

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-733-2015
	: :
vs.	: CRIMINAL DIVISION
	: :
SYLVESTER GREENE,	: :
Defendant	: Motion to Suppress

**OPINION AND ORDER**

Defendant is charged by Information filed on May 22, 2015. Defendant is charged with one count of persons not to possess. Specifically, Defendant is alleged to have possessed a firearm on April 24, 2015 while walking on Isabella Street in the city of Williamsport.

On November 3, 2015, Defendant filed a motion to suppress supplementing his previous motion to suppress filed on October 5, 2015. The supplemental motion asserts that the Pennsylvania State Police, and in particular, Trooper Adam Kirk, saw Defendant walking on Isabella Street and Seventh Avenue on April 24, 2015 and “attempted to stop” Defendant.

Defendant contends that he did not stop “when ordered” by Trooper Kirk but then walked behind an SUV and abandoned his gun. (Paragraph 4). The abandoned gun was eventually recovered and formed the basis for the charges against Defendant.

Defendant contends that because Trooper Kirk did not have a reasonable suspicion or probable cause to stop him, the abandonment of the gun was illegally forced and thus the gun must be suppressed.

The hearing in this matter was held on December 22, 2015. The court heard

testimony from Trooper Kirk, viewed a videotape of a portion of the incident taken by a neighbor, and heard extensive argument.

The facts as developed at the hearing belie Defendant's version as set forth in his motion. On April 24, 2015, Trooper Kirk was patrolling an area of the city where he believed a suspect from a very recent "city-wide police pursuit" may be located. The suspect was vaguely described as a black male wearing a hoodie.

While driving west on Isabella Street approximately six minutes after the pursuit had ended, Trooper Kirk noticed a black male wearing a hoodie (who was later identified as Defendant) walking diagonally from the southeast corner toward the northeast corner of the intersection of the Isabella Street and Seventh Avenue.

As Trooper Kirk was approaching the intersection and as Defendant was diagonally crossing the street, Defendant and Trooper Kirk made eye contact. After taking only a handful of steps into the intersection and making eye contact with Trooper Kirk, Defendant suddenly changed direction and walked back toward the southeast corner of the intersection in front of and then next to a parked, light-colored sport utility vehicle (SUV).

Defendant walked the length of the vehicle away from the intersection. By the time Defendant reached the back of the SUV, the trooper's headlights were coming around the corner, indicating that the trooper was turning his vehicle left onto Seventh Avenue in the direction that Defendant was traveling.

Defendant continued past the SUV vehicle a few feet. As the trooper's vehicle was approaching the front of the parked SUV, Defendant stopped, returned to the SUV, and ducked down. The trooper stopped at almost the same time that Defendant ducked

down behind the SUV. Defendant then immediately got up and started traveling south on Seventh Avenue while initially hunched over and then standing up.

Six seconds passed while Defendant was walking away from the SUV and down Seventh Avenue until Trooper Kirk opened the door to his vehicle and exited. Another five seconds passed before Trooper Kirk got to the sidewalk and directed his flashlight in the direction of Defendant. A few seconds later, Trooper Kirk started running after Defendant.

Trooper Kirk eventually stopped Defendant. No weapon was found on Defendant, but afterwards a firearm was discovered in the area of near the back of the SUV where Defendant crouched down and then walked away.

There is no evidence whatsoever that Trooper Kirk ordered Defendant to stop or even said anything to Defendant prior to Defendant crouching down behind the SUV in an apparent attempt to hide from Trooper Kirk or to abandon his gun. As well, there is no evidence as contended by Defendant that after he was ordered to stop by Trooper Kirk, Defendant then “walked behind the white SUV and abandoned his gun.” Trooper Kirk credibly testified that he said nothing at all to Defendant until after he stopped his patrol unit, got out of it and traveled to the sidewalk, directed his flashlight toward Defendant and then started running toward Defendant. After he started running, Trooper Kirk yelled for Defendant to stop. It was well before the “order to stop” that Defendant allegedly abandoned the gun.

Nonetheless, Defendant passionately asserts that even under these facts Trooper Kirk’s conduct constituted an illegal seizure, which allegedly forced Defendant to abandon the gun. According to Defendant, the gun must be suppressed because the alleged

seizure was not based on sufficient reasonable suspicion.

“Although abandoned property may normally be obtained and used for evidentiary purposes by the police, such property may not be utilized where the abandonment is coerced by unlawful police action.” *Commonwealth v. Tillman*, 423 Pa. Super. 343, 621 A.2d 148, 150 (1993)(citations omitted). “In considering whether the abandoned or relinquished property is admissible, our supreme court has held that ‘initial illegality taints the seizure of the evidence... [because] in such a situation it cannot be said that there was a ‘voluntary abandonment or relinquishment’ of the evidence. ...No improper or unlawful act can be committed by the officers prior to the evidence being abandoned [or relinquished].” *Commonwealth v. Pizarro*, 723 A.2d 675, 679 (Pa. Super. 1998)(citations omitted)(brackets in original).

Defendant argues that when Trooper Kirk, in full uniform and in a marked police unit, arguably accelerated around the corner toward Defendant and then stopped the vehicle near where Defendant was initially standing and attempting to secret himself, that this constituted a seizure which required reasonable suspicion. The Commonwealth, on the other hand, argues that it was a mere encounter which required no level of suspicion.

Based on the evidence presented during the suppression hearing, Defendant’s argument is utterly lacking in merit. Not every encounter between a citizen and the police amounts to a “seizure.” *Commonwealth v. Smith*, 575 Pa. 203, 211-212, 836 A.2d 5, 10 (2003). For decades, the Pennsylvania Supreme Court has recognized three categories of interactions between citizens and the police. The first of these is a mere encounter or request for information which does not need to be supported by any level of suspicion and does not

carry any official compulsion to stop or respond. *Commonwealth v. Ellis*, 541 Pa. 285, 662 A.2d 2043 (1995). The second category, an investigative detention must be supported by reasonable suspicion because, although it subjects a suspect to a stop and period of detention, it does not involve such coercive conditions as to constitute the functional equivalent of an arrest. *Id.*; see also *Smith*, supra. The final category, an arrest or custodial detention, must be supported by probable cause. *Ellis*, supra; *Smith*, supra.

In determining whether the interaction is a “mere encounter or an investigative detention, the court must decide, after looking at all of the circumstances surrounding the interaction between the police officer and the defendant, if a reasonable person would believe that they were free to decline the police officer’s requests and terminate the interaction.” *Commonwealth v. Reid*, 571 Pa. 1, 811 A.2d 530, 545 (2002), *cert. denied*, 124 S.Ct. 131 (U.S. 2003). While there is no strict formula to follow in making the determination, factors to be considered include: the nature, length and location of the detention; whether the suspect was transported against his or her will, how far and why; whether restraints were used; whether law enforcement showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions. *Commonwealth v. Bennett*, 827 A.2d 469, 478 (Pa. Super. 2003), *appeal denied*, 847 A.2d 1277 (Pa. 2004).

The court cannot conclude that Trooper Kirk’s initial interaction with the Defendant was anything but a mere encounter. Even accepting Defendant’s argument that after making eye contact with each other, Defendant walked away and Trooper Kirk accelerated around the corner and then stopped, Trooper Kirk did not engage in any unlawful or coercive conduct that even remotely forced Defendant to abandon the gun.

The court cannot conclude that a reasonable person in looking at all of the circumstances would believe that at that point they were not free to leave or decline an officer's request. There was absolutely no detention, no transportation against Defendant's will, no use of restraints, no use of lights or sirens, no display of weapons, no voice commands, no trapping Defendant in an area where he could not move, and no use of other patrol vehicles. Trooper Kirk approached Defendant with the intent to talk with him. Such is clearly a lawful mere encounter. Because no suspicion was required, the abandonment of the weapon by Defendant cannot be deemed to be coerced by unlawful police action. No improper or unlawful act was committed by Trooper Kirk prior to the evidence being abandoned. *Commonwealth v. Byrd*, 987 A.2d 786 (Pa. Super. 2009)(although up to five police cruisers were traveling the wrong way on a one way street, there was no forced abandonment when none of cruisers' were traveling at a high rate of speed or had lights or sirens activated and police did not make any statements to the defendant prior to him discarding a handgun under a parked SUV); see also *Commonwealth v. Hall*, 475 Pa. 482, 380 A.2d 1238 (1977)(where police patrolling an area known for narcotics trafficking made a U-turn and double-parked their vehicle after observing three individual and when they were about ten feet away, the defendant dropped a tissue ball of heroin, police action was noncoercive encounter); *In the Interest of Evans*, 717 A.2d 542 (Pa. Super. 1998)(no forced abandonment where the defendant discarded narcotics after police exited unmarked car and began walking towards three men, including the defendant). In fact, in light of these and other similar cases, Defendant's contrary argument is frivolous.

Even, however, assuming Defendant's argument is correct and that once

Trooper Kirk pulled his vehicle around the corner and stopped, such conduct constituted an investigative detention of Defendant, the court finds that such was supported by reasonable suspicion.

Preliminarily, it must be remembered that neither probable cause nor the less demanding standard of reasonable suspicion involves certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent persons act.

*Commonwealth v. Wimbush*, 561 Pa. 468, 750 A.2d 807, 818 (2000)(reasonable suspicion is a less demanding standard than probable cause); *Commonwealth v. Miller*, 497 Pa. 257, 260, 439 A.2d 1167, 1169 (1982)(probable cause does not involve certainties). As well, to justify a decision to stop and briefly detain an individual, “the police need not establish their suspicions to a level of certainty, a preponderance, or even a fair probability.”

*Commonwealth v. Epps*, 415 Pa. Super. 231, 233, 608 A.2d 1095, 1096 (1992).

The fundamental inquiry in a reasonable suspicion analysis is whether the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in believing that the action taken was appropriate. *Commonwealth v. Taggart*, 997 A.2d 1189, 1193 (Pa. Super. 2010)(quoting *In re M.D.*, 781 A.2d 192, 197 (Pa. Super. 2001)), *appeal denied*, 17 A.3d 1254 (Pa. 2011). “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.*

Of significant note, is Defendant’s claim that Trooper Kirk needed reasonable suspicion to turn quickly around the corner, stop the vehicle and then exit it. Pursuing

Defendant down Seventh Avenue is not at issue because the abandonment of the weapon happened prior to that.

In this case, the court concludes that Trooper Kirk was justified under all of the circumstances in turning the vehicle around the corner quickly after making eye contact with Defendant, watching Defendant quickly change directions and walk away from Trooper Kirk, watching Defendant walk away from the vehicle and then return and hide, while Trooper Kirk stopped his vehicle and started to exit it.

All of the factors justified Trooper Kirk in reasonably suspecting that the Defendant was involved in criminal activity. Defendant was walking in an area where the suspect from the police pursuit may have been located once the vehicle was found empty. The suspect was walking within six minutes of the time that the pursuit began and then ended shortly thereafter. The suspect was walking in one direction, then made eye contact with Trooper Kirk and then immediately reversed direction and started walking away. Defendant matched in general the description of the suspect. Defendant engaged in initial unprovoked flight from the trooper and then engaged in unprovoked hiding from Trooper Kirk. As well, Defendant obviously recognized Trooper Kirk as a police officer.

Accordingly, under either scenario as argued by Defendant, the court finds that Defendant's abandonment or relinquishment of the gun was not coerced by unlawful police action.

### **ORDER**

**AND NOW**, this \_\_\_\_ day of January, 2016, following a hearing and argument, Defendant's motion to suppress is **DENIED**.



By The Court,

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Marc F. Lovecchio, Judge

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