

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**THERIN POWELL,
Defendant**

:
:
:
:
:
:
:

**No. 1282-2009
CRIMINAL**

OPINION AND ORDER

Defendant, Therin Powell filed both a Motion to Suppress and a Petition for Writ of Habeas Corpus on October 1, 2009. A hearing on both Motions was held on December 18, 2009. At the time of Hearing, Defense Counsel orally withdrew his Petition for Writ of Habeas Corpus. The only issue before the Court is Defendant's Motion to Suppress.

Background

The following is a summary of the facts presented at the Suppression Hearing. At around 11:30 p.m. on July 2, 2009, while on proactive patrol, Corporal Michael Simpler (Simpler) of the Pennsylvania State Police (PSP) and Sergeant Timothy Miller (Miller) of the Williamsport Bureau of Police (WBP) observed a blue Chevy Venture traveling west on West Fourth street with dark tinted windows. The officers conducted a traffic stop in the 400 block of Fourth street. Simpler approached the driver's side of the vehicle, whereupon he identified the driver as Therin Powell (Defendant) and determined he was driving under suspension. Miller approached the passenger side and identified the passenger as Harkeem Brown (Brown). Simpler determined that the vehicle was also registered to Defendant's girlfriend.

As Simpler had knowledge of the Defendant because of weapons and drug violations, he (Simpler) had the Defendant exit the vehicle and at the rear of the vehicle, conducted a pat-down

for officer safety. Miller also had Brown exit the vehicle. Simpler informed Defendant that he stopped his vehicle for excessive window tint. Defendant was asked if he had anything illegal on his person and if he would consent to a search. Defendant consented and Simpler found \$475.00 in assorted currency. As the occupants were exiting the vehicle, Miller observed in plain view what appeared to be a marijuana stem. Miller went to the rear of the vehicle and informed Simpler of what he observed. Defendant and Brown were informed they were being detained because of what was found. Defendant then asked Brown “is that yours” and Brown responded “yeah.” Miller kicked off Brown’s shoe and searched him, whereupon he found plastic sandwich bags with glassine bags inside containing rocks of crack cocaine, one bag of powder, and one bag of marijuana. Brown then attempted to flee across Fourth street and Simpler caught up to him and tasered him. While observing Simpler taser Brown, Miller explained that Defendant fled in the direction of Lycoming street. Miller called for other units, then followed Defendant to 450 Center street where he found Defendant in the bushes.

Defendant’s vehicle was towed to the PSP Barracks where an inventory search was conducted per PSP policy. Marijuana residue was found inside the vehicle.

Discussion

No probable cause existed to conduct a vehicle stop

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, “[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 Court finds the officers had reasonable suspicion that a violation of the Motor Vehicle Code was occurring or had occurred. The testimony of Simpler and Miller was that the vehicle Defendant was operating had tint on the windows to the extent that one could not see in the vehicle. Therefore, as the officers have reasonable suspicion a violation of the Motor Vehicle Code was occurring or had occurred, the Motion shall be denied.

No probable cause existed to search the Defendant’s vehicle or property

Defendant also asserts that no probable cause existed to search the vehicle or his property.

“Inventory searches are a well-defined exception to the search warrant requirement.” Commonwealth v. Hennigan, 753 A.2d 245, 254 (Pa. Super. Ct. 2000) (citing Colorado v. Bertine, 479 U.S. 367, (1987); Commonwealth v. Nace, 571 A.2d 1389, 1391 (1990), cert. denied, 498 U.S. 966, (1990). Inventory searches can serve one or more of the following purposes:

- (1) to protect the owner's property while it remains in police custody;
- (2) to protect the police against claims or disputes over lost or stolen property;
- (3) to protect the police from potential danger;
- and (4) to assist the police in determining whether the vehicle was stolen and then abandoned.

Hennigan, 753 A.2d at 254 (citing South Dakota v. Opperman, 428 U.S. 364, 369, 49 L. Ed. 2d 1000, 96 S. Ct. 3092 (1976)). Inventory searches are permitted when: “(1) the police have lawfully impounded the automobile; and (2) the police have acted in accordance with a reasonable, standard policy of routinely securing and inventorying the contents of the impounded vehicle.” Id. “The hearing judge must be convinced that the police intrusion into the automobile was for the purpose of taking an inventory of the car and not for the purpose of gathering incriminating evidence.” Id. at 256. The factors the judge is to consider are “the scope of the search, the procedure utilized in the search, whether any items of value were in plain view, the reasons for and nature of the custody, the anticipated length of the custody, and any other facts which the court deems important in its determination.” Id. If the court determines the inventory search was conducted of an automobile lawfully in police custody, then the evidence seized as a result of the reasonable search is admissible. Id. Further, according to Pennsylvania law, police can remove to a garage or place of safety any vehicle found after “the person driving or in control of the vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before the issuing authority without unnecessary delay.” 75 Pa.C.S. § 3352(c)(3).

The Court finds the inventory search of the vehicle was conducted while the vehicle was lawfully in police custody and was reasonable. The testimony of Simpler reveals that the vehicle was towed to the PSP Barracks pursuant to the policy of the PSP and for purposes of securing valuables. Further, Defendant, the driver of the vehicle, and Brown, the passenger, were both taken into custody due to drugs found in plain view. As such, the Court finds the inventory search of the vehicle was lawful.

The arrest was made without probable cause

Defendant's final argument is that his arrest was conducted without probable cause.

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 Defendant's arrest was supported by probable cause. Under Pennsylvania law, officers are permitted to order the driver and all passengers out of the vehicle. The testimony presented shows Defendant was removed from the vehicle whereupon a pat-down

was conducted, followed by a consensual search. Found on Defendant's person was \$475.00 in cash. The passenger, Brown, was then ordered out of the vehicle, whereupon Miller immediately observed in plain view a stem of marijuana. Brown then admitted that the stem was his, which gave the officers probable cause to search him. Upon conducting a search of Brown, the officers found other narcotics on his person. Once they were both told they were going to be detained, Brown fled and soon thereafter, Defendant fled. Based upon the tinted windows which gave reasonable suspicion to conduct a traffic stop, the fact that Defendant was driving under suspension, the cash found on his person, the stem of marijuana in plain view in the vehicle, the drugs found on Brown, and the subsequently fleeing of Defendant gave the officers probable cause to arrest.

ORDER

AND NOW, this ____ day of February 2010, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Suppression Motion is hereby DENIED.

By the Court,

Nancy L. Butts, P.J.

xc: DA
George E. Lepley, Jr., Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)