

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-485-2018
 :
 NAIM TAYLOR, : Omnibus Pretrial Motion
 Defendant :

OPINION AND ORDER

By Information filed on April 13, 2018, the defendant is charged with conspiracy to possess with intent to deliver controlled substances, possession with intent to deliver a controlled substance, possession of a controlled substance and possession of drug paraphernalia.

On March 10, 2018, Officer Clinton Gardner of the Williamsport Bureau of Police was on duty patrolling the area of Wildwood Boulevard and High Street. This particular area was well known to law enforcement as a high narcotics trafficking area. Over the past 2 ½ years, Officer Gardner has investigated numerous drug trafficking offenses in the area, has made numerous controlled substance arrests in the area and has debriefed both users and dealers who have confirmed that the area is often times used for drug trafficking activity.

At approximately 9:30 p.m., Officer Gardner observed a grey Acura vehicle stopped next to one of the gas pumps at the Conoco gas station. He pulled up to the right rear side of the vehicle approximately 10 feet away. He noticed that there were two individuals in the vehicle and that the windows were fogged up indicating to him that the individuals had been inside the vehicle for quite some time. He also noticed that no one was pumping gas.

Soon after he pulled up behind the vehicle in his marked unit, two individuals exited the vehicle. He immediately recognized Jihad Lewis. He connected Mr. Lewis to the vehicle based upon prior an investigation of suspected drug activity. The vehicle was suspected to have a “trap” in it, in which controlled substances could be secreted.

Mr. Lewis and the other individual, subsequently identified as the defendant, hastily exited the vehicle and started walking toward the store. Officer Gardner suspected that they were attempting to “disassociate” themselves from the vehicle. When they were roughly 10 yards from the vehicle, he yelled to them “what’s up.” They appeared to ignore him and kept walking. He then yelled “hey guys, what’s up.”

They returned to Officer Gardner. He engaged them in brief conversation asking, among other things, what they were doing and why they were there. They had indicated that they were not parked there very long. He asked them if they would sit on the bumper of the car. He asked if they had anything illegal on their person to which they said no.

They voluntarily consented to a search of their persons. The defendant said that he had nothing illegal on him and that Officer Gardner could search him if Officer Gardner wanted.

Prior to searching the defendant, Officer Gardner noticed that there were “marijuana flakes” up and down the side and back upper thigh area of defendant’s left leg as if the defendant “sat in” marijuana. Both individuals apparently admitted that they had smoked marijuana earlier in the evening.

Mr. Lewis was found to have on him a flip phone, and two different bundles of cash totaling \$260.00 in \$20.00 denominations.

Both Officer Gardner and Officer Joshua Bell of the Williamsport Police Department conducted a search of the Acura vehicle. According to Officer Gardner, the search of the vehicle was based on the “marijuana flakes up and down [the defendant’s] leg and [the defendant] exiting the vehicle.”

The search of the vehicle uncovered contraband, bags of suspected heroin, several cell phones and a small amount of marijuana residue. The suspected heroin was found in a black sock hidden behind an air vent.

The defendant contends that his initial detention was without the requisite reasonable suspicion and secondly, that the search of the vehicle was conducted without the requisite probable cause.

To secure the right of citizens to be free from unreasonable searches and seizures, the courts in Pennsylvania “require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens to the extent those interactions compromise individual liberty.” *Commonwealth v. Reppert*, 814 A.2d 1196, 1201 (Pa. Super. 2002) (en banc). The courts have defined three types of police interaction: a mere encounter, an investigative detention, and a custodial detention.

A mere encounter is characterized by limited police presence, and police conduct and questions that are not suggestive of coercion. *Id.* Such encounters do not obligate the citizen to stop or respond, and consequently, need not be supported by any level

of suspicion. *Id.* The hallmark of a mere encounter is that the subject may decline to interact with the police or to answer questions, and is also free to leave at any time. *Commonwealth v. DeHart*, 745 A.2d 633, 636 (Pa. Super. 2000).

