

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH	:	No. CR-1547-2012
v.	:	
	:	
JEROME GREEN,	:	Motion to Suppress
Defendant	:	

OPINION AND ORDER

Defendant is charged by Information filed on October 4, 2012 with one count of Delivery of a Controlled Substance (Oxycodone) and one count of Possession with Intent to Deliver a Controlled Substance (Oxycodone), both ungraded felonies.

The charges arise out of an August 31, 2012 incident in which a white Ford Taurus was stopped by Officer Nathan Moyer, of the Williamsport Bureau of Police, for careless driving. The driver was identified as an individual by the name of Samuel Wertz. During Officer Moyer's interaction with Mr. Wertz, he was allegedly advised by Mr. Wertz that Mr. Wertz had just purchased four Percocet pills from Defendant who had been a passenger in the vehicle.

On October 29, 2012, Defendant filed a Motion to Suppress. Defendant contends that when interacting with Mr. Wertz, the police seized a pill bottle containing the controlled substances from Mr. Wertz and obtained statements from Mr. Wertz that implicated Defendant and resulted in the criminal charges filed against him. Defendant contends that such evidence was obtained as a result of Defendant's "illegal detainment" and should be suppressed as the "fruits" of unconstitutional activities by the police.

The hearing was held before the Court on February 5, 2013. Officer Nathan Moyer testified on behalf of the Commonwealth.

On August 31, 2012 at approximately 5:15 p.m., he was working as a law enforcement officer for the Williamsport Bureau of Police. He first noticed the white Ford Taurus vehicle traveling north on Campbell Street at a slower than normal rate of speed approaching the intersection at Park Avenue. The vehicle turned right on Park Avenue heading east until it eventually stopped at the intersection at Park Avenue and Walnut Street for a steady red signal.

The light turned green. The vehicle however, did not proceed through the intersection. It remained stopped. Another vehicle approached from the opposite direction with its left turn signal activated and waited for the white Taurus vehicle to proceed through the intersection. It appearing to the other vehicle that the white Taurus was not going to proceed, the other vehicle attempted to turn left onto Walnut. At that moment, the white Taurus vehicle proceeded through the intersection nearly causing an accident with the other vehicle. As a result of this “careless driving,” Officer Moyer effectuated a traffic stop of the white Taurus in the 500 block of Park Avenue.

Immediately after the vehicle stopped and as Officer Moyer was exiting his vehicle, he noticed Defendant opening a rear door and appearing to exit the vehicle. Officer Moyer told Defendant to shut the door and to stay in the vehicle.

Officer Moyer then made contact with the driver. The driver identified himself as Sam Wertz, but did not have any form of identification. Officer Moyer wrote down his name and date of birth and returned to his patrol vehicle to verify the information that Mr. Wertz provided to him. Once back at his patrol vehicle, Officer Moyer verified Mr. Wertz’ identity through a Department of Transportation photograph that appeared on his in car computer and

then returned to the vehicle.

Upon returning to the vehicle, he asked the driver to step out of the vehicle and go to the rear. Upon confronting Mr. Wertz at the rear of the vehicle, he informed Mr. Wertz that he was familiar with Defendant through other investigations. He asked Mr. Wertz if Defendant had sold him any drugs and if he had any drugs on him. Mr. Wertz admitted that he had Percocet pills on him and eventually admitted that Defendant sold him those drugs.

Following this testimony, Defendant argued that both the pill bottle and pills that were obtained from Mr. Wertz, as well as the statement incriminating Defendant should be suppressed. Defendant argued that once Officer Moyer had verified the identity of Mr. Wertz, the reason for the stop had concluded. Thus, contrary to state and federal constitutional protections, Defendant remained detained without any cause whatsoever. Defendant further argued that but for his illegal detention, the evidence against him would not have been seized.

