

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1592-2015
v.	:	
	:	
RONELL ANTOINE WYLIE,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On December 29, 2015, the Defendant filed a Motion to Suppress. A hearing on the motion was held on January 28, 2016.

I. Background

A. Officer Andrew Stevens' Testimony

At the time of the hearing, Andrew Stevens (Stevens) had been a police officer for a little more than three years. He had been with Williamsport Bureau of Police for seven months. At approximately 6:18 p.m. on August 17, 2015, Stevens was in full uniform and driving a patrol car on the 800 block of Elmira Street. The car's window was down, and he smelled a strong odor of raw marijuana. Stevens knows the smell of marijuana because he was present during a controlled burn in the Act 120 program, and, as a police officer, he has had several experiences with both burnt and raw marijuana.

Stevens parked the patrol car and walked with Officer Alexander (Alexander) to the area of the odor. When he "got to" a parked vehicle on the 800 block, Stevens again smelled the odor of marijuana. Stevens began talking with two males who were by the parked vehicle. Alexander began talking with the person who was in the driver's seat of the vehicle. After talking with the two males, Stevens began talking with the person who was in the front passenger seat of the vehicle. Stevens saw the Defendant in the backseat of the vehicle. While

talking with the front passenger, Stevens smelled the odor of marijuana. Stevens told the front passenger that he could smell marijuana coming from inside of the vehicle. The front passenger said “we just got done smoking and threw the blunt out on the sidewalk.” Stevens searched the ground by the passenger side of the vehicle, but he did not see a blunt on sidewalk.

Alexander opened the driver’s door and asked the person in the driver’s seat to exit the vehicle. As the person exited, Alexander observed a brick of heroin in the vehicle. Stevens then went around the back of the vehicle, opened the back door, and asked the Defendant to exit. As the Defendant was exiting the vehicle, Stevens saw a purple Backwoods cigars bag on the seat next to where the Defendant was sitting. The cigar bag was open, and Stevens could see clear plastic bags inside of the cigar bag. Stevens knows that clear plastic bags are sometimes drug paraphernalia. He grabbed Defendant’s hands, put them behind the Defendant’s back, and advised the Defendant that he was under arrest.

B. Arguments

The Defendant argues that Officer Stevens’ actions were unlawful because he did not have probable cause to arrest the Defendant when the Defendant was removed the vehicle. The Defendant introduced Stevens and Officer Alexander’s police reports. He notes that Alexander’s report says that she smelled only a slight odor of marijuana, and she did not indicate whether it was raw or burnt. In addition, he notes that Stevens’ report says that the passenger said he smoked a blunt and threw it out. The Defendant contends that his presence in the back of the vehicle and the observation of clear plastic bags did not provide Stevens with probable cause. He asks for the suppression of all evidence obtained after the Defendant was removed from the vehicle.

The Commonwealth argues that, because the Defendant was a passenger in the vehicle, Stevens was lawfully allowed to remove him under Commonwealth v. Brown.¹ The Commonwealth notes that Stevens saw clear plastic bags as the Defendant was exiting the vehicle. It argues that Stevens' actions were lawful because he knew that clear plastic bags are sometimes used as drug paraphernalia. Finally, the Commonwealth cites Commonwealth v. Guillespie² for the proposition that handcuffs do not transform an investigative detention into an arrest.

II. Discussion

A. It was Lawful for Officer Stevens to Ask the Defendant to Exit the Vehicle.

“Prior to subjecting a citizen to [an] investigatory detention, [the police] must harbor at least a reasonable suspicion that the person seized is then engaged in unlawful activity.” Commonwealth v. Cottman, 764 A.2d 595, 598 (Pa. Super. 2000). “Reasonable suspicion exists only where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of intrusion warrant a [person] of reasonable caution in the belief that the action taken was appropriate.” Commonwealth v. Goldsborough, 31 A.3d 299, 306 (Pa. Super. 2011). “In order to determine whether the police had a reasonable suspicion, the totality of the circumstances – the whole picture – must be considered.” In the Interest of D.M., 781 A.2d 1161, 1163 (Pa. 2001).

¹ 654 A.2d 1096 (Pa. Super. 1995).

² 745 A.2d 654 (Pa. Super. 2000).

