

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

**COMMONWEALTH OF PENNSYLVANIA**

v.

**BRAHEEM LEWIS,**  
**Defendant**

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**CP-41-CR-1-2019**

**MOTION TO SUPPRESS**

**OPINION AND ORDER**

Braheem Lewis (Defendant) was charged on December 18, 2018 with Possession of a Controlled Substance with the Intent to Deliver,<sup>1</sup> Possession of a Controlled Substance,<sup>2</sup> Possession of Drug Paraphernalia,<sup>3</sup> Driving without a License,<sup>4</sup> and Driving while Operating Privilege is Suspended or Revoked.<sup>5</sup> The charges arise from a traffic stop that occurred on Interstate 180 in Williamsport, Pennsylvania in Lycoming County. Defendant filed this Motion to Suppress Evidence on February 27, 2019. A hearing on the Motion was held by this Court on May 9, 2019. Both the Commonwealth and Defendant were then granted an opportunity to brief the motion. Defendant filed his brief on June 14, 2019 and the Commonwealth filed their brief on July 1, 2019. Defendant raises three issues in his Motion: Whether police had the requisite probable cause or reasonable suspicion of a vehicle violation to conduct a traffic stop and whether police interaction with Defendant was the functional equivalent of a custodial detention, which must be supported by probable cause. Based on the following opinion this Court denies Defendant's Motion to Suppress Evidence.

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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> 75 Pa. C.S. § 1501(a).

<sup>5</sup> 75 Pa. C.S. § 1543(a).

## **Background and Testimony**

Trooper George Aguirre (Aguirre) of the Pennsylvania State Police testified on behalf of the Commonwealth. The Commonwealth also submitted the Motor Vehicle Recording (MVR) from Aguirre's vehicle, a certified driving history of Defendant, a copy of the Waiver of Rights and Consent to Search filled out by Defendant, and the JNET photo of Defendant similar to the one Aguirre would have seen on his in car display, as exhibits. Based on this evidence the following was established. On December 18, 2018 at approximately 11:00 a.m., Aguirre was acting in his official capacity as a state trooper when he ran the registration of a black Nissan Altima. Information came back that the registered owner of the vehicle had a suspended operating status. Aguirre clicked on the button to see the photo of the driver and as he passed the driver it appeared to be the same individual that was currently driving the vehicle. Aguirre stated that the vehicle was what he would classy as a "plain Jane" vehicle, which is commonly used in drug trafficking. He testified that the vehicle appeared to be a "plain Jane" because the vehicle was five to ten years old; there was no license plate bracket; and no dealer information appeared on the vehicle. At the beginning of his conversation with Defendant, Aguirre stated that "the reason I stopped you is your license is coming back suspended. Ok. What's your name? Lewis yeah it's you. Ok I see your PennDot picture that's how I know to stop you." MVR at 1:43. Aguirre began by asking for his license and insurance information and why his license is suspended. *Id.* 2:10. Aguirre then asked "where he was coming from," "where he lives at," and "where he is going." *Id.* at 2:40. Aguirre spends over a minute talking about the suspension and insurance issues. *Id.* at 3:00-4:00. Less than five minutes into the stop Aguirre returned to his vehicle to run Defendant's information. *Id.* at 5:02.

Aguirre testified that, other than the vehicle being a “plain Jane,” there was a large bag of clothes in the vehicle, currency splayed throughout, only a single key in the ignition, multiple air fresheners, two cellphones within immediate reach of Defendant, and Defendant would not make eye contact and was speaking quietly. Aguirre testified that based on his training and experience with narcotics investigations he knew all these signs to indicate narcotics trafficking. Based on everything, Aguirre then asked Defendant to exit the vehicle. *Id.* at 13:00. Also Aguirre asked if “for our safety can I pat you down just to make sure you don’t have any weapons on you?” *Id.* at 13:32. Defendant responded “go ahead” before Aguirre reaffirmed “I can?” and Defendant again said “yeah.” *Id.* at 13:40. Aguirre then went back to asking Defendant about how long he is up here, where he goes to school, and what his major is before returning to the issue of his license. *Id.* at 13:45-17:25. When discussing options of what to do with the car Aguirre asked Defendant “let me ask you this do you have anything in the car you are not supposed to have.” *Id.* at 19:17. Aguirre asked “would you mind if I looked in there?” and asked again “I can search your car?” which Defendant responded in the affirmative. *Id.* at 19:27. Aguirre stated “I’m just asking for your consent you can tell me no.” *Id.* at 20:41. Then after he explained consent and Defendant does consent, Aguirre stated because Defendant is being cooperative with him, after he checks the car, he will not give him a ticket and let him call someone. *Id.* at 21:30. Aguirre then read Defendant the Waiver of Rights and Consent to Search form, Commonwealth’s Exhibit #2, which Defendant then acknowledged and signed. *Id.* at 24:15-26:15. When Aguirre searched the trunk, he discovered a large amount of glassine baggies with a middle finger stamp and a bundle containing six of the same baggies with suspected heroin in them. Defendant was then arrested.

## **Whether the Stop of the Vehicle was Constitutionally Valid**

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.* “Traffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose.” *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010). “[I]n order to establish reasonable suspicion, an officer must be able to point to specific and articulable facts which led him to reasonably suspect a violation of the Motor Vehicle Code.” *Commonwealth v. Holmes*, 14 A.3d 89, 96 (Pa. 2011). In contrast, a vehicle stop that does not require further investigation to determine whether a violation has occurred requires an officer to “have probable cause to make a constitutional vehicle stop.” *Commonwealth v. Chase*, 960 A.2d 108, 116 (Pa. 2008). In *Hilliar*, the Pennsylvania Superior Court determined that reasonable suspicion existed to conduct a vehicle stop when the officer witnessed “a middle aged man, which matched the description of the owner of the vehicle” driving the vehicle and that reasonable suspicion, not probable cause, was the appropriate standard to conduct a stop for such a violation. *Commonwealth v. Hilliar*, 943 A.2d 984, 989-91 (Pa. Super. 2008).

Aguirre testified that he ran the vehicle information and his in car system showed the driver of the vehicle had a license suspension. When Aguirre drove beside the vehicle he stated that individual driving the car appeared to be same individual that was shown on his screen. At this point, as in *Hilliar*, reasonable suspicion existed to conduct a stop of the vehicle for further investigation. Although Aguirre only passed by for a few seconds he could see into the vehicle and look at the driver as he had a photo of the suspended owner on the screen. Those specific

and articulable facts are sufficient to establish a reasonable suspicion of a motor vehicle violation.

### **Whether Detention of Defendant Evolved into a Custodial Detention Prior to His Consent**

Defendant alleges that he was in custodial detention prior to giving his consent to search the vehicle. That this detention was a violation of his constitutional rights and 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 typical factors considered in determining whether an encounter is investigatory or custodial are (1) the crime suspected and the grounds for suspicion, (2) the duration of the detention, (3) the location of the detention, (4) whether the suspect was transported against his will and how far and why, (5) the method of detention, (6) the show, threat or use of force, and (7) the investigative methods used to confirm or dispel suspicions. *In Interest of S.J.*, 713 A.2d 45, 47 (Pa. 1998).

Aguirre was originally conducting a stop for driving while suspended, but based on the “plain Jane” vehicle, the money scattered throughout the vehicle, the numerous air fresheners, two cellphones in Defendant’s reach, the single key in the ignition, and Defendant’s behavior, based on his training and experience Aguirre determined that the stop needed to be extended under suspicion of drug activity. *See Commonwealth v. Kemp*, 961 A.2d 1247, 1254 (Pa. Super. 2008) (A police officer may extend a stop and detain an individual in order to conduct an

investigation if that officer reasonably suspects that the individual is engaging in criminal conduct). The duration of the stop was twenty minutes until Defendant gives consent to search the vehicle and then approximately another thirty minutes until Defendant is arrested, which is not per se impermissible, and in light of the circumstances this Court finds was reasonable. *See Commonwealth v. Freeman*, 150 A.3d 32, 44 (Pa. Super. 2016) (Detention while officers were waiting for a drug K9 unit was over an hour). The detention occurred in broad daylight off the side of a busy highway and therefore was not a coercive environment to the Defendant. Defendant was directed out of his car and to the side of the road, which Aguirre testified was for Defendant's safety due to the close proximity to the highway.<sup>6</sup> *See Commonwealth v. Palmer*, 145 A.3d 170, 173 (Pa. Super. 2016) ("It is well-settled that officers conducting a valid traffic stop have an absolute right to ask the occupants of a vehicle to step out of the car for the duration of the traffic stop."). Defendant was allowed to move of his own accord, he was not handcuffed, and was sitting on a barrier as is demonstrated in the MVR. Aguirre and the officer with him did not pull their guns, they did not act in a menacing manner towards Defendant, and they did not overly crowd Defendant's space, which would coerce the Defendant into believing it was a custodial detention.

Lastly Defendant contends that the case *Ingram* is "strikingly similar." *See* Defendant's Brief in Support of Motion to Suppress Evidence 6/14/19, at 5. This Court disagrees and believes the two cases are very distinguishable. In *Ingram*, police received a report that an individual was unlawfully using another's vehicle and gave a description of the individual and what he was wearing and told officers that he was carrying a gun. *Commonwealth v. Ingram*, 814 A.2d 264, 268 (Pa. Super. 2002). The officers found an individual matching the description

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<sup>6</sup> It should also be noted Defendant would not have been allowed to drive the car away due to his license suspension.

near the vehicle and stopped him. *Id.* The defendant then was patted down for any firearms and when the officer felt something in his pocket, asked what the item was, which the defendant replied “chronic.” *Id.* at 268-69. The officer then pulled the marijuana out of the defendant’s pocket, arrested him, handcuffed him, and continued to search him. *Id.* at 269. Defendant in the present case was not handcuffed prior to his arrest and his pat down was brief and he gave his consent to the pat down. Regardless Defendant’s argument is erroneous as the court found both the investigatory detention and the purpose for the conducting of the pat-down proper, but merely the manner in which it was performed was improper. *Id.* at 270-71. Therefore this Court is not persuaded by the precedent. Additionally since Defendant was not in custodial detention until the contraband was found, Defendant’s arguments on the voluntariness of consent are also meritless. *See* Defendant’s Brief in Support of Motion to Suppress Evidence 6/14/19, at 6-7.

### **Conclusion**

Aguirre had the requisite reasonable suspicion of a motor vehicle violation to stop Defendant. He then during the process of his traffic stop gathered specific and articulable facts of drug activity, which warranted further investigative detention. The investigative detention did not become a custodial detention at any time prior to Aguirre finding the contraband. Because Defendant was not subject to a custodial detention his consent to search was knowing, intelligent, and voluntary. Therefore, Defendant’s Motion to Suppress Evidence shall be denied.

**ORDER**

**AND NOW**, this 23<sup>rd</sup> day of July, 2019, based upon the foregoing Opinion,  
Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (AG)  
Peter Campana, Esquire

NLB/kp