In support of his argument, Defendant relies upon the Superior Court's decision in Commonwealth v. Wood, 832 A.2d 740 (Pa. Super. 2003). In Wood, police officers, received a report that there was a good chance that they would find underage drinkers at a specific bar on South Street in Philadelphia during Mardi Gras. The officers entered the bar and separated the patrons based on whether they looked to be under the age of 21. Those patrons "youthful in appearance" were prevented from leaving. The defendant, Ms. Wood, was overheard admitting to have been drinking at a different establishment earlier in the evening.

The Court concluded that the law enforcement officers lacked reasonable suspicion to detain Ms. Wood for investigation when they proceeded on nothing more than her appearance. Without the requisite reasonable suspicion, her admission was rendered

inadmissible.

The Wood case is clearly distinguishable from this case. In this case, Defendant requests the Court to suppress the evidence and a statement made by another individual because of the Defendant's alleged illegal detention.

The Court must first determine whether the Defendant's detention was illegal. Clearly Defendant was detained when he was told by Officer Moyer to shut the door, get back in the vehicle and stay in the vehicle.

Nonetheless, the conduct of Officer Moyer in directing Defendant to get back in and remain in the vehicle did not violate Defendant's constitutional rights. A police officer may lawfully order a passenger who has exited and/or attempted to walk away from a lawfully stopped vehicle to re-enter and remain in the vehicle until the traffic stop is completed, without offending the passenger's rights under the Constitution. Commonwealth v. Pratt, 930 A.2d 561 (Pa. Super. 2007).

The Court reasoned that allowing police officers to control all movement in a traffic encounter, and "in particular, eliminate the possibility of a passenger who has an obvious connection to the vehicle's driver, from distracting or otherwise interfering with an officer engaged in a traffic stop, whether by exiting the car and remaining at the scene, or attempting to leave the scene for unknown reasons, is a reasonable and justifiable step for protecting their safety." Pratt, supra. at 567-568.

Applying the holding in Pratt, it is evident that Defendant's Motion to Suppress must fail. The traffic stop was not "completed" until Officer Moyer released the driver. The information of which Defendant complains was obtained by Officer Moyer during the traffic

stop. Accordingly, Defendant's rights were not violated.

Alternatively, if one concludes that the traffic stop ended at the moment Officer Moyer asked the driver to exit the vehicle in order to investigate criminal activities not related to the stop, Defendant's argument still fails.

The Court disagrees with Defendant's assertion that the drugs and statements were a "fruit" of his illegal detainment. Nothing was discovered as a result of Defendant's "detainment." There is nothing in the record to indicate that any evidence was seized from Defendant's person or that Defendant made any incriminating statements. Rather, the evidence was obtained as a result of Officer Moyer's interaction with the driver.

Moreover, to prevail on a suppression motion a defendant must "demonstrate a personal privacy interest in the area searched or the affects seized, and that such interest was 'actual, societally sanctioned as reasonable, and justifiable.'" Commonwealth v. Hawkins, 553 Pa. 76, 718 A.2d 265, 267 (1998), citing Commonwealth v. Peterson, 535 Pa. 492, 636 A.2d 615, 617 (1993). Clearly, Defendant has not demonstrated a personal privacy interest in the drugs that were seized from the driver or the statements made by the driver. Indeed, even to claim such an interest under the facts and circumstances of this case would clearly be unreasonable and not justifiable. See, for example, Hawkins, supra.; Commonwealth v. Tucker, 832 A.2d 625 (Pa. Super. 2005); Commonwealth v. Mickens, 597 A.2d 1196 (Pa. Super. 1991) (a defendant had no reasonable expectation of privacy following drug delivery); Commonwealth v. Bulling, 480 A.2d 254 (Pa. Super. 1984) (by selling heroin, the defendant relinquished possessory interests and correspondingly, the right to object to the seizure).

ORDER

AND NOW, this ____ day of February 2013, following the hearing and argument on Defendant's Suppression Motion and for the reasons set forth in the foregoing Opinion, Defendant's Motion to Suppress is **DENIED**.

By the Court,

Marc F. Lovecchio, Judge

cc: Jeana Longo, Esquire (APD)
Aaron Bichle, Esquire (ADA)
Gary Weber, Esquire (Lycoming Reporter)
Work file