

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1261-2019
vs. :
:
WILLIAM BROWN, : Motion to Suppress
Defendant :

OPINION AND ORDER

By Information filed on September 13, 2019, Defendant is charged with possession of controlled substance contraband by inmate, a felony of the second degree, and possession of a controlled substance, an ungraded misdemeanor. He was committed to the Lycoming County Prison in lieu of bail on August 9, 2019. He filed a motion to suppress on October 28, 2019. The hearing on the motion was held on January 6, 2020.

On August 9, 2019, at approximately 5:50 p.m., Officer William McInnis of the South Williamsport Police Department was on patrol in a marked unit patrolling Route 15 Highway in South Williamsport. His attention was drawn to a red Chevrolet vehicle traveling on Route 15 near the Beiter’s Furniture store. While patrolling, he routinely checks the registration status of vehicles. He noticed the red Chevrolet and ran its registration through J-Net. According to Officer McInnis, the registration check came back as “no record found.”

He explained that if a registration check comes back as “no record found”, it could be for numerous reasons either “innocent” or “non-innocent.” As a result and wanting to investigate further, he stopped the vehicle.

Following the stop of the vehicle, he discovered that Defendant was the

passenger in the vehicle and that there were warrants for Defendant's arrest. He took Defendant into custody. Defendant was searched incident to the arrest but no contraband was found. Defendant was subsequently taken to the Lycoming County Prison. At that time, contraband was allegedly found in Defendant's boxer briefs.

Officer McInnis conceded that his affidavit of probable cause did not include the reason why he conducted a vehicle stop on the red Chevrolet. He conceded as well that following the stop of the vehicle, he determined that the registration was "valid."

Defendant testified at the suppression hearing. He indicated that he was a passenger in the front seat when the vehicle was stopped by Officer McInnis.

He recalled Officer McInnis approaching the vehicle and asking the driver, William Marshall, for his driver's license, registration and insurance. Mr. Marshall handed Officer McInnis the paperwork. Mr. Marshall asked Officer McInnis why he was stopped to which Officer McInnis said that he ran the registration, it came back from the Philadelphia area and he wanted to know what the driver "was doing."

William Marshall also testified. He admitted to driving the vehicle and to being stopped by Officer McInnis. He gave Officer McInnis the requested information and asked why he was pulled over. Officer McInnis indicated that the registration "came back as registered in Philadelphia" and he walked away with Mr. Marshall's paperwork.

Mr. Marshall conceded that he and Defendant had been friends for two years, and they used to see each other a couple times per week but that they haven't talked or communicated since Defendant was incarcerated on August 9, 2019.

On cross-examination he conceded that at the time of the stop, he possessed a bottle of drug free urine. He was scheduled for a pre-employment drug test and was concerned. The drug free urine was not for Defendant's use.

He indicated as well that he was confused regarding Officer McInnis' remark about the registration being from the Philadelphia area. The car was registered to his mother who resides in Linden, Lycoming County.

Following the testimony of Defendant and Mr. Marshall, Officer McInnis testified in rebuttal. He specifically recalled the registration check coming back as "no record found." While he conceded that there may have been "trivial talk" about Mr. Marshall being from Frackville and "maybe" asking Mr. Marshall if that was near Philadelphia, he did not recall any conversation about the registration coming back from the Philadelphia area.

He restated that the reason he stopped the vehicle was to investigate the registration status because it came back "no record found." He did not provide any testimony to contradict the defense testimony that Mr. Marshall provided the requested paperwork.

Defendant argues that the stop of the vehicle was illegal as it was not supported by sufficient reasonable suspicion. The parties do not dispute the applicable law.

The police officer's statutory authority to stop a motor vehicle is codified in Section 6308 (b) of the Motor Vehicle Code. Specifically, when a police officer has reasonable suspicion that a violation of the [Code] is occurring or has occurred, he may stop a vehicle. 75 Pa. C.S. § 6308(b). In interpreting this subsection, the courts of this

Commonwealth have concluded that a vehicle stop based solely on reasonable suspicion of a motor vehicle violation “must serve a stated investigatory purpose.” The investigatory purpose must be to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of the [Code]. *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010) (en banc), *appeal denied*, 25 A.3d 327 (Pa. 2011); *Commonwealth v. Bozeman*, 205 A.3d 1264, 1270 (Pa. Super. 2019).

As well, it is within the suppression court’s sole province as factfinder to pass on the credibility of witnesses and the weight to be given to their testimony. The suppression court is free to believe all, some or none of the evidence presented at the suppression hearing. *Bozeman, id.* (citing *Commonwealth v. Elmobdy*, 823 A.2d 180, 183 (Pa. Super. 2003)(citation omitted), *appeal denied*, 847 A.2d 58 (Pa. 2004)).

