

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CR-834-2018**
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 ANTHONY EDWARDS, : **SUPPRESSION**
 Defendant :

OPINION AND ORDER

On May 10, 2018, Anthony Edwards (Defendant) was arrested for Delivery of a Controlled Substance,¹ Possession with the Intent to Deliver a Controlled Substance,² Possession of a Controlled Substance,³ and Possession of Drug Paraphernalia.⁴ On July 17, 2018, Defendant filed an Omnibus Pretrial Motion in the form of a Motion to Suppress Evidence. Defense Counsel raises one issue in his Motion to Suppress: Did Officer Gardner act outside the authority of the Municipal Police Jurisdiction Act (MPJA), which constitutes an impermissible stop and therefore all evidence gathered as a result of the stop should be suppressed. A hearing on the issue was held September 14, 2018.

Background

Officers Clinton Gardner (Gardner) and Gino Caschera (Caschera) of the Williamsport Bureau of Police and Officer William McInnis (McInnis) of the South Williamsport Borough Police testified on behalf of the Commonwealth. Their testimony established the following. On May 10, 2018, Gardner was dispatched to 641 4th Ave, a known area for heavy narcotics trafficking, for potential drug activity involving a black male with a beard and a red sedan. When he arrived he observed an individual sitting in a vehicle that matched the description

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 35 P.S. § 780-113(a)(32).

parked and idling. He observed this for about five (5) to ten (10) minutes before circling around the block. Upon coming back around, he spotted the vehicle turning onto Memorial Ave. Gardner observed the driver of vehicle commit a turn signal violation at West Fourth St. and 5th Ave by not signaling until at the stop sign. Gardner continued to follow the vehicle for about a half mile to a mile until it crossed the Maynard Bridge into South Williamsport. He testified that it is common for individuals involved in drug trafficking to attempt to disassociate with the city in an attempt to evade police contact. Once safely across the bridge Gardner initiated the stop. The vehicle stopped in the middle of the street and an unidentified female approached the driver side of the vehicle. Gardner then witnessed a hand to hand exchange. It was later determined Defendant handed the woman a pill bottle containing differing sizes of oxycodone. Caschera was the first back-up to arrive and assisted Gardner in the detention and arrest of the two individuals. During the stop of the vehicle and arrest of Defendant and female, officers from South Williamsport Borough arrived, including McInnis, but assisted in only directing traffic. This stop is the only issue presented in Defendant's Motion to Suppress. He wishes to suppress the contents of the pill bottle as well as all other evidence stemming from his arrest.

Discussion

Police officers are granted the authority to effectuate stops pursuant to violations of the motor vehicle code. 75 Pa. C.S. § 6308(b). "Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle." *Id.* Under 75 Pa. C.S. § 3334(b), "an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before

turning.” An officer has authority to act outside of their primary jurisdiction in a limited number of circumstances:

- (1) Where the officer is acting pursuant to an order issued by a court of record or an order issued by a district magistrate whose magisterial district is located within the judicial district wherein the officer's primary jurisdiction is situated, or where the officer is otherwise acting pursuant to the requirements of the Pennsylvania Rules of Criminal Procedure, except that the service of an arrest or search warrant shall require the consent of the chief law enforcement officer, or a person authorized by him to give consent, of the organized law enforcement agency which regularly provides primary police services in the municipality wherein the warrant is to be served.
- (2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.
- (3) Where the officer has been requested to aid or assist any local, State or Federal law enforcement officer or park police officer or otherwise has probable cause to believe that the other officer is in need of aid or assistance.
- (4) Where the officer has obtained the prior consent of the chief law enforcement officer, or a person authorized by him to give consent, of the organized law enforcement agency which provides primary police services to a political subdivision which is beyond that officer's primary jurisdiction to enter the other jurisdiction for the purpose of conducting official duties which arise from official matters within his primary jurisdiction.
- (5) Where the officer is on official business and views an offense, or has probable cause to believe that an offense has been committed, and makes a reasonable effort to identify himself as a police officer and which offense is a felony, misdemeanor, breach of the peace or other act which presents an immediate clear and present danger to persons or property.
- (6) Where the officer views an offense which is a felony, or has probable cause to believe that an offense which is a felony has been committed, and makes a reasonable effort to identify himself as a police officer.

42 Pa. C.S. § 8953(a).

There are only two provisions applicable to this situation, subsection (2) dealing with hot pursuit and subsection (4) dealing with prior consent.

Courts have found that officers acting in hot pursuit of a witnessed traffic violation may follow a violator outside of their primary jurisdiction to effectuate the stop. Hot or fresh pursuit is objective, so whether an officer believes the pursuit is hot or not is not dispositive. *Stein v. Commonwealth of Pa., Dep't of Transp., Bureau of Driver Licensing*, 857 A.2d 719, 726 (Pa. Cmwlth 2004). For example, an officer taking prompt action upon witnessing a traffic violation is enough to establish hot pursuit. *Id.*

In *Commonwealth v. McGrady*, an officer noticed the defendant driving at speeds slower than normal and that he was crossing the center line of the road. 685 A.2d 1008, 1008-09 (Pa. Super. 1996). The officer determined that he would issue the defendant a traffic citation for violating the motor vehicle code, but upon determined the road conditions too dangerous to pull him over, he followed him through two boroughs before conducting the stop outside of his primary jurisdiction. *Id.* at 1009. The Court differentiated this situation from prior holdings, because the officer observed the violation within his primary jurisdiction. *Id.* at 1010. But, the Court also highlighted that the only reason the officer did not pull the defendant over was because he believed the conditions were not safe to do so. *Id.*

As for consent under subsection (4), prior written consent by one authorized to give it will satisfy the requirement. *See Commonwealth v. Sestina*, 546 A.2d 109 (Pa. Super. 1988). The Superior Court found that “[t]he purpose of the statute is to expand, not limit, the power of local police officers to make arrests outside of their primary jurisdictions. The goal is to foster effective working relationship among municipalities.” *Id.* at 112. When the chief of police for two jurisdictions authorizes, in writing, that officers may take certain actions within either jurisdiction, subsection (4) under the MPJA is satisfied. *Stein*, 857 A.2d at 725. Even if the MPJA is violated, it does not call for automatic suppression of evidence. *Commonwealth v.*

Henry, 943 A.2d 967 (Pa. Super. 2008). In *Henry*, the Court adopted its earlier decision in *Chernosky* which provided that “all the circumstances of the case including the intrusiveness of the police conduct, the extent of deviation from the letter and spirit of the MPJA, and the prejudice to the accused” need to be evaluated on a case by case basis when determining whether to suppress based on an MPJA violation. *Id.* at 972 (citing *Commonwealth v. Chernosky*, 874 A.2d 123, 130 (Pa. Super. 2005)).

In *Henry*, the officer witnessed the defendant run a stop sign within his jurisdiction. He then followed him less than a mile out of his jurisdiction before effectuating a traffic stop. *Id.* at 968. The court found the MPJA was violated,⁵ but it did not warrant use of the exclusionary rule. *Id.* at 973. An important factor in this determination was that the officer did not enter the “jurisdiction to conduct an extraterritorial patrol or to embark on a fishing expedition in hopes of gathering more evidence to reach a determination of probable cause,” he had already established probable cause for a stop in his own jurisdiction. *Id.* The violation of the MPJA was therefore minor in nature. *Id.*

Analysis

Defendant contends that “Officer Gardner was not in hot pursuit of the Defendant nor was there reasonable suspicion to believe that Defendant had committed a crime within Officer Gardner’s primary jurisdiction” and “[t]he in-vehicle recording confirms that there was no traffic violation that would justify Officer Gardner arresting an individual outside of his jurisdiction.” Defendant’s Memorandum of Law in Support of Omnibus Pretrial Motion 8/29/18, at 2. The in-vehicle recording turns on after the alleged turn signal violation, but

⁵ It is important to note that, although the Superior Court does not specify why, the analysis of a violation was only conducted as it pertains to subsection (5) of the MPJA. If the Commonwealth presented their argument under subsection (2) pertaining to hot pursuit, this Court believes the court would have not concluded a violation had occurred.

there is no reason for this Court to disbelieve or doubt the credibility of the testimony provided by Gardner, which he additionally stated in his Affidavit of Probable Cause, that a turn signal violation occurred at West Fourth St. and 5th Ave.

