IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-1470-2014**
v.	:	
	:	
JUSTIN DOUGLAS CARL,	:	**CRIMINAL DIVISION**
Defendant	:	

OPINION AND ORDER

On February 10, 2015, the Defendant filed a Motion to Suppress Evidence. A hearing on the motion was held on March 12, 2015.

I. Background

Officer Joshua Bell (Bell) has been a police officer with the Williamsport Bureau of Police since 2011. Before working in Williamsport, Bell was a military police officer and an officer with the Wellsboro Police Department. He is a member of the Lycoming County Drug Task Force and has debriefed "numerous" informants.

On April 28, 2014, at approximately 10:30 P.M., Bell was driving a marked patrol car on Arch Street in Williamsport. Bell saw two people exit a vehicle, which then travelled south on Arch Street before turning and travelling east on West Third Street. Bell testified that the area of Arch Street and West Third Street is a common area for narcotics sales. The vehicle turned left from West Third Street and approached a stop sign. As the vehicle approached the sign, Bell could see the outline of a unit that housed a lamp at the bottom of the vehicle's rear window. When the vehicle decelerated, Bell saw the vehicle's back fender brake lamps illuminate, but the lamp in the rear window did not illuminate. At the sign, the vehicle again turned left and eventually approached another stop sign. As the vehicle decelerated, Bell again noticed that the lamp in the rear window did not illuminate. The vehicle again turned left and began to travel

north on Arch Street. Bell noticed that the vehicle was "circling," and it did not appear to have a destination. While following the vehicle, Bell "ran the registration" and learned that the vehicle was registered to somebody from Coal Township. On Arch Street, the vehicle decelerated to turn left into the parking lot of a restaurant. As the vehicle decelerated, the lamp in the rear window did not illuminate. The vehicle entered the parking lot, and as it decelerated to park, the lamp in the rear window did not illuminate. When the vehicle parked, Bell initiated a traffic stop. As he approached the vehicle's driver, Bell saw a red lamp housed in original manufacturer's molding at the bottom of the rear window. In the vehicle, there was a passenger and a driver, who was the Defendant.

Bell told the Defendant that he stopped him because the vehicle's rear window brake light was not working. Bell asked if there were any weapons or narcotics in the vehicle, and the Defendant responded no. The Defendant responded to Bell in a low tone and did not make eye contact with Bell. Bell noticed that the Defendant had "heightened" nervousness, which was different than the nervousness that is typically displayed during a traffic stop. From outside of the vehicle, Bell saw a Q-tip by the handle of the driver's door. Bell thought that the Q-tip was out of place; he knew that heroin users sometimes use the cotton from Q-tips as filters.

Bell asked the Defendant to exit the vehicle and told the Defendant that he was going to pat him down for weapons. Bell saw two closed pocket knives in a well of the driver's door. The Defendant exited the vehicle, and Bell conducted a pat-down. When Bell patted the Defendant's left front pants pocket, he immediately recognized that a syringe with a cap was in the pocket. From experience, Bell knew that a syringe has a large cap, a long tube, and "two wings at the back." He could feel the outline of a syringe in the pocket. Bell removed a syringe from the Defendant's pocket. Bell believed that the syringe was drug paraphernalia because the

Defendant had no apparent destination in a high-drug area, and a Q-tip was in the Defendant's vehicle. Bell arrested the Defendant for possession of drug paraphernalia. After the arrest, Bell removed a knife from the Defendant's right front pants pocket. Bell searched the vehicle and found pieces of torn cotton and more Q-tips.

The Defendant argues that Bell stopped him in violation of his constitutional rights and did not have the requisite probable cause to search him. He further argues that even if Bell "had a right to conduct a frisk . . . he certainly had no right to reach into the Defendant's pocket and remove the alleged incriminating evidence." The Defendant contends that Bell did not have probable cause to believe that the syringe was drug paraphernalia. Lastly, the Defendant argues that Bell did not have probable cause to search the vehicle. He asks for the suppression of "any physical evidence seized . . . and any fruits thereof."