There is no dispute that when Officer McInnis activated the lights on his police vehicle and stopped Mr. Marshall’s vehicle, Defendant was subjected to an investigative detention which needed to be supported by reasonable suspicion. *Commonwealth v. Fuller*, 940 A.2d 476, 479 (Pa. Super. 2007). Reasonable suspicion exists where an officer’s observations and reasonable inferences, in light of his experience, lead to the reasonable conclusion “that criminal activity was afoot and that the person he stopped was involved in that activity.” *Commonwealth v. Chambers*, 55 A.3d 1208, 1215 (Pa. Super. 2012). An investigatory detention may continue only so long as necessary to confirm or dispel such suspicion. The asserted grounds for an investigatory detention must be evaluated under the totality of the circumstances. *Commonwealth v. Hicks*, 208 A.3d 916, 927 (Pa.

2019). The totality of the circumstances “includes consideration of all of the facts and circumstances, including rational inferences derived from those facts, that bear upon a reasonable officer’s belief as to whether criminal activity may be afoot.” *Id.* at 938. Based upon the totality of the circumstances—the whole picture—the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Id.* (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

In determining whether Officer McInnis had reasonable suspicion, the court must consider all of the relevant circumstances. Officer McInnis testified that he ran the registration on J-Net and it came back “no record found.” He testified further that when he runs a vehicle registration and it comes back “no record found”, he conducts a further investigation. He indicated that he conducts a traffic stop and did so in this case because the Vehicle Code requires a vehicle to have a registration.

Officer McInnis noted that there were multiple ways to run a registration check. For example, it could be run through dispatch or alternatively, it could be run on J-Net. He noted that the courts would not recognize the registration as being suspended or expired without the J-Net certification.

In explaining what a “no records found” response from J-Net may mean, Officer McInnis noted that it “could be an issue on their part.” Specifically, he acknowledged that it could have been a mistake through PennDOT. Alternatively, it could have been a violation of the Vehicle Code.

In this particular case, after stopping the vehicle, he determined that the

registration was valid. Yet, when he ran the registration on J-Net through his “Ipad console in the car”, it indicated “no record found” when the screen popped up. Officer McInnis was sure that there was no conversation about the registration coming back from Philadelphia. The registration card in the vehicle that was given to Officer McInnis verified that it was registered to Mr. Marshall’s mother who resided in Linden, Lycoming County.

As previously noted, the seizure of a motorist for the purposes of further investigation must be supported by reasonable and articulable suspicion. In applying the totality of the circumstances test, the courts have consistently eschewed bright line rules, instead emphasizing the fact specific nature of the reasonableness inquiry. *Commonwealth v. Cost*, J-70-2019, 39 EAP 2018, 2020 WL 354975, *7 n.8 (Pa., January 22, 2020) (citing *Ohio v. Robinette*, 519 U.S. 33, 34, 117 S. Ct. 417, 419 (1996)).

In this case, the court is confronted with the reality that the record is somewhat scant and leaves many questions unanswered. More specifically, the court has little if no information as to what the term “no record found” indicates. When Officer McInnis was asked what it signified to him, he noted that, “it could be a couple things.” He elaborated that he didn’t know or have any knowledge as to how the J-Net process worked. He simply punched the seven digits into the terminal, hit send, and “what [came] back, [came] back.” Although he could not say for sure because he didn’t know how the algorithms for J-Net worked, it could possibly mean that the car was recently transferred.

The precise issue before the court is whether when an officer checks the registration on a vehicle through J-Net and it comes back as “no records found”, it leads to

the reasonable conclusion that a violation of the Motor Vehicle Code had or was occurring.
75 Pa. C.S.A. § 6308 (b).

The court cannot conclude such especially in light of the scant, if not nonexistent, evidence explaining what the term meant. The term “no record found”, according to the officer, could mean anything. It could mean that there was some type of error in the computer system. It could mean that there was some type of error in the records system. It could mean that there was a registration but it could not be found. It could mean that the officer punched in the wrong seven digits or that he punched in the correct digits but in an incorrect sequence. The absence of a meaning does not provide reasonable suspicion that a violation had occurred.

Furthermore, when the unknown meaning of “no record found” is combined with the fact that Officer McInnis did not mention any registration issue in his affidavit of probable cause or his initial narrative,¹ the court is unable to find that the Commonwealth has met its burden of proof to show that Officer McInnis had reasonable suspicion to believe that the vehicle Mr. Marshall was driving was not registered.

Reasonable suspicion requires some articulable facts that cause the officer to believe that a violation had or was occurring. As such an articulable fact was not present in this case, the stop was unlawful.²

¹ Officer McInnis filed a supplemental narrative on October 31, 2019, which was three days after Defendant filed his motion to suppress challenging the basis for the stop.

² It also appears that Officer McInnis retained the paperwork, returned to his vehicle and continued to investigate Mr. Marshall and Defendant even after Mr. Marshall handed him a valid registration card for the vehicle.

ORDER

AND NOW, this ____ day of February 2020, following a hearing and argument, Defendant's Motion to Suppress is **GRANTED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Devin Walker, Esquire (ADA)
Howard Gold, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File