

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1514-2014**
 v. :
 :
 SHARIFF ATO COLEMAN, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On November 12, 2014, the Defendant filed an Omnibus Pre-Trial Motion. A hearing on the motion was held on December 8, 2014.

I. Background

A. Testimony of Trooper Tyson Havens

On July 19, 2014, Pennsylvania State Police (PSP) Trooper Tyson Havens¹ (Havens) was on DUI patrol in an unmarked vehicle with PSP Corporal Scott Davis (Davis). At 10:50 P.M., Havens was driving west on Park Avenue in Williamsport, Pennsylvania. He saw a white Audi vehicle (Defendant’s vehicle) travelling south on Sixth Avenue. The Defendant had a stop sign, but Havens did not. The Defendant’s vehicle was moving as Havens approached the intersection of Park Avenue and Sixth Avenue. When the Defendant’s vehicle stopped, it was partially in the westbound lane of Park Avenue. Havens stopped and flashed his high beams to get the Defendant to move through the intersection. After about 30 seconds, the Defendant drove through the intersection.

Havens stopped the Defendant’s vehicle on Third Avenue. Havens approached the Defendant, and Davis approached a passenger in the front seat. Havens noticed a strong odor of marijuana when he got to the Defendant’s door.² He also saw marijuana residue or “crumbs” on

¹ Havens has been a trooper for over 20 years.

² Havens has smelled marijuana “thousands” of times.

the Defendant's shirt. The Defendant appeared to be very nervous and kept looking down in between his legs. Havens asked the Defendant for his driver's license. When the Defendant "shot his hand down" in between his legs, Havens pulled out his firearm. After Havens saw that the Defendant picked up a wallet, he holstered his firearm.

Havens asked the Defendant to step out of the vehicle and placed him in handcuffs. He then began to search the vehicle because he wanted to check the vehicle for weapons. Havens first searched the spot where the Defendant reached. In a drawer underneath the driver's seat, Havens found a "sleeve" containing what he believed was marijuana. The drawer also had about \$2,000 in cash. In the vehicle's center console, Havens found more suspected marijuana and marijuana "dabs." Havens then stopped the search and placed the Defendant in the back of his patrol car.

The Defendant was read his *Miranda*³ rights and said that he was willing to talk to police without an attorney. The Defendant said that the marijuana found belonged to him, but there was marijuana in the trunk that he was just holding for someone else. The Defendant said that he was a marijuana user, not a seller.

The vehicle was transported to the PSP barracks in Montoursville and an inventory search was conducted. A backpack was found in the trunk. In the backpack, there was a heat sealed bag containing marijuana. There was also another sleeve containing marijuana.

On July 21, 2014, Havens applied for and obtained a warrant to search the vehicle. During the search, police found marijuana in the vehicle's armrest and a Western Union receipt showing that the Defendant had sent \$1,720 to another person on June 26, 2014.

Havens believed the marijuana was for resale because of the amount of cash found and the amount of marijuana. The sleeve underneath the driver's seat had an ounce of marijuana.

³ Miranda v. Ariz., 384 U.S. 436 (1966).

The heat sealed bag in the backpack had a half pound of marijuana. The sleeve in the backpack had an ounce of marijuana. Two empty sleeves were also found in the vehicle. In total, there was about 288 grams of marijuana in the vehicle, and the Defendant had over \$2,000 in cash.

B. Testimony of Landon Washington

Landon Washington was the passenger in the Defendant's vehicle. The Defendant stopped his vehicle at the stop sign at the intersection of Fourth Avenue and Park Avenue. The Defendant's vehicle was not past the sign. A black vehicle stopped on Park Avenue even though the vehicle did not have a stop sign. The Defendant and the black vehicle flashed high beams at each other a couple of times. Other than the black vehicle, no vehicle was blocking the Defendant's view.

C. Defendant's Testimony

The Defendant stopped at the stop sign on Fourth Avenue. A black vehicle stopped on Park Avenue. The Defendant and the black vehicle flashed lights at each other. The Defendant inched out and then drove through the intersection.

D. Charges

The Defendant was charged with one count of Possession with Intent to Deliver Marijuana,⁴ two counts of Possession of Marijuana,⁵ one count of Possession of Drug Paraphernalia,⁶ and one count of Stop Signs and Yield Signs.⁷

⁴ 35 P.S. § 780-113(a)(30).

⁵ 35 P.S. § 780-113(a)(16).

⁶ 35 P.S. § 780-113(a)(32).

⁷ 75 Pa.C.S. § 3323(b).

E. Arguments

The Defendant argues that Trooper Havens did not have probable cause to stop his vehicle because the Defendant stopped when Havens approached intersection. The Defendant emphasizes that two witnesses testified that the Defendant's vehicle was on Fourth Avenue, not Sixth Avenue.

The Defendant argues that the search of the vehicle is not justified by the "automobile exception" to the warrant requirement because Havens testified that he was searching the vehicle for weapons, not marijuana.

The Defendant argues that the search of the vehicle is not justified as a protective sweep because Havens did not have any facts to believe that the Defendant had a weapon. The Defendant's only conduct was reaching down to the drawer to get his wallet after Havens asked for his license.

The Defendant argues that the facts are not sufficient to establish a *prima facie* case of Possession with Intent to Deliver Marijuana. He argues that the quantity of marijuana does not show that the Defendant intended to deliver it. He also argues that the amount of money does not show that the Defendant intended to deliver marijuana because he had a job and people can save money.

