

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**DOMINIQUE LAWTON,
Defendant**

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**CR: 373-2009
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on May 8, 2013. A hearing on the motion was held on July 18, 2013.

Background

On January 25, 2009 at approximately 2:45 AM, Sergeant Joseph Hope (Hope) of the Old Lycoming Township Police was on routine patrol in a marked police vehicle when he noticed tail lights from a vehicle behind Wascher Chiropractic Center (Chiropractic Center). Hope was suspicious of the vehicle being on the driveway because the Chiropractic Center was closed. The driveway also led to the home of Judy Rodgers (Rodgers). In addition, Hope stated that from 1996 to 2005 there had been five (5) criminal complaints in that area, dealing with Sunset Ice Cream and Rodgers' home.¹

The vehicle pulled out of the driveway and Hope followed. Hope requested a county dispatcher run the registration of the vehicle but was unable to get any information because PennDot's system was not operating. Without observing any motor vehicle violations, Hope pulled over the vehicle by activating his overhead lights. The operator of the vehicle was Dominique Lawton (Defendant) and she told Hope that she was in the driveway because she was dropping off Rodgers' at her home, which was later confirmed by police. During the interaction

¹ Hope researched the criminal history of the area before testifying at the hearing.

with Hope he suspected that the Defendant was intoxicated, resulting in the Driving Under the Influence of Alcohol charges.

Motion to Suppress

The Defendant argues that the stop of her vehicle was done without reasonable suspicion and that all evidence found as a result of that stop should be suppressed. The Pennsylvania Courts have defined three forms of police-citizen interaction: (1) mere encounter; (2) investigative detention; and (3) custodial detention. A mere encounter between police and a citizen “need not be supported by any level of suspicion, and carries no official compulsion on the part of the citizen to stop or to respond.” Commonwealth v. Ellis, 541 Pa. 285, 293-94, 662 A.2d 1043, 1047 (Pa. 1995). If a police action becomes too intrusive, a mere encounter may escalate to an investigatory detention or seizure.² Commonwealth v. Boswell, 554 Pa. 275, 721 A.2d 336, 339-40 (Pa. 1998).

In cases where a defendant’s vehicle is sitting near a closed store or on the side of the road, Pennsylvania courts have found that a police interaction with the operator is a mere encounter. For example, in Collins, an officer observed a vehicle pulled over at a state park overlook at 7:00 PM. Commonwealth v. Collins, 950 A.2d 1041, 1044 (Pa. Super. 2008). The officer went to check on the status of the occupants and observed drug paraphernalia. The

² For the determination of whether a mere encounter has risen to an investigatory detention, the Court must determine whether police have conducted a seizure of the person involved. Commonwealth v. Mendenhall, 552 Pa. 484, 715 A.2d 1117, 1119 (Pa. 1998).

To decide whether a seizure has occurred, we apply the following objective test: a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter. In applying this test, it is necessary to examine the nature of the encounter. Circumstances to consider include, but are not limited to, the following: the number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer’s demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked. Otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Commonwealth v. Beasley, 2000 Pa. Super. 315, 761 A.2d 621, 625-26 (Pa. Super. 2000).

Pennsylvania Superior Court found that the police contact was a mere encounter because the overhead lights were not turned on, there was no traffic violation, and the officer did not observe anything that would make him believe illegal activity was occurring. Id. at 1047. During the mere encounter the officer observed illegal activity and therefore no evidence should have been suppressed.

Additionally, when police pull behind a stopped vehicle because it had previously been located in a high crime area it is a mere encounter. In Guzman, an officer observed a vehicle in a high crime area at 2:30 AM. Commonwealth v. Guzman, 44 A.3d 688, 691 (Pa. Super. 2012). The vehicle turned right, parked, and a man walked away from the vehicle and entered an apartment. The vehicle was parked in a private driveway with its headlights on. The officer pulled his patrol vehicle behind the vehicle and illuminated it with his spotlight. As the officer approached the vehicle the defendant jumped out of the passenger side. After the defendant was restrained, the officer saw through an open door of the vehicle suspected heroin and marijuana. The Superior Court of Pennsylvania determined that the officer pulling his vehicle behind the defendant's vehicle and approaching to ask questions was a mere encounter.³ Id. at 694. The appellate court decided that the officer "did not display the type of physical force or show of authority necessary to rise to the level of investigative detention." Id. at 693. See also Commonwealth v. Kendall, 976 A.2d 503 (Pa. Super. 2009) (finding that a mere encounter occurs when an officer investigates why a car has pulled off to the shoulder of the road and activates his overhead lights).

An important distinction of all these mere encounter cases is that the vehicles had previously stopped before any interaction with police. The law distinguishes when an officer pulls over a moving vehicle and when an officer approaches a stopped vehicle. A vehicle stop

³ The Superior Court found that the actions of the Defendant leaving the vehicle created reasonable suspicion to restrain him.

by an officer constitutes a seizure under the Fourth Amendment. Commonwealth v. Chase, 960 A.2d 108, 113 (Pa. 2008). For an officer to conduct a vehicle stop he must have reasonable suspicion to believe that a violation of the Motor Vehicle Code has occurred or he must have reasonable suspicion that criminality was afoot. Commonwealth v. Holmes, 14 A.3d 89, 95-96 (Pa. 2011).

Generally, reasonable suspicion is decided by the court after a review of the totality of the circumstances and a finding that the facts support a reasonable belief that the law is being broken. Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. Super. 2007). “In making this determination, we must give ‘due weight . . . to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” Id. (citing Commonwealth v. Cook, 735 A.2d 673, 76 (Pa. 1999)). To establish reasonable suspicion the officer must be able to articulate specific observations that led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Commonwealth v. Little, 903 A.2d 1269, 1272 (Pa. Super. 2006).

Here, Hope stopped the Defendant’s vehicle solely because the vehicle was located in a driveway behind the Chiropractic Center. The driveway did not only go behind closed businesses but led to Rodgers’ home. Hope could not cite to a criminal complaint in the area since 2005. Additionally, there was no motor vehicle violation or additional suspicious behavior. Typically an officer has more specific observations besides the location of the vehicle when reasonable suspicion is found. See In the Interest of D.M., 781 A.2d 1161 (Pa. 2001) (ruling that there was reasonable suspicion when the defendant was in a high crime area and there was unprovoked flight); Guzmon, 44 A.3d at 694 (finding reasonable suspicion based on the defendant being in a high crime area, acting erratically, and searching for something in his pockets); Commonwealth v. Powell, 934 A.2d 721, 722 (Pa. Super. 2007) (determining

reasonable suspicion for a passenger of a vehicle because the vehicle was in a high crime area and the driver was found with a gun). Based solely on the location of the vehicle, the Court is unable to find that Hope had reasonable suspicion to stop the Defendant's vehicle. See Commonwealth v. Washington, 51 A.3d 895 (Pa. Super. 2012) (ruling that a suspect must know he is running from law enforcement and that merely being in a high crime location is not reasonable suspicion). Although an individual maybe located in a high crime area found in a suspicious location, those factors alone do not justify reasonable suspicion. Absent other facts Hope could not reasonably conclude criminal activity was afoot and that the Defendant was involved in that activity when there was no evidence at all that a crime occurred.

ORDER

AND NOW, this _____ day of August, 2013, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby GRANTED. The Court finds that Old Lycoming Township Police did not have reasonable suspicion to stop the Defendant's vehicle. Accordingly, it is ORDERED and DIRECTED that evidence seized as a result of the vehicle stop is hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Bradley Hillman, Esq.
Eileen Dgien, Dep. CA