

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-585-2019
vs. :
:
RASHEED BROWN, : Motion to Suppress
Defendant :

OPINION AND ORDER

Defendant is charged by Information with Possession With Intent to Deliver and related charges. On July 1, 2019, Defendant filed a motion to suppress. Hearings were held on October 10, 2019 and November 1, 2019. A hearing was scheduled for January 6, 2020 to take the testimony of the remaining witnesses. Defendant chose not to call any additional witnesses. Accordingly, the record was closed on January 6, 2020, and this matter is ripe for a decision.

According to the Affidavit of Probable Cause, the charges stem from an incident that allegedly occurred on or about May 6, 2019. At or about 10:30 p.m. while patrolling the area of the 700 Block of West Edwin Street traveling westbound, Officer Trafford of the Williamsport Bureau of Police observed Defendant traveling eastbound. Officer Trafford knew that Defendant did not have a valid driver's license but was still driving and accordingly he followed Defendant.

Defendant parked the car in the 500 Block of West Edwin Street and immediately got out of the car in a hurry, leaving the keys in the ignition and walking hastily south on Center Street.

Knowing Defendant did not have a valid license, Officer Trafford started

questioning Defendant from his police vehicle. Defendant told Officer Trafford that the vehicle did not belong to him; he did not know the name of the owner. Officer Trafford then called Officer Caschera also of the Williamsport Bureau of Police for backup.

When Officer Caschera arrived, they had Defendant stand while checking the vehicle registration. The owner of the vehicle eventually arrived and stated he didn't know the person who was driving and only knew the person as "J.R." The owner gave Officer Trafford consent to search the vehicle for narcotics.

Defendant argues that Officer Trafford's directive to him to remain with Officer Caschera and to have Officer Caschera stay with Defendant constituted a custodial detention without the requisite probable cause. Alternatively, he argues that the interaction constituted an investigatory detention without the requisite reasonable suspicion. Accordingly, he argues that, under either scenario, the interaction was illegal and that all evidence obtained following the stop must be suppressed.

Additionally, Defendant argues that the vehicle's owner's consent to search was invalid and, as result, the items obtained from the vehicle must be suppressed.

At the November 1, 2019 hearing in this matter, Officer Trafford testified that he was in duty in full uniform in a marked patrol unit on April 6, 2019 and that while he was traveling on West Edwin Street he noticed Defendant driving a vehicle in the opposite direction. Through a prior interaction with Defendant in March of that year he was aware that Defendant did not have a valid driver's license.

He followed Defendant's vehicle until it stopped on Center Street where

Defendant parked it. Defendant then got out of the vehicle and started walking south on Center Street. Based on his experience, Officer Trafford concluded that Defendant was trying to elude him by walking quickly away.

Officer Trafford drove his patrol vehicle next to Defendant. While Officer Trafford was in his vehicle and while Defendant was walking, Officer Trafford engaged Defendant in conversation by asking him: "Rasheed, what are you doing driving"? Defendant responded that he was just dropping off a friend's car. Officer Trafford then got out of the vehicle, approached Defendant, and asked him whose car he was driving. Defendant appeared nervous and short of breath. Defendant was hesitant in answering the question and appeared evasive stating that he did not know whose car he was driving and that he had known the owner for only a couple of weeks.

Officer Caschera had been dispatched to the scene and soon arrived. Officer Trafford informed Defendant that he was not free to leave and asked Officer Caschera to stay with Defendant while Officer Trafford investigated the incident further.

Officer Trafford ran the registration on the vehicle and it came back to an individual by the name of Cherokee Hamilton, who resided in Lock Haven. While looking into the vehicle, Officer Trafford noted that the key still in the ignition. At around this time, Mr. Hamilton appeared on the scene and asked why Officer Trafford was looking in the vehicle. At around this time, Officer Joshua Bell of the Williamsport Bureau of Police also arrived.

While the officers were on the scene with Defendant and Mr. Hamilton, Mr.

Hamilton indicated that he did not know who was operating the vehicle and that he “only” knew him as “J.R.” Mr. Hamilton agreed to allow the officers to search the vehicle. Mr. Hamilton’s consent was, according to Officer Trafford, “clearly” knowing, intelligent and voluntary. The search of the vehicle uncovered approximately four grams of crack cocaine and 15 separate packets of powder cocaine located in the center console.

Soon thereafter, Defendant was taken into custody. The entire incident from the time that Officer Trafford decided to get out of the vehicle until Defendant was in custody lasted approximately 15 minutes.

When evaluating the level of interaction between law enforcement and a citizen to determine if a seizure occurred, the courts must conduct an objective examination of the totality of the surrounding circumstances. *Commonwealth v. Lucski*, 212 A.3d 530, 543 (Pa. Super. 2019). The court must consider all of the circumstance surrounding the encounter to determine whether the demeanor and conduct of the police would have communicated to a reasonable person that he was not free to decline the officer’s request or otherwise terminate the encounter. *Id.*

The following are non-exclusive factors that the courts may consider:

the number of officers present during the interaction; whether the officer informs the citizen that he is suspected of criminal activity; the officer’s demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officers; and the questions asked.

Id. (quoting *Commonwealth v. Newsome*, 170 A.3d 1151, 1155 (Pa. Super. 2017)).

Generally, there must be “some level of coercion, beyond the officer’s mere

employment, that conveys a demand for compliance or a threat of tangible consequences from refusal.” *Id.* at 544.

An investigative detention constitutes a seizure and requires reasonable suspicion. *Id.* Reasonable suspicion exists only when the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those reasonable observations, lead him to reasonably conclude, in light of his experience that criminal activity was afoot and that the person that he stopped was involved in that activity. *Id.* The inquiry is not limited to those facts that clearly indicate criminal conduct; even a combination of innocent facts when taken together may warrant further investigation by a police officer. *Id.* at 545.

An arrest or a custodial detention requires probable cause. *Id.* Probable cause is made out when the facts and circumstances within the knowledge of the officer at the time of the arrest, and of which the officer has reasonably trustworthy information, are sufficient to warrant an officer of reasonable caution in the belief that the suspect has committed or is committing a crime. *Id.* The courts require a probability, not a prima facie showing a criminal activity. *Id.*

Importantly, although cases involving similar or comparable seizure determinations may serve as guideposts, a suppression court must independently employ a totality of the circumstances test. *Id.* No single factor controls. *Id.*

In this case, Defendant’s initial statements to Officer Trafford while Officer Trafford remained in his police vehicle and while Defendant was walking away from the

vehicle Defendant had been driving were made during a mere encounter. As Defendant was not detained when these statements were made, they are not subject to suppression.

Clearly, Officer Trafford had probable cause to believe that Defendant was unlawfully operating a motor vehicle based on Officer Trafford's knowledge regarding Defendant's inability to lawfully operate a motor vehicle and his observations of Defendant unlawfully doing so. Therefore, Officer Trafford lawfully detained Defendant to address this Vehicle Code violation.

The court rejects Defendant's claim that Defendant being directed to wait with Officer Caschera constituted a custodial detention or arrest. Rather, it constituted an investigative detention. While the officers were in uniform, armed and driving patrol vehicles, the entire interaction only lasted approximately 15 minutes. While Defendant was directed to remain, that is not determinative. He was not handcuffed. He was neither placed in a patrol unit nor transported against his will. The officer's demeanor and tone of voice was investigatory, the questions asked were investigatory, the conduct of the police officers was investigatory and the entire interaction happened in public, albeit late in the evening.

Because the court concludes that the interaction was an investigative detention, the Commonwealth must prove that it was supported by reasonable suspicion. The court concludes that reasonable suspicion existed because Officer Trafford was able to articulate specific observations, which, in conjunction with reasonable inferences derived from those observations, led him to reasonably conclude in light of his experience that criminal activity was afoot and that the person he stopped was involved in that activity.

First, Officer Trafford knew that Defendant did not have a license to drive a vehicle yet was doing so. The defendant had previously been stopped by the officer and it was confirmed that the defendant did not have a license. As well, the officer was aware that Defendant had prior convictions for drug trafficking and drug possession. Second, it was late at night in an area of the city that was a known drug trafficking area. Defendant parked the vehicle in a residential area, quickly exited the vehicle and left the keys in the ignition. The reasonable inference was that he was trying to avoid Officer Trafford. When Defendant was confronted, he indicated that he was dropping off the vehicle for a friend but did not know the friend's name. The owner of the vehicle also could not identify Defendant by name even though Defendant was driving his vehicle. According to Officer Trafford, it is not uncommon in drug investigations for individuals to not know or not name the true names of those with whom they are associating. Upon being confronted with the prospect of further investigation Defendant was nervous, anxious and evasive.

Based on all of these facts and circumstances, viewed in a common sense manner through the lens of Officer Trafford's training and experience, the court concludes that Officer Trafford had reasonable suspicion to believe that Defendant was engaged in illegal activity; namely drug trafficking. This reasonable suspicion allowed Officer Trafford to detain Defendant to investigate further. Accordingly, the court rejects Defendant's claim that Defendant's detention was illegal.

Defendant next asserts that the items obtained from the search of the vehicle must be suppressed because the owner's consent to search was invalid. Defendant did not

allege in his suppression motion how or why the owner's consent was invalid.

“It is well established that the government may search a vehicle without a warrant or probable cause if the owner of the vehicle voluntarily consents to the search.” *Commonwealth v. Yedinak*, 676 A.2d 1217, 1220 (Pa. Super. 1996); see also *U.S. v. Schofield*, 80 Fed. Appx. 798 (3d Cir. Pa. 2003), *cert. denied*, 124 S.Ct. 2051 (U.S. Pa. 2004)(owner's consent to search trumped objection of defendant driver).

Officer Trafford testified that Mr. Hamilton, the owner of the vehicle, voluntarily agreed to allow the officers to search the vehicle. Defendant did not present any factual basis or legal argument to dispute Officer Trafford's credible testimony. Therefore, the court rejects Defendant's claim that the owner's consent was invalid.

ORDER

AND NOW, this ___ day of January 2020 following a hearing and argument, the court **DENIES** Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Michael Sullivan, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File