The Commonwealth argues that the stop was lawful because Bell had probable cause to believe that the rear window brake light was not functioning. It further argues that the pat-down was lawful because Bell's observation of two knives in the vehicle gave him reasonable suspicion that the Defendant was armed and dangerous. Lastly, the Commonwealth argues that it was immediately apparent that the syringe was drug paraphernalia.

II. Discussion

A. The Stop was Lawful Because Officer Bell had Probable Cause to Believe that the Defendant was Violating the Motor Vehicle Code.

In Commonwealth v. Muhammed,[1] police stopped the defendant's vehicle after noticing a nonfunctioning center brake light in the vehicle's rear window. 992 A.2d at 899. The police noticed that the two fender brake lights were working properly. Id. at 902. The Superior Court

[1] 992 A.2d 897 (Pa. Super. 2010).

of Pennsylvania held that "[a]lthough the center brake light was not mandatory equipment on [defendant's] vehicle, the vehicle was so equipped; thus, the light can be held to the same standards and requirements as the other brake lights." Id.

Here, the Defendant's vehicle was originally equipped with a brake light in the rear window. Bell testified that as he followed the vehicle, he could see the outline of a unit that housed a lamp at the bottom of the rear window. He also testified that as he approached the driver, he could see that the lamp in the rear window was housed in original manufacturer's molding. This testimony is supported by the video from the camera in Bell's patrol car.

A traffic stop solely for a nonfunctioning brake light does not serve an investigatory purpose. See Commonwealth v. Feczko, 10 A.3d 1285, 1291, n.2 (Pa. Super. 2010) (en banc) (noting that the traffic stop in Muhammed could not have served an investigatory purpose). "Where a vehicle stop has no investigatory purpose, the police officer must have probable cause to support it." Commonwealth v. Enick, 70 A.3d 843, 846 (Pa. Super. 2013) (citing Feczko, 10 A.3d at 1291). "'The police have probable cause where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. [Courts] evaluate probable cause by considering all relevant facts under a totality of circumstances analysis.'" Commonwealth v. Brown, 64 A.3d 1101, 1105 (Pa. Super. 2013) (quoting Commonwealth v. Hernandez, 935 A.2d 1275, 1284 (Pa. 2007)). "'The officer must be able to articulate specific facts possessed by him at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in some violation of some provision of the Vehicle Code. Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference.'" Enick, 70 A.3d at 846, n.3 (quoting Commonwealth v. Lindblom, 854

A.2d 604, 607 (Pa. Super. 2004)). "The MVC requires . . . brake lights to illuminate upon application of the brakes." Muhammed, 992 A.2d at 903.

Here, Bell articulated specific facts, which were sufficient to warrant a person of reasonable caution in the belief that the Defendant was committing a violation of the Motor Vehicle Code. Bell noticed that while the fender brake lights were functioning, the brake light in the rear window was not. On four occasions when the Defendant braked, Bell noticed that the brake lamp in the rear window did not illuminate. Bell's testimony is supported by the video from the camera in his patrol car. Bell's observations gave him probable cause to believe that the Defendant was violating the Motor Vehicle Code by driving a vehicle with a nonfunctioning brake light.

B. Officer Bell's Request for the Defendant to Exit the Vehicle was Lawful.

"During the traffic stop, the police officer may check 'vehicle registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or secure such other information as the officer may reasonably believe necessary to enforce the provisions of [the Vehicle Code].'" Commonwealth v. Clinton, 905 A.2d 1026, 1030 (Pa. Super. 2006) (quoting 75 Pa.C.S. § 6308(b)). "[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).

Here, video from the camera in the patrol car shows Bell approaching the Defendant's vehicle. Bell stands next to the driver's door while he communicates with the Defendant. The Defendant gives Bell some items, and Bell writes down some information. After shining a flashlight and looking into the vehicle, Bell motions for the Defendant to exit.

