

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-238-2010
vs. :
 :
JOEY D. TEMPLE, JR., :
Defendant :

OPINION AND ORDER

This matter came before the Court on Defendant Joey Temple Jr.'s Omnibus Pre-trial Motion. The relevant facts follow.

On November 26, 2009, at approximately 12:52 a.m. Chief Jason Gill of the Hughesville Police Department was on patrol with Officer Herb in a marked unit traveling south on Railroad Street when they observed a vehicle coming toward them. The vehicle's passenger side tires were either off of the roadway or riding on the edge of the roadway. Chief Gill told Officer Herb to turn their marked unit around so they could get behind the vehicle and observe it. The vehicle came to the intersection of Railroad Street and Route 220. The vehicle stopped then turned right onto Route 220, but turned off its headlights as it pulled into the parking lot of a nearby gas station that was closed. There had been several thefts from automobiles, so the police pulled in behind the vehicle to see why they appeared to be stopping at a closed gas station. As the police entered the parking lot, they did not turn on their lights or sirens and did not block the vehicle from leaving the parking lot. They observed the driver get out of the vehicle, walk around the car and get into the passenger's seat while the passenger slid over into the driver's seat.

Chief Gill got out of his marked unit and approached the driver's side. The

female passenger was now in the driver's seat and the male driver was in the passenger seat. Chief Gill asked what they were doing in the parking lot at that time of night, because he wanted to make sure everybody was okay and that there was no criminal activity going on. The female said she pulled over to see where to go next. Chief Gill told her that he saw them switch seats. The female denied switching seats and claimed she had been the driver the whole time. Chief Gill then went to the passenger side to speak to the male occupant, because it was obvious the female occupant was not telling him the truth.

The male occupant was Defendant Joey Temple Jr. Chief Gill asked him to get out of the vehicle so he could talk to him away from the female. Defendant admitted he had been the driver of the vehicle. He explained that he saw the police car turn around. Defendant also stated he did not believe he was intoxicated, but he switched seats because he was scared the police were going to pull him over. While speaking to Defendant, Chief Gill noticed an odor of alcohol and Defendant's eyes were blood shot and glassy. After conducting field sobriety tests, Chief Gill arrested Defendant for driving under the influence of alcohol (DUI).

Defendant contends that the police did not have reasonable suspicion to stop his vehicle; therefore any evidence obtained as a result must be suppressed. The Commonwealth argues that the police did not stop Defendant's vehicle and Chief Gill's approaching the vehicle in the parking lot was a mere encounter.

There are three categories of encounters between citizens and the police: (1) a mere encounter, (2) an investigative detention, and (3) custodial detentions.

The first of these is a "mere encounter" (or request for

information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an “investigative detention” must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Commonwealth v. Mendenhall, 552 Pa. 484, 715 A.2d 1117, 1119 (1998)(citations omitted).

The driver of the vehicle pulled into the parking lot and stopped the vehicle of his own accord prior to the police approaching it. The police did not activate their lights or sirens. They also did not block the vehicle from leaving the parking lot. Therefore, the Court agrees with the Commonwealth that when Chief Gill approached the vehicle in the parking lot it was a mere encounter. See Commonwealth v. Collins, 950 A.2d 1041 (Pa. Super. 2008).

The more difficult question, however, is did the mere encounter ripen into an investigative detention when Chief Gill asked Defendant to step out of the vehicle to talk to him, and, if so, did Chief Gill have reasonable suspicion to justify that detention. The Court finds that a reasonable person in Defendant’s situation would not feel like he was free to leave or to refuse Chief Gill’s request to exit the vehicle. The patrol vehicle pulled in behind Defendant’s vehicle and parked only 1 to 1 ½ car lengths behind it. Chief Gill spoke to the female occupant who explained they pulled into the parking lot to determine where they were going to go next. The female occupant also denied switching seats with Defendant. Defendant was seated within a few feet of the female occupant and would have been able to hear her conversation with Chief Gill, including his statements that he observed the occupants switch seats. When Chief Gill came to the passenger side of the vehicle and asked

Defendant to exit the vehicle, a reasonable person in Defendant's position would think he was required to comply with Chief Gill's request. Therefore, the encounter escalated to an investigative detention when Chief Gill asked Defendant to exit the vehicle.

While Chief Gill did not notice the odor of alcohol or Defendant's slightly bloodshot and glassy eyes until after Defendant exited the vehicle, there was reasonable suspicion to conduct an investigative detention of Defendant. First, Defendant was driving his vehicle in an unusual manner by either driving with the passenger side tires off of the roadway or driving with those tires on the edge of the roadway. Second, Defendant turned off his headlights as he entered the gas station parking lot, as if he was trying to avoid detection. Third, the gas station was closed, and there recently had been several vehicles in the area that had been broken into. Fourth, Defendant immediately switched seats with the passenger once it became apparent that the police had followed him into the parking lot. Finally, the passenger lied to Chief Gill by denying she switched seats with Defendant and claiming that she had been the driver the entire time. Under the totality of the circumstances, it was reasonable for Chief Gill to believe that criminal activity was afoot. Therefore, he was authorized to conduct a brief investigative detention to determine who was in the vehicle, why they turned off the headlights and entered the parking lot of a business that was closed and why the female occupant was lying about being the driver.

ORDER

AND NOW, this ____ day of December 2010, for the reasons set forth in the foregoing Opinion, the Court DENIES the motion to suppress contained in Count 1 of Defendant's Omnibus Pre-trial Motion.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire
Melody Protasio, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)