

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1255-2012
vs. :
 :
SHAREEF THOMPSON, : Omnibus Pretrial Motion
Defendant :

OPINION AND ORDER

By Information filed on August 16, 2012, Defendant is charged with one count of Criminal Conspiracy to Deliver a Controlled Substance, one count of Possession with Intent to Deliver a Controlled Substance, two counts of Possession of a Controlled Substance, one count of Possession of Drug Paraphernalia, and one count of Corruption of Minors.

The charges arise out of an incident that allegedly occurred on July 13, 2012 when, following a traffic stop of a vehicle being driven by Defendant, the police discovered controlled substances, drug paraphernalia and indicia of drug delivery such as numerous cell phones and a substantial amount of currency in varied denominations.

On September 19, 2012, Defendant filed an Omnibus Pretrial Motion which included a Motion to Suppress and a Motion to Dismiss. The Motion to Suppress argues that the police officers did not have reasonable suspicion to stop the vehicle, or in the alternative it was pretextual, and accordingly all of the evidence obtained thereafter should be suppressed. Defendant also argues that the subsequent pat down of him following the stop was without reasonable suspicion to believe that he was armed and/or dangerous and accordingly all of the evidence seized from him should be suppressed. Defendant's Motion to Dismiss alleges that if the Motion to Suppress is granted, there is insufficient evidence to

sustain the charges against the Defendant.

A hearing on Defendant's Omnibus Pretrial Motion was held on December 13, 2012. Officer Jeremy Brown first testified on behalf of the Commonwealth.

On July 13, 2012, he was on duty in the City of Williamsport near the intersection of Walnut Street and Little League Boulevard. He was operating a marked unit with his partner, Officer Robert Williamson.

At approximately 6:00 p.m. he observed a greenish/silverish van driving on Walnut Street. He noticed that the van had heavily tinted windows throughout including the front driver and passenger windows. He concluded immediately that the tint was illegal because you could not see through the windows as required. He immediately activated his lights to conduct a vehicle stop.

Upon activating his lights, he was asked by Officer Williamson why he was stopping the vehicle upon which Officer Brown remarked "heavy tint." The vehicle stop was effectuated near the intersection of Walnut Street and just south of Little League Boulevard.

With respect to the stopping of the vehicle, Officer Williamson also testified. Prior to the stop, he was partnered with Officer Brown conducting crime suppression unit duties.

He verified that the front windows of the van were illegally tinted. It was daylight and the sun was out but you could still not see through either the driver's side or passenger side front windows. Upon approaching the vehicle, he had to put his flashlight directly on the window surface just to see past the window. Even then he could only see in

the limited beam area.

He also testified that earlier that day at approximately 2:20 in the afternoon he responded to a two-vehicle accident which coincidentally involved the same vehicle being driven by Defendant.

The accident was “very minor” and he responded to ensure that no one was injured, that both vehicles were drivable, and to fill out an accident report receipt for the driver.

He testified further that he was not concerned with the tint of the windows and could not recall if he even noticed their tint. He did not cite Defendant for illegally tinted windows but indicated that under the circumstances he generally would not have done so even if he did notice that the tint was illegal.

With respect to the tint issue, Defendant also testified. He testified that upon being stopped and inquiring as to why he was stopped, Officer Brown told him that it was because of the “back window tints.” He testified further that he was immediately asked to step out of the vehicle and then searched for weapons. With respect to the earlier accident to which Officer Williamson responded, he testified that nothing at all was said about the tint.

He failed to deny that the front windows were tinted or that they did not have the required “factory tint” as previously testified to by both Officer Brown and Officer Williamson.

With respect to the vehicle stop, Defendant asserts two arguments. First, he asserts that the police officers lack reasonable suspicion to conduct the stop. In conjunction

with this he argues that the stop was pretextual and that the real motive was to stop the vehicle and search for illegal narcotics and weapons. Under the facts, both arguments fail.

First, Defendant misstates the level of suspicion required to stop a vehicle for a violation of the Vehicle Code of which there is no further need to investigate. While Defendant claims the standard is reasonable suspicion, under the circumstances of this case, the standard is probable cause.

More specifically, because this is a case where there is no further evidence that could be obtained from a subsequent stop and investigation, the stop for a violation of the Motor Vehicle Code must have been based on probable cause. Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010). A vehicle stop made solely on offenses not “investigatable” cannot be justified by a mere reasonable suspicion. Commonwealth v. Chase, 599 Pa. 80, 960 A.2d 108, 116 (2008).

Accordingly, in order to withstand constitutional scrutiny, the officers must articulate specific facts possessed by them which at the time of the stop would have provided probable cause to believe that the vehicle or the driver was in violation of some provision of the Code. Id.

