

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-1035-2016
	:
vs.	:
	:
	: Omnibus Pretrial Motion
JERMAINE REDDICK,	:
Defendant	:

OPINION AND ORDER

By Information filed on June 24, 2016, the Defendant is charged with possession with intent to deliver a controlled substance (PWID), possession of drug paraphernalia and possession of a controlled substance. The Commonwealth alleges that on May 7, 2015 at approximately 2:00 in the morning, law enforcement officers conducted a vehicle stop at the intersection of Park Avenue and Rose Street in Williamsport. The Defendant was a passenger in the rear driver’s side of the vehicle and is alleged to have possessed with intent to deliver six separate bags of cocaine. The Defendant filed an Omnibus Pretrial Motion (OPM) on July 8, 2016. The OPM includes a motion to suppress and a petition for writ of habeas corpus with respect to the possession with intent to deliver count.

A hearing on the Defendant’s OPM was held on September 12, 2016. Following the presentation of testimony by three different Commonwealth witnesses and the introduction of one exhibit, the Defendant withdrew his petition for writ of habeas corpus. Accordingly, this opinion shall address only the Defendant’s motion to suppress.

Officer Michael Corter of the Williamsport Bureau of Police first testified on behalf of the Commonwealth. He was working on May 9, 2016 and, at approximately 1:20

a.m., he conducted a vehicle stop near the intersection of Park Avenue and Rose Street. He observed that the vehicle was operating without its required third brake light. The vehicle was eventually pulled over at Tenth Avenue on the south side of the street.

The vehicle pulled into a legal parking spot on the side of the street at about the same time that Officer Corter activated his lights. He approached the vehicle on the driver's side.

Prior to first interacting with the driver, Officer Corter interacted with the Defendant. He noticed that the Defendant was sitting in the backseat and for his safety he wanted to make sure that he could see the Defendant's hands. After "clearing" the Defendant, he then closed the backdoor and interacted with the driver.

He made contact with the driver, Jasma Hunt. Ms. Hunt provided her name and date of birth but could not produce a valid driver's license. While Officer Corter had some identifying information with respect to Ms. Hunt, he did not have all of the information he might have needed to issue a citation for the brake light traffic violation. He first needed to check Ms. Hunt's identifying information through county dispatch.

After obtaining the limited information from the driver, Officer Corter again interacted with the Defendant. He asked the Defendant if the Defendant had a valid driver's license. His purpose in doing so was to verify if any of the occupants had a driver's license and could thus legally move the car after the stop was concluded. The Defendant indicated that he didn't have one. Officer Corter then asked for the Defendant's name. The Defendant identified himself. During his interaction with the Defendant, however, Officer Corter became concerned that the Defendant might have been "hiding contraband" in his mouth.

Defendant's speech was muffled and slow and difficult to discern. Officer Corter had to ask the Defendant three times for his name before Officer Corter was able to understand what the Defendant was saying.

While speaking with Defendant, Officer Corter noticed that the Defendant was moving something around in his mouth. He asked the Defendant to open his mouth. The Defendant did so but "kept his tongue up." When asked to put his tongue down, the Defendant refused to do so.

At this time Officer Corter asked the Defendant to exit the vehicle. For reasons not germane to the issue at hand, Officer Corter attempted to detain the Defendant. An incident ensued and the Defendant was eventually taken to the ground and handcuffed.

Found in plain view on the Defendant's seat was a clear plastic baggie with a substance, which later field-tested positive for cocaine. Upon a further search of the vehicle, the officers found a distribution bag containing five smaller clear plastic bags with a white powdery substance that later field-tested positive for cocaine.

Ryan Brague, also an officer with the Williamsport Bureau of Police, testified that he too was working on May 9, 2016. He arrived at the scene to assist in the investigation. He saw in plain view the clear plastic baggie containing the white substance. This baggie was on top of the rear passenger seat on the driver's side where the Defendant had been sitting.

He subsequently searched the vehicle and underneath the seat buckle tucked into the seat corner between the area where the Defendant was seated and a middle passenger could have been seated, Officer Brague found the distribution bag containing the five

separate baggies.

Defendant argues that because the traffic stop had concluded before he was ordered to exit the vehicle, and because the officers lacked a reasonable suspicion of criminal activity, his removal from the vehicle was illegal.