The Court finds Officer Stevens' testimony credible. He articulated observations which would lead a reasonable person to conclude that criminal activity was afoot and that the Defendant was involved in that activity. Stevens smelled a strong odor of raw marijuana as he was driving on the 800 block of Elmira Street. When he "got to" a parked vehicle on the block, he again smelled the odor of marijuana. The person in the front passenger seat said "we just got done smoking and threw the blunt out on the sidewalk." Video from the patrol car camera shows Stevens and Officer Alexander searching the ground next to the passenger side of the vehicle, but the officers did not find a blunt. When Alexander opened the driver's door, she saw a brick of heroin in the vehicle. Because (1) Stevens smelled the odor of marijuana when he "got to" the vehicle, (2) the front passenger said they had just smoked, (3) there was no corroboration for the front passenger's statement about a blunt being on the sidewalk, (4) Officer Alexander saw heroin in the vehicle, and (5) the Defendant was one of only three individuals inside of the vehicle, Stevens had reasonable suspicion that criminal activity was afoot inside of the vehicle and that the Defendant was involved. Since Stevens had the requisite reasonable suspicion to subject the Defendant to an investigative detention, his request for the Defendant to exit the vehicle was lawful.

The Defendant emphasizes that Stevens' report says that the passenger said "he" smoked, not "we" smoked. Although the Court finds Stevens credible, the Court notes that if the passenger had indeed said that he smoked, Stevens still would have had reasonable suspicion that the Defendant was involved in criminal activity. With (1) the marijuana odor, (2) the lack of corroboration for the front passenger's statement about a blunt being on the sidewalk outside of the vehicle, (3) Alexander's observation of heroin in the vehicle, and (4) the Defendant being one of only three individuals in the vehicle, a reasonable person could conclude that criminal

activity was afoot in the vehicle and that the Defendant was involved. Therefore, even if the passenger said that he smoked, Stevens still had the requisite reasonable suspicion to subject the Defendant to an investigative detention.

The Court also believes that Stevens' request was lawful because the Defendant was in the vehicle, and the officers could have lawfully searched the vehicle at the time of the request. "In order to conduct a warrantless search of an automobile, the police must . . . establish probable cause" Commonwealth v. Loughnane, 128 A.3d 806 (Pa. Super. 2015) (citing Commonwealth v. Gary, 91 A.3d 102, 138 (Pa. 2014)). "[T]he level of probable cause necessary to justify a warrantless search of an automobile is the same as that required to obtain a search warrant. Probable cause exists where the facts and circumstances within the knowledge of the officer are reasonably trustworthy and sufficient to warrant a person of reasonable caution in believing that the person has committed the offense." Commonwealth v. Gelineau, 696 A.2d 188, 192 (Pa. Super. 1997) (internal citations and quotation marks omitted). "[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). 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). "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, Stevens smelled the odor of marijuana when he "got to" the vehicle. The person in the front passenger seat told Stevens that a blunt was thrown out on the sidewalk. The officers searched the ground by the passenger side, but they did not find a blunt. When Officer

Alexander opened the driver's door, she saw a brick of heroin in the vehicle. The marijuana odor, the lack of corroboration for the front passenger's statement about a blunt on the sidewalk, and the observation of heroin provided the officers with probable cause to believe that drugs and drug paraphernalia were in the vehicle. A reason for the automobile exception to the warrant requirement is "the inherent mobility of the vehicle." Loughnane, 128 A.3d 806 (quoting Gary, 91 A.3d at 110). Since the officers could have lawfully searched the vehicle and the Defendant was in the vehicle, it was lawful for Stevens to request that the Defendant exit it.

B. It was Lawful for Officer Stevens to Grab the Defendant's Hands Because he had Probable Cause that the Defendant Possessed Drug Paraphernalia.

"It is well settled that the police may make a warrantless arrest if probable cause exists." Commonwealth v. Santiago, 736 A.2d 624, 629-30 (Pa. Super. 1999). "In determining whether probable cause exists, [courts] must consider the totality of the circumstances as they appeared to the arresting officer." Copeland, 955 A.2d at 400. "Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference." Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa. Super. 2004).

When the Defendant was exiting the vehicle, Officer Stevens saw clear plastic bags in a cigar bag on the seat next to the Defendant. Stevens then grabbed the Defendant's hands and placed them behind the Defendant's back. When Stevens grabbed the Defendant's hands, the facts and circumstances known to him were sufficient to warrant a person of reasonable caution in the belief that the Defendant possessed drug paraphernalia. Stevens had seen clear plastic bags in a cigar bag on the seat next to the Defendant. This observation along with the marijuana odor provided Stevens with probable cause to believe that the Defendant was in possession of

drug paraphernalia. Since Stevens had probable cause upon seeing the bags, his actions after seeing the bags were lawful.

III. Conclusion

Officer Stevens' request for the Defendant to exit the vehicle was lawful. It was lawful for Officer Stevens to grab the Defendant's hands because he had probable cause that the Defendant possessed drug paraphernalia.

ORDER

AND NOW, this _____ day of February, 2016, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Motion to Suppress, which was filed on December 29, 2015, is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge