

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-68-2014
v.	:	
	:	
DAVION JASON MINOR,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On April 15, 2014, the Defendant filed a Motion to Suppress. A hearing on the motion was held on October 23, 2014.

I. Background

On January 6, 2014, at approximately 6:44 P.M., Officer Joshua Bell (Bell) of the Williamsport Bureau of Police noticed a silver sedan in the parking lot of a restaurant. Bell saw the sedan exit the parking lot and travel north on Arch Street in Williamsport. Bell noticed that one of the sedan's brake lights was not operating and stopped the sedan. The sedan had three occupants: the driver, a front passenger, and a back passenger who was seated behind the driver. The Defendant was the back passenger. Bell testified that the occupants appeared nervous, placed their hands in their pockets, and were shifting in their seats. Bell told the occupants to keep their hands visible. He asked the occupants if there were any narcotics or weapons in the vehicle. They responded that there were no narcotics or weapons in the vehicle. Bell testified that the occupants continued to move around and shift in their seats.

Officer Snyder (Snyder) of Williamsport Bureau of Police arrived shortly after Bell stopped the sedan. Snyder went to the window on the front passenger side of the vehicle. Bell decided to pat down the occupants because of their movement in the car. Bell asked driver to step out of the vehicle. The driver exited the vehicle, and Bell conducted a pat down of the

driver. Snyder conducted a pat down of the front passenger. The pat downs of the driver and the front passenger did not reveal any weapons. Bell then asked the Defendant to step out of the vehicle. After the Defendant exited the vehicle, Bell conducted a pat down, which revealed a pocket knife. As Bell continued the pat down, he asked the Defendant whether he had drugs or weapons. The front passenger testified that the officer who conducted the pat down said the following to the Defendant: “Do you have anything on you? If you do, you might as well tell me now because I’m going to find it anyway.” The Defendant told Bell that he had marijuana in a pants pocket.¹ Bell found a bag of marijuana in the Defendant’s pocket and arrested the Defendant. He then searched the Defendant and found heroin in another pocket.

Bell has been an officer in the Williamsport Bureau of Police since 2011. He is an officer in the Bureau’s Drug Task Force and has been involved in over 100 narcotics arrests. Bell testified that he has made a “handful” of narcotics arrests in area where he stopped the sedan. In Bell’s opinion, the area is a high narcotics activity area.

The Defendant was charged with Possession of Heroin with Intent to Deliver² and Possession of a Small Amount of Marijuana.³

In his motion, the Defendant argues that the stop of the sedan, the pat down of the Defendant, and the questioning of the Defendant were done in violation of the Defendant’s rights under the Fourth Amendment to the Constitution of the United States and Article 1, Section 8 of the Pennsylvania Constitution. Specifically, the Defendant argues that the pat down was conducted without reasonable suspicion that the Defendant had weapons or controlled substances. The Defendant also argues that the he was subjected to a custodial interrogation

¹ Bell’s pat down had not progressed to the pocket where the marijuana was found, but he was working towards the area.

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(31)(i).

without first receiving *Miranda* warnings. Furthermore, the Defendant argues that the search of the Defendant was unlawful because it was done without a warrant or exigent circumstances.

During the suppression hearing, the Defendant argued that Bell had no reason to remove the occupants from the sedan. He contended that the movement of the occupants was not enough to give Bell a reasonable belief that they possessed weapons or drugs. The Defendant, therefore, asks that the evidence obtained from the stop, pat down, questioning, and search of the Defendant be suppressed.

The Commonwealth argues that Bell had reasonable suspicion that the Defendant possessed a weapon. It notes that the stop was done during nighttime, the officers were outnumbered, the occupants were moving, and the area of the stop is a high drug area.

II. Discussion

A. Officer Bell had Reasonable Suspicion that a Violation of the Motor Vehicle Code was Occurring.

“Whenever a police officer . . . has reasonable suspicion that a violation of [the Motor Vehicle Code] is occurring or has occurred, he may stop a vehicle . . . for the purpose of checking the vehicle’s registration, proof of financial responsibility, vehicle identification number or engine number or the driver’s license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.” 75 Pa. C.S. § 6308(b).

“Section 6308(b) allows a police officer to conduct a vehicle stop if he has reasonable suspicion to believe that a violation of the Motor Vehicle Code is occurring or has occurred.” Commonwealth v. Holmes, 14 A.3d 89, 95 (Pa. 2011). “Police can initiate an investigatory stop

when they have reasonable suspicion of a MVC violation.” Commonwealth v. Muhammed, 992 A.2d 897, 900 (Pa. Super. 2010).

“[I]n order to establish reasonable suspicion, an officer must be able to point to specific and articulable facts which led him to reasonably suspect a violation of the Motor Vehicle Code . . .” Holmes, 14 A.3d at 96.

“The MVC requires . . . brake lights to illuminate upon application of the brakes.” Muhammed, 992 A.2d at 903; *see* 75 Pa. C.S. § 4303(b).

Here, Bell reasonably suspected a violation of the Motor Vehicle Code because he observed that one of the sedan’s brake lights was not operating.

B. Officer Bell’s Request that the Defendant Exit the Vehicle was Lawful.

“[P]olice may request both drivers and their passengers to alight from a lawfully stopped car without reasonable suspicion that criminal activity is afoot.” Commonwealth v. Brown, 654 A.2d 1096, 1102 (Pa. Super. 1995). “The police officer lawfully pulled [the defendant] over because of a malfunctioning brake light; therefore he also had the right to ask him to step out of the vehicle.” Commonwealth v. Parker, 957 A.2d 311, 315 (Pa. Super. 2008).

Here, Bell’s request that the Defendant exit the vehicle was lawful because he lawfully stopped the vehicle.

C. Officer Bell had Reasonable Suspicion to Conduct a Pat Down of the Defendant.

“If, during the course of a valid investigatory stop, an officer observes unusual and suspicious conduct on the part of the individual which leads him to reasonably believe that the suspect may be armed and dangerous, the officer may conduct a pat-down of the suspect’s outer garments for weapons. In order to establish reasonable suspicion, the police officer must

articulate specific facts from which he could reasonably infer that the individual was armed and dangerous. When assessing the validity of [an investigatory] stop, [Pennsylvania courts] examine the totality of the circumstances, giving due consideration to the reasonable inferences that the officer can draw from the facts in light of his experience, *while disregarding any unparticularized suspicion or hunch.*” Commonwealth v. Wilson, 927 A.2d 279, 284 (Pa. Super. 2007) (citations omitted). “In determining whether a [pat down] was supported by a sufficient articulable basis, [Pennsylvania courts] examine the totality of the circumstances.” Commonwealth v. Gray, 896 A.2d 601, 606 (Pa. Super. 2006).

“Among the factors to be considered in forming a basis for reasonable suspicion are tips, the reliability of the informants, time, location, and suspicious activity, including flight.” In the Interest of M.D., 781 A.2d 192, 197 (Pa. Super. 2001).

“[W]hile nervous behavior is a relevant factor, nervousness alone is not dispositive and must be viewed in the totality of the circumstances.” Gray, 896 A.2d at 606 n. 7.

“[P]resence in a high crime area alone . . . does not form the basis for reasonable suspicion.” In the Interest of M.D., 781 A.2d at 197.

“The fact that an officer may be outnumbered is certainly a factor to be considered when determining whether an officer’s safety is at risk.” Commonwealth v. Mack, 953 A.2d 587, 591 (Pa. Super. 2008).

A vehicular stop at night “creates a heightened danger that an officer will not be able to view a suspect reaching for a weapon.” In the Interest of O.J., 958 A.2d 561, 566 (Pa. Super. 2008). “It is well-settled that an encounter that occurs late at night is inherently more dangerous than one that occurs during the day, particularly when the suspects appear shaky and inordinately nervous, as in this case.” Commonwealth v. Austin, 631 A.2d 625, 628 (Pa. Super. 1993).

“[A] combination of circumstances, none of which taken alone would justify a stop, may be sufficient to achieve a reasonable suspicion.” Commonwealth v. Riley, 715 A.2d 1131, 1135 (Pa. Super. 1998).

In Commonwealth v. Mesa,⁴ police stopped a vehicle. 683 A.2d at 645. An officer noticed that the passenger was moving around “a lot.” Id. The officer conducted a pat down of the passenger and felt a large bulge in the passenger’s pants pocket. Id. The officer “immediately reached into the pocket and pulled out a large amount of cash folded in half.” Id. “Wrapped up inside of the cash was a two inch by two inch baggie which contained a small amount of marijuana.” Id. The Superior Court of Pennsylvania found that the officer “had ‘articulable’ suspicion that [the passenger] might be armed and dangerous, warranting a [pat down] for his protection.” Id. at 646.

In Commonwealth v. Wilson, a police officer stopped a vehicle. 927 A.2d at 282. “The officer observed the [driver] checking his mirrors, putting his hands in his pockets, and appearing very nervous. Both the driver’s and passenger’s side windows were down, despite the cold weather.” Id. The officer conducted a pat down of the driver. Id. “[T]he officer felt a large hard ball in the [driver’s] front left jacket pocket. Concerned that it was a weapon, [the officer] looked in the pocket and saw what he believed to be crack cocaine, at which point [he retrieved the bag and placed] the [driver] . . . under arrest.” Id. The Superior Court of Pennsylvania concluded that the officer “articulated specific facts from which he could infer that [the driver] might be armed and dangerous.” Id. at 284. The Court wrote, “[The driver’s] suspicious gestures and movements, in conjunction with the fact that he placed his hands inside his coat pocket as if he were reaching for something, could lead [the officer] to reasonably conclude that his safety was in jeopardy.” Id. at 284-85.

⁴ 683 A.2d 643 (Pa. Super. 1996).

In Commonwealth v. Parker, a police officer stopped a car. 957 A.2d at 313. The officer noticed that the driver “began to reach down, dipping his shoulders right and left.” Id. “After [the driver] was unable to produce identification, the officer ordered him out of the car so he could pat him down to check for the presence of weapons. During the pat down, the officer felt two plastic bags with a ‘hard chunky substance’ in [the driver’s] pants pocket. Based on the officer’s experience, he believed the objects felt to be cocaine and seized them.” Id. The Superior Court of Pennsylvania held that “the suspicious gestures and movements of [the driver] could have caused the officer to reasonably conclude, in light of his experience, that [the driver] was armed and dangerous.” Id. at 316.

Here, Bell provided a sufficient articulable basis for his belief that the Defendant may have been armed and dangerous. Bell testified that the sedan’s occupants appeared nervous, placed their hands in their pockets, and were shifting in their seats. Like the passenger in Mesa and the driver in Parker, the Defendant was moving around in the vehicle. Like the driver in Wilson, the Defendant appeared nervous. In addition, the stop occurred at night when there was a heightened danger that Bell and Snyder would not be able to view an occupant reaching for a weapon. Furthermore, there were three occupants of the sedan but only two officers at the stop. After examining the totality of the circumstances, this Court finds that Bell had the required reasonable suspicion to pat down the Defendant.

D. *Miranda* Warnings were not Required until the Defendant was Arrested for the Marijuana.

“[P]olice need only give *Miranda* warnings while detaining a suspect by the side of a public highway when the suspect is actually placed under arrest or when the questioning of the suspect is so prolonged or coercive as to approximate the atmosphere of a station house

interrogation. Thus, in the typical situation in which a motorist is temporarily ordered to remain by the side of his car, *Miranda* warnings are not essential.” Commonwealth v. Toanone, 553 A.2d 998, 1003 (Pa. Super. 1989).

“[T]raffic stops, like *Terry* stops, constitute investigative rather than custodial detentions, unless under the totality of the circumstances the conditions and duration of the detention become the functional equivalent of an arrest.” Commonwealth v. Haupt, 567 A.2d 1074, 1078 (Pa. Super. 1989) (quoting Commonwealth v. Ellis, 549 A.2d 1323, 1331 (1988)). “Thus, [Pennsylvania courts] must review the totality of the circumstances to determine whether facts existed which would elevate this traffic stop to the ‘functional equivalent of an arrest.’” Id. The factors considered to determine whether a detention is investigative or custodial include:

the basis for the detention (the crime suspected and the grounds for suspicion); the duration of the detention; the location of the detention (public or private); whether the suspect was transported against his will (how far, why); the method of detention; the show, threat or use of force; and, the investigative methods used to confirm or dispel suspicions.

Commonwealth v. Pizarro, 723 A.2d 675, 681 (Pa. Super. 1998).

Here, Bell’s statement that he was going to find any weapons or drugs regardless of whether the Defendant told him is a circumstance supporting that the detention was custodial. However, the inquiry is not complete as this Court must examine the *totality* of the circumstances. The following circumstances support that the detention was investigative. The Defendant was detained in order to allow Bell to determine whether he had any weapons. While the exact duration of the detention is unknown, the Defendant has not alleged that he was detained longer than what was necessary for Bell to determine whether he had a weapon. A typical pat down is not very time consuming. The Defendant was detained on the side of the road and, thus, not transported anywhere. Bell did not use more force than was necessary to

conduct the pat down. After examining the totality of the circumstances, this Court finds that the detention of the Defendant was investigative. Therefore, *Miranda* warnings were not required before the marijuana was revealed, and the Defendant's statements before the marijuana was revealed will not be suppressed.

E. The Search of the Defendant after his Arrest was Lawful.

“The potential dangers lurking in all custodial arrests make warrantless searches of items within the ‘immediate control’ area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved.” United States v. Chadwick, 433 U.S. 1, 14-15 (1977), abrogated on other grounds by California v. Acevedo, 500 U.S. 565 (1991).

After the Defendant was arrested for the marijuana, Bell searched the Defendant and found heroin in a pocket. The heroin will not be suppressed because Bell searched only the area in the Defendant's immediate control.

III. Conclusion

Bell had reasonable suspicion that a violation of the Motor Vehicle Code was occurring because he observed that one of the sedan's brake lights was not operating. Bell's request that the Defendant exit the vehicle was lawful because Bell lawfully stopped the vehicle. The totality of the circumstances shows that Bell had reasonable suspicion to conduct the pat down. *Miranda* warnings were not required until the marijuana was revealed because the totality of the circumstances shows that the detention of the Defendant was investigative. Bell's search of the Defendant after the arrest for marijuana was lawful because Bell searched only the area in the Defendant's immediate control.

ORDER

AND NOW, this _____ day of December, 2014, based on the foregoing opinion, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Michael Morrone, Esq.
DA