

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-1052-2018**  
 v. :  
 :  
 **NIHEEM KEYS,** : **OMNIBUS PRETRIAL**  
 **Defendant** : **MOTION**

**OPINION AND ORDER**

Niheem Keys (Defendant) was arrested on June 24, 2018 on two counts of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,<sup>1</sup> two counts of Possession of a Controlled Substance,<sup>2</sup> one count of Possession of Drug Paraphernalia,<sup>3</sup> one count of Aggravated Assault,<sup>4</sup> one count of Simple Assault,<sup>5</sup> one count of Escape,<sup>6</sup> one count of Tampering with Physical Evidence,<sup>7</sup> one count of Resisting Arrest,<sup>8</sup> one count of Disorderly Conduct,<sup>9</sup> and one count of Use of Headphones While Driving.<sup>10</sup> The charges arise a traffic stop conducted by two Williamsport Bureau of Police officers in front of 671 Campbell St., Williamsport, PA 17701. Defendant filed this timely Omnibus Pretrial Motion on August 22, 2018. A hearing on the motion was held by this Court on October 4, 2018.

In his Omnibus Motion, Defendant challenges whether the police had probable cause of a motor vehicle violation to conduct a stop and whether there was reasonable suspicion to

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<sup>1</sup> 35 P.S. §780-113(a)(30).

<sup>2</sup> 35 P.S. §780-113(a)(16).

<sup>3</sup> 35 P.S. §780-113(a)(32).

<sup>4</sup> 18 Pa. C.S. § 2702(a)(3).

<sup>5</sup> 18 Pa. C.S. § 2701(a)(1).

<sup>6</sup> 18 Pa. C.S. § 5121(a).

<sup>7</sup> 18 Pa. C.S. § 4910(1).

<sup>8</sup> 18 Pa. C.S. § 5104.

<sup>9</sup> 18 Pa. C.S. § 5503(a)(4).

<sup>10</sup> 75 Pa. C.S. § 3314(a).

justify the resulting investigatory detention. Defendant contends as a result of his unlawful detention any evidence obtained as a basis of should be suppressed.

### **Background and Testimony**

Officers Nicholas Carrita (Carrita) and Gino Caschera (Caschera) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. Their testimony established the following. On June 24, 2018, Carrita and Caschera were operating a marked patrol vehicle when they witnessed Defendant makes a left-hand turn in front of them wearing white earbuds. They turned to follow him, at which point Defendant immediately pulled his car over without signaling in front of 671 Campbell St. The officers then pulled up behind him to effectuate a traffic stop. Carrita noticed Defendant's furtive movements as he approached the vehicle. Defendant was nervous and shaky and continually reached towards the center console and passenger seat areas. Defendant handed Carrita his license, registration, and title. One minute into the stop Carrita called in a license check. There was a black plastic bag on the passenger seat, which Defendant grabbed and stated there was "just stuff in," when asked. Caschera then asked: "Could I look in the bag?" to which Defendant answered "Go ahead" while handing it to Caschera. Caschera observed little blue waxen baggies in the plastic bag, which in his training and experience are commonly used in the packaging of heroin. Upon viewing the contents of the bag, Caschera informed Carrita to have Defendant get out of the vehicle. Carrita then carefully explained how he wanted Defendant to get out of the vehicle, but when Defendant exited the vehicle he pushed Carrita and ran away.

### **Whether there was Probable Cause to Conduct a Traffic Stop**

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. § 3314(a), a traffic violation occurs if a driver “operate[s] a vehicle while wearing or using one or more headphones or earphones.”

Both Carrita and Caschera testified to seeing white earbuds in Defendant’s ears when he turned in front of them. There is no reason for this Court to disregard or disbelieve that the officers testified truthfully and were credible. There was reasonable suspicion a traffic violation occurred and therefore a stop was permissible under 75 Pa. C.S. § 6308(b).

### **Whether Carrita and Caschera had Reasonable Suspicion for an Investigatory Detention**

Defendant alleges that he was detained by the police in violation of his constitutional rights, therefore any evidence seized by the police should be suppressed. There are three categories when dealing with interactions between citizens and the police:

The first is a “mere encounter” (or request for information) which need not be supported by any level of suspicions, but carries no official compulsion to stop or respond. The second, an “investigative detention,” must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

*Commonwealth v. Gutierrez*, 36 A.3d 1104, 1107 (Pa. Super. 2012).