The Commonwealth argues Havens had probable cause to stop the Defendant's vehicle because he saw the vehicle go through the stop sign and stop partially in the intersection. It argues that the search of the vehicle was justified under the protective sweep doctrine and the automobile exception to the warrant requirement. The Commonwealth argues that Havens had probable cause to search the vehicle because he smelled marijuana and saw marijuana crumbs.

Finally, the Commonwealth argues that the amount of marijuana and the amount of money show that the Defendant possessed marijuana with the intent to deliver.

II. Discussion

A. The Stop of the Defendant was Lawful Because Trooper Havens had Sufficient Facts to Provide him with Probable Cause to Believe that the Defendant Violated 75 Pa.C.S. § 3323(b).

“Where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.” Commonwealth v. Ruey, 892 A.2d 802, 807 (Pa. 2006) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

“Mere reasonable suspicion will not justify a vehicle stop when the driver’s detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, ‘it is incumbent [sic] upon the officer 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 violation of some provision of the Code.*’” Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010) (quoting Commonwealth v. Gleason, 785 A.2d 983, 989 (Pa. 2001)).

“‘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.’” Commonwealth v. Enick, 70 A.3d 843, 846, n.3 (Pa. Super. 2013) (quoting Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa. Super. 2004)).

“Motorists maintain a constitutionally protected privacy interest in their vehicles that we must balance against strict enforcement of the Vehicle Code when such enforcement is a ruse to stop a vehicle.” Id. at 848.

“[E]very driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or, if no stop line is present, before entering a crosswalk on the near side of the intersection or, if no crosswalk is present, then at the point nearest the intersecting roadway where the driver has a clear view of approaching traffic on the intersecting roadway before entering. If, after stopping at a crosswalk or clearly marked stop line, a driver does not have a clear view of approaching traffic, the driver shall after yielding the right-of-way to any pedestrian in the crosswalk slowly pull forward from the stopped position to a point where the driver has a clear view of approaching traffic. The driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute a hazard during the time when the driver is moving across or within the intersection or junction of roadways and enter the intersection when it is safe to do so.” 75 Pa.C.S. § 3323(b).

Here, the location of the stop sign is disputed, but the Defendant does not dispute that he had a stop sign. Havens testified that the Defendant’s vehicle was moving as Havens approached the intersection. Havens also testified that when the Defendant’s vehicle stopped, it was partially on Park Avenue. The passenger in the Defendant’s vehicle testified that other than Havens’ vehicle, there were no other vehicles blocking the view at the intersection. The facts possessed by Havens provided him with probable cause to believe that the Defendant violated 75 Pa.C.S. § 3323(b).

B. The Search of the Defendant’s Vehicle was Lawful Because Trooper Havens had Sufficient Facts to Provide him with Probable Cause to Believe that Marijuana was 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).

“The Supreme Court of the United States has held that an odor may be sufficient to establish probable cause.” Commonwealth v. Stoner, 344 A.2d 633, 635 (Pa. Super. 1975) (citing United States v. Ventresca, 380 U.S. 102 (1965)).

Here, the circumstances were sufficient to warrant a prudent individual in believing that marijuana was in the Defendant’s vehicle. Havens noticed a strong odor of marijuana when he got the Defendant’s door. He testified that he has smelled marijuana thousands of times. Havens also saw marijuana crumbs on the Defendant’s shirt. These facts provided Havens with probable cause to believe that marijuana was in the Defendant’s vehicle. Therefore, the search of the vehicle was lawful under the automobile exception to the warrant requirement.

C. The Circumstances are Sufficient to Establish a *Prima Facie* Case of Possession with Intent to Deliver Marijuana.

“At the pre-trial stage of a criminal prosecution, it is not necessary for the Commonwealth to prove the defendant’s guilt beyond a reasonable doubt, but rather, its burden is merely to put forth a *prima facie* case of the defendant’s guilt. A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury. Moreover, inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth’s case.”

Commonwealth v. Nieves, 876 A.2d 423, 424 (Pa. Super. 2005) (quoting Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003)).

“[T]he intent to deliver ‘may be inferred from an examination of the facts and circumstances surrounding the case.’” Id. at 426, n.3 (quoting Commonwealth v. Aguado, 760 A.2d 1181, 1185 (Pa. Super. 2000)).

Here, the intent to deliver can be inferred from the circumstances. About 288 grams of marijuana was found in the Defendant’s vehicle. This amount of marijuana is not indicative of personal use. The marijuana was packaged separately and there were two empty sleeves in the Defendant’s vehicle. In addition, the Defendant had over \$2,000 in cash and had relatively recently sent another person \$1,720. These circumstances are sufficient to establish a *prima facie* case of Possession with Intent to Deliver Marijuana.

III. Conclusion

The stop of the Defendant's vehicle was lawful because Trooper Havens possessed sufficient facts to provide him with probable cause to believe that the Defendant violated 75 Pa.C.S. § 3323(b). The search of the Defendant's vehicle was lawful because Trooper Havens possessed sufficient facts to provide him with probable cause to believe that marijuana was in the vehicle. The circumstances are sufficient to establish a *prima facie* case that the Defendant possessed marijuana with the intent to deliver.

ORDER

AND NOW, this _____ day of February, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Omnibus Pre-Trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge