

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-487-2018
v.	:	
	:	
WILLIAM R. WEST,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

William West (Defendant) was arrested on March 9, 2018 on three counts of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,¹ two counts of Possession of a Controlled Substance,² one count of Possession of Drug Paraphernalia,³ and one count of Tampering with or Fabricating Physical Evidence.⁴ The charges arise from a traffic stop that occurred in the area of Park Avenue and 3rd Avenue, Williamsport, PA 17701. Defendant filed this Motion to Suppress Evidence on November 15, 2018. A hearing on the motion was held by this Court on December 14, 2018.

In his Omnibus Pretrial Motion, Defendant challenges whether the police had probable cause of a traffic violation to conduct a stop, whether the continued detention was constitutional, and whether there was probable cause to search the vehicle. Defendant contends any evidence obtained as a result should be suppressed.

Background and Testimony

Officer Clinton Gardner (Gardner) of the Williamsport Bureau Police testified on behalf of the Commonwealth. Additionally, the Commonwealth provided a copy of the video from the

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 35 P.S. § 780-113(a)(32).

⁴ 18 Pa. C.S. § 4910(1).

Motion Video Recorder (MVR) and the search warrant as exhibits. Based on this evidence the following was established. On March 9, 2018 around 6:00 p.m., Gardner was acting in his official capacity as a police officer in full uniform and in a marked police vehicle in the area of Park Avenue and 3rd Avenue. Gardner observed a blue vehicle with tinted windows traveling on Third Avenue. As he turned to follow, the vehicle was pulling over. At this time Gardner effectuated a stop. Gardner realized that the vehicle possibly belonged to Defendant, which he knows to be a narcotics trafficker with prior firearms charges. Defendant had cracked his window and upon approaching the vehicle Gardner could smell processed marijuana. Gardner testified that he knew Defendant did not live near where he pulled over and that on this occasion, in contrast to a previous encounter, Defendant was being overly friendly and polite. Officer Bonnell arrived on scene to provide support. Gardner ran Defendant for warrants, which came back negative, before returning to the vehicle to remove Defendant and conduct a pat down for weapons. Gardner testified that as Defendant opened the door the smell of marijuana became stronger. Before conducting a search, Gardner patted down Defendant and could tell from that frisk that Defendant had large sums of currency in both his front pockets. Defendant was then detained and handcuffed, and when asked about the smell stated there was a small amount in his center console. When Gardner attempted to open the door he discovered it was locked with the keys inside, which Defendant stated he had intentionally done. While walking Defendant back to Gardner's police vehicle he spit out a clear plastic baggie, which Gardner recognized to be common in the packaging of cocaine. On Defendant's person one cellphone and \$2,246 in four separate bundles. In the vehicle in plain view officers could see a prescription bottle with white pills in it and the label torn off. The vehicle was brought back to impound and a search warrant was obtained and executed on the vehicle. The search yielded a

“50 bag” (.5 grams of cocaine), which was similar in appearance to the one Defendant spit out, two Oxycodone pills in an unlabeled pill bottle, and 16 Tramadol pills in a prescription pill bottle prescribed to another person.

Whether Gardner had Reasonable Suspicion to Effectuate 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.* Tint of a vehicle’s windows may give officers reasonable suspicion to effectuate a stop under Title 75:

(e) Sun screening and other materials prohibited.--

(1) No person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle.

(2) This subsection does not apply to:

(i) A vehicle which is equipped with tinted windows of the type and specification that were installed by the manufacturer of the vehicle or to any hearse, ambulance, government vehicle or any other vehicle for which a currently valid certificate of exemption has been issued in accordance with regulations adopted by the department.

(ii) A vehicle which is equipped with tinted windows, sun screening devices or other materials which comply with all applicable Federal regulations and for which a currently valid certificate of exemption for medical reasons has been issued in accordance with regulations adopted by the department.

75 Pa. C.S. § 4524(e)(1-2).

Defendant argues that Gardner did not see tinted windows and stopped the vehicle based upon it being Defendant’s vehicle. Alternatively, Defendant argues that the window tinting was a pretextual stop for the search of drugs. Gardner’s motivations for effectuating the traffic stop do not weigh into the analysis of the stop. The stop is legitimate if by an objective standard there was reasonable suspicion of a traffic violation. *Commonwealth v. Postie*, 110

A.3d 1034, 1039-40 (Pa. Super. 2016). The vehicle can be seen driving by at 1:43 on the MVR and the tinting of the side windows panes can be seen. At that point, regardless of what Defendant argues Gardner's subjective intent was, there is objective reasonable suspicion to investigate further to see if the tinting meets an exception. Additionally, there is "no merit to [Defendant]'s argument that he was not issued a citation for tinted windows, as the law does not require a violation to be established." *Id.* at 1040.

Whether the Stop and Subsequent Seizure of Defendant and Vehicle was Permissible

Defendant next contends the search of his person and vehicle was unwarranted and any statements given should also be suppressed as he was never read his *Miranda* rights. 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 create it. *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). Reasonable suspicion is evaluated as an objective assessment, the officer's subjective intent is irrelevant. *Commonwealth v. Foglia*, 979 A.2d 357, 361 (Pa. Super. 2009) (citing *Scott v. United States*, 436 U.S. 128, 136 (1978)).

Defendant first argues that the search of his person was a violation of his constitutional rights. “[I]t is well-established that when an officer detains a vehicle for violation of a traffic law, it is inherently reasonable that he or she be concerned with safety and, as a result, may order the occupants of the vehicle to alight from the car.” *Commonwealth v. Harris*, 179 A.3d 1009, 1020-21 (Pa. Super. 2017) (citing *Commonwealth v. Rosas*, 875 A.2d 341, 348 (Pa. Super. 2005)). When adopting *Terry*, the Pennsylvania Supreme Court also articulated this allows an officer to conduct “a limited search of an individual's outer clothing in an attempt to discover the presence of weapons which may be used to endanger the safety of police or others.” *Hicks*, 253 A.2d at 279. During the course of a traffic stop an officer may “pat-down the driver when the officer believes, based on specific and articulable facts, that the individual is armed and dangerous.” *Commonwealth v. Parker*, 957 A.2d 311, 315 (Pa. Super. 2008). Based on Defendant's prior weapons charges, the need to get Defendant out of the vehicle to further investigate the odor of marijuana, and time and nature of the stop, Gardner was justified in giving Defendant a brief preliminary pat down or frisk. In addition, no items were removed

from Defendant's pockets or manipulated during the search, so there is no evidence to suppress as a result of that frisk.

Defendant claims that at this point he should have been read his *Miranda* rights and therefore any statements should be suppressed, but being handcuffed does not transform an investigatory detention into a custodial detention. *Rosas*, 875 A.2d at 348 (“While we acknowledge that [the trooper] ordered [the defendant] out of the car and placed him in handcuffs, such facts, by themselves, do not support the conclusion that [the defendant] was under arrest.”). Handcuffing an individual while further investigation takes place is a common during an investigatory detention. In *Harris*, the court found a defendant, “who was handcuffed for approximately fifteen minutes while awaiting the K-9 sniff, and permitted to stand outside of his vehicle, was subjected to an investigative detention for which reasonable suspicion was necessary.” 176 A.3d at 1021. Similarly here Defendant was permitted to stand outside his vehicle and around 9:05 on the MVR can be seen conversing with Gardner, which Gardner testified was Defendant stating he had a small amount of marijuana in his center console. Then you can see Gardner attempt to open the door and it is locked at 9:38. At this point based on Defendant's hindrance of Gardner's continued search, the odor of marijuana, and Defendant's statement there was probable cause to effectuate an arrest until a further search the vehicle could be conducted.

Defendant contends the search of the vehicle was additionally without probable cause. When an “officer is justified in being where he is, his detection of the odor of marijuana is sufficient to establish probable cause.” *Commonwealth v. Copeland*, 955 A.2d 396, 401 (Pa. Super. 2008). Additionally a plurality of the Pennsylvania Supreme Court has found

no compelling reason to interpret Article I, Section 8 of the Pennsylvania Constitution as providing greater protection with regard to warrantless searches

of motor vehicles than does the Fourth Amendment. Therefore, we hold that, in this Commonwealth, the law governing warrantless searches of motor vehicles is coextensive with federal law under the Fourth Amendment. The prerequisite for a warrantless search of a motor vehicle is probable cause to search; no exigency beyond the inherent mobility of a motor vehicle is required. The consistent and firm requirement for probable cause is a strong and sufficient safeguard against illegal searches of motor vehicles, whose inherent mobility and the endless factual circumstances that such mobility engenders constitute a *per se* exigency allowing police officers to make the determination of probable cause in the first instance in the field.

Commonwealth v. Gary, 91 A.3d 102, 138 (Pa. 2014); *see also Commonwealth v. Runyan*, 160 A.3d 831, 835-37 (Pa. Super. 2017) (adopting *Gary* as precedent).

Although it can be argued Gardner no longer had an exigent circumstance once Defendant was placed in custody, it is erroneous because Gardner obtained a search warrant once the vehicle was taken to impound. Since that search warrant has not been challenged the search of the vehicle was permissible.

Conclusion

Gardner had the requisite reasonable suspicion to stop Defendant for a motor vehicle violation, regardless of whether the vehicle would have met an exception or not. Then upon conducting the permissible stop Gardner smelled the odor of marijuana. After searching for active warrants he decided to investigate further. Gardner had Defendant get out of the vehicle and based on his history of firearms' offenses gave him a permissible pat down and handcuffed him for officer safety purposes. Defendant was allowed to stand outside his vehicle and was not in custodial detention. Then based on Defendant's statement and his hindrance of Gardner's further investigation into the odor of marijuana, probable cause was established for a custodial detention and a search of the vehicle. Therefore, there is no violation of Defendant's constitutional rights and the evidence resulting shall not be suppressed.

ORDER

AND NOW, this _____ day of December, 2018, based upon the foregoing Opinion, the Defendant's Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Nicole Ippolito, Esquire, ADA
Michael Morrone, Esquire

NLB/kp