

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**HENRY BLACKMAN,
Defendant**

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**CR: 1581-2013
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on November 19, 2013. A hearing on the motion was held on February 4, 2014.

Background

On August 8, 2013, Office Justin Snyder (Snyder) of the Williamsport Bureau of Police was driving an unmarked police vehicle when he observed a white Cadillac sedan driven by who he thought was Gregory Amos (Amos). Snyder was familiar with Amos due to his past contacts with police and contacted Lycoming County Communications Center (LCCC) to determine his driver information and warrant status. LCCC informed Snyder that Amos was DUI suspended and had an active bench warrant out of Lycoming County.

Snyder was in front of the white Cadillac and pulled over so that the vehicle would pass. Once behind the vehicle, Snyder activated his lights and conducted a vehicle stop on the white Cadillac. When Snyder was in close proximity to the driver of the white Cadillac he noticed that the driver was, in fact, not Amos but someone with a similar appearance. Snyder stated to the driver "I thought you were someone else. You are free to leave."¹ Snyder testified that the driver, Henry Blackman (Defendant), continued to look for his driver's license and give it to him. Snyder looked at the license, confirmed Defendant's identity, and then started to give it

¹ Snyder did not remember the exact wording he stated to the Defendant.

back to the Defendant. While close to the Defendant, Snyder observed a zip lock bag of marijuana in the Defendant's left front breast pocket of his t-shirt. Snyder testified that at this point the Defendant was arrested and reached into the Defendant's pocket and took possession of the bag of marijuana. Snyder then asked the Defendant if he had anything else on him and the Defendant gave the officer three (3) more zip-lock baggies of marijuana.

The Defendant testified at the suppression hearing and stated that Snyder did not tell him he was free to leave. Instead, the Defendant stated that Snyder approached the vehicle and said, "I thought you were someone else." At this time the Defendant stated he had his driver's license out and Snyder requested to look at it. Snyder had the driver's license for three (3) to four (4) seconds and was about to hand it back to him when he reached for his shirt pocket and grabbed the bag of marijuana. The Defendant testified that the pocket was not only closed but that a seat belt was covering the pocket.

The Defendant was charged with Possession with Intent to Deliver,² Possession of a Controlled Substance,³ Possession of a Controlled Substance (small amount),⁴ and Possession of Drug Paraphernalia.⁵ On November 19, 2013, the Defendant filed a Motion to Suppress, which alleged that the stop was conducted without reasonable suspicion; that the search of the Defendant was done without reasonable suspicion, warrant, consent, or exigent circumstances; and that the Defendant was questioned without being Mirandized.

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 35 P.S. § 780-113(a)(31)(i).

⁵ 35 P.S. § 780-113(a)(32).

Motion to Suppress

- a. *Whether the vehicle stop of the Defendant was conducted with reasonable suspicion.*

The Defendant contends that the stop of his vehicle was improperly conducted. 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).

Relevant to a determination of reasonable suspicion are the specific observations of the police officer prior to the vehicle stop. In Farnan, an officer received information that a defendant was driving on a license that was suspended for a DUI-related matter. Commonwealth v. Farnan, 55 A.3d 113, 114 (Pa. Super. 2012). Within thirty (30) days of learning defendant’s current license status, the officer observed the defendant driving and pulled over his vehicle. The defendant argued that the officer could have reconfirmed the status of his license prior to pulling his vehicle over. The Superior Court of Pennsylvania, however, disagreed and found that the vehicle stop was lawful based on reasonable suspicion. “[A]n officer need not delay the interaction until he has acquired the greatest available quantum of information indicating that the defendant is engaged in unlawful conduct.” Id. at 118 (citing Commonwealth v. Rogers, 849 A.2d 1185, 1189 (Pa. 2004)).

Here, Snyder testified that he was one-hundred percent sure, prior to the vehicle stop, that the operator of the white Cadillac was Amos, whom with Snyder had prior police contacts. Snyder contacted LCCC and was informed that Amos had an active bench warrant and his license was suspended for a DUI offense. At this point, Snyder has reasonable suspicion to believe that the operator of the white Cadillac was driving with a suspended license. Based on Farnan and other cases related to suspended licenses, Snyder lawfully conducted a vehicle stop of the vehicle.

The Defendant additionally alleges that there was no reasonable suspicion for the vehicle stop because he was not Amos, the main purpose for the stop. Despite the fact that the officer discovered his mistake only after the traffic stop and was not known at the time reasonable suspicion was being determined, mistakes of law and mistakes of fact are distinguishable. “If an officer makes a traffic stop based on a mistake of law, the stop violates the Fourth Amendment.” United States v. Miguel, 368 F.3d 1150, 1153 (9th Cir. 2004). “[A] mere mistake of fact will not render a stop illegal, if the objective facts known to the officer gave rise to a reasonable suspicion that criminal activity was afoot. An officer’s correct understanding of the law, together with a good-faith error regarding the facts, can establish reasonable suspicion.” Id. (citations omitted); see also Commonwealth v. Chase, 960 A.2d 108, 120 (Pa. 2008) (“[E]ven stops based on factual mistakes generally are constitutional if the mistake is objectively reasonable.”).

Here, the mistake made by Snyder was a mistake of fact. The Court finds that Snyder made an objectively reasonable mistake when he believed that the Defendant was Amos. Based on both the testimony of Snyder and the Defendant, Snyder immediately notified the Defendant that he believed he was someone else. Further, the Defendant admitted to Snyder that others

have said he closely resembles Amos. Based on the record provided, the Court finds that Snyder had articulable reasonable suspicion to stop the Defendant's vehicle.

b. *Whether the search of the Defendant was lawful.*

The Defendant contends that the search of his shirt pocket was unlawful. The Commonwealth, however, argues that the officer viewed the drugs in plain view and once viewed was subsequently arrested. "The plain view doctrine permits the warrantless seizure of an object in plain view when: (1) an officer views the object from a lawful vantage point; (2) it is immediately apparent to him that the object is incriminating; and (3) the officer has a lawful right of access to the object." Commonwealth v. Gonzalez, 979 A.2d 879 (Pa. Super. 2009). As discussed above, when the Defendant's vehicle was pulled over it was based upon reasonable suspicion. The officer, however, realized he made a mistake after the stop and there was a continued interaction between the officer and the Defendant. This Court must first determine whether this continued interaction between the officer and the Defendant following the traffic stop was a lawful mere encounter or an investigative detention.

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, 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. Commonwealth v. Boswell, 721 A.2d 336, 339-40 (Pa. 1998).

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, 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, 761 A.2d 621, 625-26 (Pa. Super. 2000). In addition, the Court is to consider the nature of any prior seizure, whether there was a clear and expressed endpoint to any such prior detention, and the presence or absence of express advice that the citizen-subject was free to decline the request for consent to search. Commonwealth v. Freeman, 757 A.2d 903, 906-07 (Pa. 2000). "[W]hen an individual has been subjected to a valid detention and the police continue to engage that person in conversation, the citizen, having been in official detention, is *less likely* to understand that he has the right to refuse to answer questions or a search."

Commonwealth v. Moyer, 954 A.2d 659, 665 (Pa. Super. 2008) (emphasis in original) (citing Commonwealth v. Strickler, 757 A.2d 884 (Pa. 2000)).

In Moyer, two officers in uniform pulled over a defendant for having a hole in the taillight of his vehicle and questioned him about his whereabouts. Moyer, 954 A.2d at 661. The officers initiated a search of the defendant's criminal history after he appeared nervous and had bloodshot eyes. The defendant's criminal history revealed a previous arrest for possession of marijuana. Subsequently, the officers ordered the defendant out of the vehicle, showed him the

hole in the taillight, and told him to have it repaired. The officers then told the defendant he was free to leave but before he re-entered his vehicle an officer requested to ask a few questions.

Following the questioning, the defendant consented to a search of his vehicle and person.

The Superior Court of Pennsylvania, *en banc*, found that the consent to search occurred during an illegal investigatory detention. The Superior Court stated that the officers created an intimidating atmosphere during the initial stop because they ordered the defendant out of the car to look at the taillight and by asking about his whereabouts. Further, the officer re-questioned the defendant shortly after saying he was free to go and thus “there was no precise end to the traffic stop.” *Id.* at 667. In addition, there were two armed, uniformed officers standing with the isolated defendant outside his vehicle, the officers had activated their lights, the defendant was not informed that he did not have to answer any further questions, the officer conveyed the results of his criminal history check, and the officers did not inform the defendant that he could decline to consent to the search. In conclusion, the Superior Court stated:

The only factors that would substantiate a finding that a mere encounter occurred herein were that police told Appellee that he was free to leave, did not use a coercive tone, and did not display their guns. However, the record supports the suppression court’s assessment that those elements did not outweigh the overwhelming indicia supporting the reasonableness of Appellee’s belief that he could not refuse the officer’s requests for more information and to search his car and person.

Id. at 668.

In addition, in Dales, an officer stopped a vehicle for excessive tint on windows. Commonwealth v. Dales, 820 A.2d 807 (Pa. Super. 2003). The officer observed several air fresheners and a Bactine/medicine type smell. In addition, the defendant acted nervous. After verifying the defendant’s license, the officer requested the defendant out of the vehicle and explained proper tint by comparing the defendant’s vehicle to the officer’s vehicle. The officer then gave the defendant all the documentation taken from him but continued to ask additional

questions. The defendant eventually consented to a search of his vehicle, which resulted in contraband being found. The Superior Court found that once the officer gave the defendant his documentation back the initial traffic stop had ended. When the second round of questioning began the Superior Court found that it was an investigative detention based on a hunch and without reasonable suspicion. The Superior Court found that any information found during the investigative detention could not have been used to justify the detention that was already occurring.

In support of the decision in Dales, the Superior Court cited By, which actually found that subsequent questioning of a defendant was a mere encounter. Commonwealth v. By, 812 A.2d 1250 (Pa. Super. 2002). In By, the defendant's vehicle was pulled over for having excessive tint. Two (2) additional officers arrived on the scene and the identities of the four (4) individuals in the vehicle were obtained. It was further found that one of the passengers had given false information about his name and birth date. After the officer gave the defendant a warning for the tinted windows and told he could leave, the officer continued to ask questions. The officer asked if he could search the vehicle but again repeated that the defendant could also leave. The Superior Court found that the subsequent questioning after the initial traffic stop was a mere encounter, citing that the officers returned the defendant's documentation, told the defendant he was free to leave, did not use force/threats, did not block the defendant's path, did not remove a weapon from his holster, and reminded the defendant he could leave after requesting consent to search. Id. at 1256-57.

Here, the Court finds that the continued interaction between the Defendant and the officer was a mere encounter. The Court finds that Snyder's version of the stop is credible and that he informed the Defendant that he believed he was someone else and that he was free to go. The

officer did not request for the Defendant to exit the vehicle, did not use force or threat, did not remove his weapon from his holster, and did not block the Defendant's path. The Court believes that after being informed that the officer thought he was someone else the Defendant confirmed this with the officer by handing him his license. The officer looked at the license for a few seconds and in the process of handing it back saw the bag of marijuana. The officer did not ask additional questions and did not request Defendant's driver's license. The officer did not create an intimidating atmosphere and therefore the interaction between the officer and the Defendant was a lawful mere encounter.

Finally, the Court must now consider whether the officer viewed the bag of marijuana in plain view. As discussed above, Snyder was in a lawful vantage point when he viewed the marijuana. An additional issue is whether the marijuana was immediately apparent to Snyder. Based on Snyder's testimony, which this Court finds credible, Snyder knew immediately that the Defendant had a bag of marijuana in his pocket. At this point, Snyder had probable cause to arrest the Defendant for possession of a controlled substance and had lawful access to the object. Therefore, the Court finds that the officer lawfully seized the bag of marijuana from the Defendant.

- c. *Whether statements made by the Defendant should be suppressed because he had not been given his Miranda rights.*

The Defendant contends that the Defendant was questioned without being Mirandized and that his statements should be suppressed. Miranda rights are required before a custodial interrogation or when police questions are "calculated to, expected to, or likely to elicit an incriminating response, or that the questions were asked with an intent to extract or an

expectation of eliciting an incriminating statement.” Commonwealth v. Davis, 331 A.2d 406, 407 (Pa. 1975) (citing Commonwealth v. Yount, 314 A.2d 242, 246 (Pa. 1974)).

[N]ot every statement made by an individual during a police encounter constitutes an interrogation. Miranda rights are required only prior to a custodial interrogation. “Custodial interrogation is ‘questioning initiated by law enforcement officers after a person has been taken into custody otherwise deprived of [his] freedom of action in any significant way.’” Furthermore, volunteered or spontaneous utterances by an individual are admissible without the administration of Miranda warnings. “When a defendant gives a statement without police interrogation, we consider the statement to be ‘volunteered’ and not subject to suppression Interrogation is police conduct ‘calculated to, expected to, or likely to evoke admission.’”

Commonwealth v. Garvin, 50 A.3d 694 (Pa. Super. 2012) (citations omitted).

The Court finds that a custodial interrogation occurred when Snyder asked the Defendant if he had anything additional on him. Snyder testified that the Defendant was arrested the moment he saw the bag of marijuana, which prompted him to seize the marijuana. Further, the question by Snyder was expected to elicit an incriminating response by the Defendant. Therefore, the Court finds the Defendant’s response to the officer’s question should be suppressed.

Any error that may have resulted from Snyder’s question does not result in the suppression of the remaining evidence found on the Defendant. The Pennsylvania Supreme Court has adopted the inevitable discovery doctrine stating that “where the evidence obtained as the result of illegal police activity would have been discovered in the course of a lawfully conducted investigation, no purpose is served in applying the exclusionary rule.”

Commonwealth v. Wiley, 904 A.2d 905, 909 (Pa. 2006); see Commonwealth v. Ingram, 814 A.2d 264 (Pa. Super. 2002) (finding that search incident to a lawful arrest would have produced the drugs that were unlawfully found). Snyder would have found the marijuana following a legal search incident to a lawful arrest.

ORDER

AND NOW, this _____ day of March, 2014, after a hearing and based upon the foregoing Opinion, Defendant's Motion to Suppress is hereby GRANTED in part and DENIED in part. The Court finds that only the Defendant's response to the officer's question of whether he had anything additional on him was the result of a custodial interrogation. The Court, however, finds that Snyder lawfully stopped the Defendant's vehicle and viewed the marijuana in plain view during a mere encounter following the traffic stop. Accordingly, it is ORDERED and DIRECTED that the Defendant's statement identifying additional marijuana is hereby SUPPRESSED. In all other regards, the Defendant's Motion to Suppress is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Michael Morrone, Esq.
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