The Pennsylvania Supreme Court has adopted the United States Supreme Court’s holding in *Terry v. Ohio*, 392 U.S. 1 (1968), permitting police to effectuate a precautionary seizure when there is reasonable suspicion criminal activity is afoot. *Commonwealth v. Matos*, 672 A.2d 769, 773-74 (Pa. 1996) (citing *Commonwealth v. Hicks*, 253 A.2d 276 (Pa. 1969)). The Court views a totality of the circumstances to determine whether “a reasonable person would believe that he was not free to leave.” *Commonwealth v. Collins*, 672 A.2d 826, 829 (Pa. Super. 1996). “[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to

the specific reasonable inferences he is entitled to draw from the facts in light of his experience.” *Commonwealth v. Cook*, 735 A.2d 673, 676 (Pa. 1999) (quoting *Terry*, 392 U.S. at 27). Case law has established certain facts alone do not create reasonable suspicion, but a totality of the circumstances may. *See Commonwealth v. DeWitt*, 608 A.2d 1030 (Pa. 1992) (flight alone does not establish reasonable suspicion); *Commonwealth v. Kearney*, 601 A.2d 346 (Pa. Super. 1992) (mere presence in a high crime area alone does not create reasonable suspicion). Information acquired during a valid traffic stop may be used to conduct a further investigatory detention. *Commonwealth v. Kemp*, 961 A.2d 1247, 1260-61 (Pa. Super. 2006).

“A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies.” *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000). Consent voluntarily given is “one such exception.” *Id.* For consent to be valid it must be given during a valid police encounter. *Id.* “Where the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus.” *Id.* at 888-89. Consent is evaluated by a totality of the circumstances and by evaluating a “non-exclusive lists of factors.” *Id.* These factors include:

- 1) the presence or absence of police excesses;
- 2) whether there was physical contact;
- 3) whether police directed the citizen's movements;
- 4) police demeanor and manner of expression;
- 5) the location and time of the interdiction;
- 6) the content of the questions and statements;
- 7) the existence and character of the initial investigative detention, including its degree of coerciveness;
- 8) the degree to which the transition between the traffic stop/investigative detention and the subsequent encounter can be viewed as seamless, ... thus suggesting to a citizen that his movements may remain subject to police restraint, and
- 9) whether there was an express admonition to the effect that the citizen-subject is free to depart, which is a potent, objective factor.

*Kemp*, 961 A.2d at 1253 (internal citations and quotations omitted).

When viewing the totality of circumstances and the consent factors, Defendant consented to the search of the black plastic bag and based upon that search an investigatory

detention would be permissible. When viewing the excesses of police conduct, two police officers conducted a valid traffic stop. Officers did not draw their weapons or appear to be portraying themselves in a forceful manner, including no physical contact with Defendant. The police directed Defendant to keep his hands on the wheel, which he continually failed to comply with and he voluntarily handed the bag to Caschera without being prompted to do so. The stop occurred during the day in a rather busy area of Williamsport, so Defendant would not feel secluded or alone with officers. The content and questions of officers were of a common nature for a traffic stop: They asked him to keep his hands on the wheel due to his furtive movements towards his center console/passenger seat; They asked for his information so they could run it; and After Defendant grabbed a bag on his passenger seat, Caschera asks if he could look in the bag, at which point Defendant answered “Go ahead” while handing the bag to him. In the bag Caschera finds blue waxen baggies, which through his training and experience are known to be common in heroin packaging. This information in conjunction with Defendant’s motions and nervousness lead officers to believe he should be taken out of the car, which is common for an investigatory detention. This stop did not begin as an investigatory detention, but instead as a valid traffic stop, which turned into an investigatory detention based on observations and the contents of the bag. There was no coercion present. The entirety of the stop up to when Defendant fled was around two minutes in length, as captured on the vehicle’s video recording. This is a very common length of time for a traffic stop. Carrita can be seen calling in Defendant’s information, the search of the bag occurs with consent, and then Defendant is asked to step out of the vehicle at which point he takes off. Officers had reasonable suspicion of drug activity to ask Defendant to step out of the vehicle following a consensual search of the bag in Defendant’s possession. *See Commonwealth v. Haupt, 567*

A.2d 1074 (Pa. Super. 1989) (detention was traffic violation; stop endured approximately 15 to 20 minutes; location was public street; defendant-motorist not transported; no restraints used; and police officer made no show, threat, or use of force).

**Conclusion**

The Court finds there was reasonable suspicion of a traffic violation to conduct a traffic stop, Defendant consented to the search of the plastic bag, and officers had the requisite reasonable suspicion at the time of the investigatory detention. Therefore, there is no violation of Defendant's constitutional rights and the evidence resulting shall not be suppressed.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of October, 2018, based upon the foregoing Opinion, the Defendant's Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (AG)  
Robert Hoffa, Esquire

NLB/kp