Clearly, the officers did so. The Vehicle Code prohibits a person from driving a motor vehicle with any screening device or other material which does not permit a person to see or view the inside of the vehicle through the outside window of the vehicle. 75 Pa.C.S. §4524(e)(1). Because Officer Brown and Officer Williamson credibly testified that they could not see inside the vehicle through the front driver’s and passenger’s side windows,

they had probable cause to stop the vehicle. Compare, Commonwealth v. Brubaker, 5 A.3d 261 (Pa. Super. 2010).

Moreover, Defendant's pretext argument also fails. The constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved as long as they meet the probable cause standard. Whren v. United States, 517 U.S. 806, 813, 116 S Ct. 1769 (1996); Chase, 960 A.2d at 120.

Defendant's Motion to Suppress also claims that the pat down of the Defendant following his removal from the vehicle was not justified by reasonable suspicion to believe that he was armed or dangerous. During the hearing and argument, however, Defendant conceded that the pat down did not result in the discovery of any evidence against the Defendant. As a result, there is nothing to suppress even if the pat down was unconstitutional.

Where a Motion to Suppress has been filed, the determinative issue concerns whether the challenged evidence is admissible. Commonwealth v. Ruey, 586 Pa. 230, 892 A.2d 802, 807 (2006). In other words, the purpose of a suppression hearing is to determine whether the fruits of the search are admissible. Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991). Regardless of the propriety of the pat down search in this case, there is nothing to suppress because there were no "fruits" from the search, and Defendant's Motion will be denied.

Alternatively, assuming that there were in fact "fruits of the search," the Court would find that the officers had reasonable articulable suspicion that the Defendant may have

been armed and dangerous.

As Defendant correctly contends, in order to conduct a pat down search, the officer must have a reasonable suspicion that not only criminal activity was afoot but also that the suspect may be armed and dangerous. Commonwealth v. Shelly, 703 A.2d 499, 503 (Pa. Super. 1997), appeal denied, 555 Pa. 743, 725 A.2d 1220 (1998).

In deciding if reasonable suspicion was present, the courts must take into account the totality of the circumstances as viewed through the eyes of a trained officer. Commonwealth v. Jackson, 907 A.2d 540, 543 (Pa. Super. 2006), appeal denied, 593 Pa. 754, 932 A.2d 75 (2007), citing Commonwealth v. Fink, 700 A.2d 447, 449 (Pa. Super. 1997), appeal denied, 552 Pa. 694, 716 A.2d 1247 (1998).

The credible testimony from Officers Brown and Williamson supported a reasonable suspicion that Defendant may have been armed and dangerous. The stop occurred in a high crime area of the city. It was “right next” to Flannigan Park where just a few months ago, a shooting took place. Upon confronting the Defendant, he became argumentative. As well, he was nervous and fidgety. He was directed on more than one occasion to put his hands where the police could see them. He kept diverting attention from the passenger who appeared to be either hiding or accessing something between his legs.

Shortly after the stop, people started gathering on the streets making comments and “trying to talk to” Defendant and the passengers. It was difficult for either police officer to view what the third person was doing in the back of the van.

Further, the occupants were listening to “police transmissions,” apparently through an application on one of their cell phones.

According to Officer Williamson, the occupants of the vehicle including Defendant were trying to dictate how the vehicle stop would be conducted. Defendant was argumentative throughout including when he was removed from the vehicle.

Finally, it appeared to both officers that Defendant and other occupants were being evasive, secretive and to some extent manipulative. Defendant refused to give either clear or concise answers to basic questions and acted suspicious the entire time.

Defendant’s Motion to Dismiss assumes that the Court grants the Suppression Motion. In that the Court has denied the suppression motion, Defendant’s Motion to Dismiss will also be denied.

Following the hearing and argument on Defendant’s Omnibus Pretrial Motion, Defendant made an oral motion to modify bail. As the Court noted in its December 10, 2012 Order, the Court was willing to reconsider Defendant’s bail request if the circumstances of the underlying charges changed or otherwise if deemed appropriate.

While the Court is sympathetic to the fact that Defendant has remained incarcerated for quite some time, he faces serious charges. One of the charges carries a mandatory minimum sentence that would result in a period of State incarceration. In light of the Court’s denial of Defendant’s suppression motion, the evidence against Defendant remains substantial.

Following Defendant's waiver of his preliminary hearing, his bail was modified by agreement with the Commonwealth and approval of District Justice Carn, from \$25,000.00 good bail to \$25,000.00 unsecured with the provision that Defendant only be released on intensive supervised bail if approved. Under all of the circumstances, the Court finds that such bail remains reasonable and will not modify it any further.

ORDER

AND NOW, this ____ day of December 2012, following a hearing and argument, the Court **DENIES** Defendant's Omnibus Pretrial Motion and oral Motion for Modification of Bail.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)
Scott Stottlemeyer, Esquire
Law Office of Scott Pletcher
119 South Burrowes Street
State College, PA 16801
Gary Weber, Lycoming Reporter
Work file