

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-437-2016
	:
vs.	: CRIMINAL DIVISION
	:
	:
TYREE GREEN,	:
Defendant	: Motion to Suppress

OPINION AND ORDER

By Information filed on March 24, 2016, Defendant is charged with firearms not to be carried without a license, criminal conspiracy, receiving stolen property, sale or transfer of firearms and persons not to possess.

On February 16, 2016, members of the Lycoming County Narcotics Enforcement Unit, including Detective Josh Bell, Detective Keifer Bathgate and Detective Matthew Keller, were conducting a narcotics investigation and interdiction in the area of High Street and Lycoming Creek Road at approximately 3:00 p.m.

They noticed a blue Volkswagen Passant occupied by two people driving on the 400 block of Louisa Street in Williamsport. This is a known narcotics area with a recent history of “high narcotics trafficking.” They noticed that the front passenger headlight was not working. At the time there was visible precipitation and the weather was inclement. They followed the vehicle from Williamsport for a few miles, or approximately four to five minutes, into Old Lycoming Township.

They observed the vehicle stop at the Trail Inn. Despite the Trail Inn being closed, a white male was waiting in the parking lot. He then entered the vehicle on the driver’s side rear seat. The vehicle then traveled across Lycoming Creek Road and stopped at

1888 Fairlawn Avenue. The white male immediately got out of the vehicle. He was in the vehicle for no more than one minute.

The vehicle then traveled back toward Williamsport south on Lycoming Creek Road. One of the undercover surveillance vehicles stopped behind the Passant as it was stopped at a red light. The detectives observed the passenger look back toward the undercover vehicle, then lean into the center console and then “quickly” move toward the glove box in an “an apparent attempt to hide something.”

The detectives “recognized [all of] this behavior as being indicative of a narcotics transaction.” Detective Keller, based upon all of the above observations, requested a marked Old Lycoming Township Police Unit to initiate a traffic stop of the Volkswagen.

He testified that he had reasonable suspicion to believe that a crime, such as a narcotics transaction, had occurred or in the alternative, that the nonworking headlight created probable cause to stop.

The vehicle was eventually stopped by Old Lycoming Township Police at 1830 Jamison Avenue. The occupants attempted to exit the vehicle and were identified as Tyree and Tyrone Green.

A pat down was conducted of the occupants. Located on Tyrone Green was a small bag of marijuana. It was located in the right front coin pocket of his jeans.

Defendant and Tyrone Green were detained and police searched the Volkswagen. During the course of the search, they located a handgun within the glovebox. The Greens were then taken into custody and transported to the Old Lycoming Township Police Department.

On April 7, 2016, Defendant filed a motion to suppress. On May 16, 2016, Defendant filed an amended motion to suppress. The hearing on the motions was held on May 18, 2016.

Defendant submits three arguments in support of his motion to suppress. First, Defendant contends that the vehicle stop was conducted without the requisite reasonable suspicion. Second, and alternatively, Defendant argues that the vehicle stop was not conducted with the requisite probable cause. Defendant asserts that it was “a pretextual stop bordering on racial profiling.” Third, Defendant argues that even if the stop was legal, the search of the vehicle was unconstitutional.

When a defendant files a motion to suppress challenging the constitutionality of the stop of his vehicle, the Commonwealth bears the burden of proof to show that the defendant’s rights were not violated. Pa. R. Cr. P. 581 (H); *Commonwealth v. Enimpah*, 62 A.3d 1028, 1031-1032 (Pa. Super. 2013).

If a police officer is making a traffic stop for an offense where he has a reasonable expectation of learning additional evidence related to the suspected criminal activity, the stop needs to be supported by reasonable suspicion. *Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108,115-16 (2008); *Commonwealth v. Feczko*, 10 A.3d 1285,1290-91 (Pa. Super. 2010). Here, the basis for the stop was Detective Keller’s belief that a drug transaction was or had occurred.

In order to establish reasonable suspicion, the officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts that lead the officer to believe that criminal activity is afoot. *Commonwealth v. Cook*, 558 Pa. 50, 735

A.2d 673, 677 (1999). “Merely because a suspect’s activity may be consistent with innocent behavior does not alone make detention and limited investigation illegal.” *Commonwealth v. Riley*, 715 A.2d 1131, 1135 (Pa. Super. 1998) (citations omitted). “[A] combination of circumstances, none of which taken alone would justify a stop, may be sufficient to achieve a reasonable suspicion.” *Id.*

Detective Keller has been employed as a law enforcement officer for numerous years. He has extensive training and experience in drug interdiction. The narcotics investigation that was being conducted was in an area that was known, by recent history, to have a high volume of narcotics trafficking.

Based upon Detective Keller’s experience and training, once the vehicle stopped at the Trail Inn while it was closed and a white male entered the vehicle in the rear seat, remain in the vehicle for only a short period of time and then leave after the vehicle drove across the road, it was such that the detectives recognized the behavior as being suspicious of a narcotics transaction. The suspicion was further peaked once the detectives saw the furtive movements in the vehicle seemingly hiding something.

Clearly, the detectives pointed to specific and articulable facts and reasonable inferences drawn from those facts that led them to believe that criminal activity, namely a narcotics transaction, was afoot. Thus, Detective Keller had reasonable suspicion to direct that the vehicle be stopped.

Alternatively, an officer must have probable cause to make a constitutional vehicle stop for an offense that is not “investigable.” *Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108, 118 (2008). “It is incumbent 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 Vehicle Code.” *Commonwealth v. Feczko, Id.* at 1291. “Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference.” *Commonwealth v. Lindbloom*, 854 A.2d 604, 607 (Pa. Super. 2004), quoting *Commonwealth v. Stroud*, 699 A.2d 1305, 1308 (Pa. Super. 1997).

The credible testimony of the detectives was that the vehicle was traveling with one of the front headlights not working. This failure was during a time when the precipitation limited visibility. The failure to have one of the front headlights working properly is in violation of 75 Pa. C.S.A. § 4302 and 67 Pa. Code § 175.66.

The police officers clearly had probable cause to stop the vehicle for a violation of the Motor Vehicle Code.

Once the Defendants were legally stopped, both the driver and passenger were requested to exit the vehicle. “Police 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).

Defendant argues that the search of his vehicle was unconstitutional. 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).

Here, the circumstances were sufficient to warrant a prudent individual in believing that controlled substances were in the vehicle. The police had viewed a transaction

that was consistent with a controlled substance delivery. Upon being patted down, the driver of the vehicle was found in possession of a controlled substance. While being followed, the passenger was seen moving his hands from the area of the center console toward the glovebox indicating to the police officers that something was being hidden.

These facts provided law enforcement with probable cause to believe that controlled substances were in Defendant's vehicle. Therefore, the search of the vehicle was lawful under the automobile exception to the warrant requirement.

ORDER

AND NOW, this 14th day of June 2016, following a hearing and argument on Defendant's Motion to Suppress and Amended Motion to Suppress, said Motions are **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Linhardt, Esquire, DA
Paul Petcavage, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file