Even if the original purpose for the stop had ended when Bell asked the Defendant to exit the vehicle, the request was lawful since Bell had reasonable suspicion that the Defendant was committing a crime. "[A] police officer may, short of an arrest, conduct an investigative detention if he has a reasonable suspicion, based upon specific and articulable facts, that criminality is afoot. The fundamental inquiry is an objective one, namely, whether 'the facts available to the officer at the moment of the [intrusion] 'warrant a man of reasonable caution in the belief' that the action taken was appropriate.'" Commonwealth v. Zhahir, 751 A.2d 1153, 1156 (Pa. 2000) (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)). "This assessment, like that applicable to the determination of probable cause, requires an evaluation of the totality of the circumstances, with a lesser showing needed to demonstrate reasonable suspicion in terms of both quantity or content and reliability." Id. at 1156-57 (citation omitted).

"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). "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." Commonwealth v. Gray, 896 A.2d 601, 606, n. 7 (Pa. Super. 2006). "[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. "[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).

Here, the totality of the circumstances shows that Bell had reasonable suspicion that the Defendant was in possession of drugs or drug paraphernalia. Bell saw two people exit the Defendant's vehicle. The Defendant was "circling" in a high-drug area and did not appear to have a destination. The Defendant was nervous, and there was a Q-tip by the handle of the driver's door. Bell knew that heroin users sometimes use the cotton from Q-tips as filters. Such observations were sufficient to give Bell reasonable suspicion that the Defendant was committing a crime. Therefore, the request for the Defendant to exit the vehicle was lawful.

C. The Pat-Down was Lawful Because Officer Bell had Reasonable Suspicion that the Defendant was Armed and Dangerous.

"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." Wilson, 927 A.2d at 284 (citations omitted). "In determining whether a [pat-down] was supported by a sufficient articulable basis, [Pennsylvania courts] examine the totality of the circumstances." Gray, 896 A.2d at 606.

"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 . . . ." Commonwealth v. Austin, 631 A.2d 625, 628 (Pa. Super. 1993).

Here, by the time Bell conducted the pat-down, another officer had arrived, so Bell was not outnumbered. Nevertheless, the totality of the circumstances shows that the pat-down was supported by reasonable suspicion that the Defendant was armed and dangerous. Although the stop occurred in a lit area, Bell did not have the same level of visibility as a day-time stop. Bell noticed that the Defendant had "heightened" nervousness. The Defendant said that there were no weapons in the vehicle, but Bell noticed two pocket knives in a well of the driver's door. Under these circumstances, Bell could have reasonably inferred that the Defendant was armed and dangerous.

D. Officer Bell Lawfully Seized the Syringe Because He Immediately Recognized it as a Syringe and the Incriminating Nature of the Syringe was Immediately Apparent.

In Commonwealth v. Stevenson,[2] the Supreme Court of Pennsylvania explained the plain feel doctrine:

> [A] police officer may seize non-threatening contraband detected through the officer's sense of touch during a Terry frisk [a/k/a pat-down] if the officer is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent from its tactile impression and the officer has a lawful right of access to the object . . . [T]he plain feel doctrine is only applicable where the officer conducting the frisk feels an object whose mass or contour makes its criminal character immediately apparent. Immediately apparent means that the officer readily perceives, without further exploration or searching, that what he is feeling is contraband. If, after feeling the object, the officer lacks probable cause to believe that the object is contraband without conducting some further search, the immediately apparent requirement has not been met and the plain feel doctrine cannot justify the seizure of the object.

744 A.2d at 1265.

[2] 744 A.2d 1261 (Pa. 2000).

"[T]he immediately apparent requirement of the plain feel doctrine is not met when an officer conducting a Terry frisk merely feels and recognizes by touch an object that could be used to hold either legal or illegal substances, even when the officer has previously seen others use that object to carry or ingest drugs." Id. at 1266. "[A]n officer must be able to substantiate what it was about the tactile impression of the object that made it immediately apparent to him that he was feeling contraband." Commonwealth v. E.M./Hall, 735 A.2d 654, 664 at n.8 (Pa. Super. 1999).

The Supreme Court of Pennsylvania "has treated the phrase 'immediately apparent' as essentially coextensive with probable cause, an inquiry which takes into account the totality of the circumstances surrounding the frisk, including, inter alia, the nature of the object, its location, the conduct of the suspect, the officer's experience, and the reason for the stop. Moreover, an officer's subjective belief that an item is contraband is not sufficient unless it is objectively reasonable in light of the facts and circumstances that attended the frisk." Zhahir, 751 A.2d at 1163.

In Commonwealth v. Pakacki,[3] a police officer smelled marijuana emanating from the defendant. 901 A.2d at 985. The officer "patted down [the defendant] and felt what, based on his past experience, he believed to be a marijuana pipe." Id. The Supreme Court of Pennsylvania held that "[u]nder the totality of the circumstances, the incriminating nature of the pipe was immediately apparent to [the officer], who had a lawful right of access to it." Id. at 990.

Here, from experience, Bell knew that a syringe has a large cap, a long tube, and "two wings at the back." He immediately recognized that a syringe was in the Defendant's pocket. The totality of the circumstances shows that Bell had probable cause to believe the syringe was

[3] 901 A.2d 983 (Pa. 2006).

drug paraphernalia. The Defendant was "circling" in a high-drug area and had no apparent destination. He was nervous, and there was a Q-tip by the handle of the driver's door. Bell knew that heroin users sometimes use the cotton from Q-tips as filters. Under the totality of the circumstances, the incriminating nature of the syringe was immediately apparent. Therefore, Bell lawfully seized the syringe.

E. The Search of the Defendant's Vehicle was Lawful Because Officer Bell had Probable Cause to Believe that Drugs or Drug Paraphernalia Were in the Vehicle.

"The prerequisite for a warrantless search of a motor vehicle is probable cause to search; no exigency beyond the inherent mobility of a motor vehicle is required." Commonwealth v. Gary, 91 A.3d 102, 138 (Pa. 2014). "Probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the defendant has committed it. In determining whether probable cause exists, [courts] must consider the totality of the circumstances as they appeared to the arresting officer. Additionally, [t]he evidence required to establish probable cause for a warrantless search must be more than a mere suspicion or a good faith belief on the part of the police officer." Commonwealth v. Copeland, 955 A.2d 396, 400 (Pa. Super. 2008) (citations omitted).

Here, the totality of the circumstances shows that Bell had probable cause to believe that drugs or drug paraphernalia were in the Defendant's vehicle. The Defendant was in a high-drug area. He was "circling" and had no apparent destination. Bell saw a Q-tip in the Defendant's vehicle and seized a syringe from the Defendant's pocket. These circumstances were sufficient to warrant a prudent individual in believing that drugs or drug paraphernalia were in the vehicle. Therefore, the search of the vehicle was lawful.

III. Conclusion

The stop of the Defendant's vehicle was lawful because Officer Bell had probable cause to believe that the Defendant was violating the Motor Vehicle Code by driving with a nonfunctioning brake light. Bell's request for the Defendant to exit the vehicle was lawful because Bell had reasonable suspicion that the Defendant was committing a crime. The pat-down of the Defendant was lawful because, under the circumstances, Bell had reasonable suspicion that the Defendant was armed and dangerous. Bell lawfully seized the syringe because he immediately recognized it as a syringe and the incriminating nature of the syringe was immediately apparent. The search of the vehicle was lawful because Bell had probable cause to believe that drugs or drug paraphernalia were in the vehicle.

ORDER

AND NOW, this _____ day of May, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress Evidence is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge