooper McDermott that there were two rifles in the trunk must be suppressed because the Defendant was undergoing custodial interrogation and was not given *Miranda* warnings.

“Statements made during custodial interrogation are presumptively involuntary, unless the accused is first advised of his *Miranda* rights.” Commonwealth v. Hope Williams, 941 A.2d 14, 30 (Pa. Super. 2008). Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Williams, supra., citing, Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966).

Trooper McDermott approached the Defendant while the Defendant was being treated by EMS personnel in the front seat of his vehicle. The EMS personnel were putting a neck collar on the Defendant at which time Trooper McDermott noticed .22 caliber cartridges in plain view on the floor board and in the center console. Trooper McDermott asked the Defendant if there were any other firearms in the vehicle at which time the Defendant indicated there were two rifles in the trunk.

The ultimate inquiry for determining whether an individual is in custody for *Miranda* purposes is whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Commonwealth v. Pakacki, 901 A.2d 983, 988 (Pa. 2006), quoting Commonwealth v. Boczkowski, 846 A.2d 75, 90 (Pa. 2004). The focus is on whether the individual being interrogated reasonably believes his freedom of action is being restricted. Commonwealth v. Clayton Williams, 650 A.2d 420, 427 (Pa. 1994).

In looking at the totality of the circumstances, the Court cannot conclude that the Defendant was in custody. The detention, if any, was not so coercive as to constitute the functional equivalent of a formal arrest. The Defendant was being treated by EMS personnel for an apparent serious injury. The Defendant was not transferred anywhere against his will,

no restraints whatsoever were used, and there was no show, threat or use of force. The investigation by Trooper McDermott with respect to the accident had not yet concluded. The interaction between Trooper McDermott and the Defendant was on a public roadway, and Trooper McDermott's questioning was not threatening, demanding, onerous, devious, or characterized by trickery.

Moreover, the question by Trooper McDermott falls unquestionably and completely on the side of officer safety. This Court cannot blind itself to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where officer safety may be an issue. There was a legitimate basis for Trooper McDermott to ask the question of the Defendant which outweighed any minor intrusion on the Defendant's rights at that time. See for example, Commonwealth v. Clinton, 905 A.2d 1026, 1030-1031 (Pa. Super. 2006).

Finally, this Court doubts that under the circumstances, the question by Trooper McDermott constitutes interrogation at all. Indeed, his question was not one reasonably likely to elicit an incriminating response from the Defendant.

Accordingly, the Court denies the Defendant's Motion to Suppress the Defendant's statement regarding the rifles in the trunk in that, under the circumstances, *Miranda* warnings were not necessary.

The next inquiry concerns whether the seizure of the rifles found in Defendant's trunk should be suppressed. Defendant argues that there was no probable cause to search the trunk. The Commonwealth argues, on the contrary that there were several reasons to justify the warrantless search of the trunk. The Commonwealth argues that there was both probable cause

and exigent circumstances. The Commonwealth also argues that the rifles would have inevitably been discovered through an inventory search of the vehicle.

The Court finds the trooper was justified in searching the trunk and seizing the rifles under the facts and circumstances of this case. Cartridges were viewed by the trooper both on the floor board and on the console. There were no weapons in plain view which matched the cartridges. Certainly, it was reasonable for the trooper to believe that the weapons were elsewhere, and accordingly, he inquired of the Defendant with respect to such. Once the Defendant admitted that there were two rifles in the trunk, it was certainly reasonable for the trooper to conclude that those weapons might pose a danger to EMS personnel and/or the expected tow truck operator once the vehicle was towed as anticipated. Under the circumstances then and there existing, the trooper expected the Defendant to continue receiving treatment and eventually be transported to the hospital. It would have been necessary for the trooper to make arrangements to have the vehicle towed, because one of its axles had been broken in two. Under these circumstances and based upon the principles of law set forth above, the trooper was justified in searching the trunk and seizing the rifles.

Given the Court's finding that the search and seizure of the rifles was lawful under the facts and circumstances of this case, the Court need not address the inevitable discovery issue.

ORDER

AND NOW, this ____ day of June, 2010, the Court grants the Defendant's Motion to Suppress the handguns that were illegally obtained from Defendant's glove box

following the traffic accident. The Commonwealth is precluded from utilizing the handguns in its case-in-chief, or in rebuttal, as evidence against the Defendant.

The Court denies Defendant's Motion to Suppress in connection with the statement made by the Defendant regarding the rifles being present in the trunk as well as the Defendant's Motion to Suppress in connection with the rifles and other items that were located in the trunk.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Kyle Rude, Esquire
Mary Kilgus, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File