

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-336-2012
:
vs. : Opinion and Order regarding
: Defendant's Motion to Suppress
DENISE M. SHAIBLE, :
Defendant :

OPINION AND ORDER

This matter came before the court on October 11, 2012 for a hearing on Defendant's motion to suppress. Defendant asserts the police committed an illegal detention when she was not released after the initial stop regarding the registration of the vehicle she was driving was completed. The relevant facts follow.

On October 28, 2011 at approximately 11:50 pm., Detective Chris Kriner observed a silver Ford Windstar minivan on Canfield Lane coming from the area of the boat dock. Detective Kriner turned his vehicle around and ran the registration of the vehicle, which indicated that the registration plate belonged to a Pontiac sedan. Detective Kriner activated his emergency lights and conducted a traffic stop for the suspected registration violation.

As Detective Kriner approached the vehicle, the driver, who was later identified as Defendant Denise Shaible, had both of her hands in a black purse that was located on the floor between the seats. Detective Kriner told Defendant to remove her hands from the purse, but she ignored him. Again, the detective told Defendant to remove her hands from her purse. Defendant removed her hands from her purse and placed them on the steering wheel for just a second. Defendant was acting very restless and nervous. Detective

Kriner told Defendant why he stopped her vehicle. He asked her for her driver's license, insurance and registration and inquired why she was on Canfield Lane near the boat docks at that late hour. Defendant provided the relevant documents, including a pink slip for the minivan, and explained that she wanted to go to Morey's Tavern on Third Street, but she missed the exit and was turning around. Detective Kriner did not find this explanation credible because there were several businesses on Canfield Lane where Defendant could have turned around prior to getting back to the area of the boat dock. During this initial contact with Defendant, Detective Kriner also noted a slight odor of alcohol and observed that Defendant was talking very fast and she could not sit still. Detective Kriner asked Defendant if she had been drinking, and she said no.

Based on Detective Kriner's observations of Defendant's conduct and demeanor, he believed that Defendant was under the influence of alcohol and/or a controlled substance and that she may have been attempting to hide contraband in her purse when he first stopped her vehicle. Detective Kriner testified that he had seen individuals under the influence of cocaine in the past, who exhibited mannerisms similar to Defendant.

Detective Kriner walked to his vehicle and checked the validity of Defendant's driver's license. Defendant's driver's license was valid and there were no warrants for her arrest. When Detective Kriner returned to Defendant's vehicle, he asked Defendant to exit the vehicle and perform field sobriety tests. Defendant performed poorly on the sobriety tests. Detective Kriner gave Defendant a preliminary breath test (PBT), which indicated the presence of alcohol but in an amount below the legal limit. Detective

Kriner then asked Defendant if he could search her purse, and Defendant consented.

Detective Kriner found cocaine and paraphernalia in Defendant's purse.

Defendant was arrested and charged with driving under the influence of a controlled substance, possession of a controlled substance and possession of drug paraphernalia.¹

Defendant contends that she was the subject of an unlawful investigatory detention when Detective Kriner continued to detain her after she gave him the pink slip, which proved that she was not committing a registration violation. The court cannot agree.

Police officers are permitted to conduct an investigatory detention when they have reasonable suspicion that criminal activity is afoot.

Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to 'specific and articulable facts' leading him to suspect that criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.

Commonwealth v. Brown, 606 Pa. 198, 996 A.2d 473, 477 (2010)(citations omitted)

Defendant does not dispute that Detective Kriner had sufficient information to stop the vehicle for a suspected registration violation. During his initial contact with Defendant, however, Detective Kriner made additional observations that led him to

¹ After Defendant was taken into custody, she was transported to the DUI Processing Center, where she provided a blood sample, the test results of which showed that Defendant had cocaine and cocaine metabolites in her blood at the time of her arrest.

reasonably believe that criminal activity was afoot.

When Detective Kriner first approached the vehicle, Defendant had both hands in her purse and she refused or ignored Detective Kriner's initial request to take her hands out of her purse and keep them where he could see them. Defendant's explanation for being in the area of the boat dock did not make sense, as she could have turned around in the parking lot of several businesses before reaching the boat dock area. Moreover, Detective Kriner noticed an odor of alcohol and Defendant was very nervous and fidgety. This was not the nervousness typical of anyone who is stopped by the police, but rather a restlessness and hyperactivity that, in the detective's experience, was consistent with the mannerisms of individuals who were under the influence of cocaine. Based on these facts, Detective Kriner reasonably believed that Defendant was under the influence of alcohol and/or controlled substances and that Defendant may have been concealing controlled substances in her purse when she had her hands in her purse and failed or refused to remove them.

The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. Detective Kriner acted reasonably when he attempted to confirm or dispel his suspicions by asking Defendant to perform field sobriety tests and asking Defendant for consent to search her purse. When Defendant performed poorly on the field sobriety tests and the consensual search of her purse revealed the presence of cocaine and drug paraphernalia, Detective Kriner's reasonable suspicions were confirmed and ripened into probable cause to arrest Defendant for the crimes with which she was charged.

Accordingly, the following order is entered:

ORDER

AND NOW, this ____ day of November 2012, the Court DENIES Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Kirsten Gardner, Esquire (APD)
Trisha Hoover, Esquire (conflict counsel)
Gary Weber, Esquire (Lycoming Reporter)
Work file