An investigative detention carries an official compulsion to stop and respond. *Id.* These interactions have elements of official compulsion and because of such, require “reasonable suspicion” of unlawful activity. *Id.* “[A] custodial detention occurs when the nature, duration and conditions of an investigative detention become so coercive as to be, practically speaking, the functional equivalent of an arrest.” *Id.*

The Commonwealth conceded that the defendant was subjected to an investigatory detention when he walked back to Officer Gardner after Officer Gardner’s second verbal inquiry.

An investigatory detention is justified only if the detaining officer can point to specific and articulable facts which, in conjunction with rational inferences derived from those facts, give rise to a reasonable suspicion of criminal activity and therefore warrant the intrusion. *Commonwealth v. E.M.*, 735 A.2d 654, 659 (Pa. 1999). The officer “must be able to articulate something more than an inchoate and unparticularized suspicion or hunch.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

In *Commonwealth v. DeWitt*, 608 A.2d 1030 (Pa. 1992), the Supreme Court concluded that reasonable suspicion did not exist to detain the defendant. The defendant was seated in a legally parked vehicle with others when the police approached the vehicle. As the police neared the vehicle, they observed the occupants inside making furtive movements as if

they were trying to hide something. When the officers reached the vehicle, the defendant attempted to flee on foot and the officers gave chase. The Supreme Court held that the seizure was illegal because even the combined circumstances of furtive movements, late time of night, previous reports of criminal activity in the area, and flight, did not establish an adequate basis for reasonable suspicion.

In *Commonwealth v. McCleave*, 750 A.2d 320 (Pa. Super. 2000), the defendant was stopped late at night in an area that had previous reports of criminal activity. Prior to the stop, police officers driving by noticed the defendant sitting in his legally parked car with his head down as if he were looking at his hands. As the police vehicle passed the defendant's vehicle, he raised his head and looked at the officers. As he did so, his eyebrows raised, his eyes got wider, and he immediately lowered his body.

Upon observing these movements, the officers exited their vehicle and approached the defendant's vehicle. One officer noted that the defendant was attempting to exit the vehicle, at which point the officer ordered him to stay in the vehicle. The defendant complied, but attempted to discreetly toss a marijuana blunt under the car. As the officers drew near the vehicle, they noticed an open container of alcohol and a large amount of cash in the ashtray. They later found cocaine and marijuana in the trunk.

On review, the Superior Court concluded that as soon as the officer ordered the defendant to get back in the vehicle, he was seized and an investigative detention commenced. The Superior Court further concluded that the seizure was illegal because a motorist's furtive movements upon the approach of police, even late at night in an area of

reported of criminal activity, did not establish reasonable suspicion for an investigatory detention. *Id.*, at 326.

The court agrees with the defendant that Officer Gardner did not have reasonable suspicion to detain the defendant. The detention occurred when Officer Gardner “requested” them to return to the vehicle. While his hunch may have been correct, his reasons for doing so were legally insufficient. He indicated that it was 9:30 at night in a high narcotics trafficking area, no one was pumping gas, the windshield was fogged up, as soon as his vehicle approached, the individuals hastily left to go into the store and when he yelled to them the first time they ignored him. Finally, several months earlier in the “fall of 2017”, there was information supplied from a narcotics unit that the vehicle may have had a “trap” in it to hide controlled substances.

Because the court concludes that Officer Gardner did not have reasonable suspicion to detain the defendant, the evidence seized following said detention must be suppressed. The Commonwealth conceded such and made no further argument as to the admissibility of the evidence should the defendant’s reasonable suspicion argument prevail.

ORDER

AND NOW, this ____ day of June 2018, following a hearing, argument and the submission of written authority, the court **GRANTS** Defendant’s motion to suppress. All of the evidence seized from the defendant following his illegal seizure is suppressed.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Gallogly, Esquire (ADA)
Mary Kilgus, Esquire,
Work file
Gary Weber, Esquire, Lycoming Reporter