First the Court finds that Gardner was acting in hot pursuit when he effectuated the stop outside of his primary jurisdiction. At the time Gardner witnessed the turn signal violation he has probable cause to effectuate a stop. *See* 75 Pa. C.S. § 6308(b). Where this situation differs from *McGrady* is that Gardner admits that he had ample opportunity to pull Defendant over prior to leaving his primary jurisdiction. *McGrady*, 685 A.2d at 1009. Gardner also stated that he did not believe himself to be in hot pursuit, but when looking at the factual situation this Court disagrees. *Stein*, 857 A.2d at 726 (officers subjective belief as to whether they are involved in hot pursuit is not dispositive). Gardner as in *McGrady* witnessed a traffic violation within his primary jurisdiction. *McGrady*, 685 A.2d at 1009. He followed Defendant for a few minutes, which is not uncommon in the daily practice of law enforcement officers. *See United States v. Sharpe*, 470 U.S. 675, 677 (1985) (followed two vehicles for twenty miles before deciding to conduct an investigatory stop); *Commonwealth v. Slonaker*, 795A.2d 397, 401 (Pa. Super. 2002) (officer followed vehicle for five miles and saw vehicle fully cross fog line three times and weave numerous times over double yellow line before conducting a stop); *Commonwealth v. Houck*, 102 A.3d 443 (Pa. Super. 2014) (witnessed the defendant cross the center line four times and followed him for four minutes before conducting a stop). Once on the bridge, a stop would have no longer been deemed safe, as in *McGrady*, so he conducted the stop as soon as the vehicle was safely across. *McGrady*, 685 A.2d at 1010. Gardner was in hot pursuit when he conducted the stop and therefore did not violate the MPJA.

Although this Court finds that hot pursuit has been established and therefore the MPJA was not violated, the exception under subsection (4) is also applicable. A written agreement was entered into between the Borough of South Williamsport, Police Department and the City of Williamsport Police Department. *See* Commonwealth's Exhibit #2 (entitled Memorandum of Understanding Mutual Aid and Agreement for Police Services). One particular provision of importance states: "It is understood that Borough Ordinance Number 1976-72 (as amended) and City Ordinance Number 4760 (as amended) authorizes members of the South Williamsport Police Department and the Williamsport Bureau of Police to have the same arrest and investigation powers and to enforce all State and Federal Laws and Local Ordinances in each others jurisdictions." *Id.* at 3. This was signed by the City Clerk, Controller, Mayor, and Chief of Police of the City of Williamsport and the Borough Secretary, Council President, Mayor, and Chief of Police of the Borough of South Williamsport. *Id.* at 5. Since both police chiefs signed off granting one another's officers jurisdiction, subsection (4) under the MPJA is satisfied, and Gardner did not violate the MPJA. *Stein*, 857 A.2d at 725.

Lastly, regardless of whether a violation occurred or not, this is not the type of MPJA violation courts have granted suppression for in the past. When viewing the intrusiveness of police conduct, the stop occurred right outside Gardner's jurisdiction. Much like in *Henry*, across the bridge is very similar to as less than a mile down the street from the witnessed violation. *Henry*, 943 A.2d at 968. Gardner also was not entering the "jurisdiction to conduct an extraterritorial patrol or to embark on a fishing expedition in hopes of gathering more evidence to reach a determination of probable cause." *Id.* at 973. He, as in *Henry*, had already established probable cause to effectuate a stop in his primary jurisdiction. When taking into account the "purpose of the statute is to expand, not limit, the power of local police officers to

make arrests . . . and [t]he goal is to foster effective working relationship among municipalities,” this purpose would not be served by permitting exclusion of evidence in this situation. *Sestina*, 546 A.2d at 112. The departments have an agreement to foster a good working relationship and this intrusion is not of the type that would be a severe detriment to Defendant. There is little to no prejudice to Defendant when there was probable cause to conduct a traffic stop and Gardner’s violation is not of the volitional nature, which the stifling effect of the exclusionary rule would be necessary for.

Conclusion

The Court finds Gardner’s testimony credible that Defendant violated the motor vehicle code by not properly employing his turn signal. Gardner was in a fresh or hot pursuit of this violation when he initiated the traffic stop just outside of his primary jurisdiction and/or there was an agreement of written consent from the chief law enforcement officer of South Williamsport Borough allowing Gardner to conduct such a stop in South Williamsport Borough. In addition, even if a violation of the MPJA did occur, it was minor in nature and not of the variety, which the MPJA’s purpose would be fulfilled by suppressing. The Court finds Gardner had jurisdiction to conduct the traffic stop of Defendant’s vehicle and therefore will not suppress the evidence obtained as a result.

ORDER

AND NOW, this _____ day of October, 2018, based upon the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA (NI)
Robert Hoffa, Esq.