Police officers conducting a valid traffic stop have an absolute right to ask the occupants of the vehicle to step out of the car for the duration of the traffic stop.

Commonwealth v. Palmer, 2016 Pa. Super. 170, 2016 Pa. Super. LEXIS 431 at *8 (August 4, 2016)(citing *Commonwealth v. Boyd*, 17 A.3d 1274, 1277 (Pa. Super. 2011)). There is no requirement that the officers have reasonable suspicion that criminal activity is afoot. *Id.* (citing *Commonwealth v. Pratt*, 930 A.2d 561, 564 (Pa. Super. 2007)). However, once the primary traffic stop has concluded, the officer's authority to order either the driver or occupants from the car is extinguished. *Commonwealth v. Reppert*, 814 A.2d 1196, 1202 (Pa. Super. 2002).

Although there is no "bright line definition" of when a traffic stop has concluded or otherwise given way to a new interaction, in *Commonwealth v. Freeman*, 757 A.2d 903 (Pa. 2000), the Supreme Court set forth multiple relevant circumstances on the basis of which a lower court could recognize the end of a traffic stop and the commencement of another interaction, including: "the existence and nature of any prior seizure; whether there was a clear and expressed endpoint to any such prior detention; the character of police presence and conduct in the encounter under review (for example – the number of officers, whether they were uniformed, whether police isolated subjects, physically touched them or directed their movement, the content or manner of interrogatories or statements, and

“excesses” factors stressed by the United States Supreme Court); geographic, temporal and environmental elements associated with the encounter; and the presence or absence of express advice that the citizen-subject was free to decline the request for consent to search. *Reppert*, supra (citing *Freeman*, 757 A.2d at 906-07).

Upon consideration of these circumstances, the court concludes that the traffic stop had not concluded or otherwise given way to a new interaction. The following facts support this conclusion: no citations were issued; no one was told that they were free to leave; the officer had not accomplished the purpose of the traffic stop; there was no re-engagement by the officer; the questioning of the occupants including the driver and the Defendant was consistent with the officer’s stated purpose that he was trying to identify who could legally drive the vehicle, if anyone; the officer still needed additional information in order to issue the citation; no individuals were previously isolated; officers did not perform any tasks that were not tied to the traffic infraction; and there were no other circumstances that signaled the end of the stop. Accordingly, the officers were within their authority to require the Defendant to exit the vehicle.

Alternatively, even if the primary traffic stop had concluded and had given way to a new interaction, this court’s holds that there was reasonable suspicion to order the Defendant from the vehicle.

Clearly, the Defendant was seized at the time he was asked to exit the vehicle. Defendant does not argue nor does the court conclude that he was immediately arrested. Instead, the Defendant was subject to an investigative detention.

To constitute a valid investigative detention, the seizure must be justified by

an articulable, reasonable suspicion that the defendant may have been engaged in criminal activity independent of that supporting the initial stop of the vehicle. *Freeman*, 757 A.2d at 908; *Commonwealth v. Strickler*, 757 A.2d 884, 889 (Pa. 2000). In determining whether reasonable suspicion existed at the time of Defendant's detention, the totality of the circumstances must be examined. *Freeman*, supra.

Clearly, law enforcement officers suspected that the Defendant was concealing contraband in his mouth. He was acting nervous and fidgety. He would not open his mouth when answering questions causing his answers to be mumbled and inarticulate. When he did open his mouth after being asked three times to do so, he opened his mouth but kept his tongue at the roof of his mouth apparently to hide the contraband that was suspected to be in there. Additionally, the driver's conduct suggested that something criminal may have been taking place. The driver was nervous, fidgety and unresponsive. The driver produced paperwork that wasn't requested.

Finally, the Court cannot ignore the place or location of where the stop took place. Both officers testified that it was an area of the city where they had previously made numerous arrests and/or interdictions with respect to drug trafficking.

Accordingly, the Defendant's removal from the vehicle was lawful.

ORDER

AND NOW, this ___ day of September 2016, following a hearing and argument, the court **DENIES** the Defendant's Omnibus Pretrial Motion

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Ronald C. Travis, Esquire
Gary Weber, Lycoming Reporter
Work file