

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-60-2020**
v. :
 :
ANTHONY BOOKER, : **OMNIBUS MOTION**
Defendant :

OPINION AND ORDER

Anthony Booker (Defendant) was charged with Possession with Intent to Deliver¹, Resisting Arrest², Possession of a Controlled Substance³, Possession of Drug Paraphernalia⁴, and summary offenses under the Vehicle Code. The charges arise from police attempting to pull over the car Defendant was travelling in for driving without illuminated taillights at night. Defendant filed this timely Omnibus Pre-trial Motion on December 18, 2020. This Court held a hearing on the motion on August 26, 2021.

In his Motion, Defendant raises three issues. The first issue Defendant asserts is that police's warrantless entry into the home to arrest him was unlawful. Defendant's second issue is, even if Defendant's arrest was proper, the search of the coat in question was not a valid search incident to arrest. Lastly, Defendant argues that, even if his arrest was proper, the search of his vehicle was not a valid search incident to arrest. Defendant requests this Court to suppress all evidenced seized by law enforcement on the night in question.

Background and Testimony

Officer Andrew Stevens (Stevens) and Officer Zachary Geary (Geary) of the Williamsport Bureau Police Department testified on behalf of the Commonwealth. On January

¹ 35 Pa.C.S. § 780-113(a)(30).

² 18 Pa.C.S. § 5104.

³ 35 Pa.C.S. § 780-113(a)(16).

⁴ 35 Pa.C.S. § 780-113(a)(32).

1, 2020 at approximately 8:30 p.m., Stevens was on duty with Officer Zachary Geary (Geary) in a marked vehicle and in uniform. Stevens and Geary were patrolling the 600 block of Locust Street in the city of Williamsport when they observed a silver Volkswagen make a left turn to go south on Locust Street. The vehicle did not have any rear illumination as required at this time of night. The officers attempted to make a vehicle stop based on the traffic violation and activated the emergency lights to indicate the Volkswagen driver needed to pull off to the side of the road. The officers also shone a headlight onto the vehicle so the driver had additional confirmation the Volkswagen was the car that needed to stop. However, the car continued into the Roundhouse apartment complex and parked in front of apartment 402. The driver, later identified as Defendant, exited the vehicle without turning the engine off. Geary testified that he exited the patrol vehicle as Defendant exited his car.

Geary and Stevens instructed Defendant to stop and return to his vehicle but Defendant ignored them and continued to approach apartment 402. Both officers chased after Defendant on foot with Geary in the lead closest to Defendant's retreating position. Neither Stevens nor Geary knew anything about Defendant or if apartment 402 was his residence at this time. Stevens further testified that Defendant opened the screen door to apartment 402. Stevens noted that Defendant did not use a key to gain access to the apartment. Stevens and Geary both testified that Geary was able to grab onto Defendant's coat as he attempted to enter the apartment threshold in his endeavor to evade the police. Defendant tried to close the door on Geary which caused the screen door to hit Geary's arm, sandwiching Defendant and Geary between the screen door and the main door. Geary stated that Defendant opened the main door and moved his arms backward to slide his body out of the coat. The coat was left in the sweep of the door when Geary continued to attempt to apprehend Defendant.

Defendant turned left to go up a staircase but Geary grabbed Defendant's shirt as he attempted to go up the steps. A struggle between the two ensued to bring Defendant into custody. Geary deployed his Taser on Defendant to bring him back down the stairs. When Defendant resisted being put in handcuffs, Stevens tased Defendant and Defendant was eventually taken into custody. Geary walked Defendant back to the patrol car while Stevens walked with them. Geary instructed Stevens to get the jacket that Defendant had been wearing. Stevens retrieved the coat after Defendant was handcuffed and conducted a search incident to arrest. Stevens testified he did so because he was concerned for officer safety because Defendant's behavior was out of the ordinary. Stevens located suspected crack cocaine inside small baggies in one of the pockets. Stevens testified that he did not hear a woman scream that the coat did not belong to Defendant. Stevens also testified that he did not recall Defendant saying that he could not put one of his arms behind his back because of a shoulder injury. Stevens conceded that if Defendant had not entered the apartment, Stevens would have had no reason to go in there. Geary stated he did not personally search Defendant's car and could not recall if it was searched. Stevens and Geary testified they had many safety concerns that evening, particularly because it was not normal for an individual to leave a vehicle and keep the engine running. Geary clarified that he had injured his hand on the screen door during the incident and went to the hospital afterwards for treatment.

Defendant testified on behalf of himself at the hearing on this motion. Defendant noted that he lived in apartment 402 where he was taken into custody and had been living there for three (3) months. Defendant stated that he was not wearing a coat and instead only wore a Converse hoodie sweatshirt and a thermal. Defendant claimed that he was through the threshold of the apartment before the police entered. He testified that he was through the doorway and

had turned left to begin ascending the staircase that is close to the door. Defendant said he placed a foot on the first step but was snatched backwards by the police holding onto the hood of his sweatshirt. Defendant testified that, once police grabbed his clothing, he tried to grab onto the walls to regain his balance and knocked coats off hooks located near the door. Defendant believed that the coat the police took custody of was never worn by him on the night in question, but was taken from inside the apartment after it fell off the hooks. Defendant testified that no clothing was removed from him that night.

The Commonwealth submitted the MVR footage of this incident, marked as Commonwealth's Exhibit 1. This footage establishes the following. A silver Volkswagen makes a left turn in front of the police car. Once the turn is completed, it is clear that the Volkswagen does not have proper illumination in its rear lights. On the second showing that the car does not have proper lights, the emergency lights on the patrol car are activated. A bright headlight is directed onto the vehicle. Instead of pulling over, the Volkswagen continues its travel and navigates into a parking space. The exhaust is still emitting smoke when the driver exits the vehicle, indicating that the car's engine is still running. The police tell the driver to get back in the car. When he does not listen, Geary begins pursuit with his Taser in hand. They exit the view of the MVR footage but a woman can be heard screaming inaudibly in the background. For approximately one minute of the recording, the microphones pick up bits and pieces of the officers' conversations with Defendant and the other residents of the house. Defendant is lead out of the house in handcuffs and is wearing a black Converse sweatshirt. Geary says, "grab that jacket I pulled off him." Shortly afterwards, the officers' microphones are shut off and no additional sound is detected. A few more officers arrive on scene while Geary supervises Defendant in front of the police vehicle. Stevens retrieves the jacket as Geary

instructed and begins going through the pockets. Stevens removes a small bag with suspected narcotics from the pocket of the jacket. A few officers begin searching the entire vehicle and retrieve Defendant's cell phone. Eventually, an officer gets into the driver's seat of Defendant's vehicle and drives it out of sight of the camera, purportedly to bring it to the police station.

Analysis

Warrantless Entry into Home

Defendant challenges law enforcement's warrantless entry into his residence in order to arrest him. The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; P.A. Const. art. 1, § 8. Warrantless searches are unreasonable per se, "subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). One such exception arises when "the exigencies of the situation" create "a compelling need for official action and no time to secure a warrant." Kentucky v. King, 563 U.S. 452, 460 (2011); Missouri v. McNeely, 569 U.S. 141, 149 (2013). An exigency of this kind may occur when "an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape." Lange v. California, 141 S.Ct. 2011, 2013 (2021). The United States Supreme Court has upheld a warrantless entry made during hot pursuit of a felony suspect for an arrest initiated in a public place. United States v. Santana, 427 U.S. 38, 42-43 (1976). However, "the law regarding warrantless entry in hot pursuit of a fleeing misdemeanor is not clearly established." Stanton v. Sims, 571 U.S. 3, 8, 10 (2013). Generally, law enforcement is not justified in conducting a warrantless entry on an individual suspected of a minor offense that has not fled the scene. See Welsh v. Wisconsin, 466 U.S. 740 742-43

(1984). Therefore, a case-by-case, totality of the circumstances analysis of exigency supporting a warrantless entry following the flight of a misdemeanor is necessary.

Defendant alleges that the warrantless entry into his home to reprimand an individual alleged to have committed a summary violation of the Motor Vehicle Code was not justifiable. Defendant cites to Lange v. California, 141 S.Ct. 2011 (2021) to support his argument that the police had no justification in entering the apartment to arrest Defendant. In the Lange case, the defendant drove past a police officer while playing loud music and honking his horn. Id. at 2013. The officer began following defendant and soon signaled that defendant should pull over, but instead of stopping, defendant drove a little further to his driveway and went inside his garage. Id. The officer followed defendant into the garage and began to question him. Id. The officer believed he observed defendant exhibited signs of intoxication and had defendant undergo field sobriety tests. Id. The defendant eventually submitted to a blood test that showed defendant's blood-alcohol content was three times beyond the legal limit. Id. Lange was charged with a misdemeanor driving under the influence and he moved to suppress the evidence gathered after the officer entered defendant's garage. Id. The defendant argued that this entry violated his Fourth Amendment rights. Id. The United States Supreme Court held that the pursuit of a fleeing misdemeanor suspect does not categorically justify a warrantless entry into a home. Id. In light of the holding in Lange, Defendant argues that the police lacked justification to make the warrantless entry to arrest him for a mere summary traffic violation. Therefore, Defendant contends that any evidence seized as a result of law enforcement's entry into his residence should be suppressed.

The Commonwealth argues that the police were justified in pursuing Defendant into the home without a warrant. The Commonwealth concedes that Lange is relevant to this case in

that hot pursuit alone is not enough to create exigency. However, the Commonwealth believes that proper exigency was established in the immediate instance for several reasons. Defendant knew that Stevens and Geary were police officers and that they were attempting to pull him over. Defendant tried to flee a lawful traffic stop and was legally detained when the officers told him to stop and get back into his car. The Commonwealth asserts that Defendant's behavior suggested active avoidance of the police. Therefore, the totality of the circumstances provided exigency for the police to pursue Defendant into the residence. Nevertheless, the Commonwealth further argues that this argument is not necessary because Geary made physical contact with Defendant prior to his entry into the apartment or directly at the threshold of the apartment. Furthermore, the Commonwealth asserts that that law enforcement had valid safety concerns over Defendant's behavior, in particular, they did not know if the home Defendant was attempting to enter was a random place to escape police or if it was actually his residence.

This Court agrees with the Commonwealth on this issue for the following reasons. Although Lange clearly applies to the case *sub judice*, the Court believes Defendant attempts to make a categorical rule out of the Supreme Court's decision. However, the Court believes the facts of this case demonstrate sufficient exigency to justify hot pursuit. In the Lange case, Lange committed no summary traffic violations while driving other than "asking for attention." Lange v. California, 141 S.Ct. 2011, 2016 (2021). Only after the officer entered the garage did he observe enough behavior to believe Lange was unlawfully intoxicated. In this case, Defendant had already committed a summary offense prior to Stevens and Geary's attempt to pull him over. As such, it was within law enforcement's right to conduct a traffic stop of Defendant's car for this infraction. Moreover, Defendant's conduct on the night in question escalated the situation unnecessarily. The police made it abundantly clear that Defendant was

required to pull over when they activated the overhead lights on the patrol car and shone a headlight into Defendant's vehicle. Defendant chose to ignore the justified stop and attempted to evade the officers by fleeing into his home before apprehension. However, the police were unsure if apartment 402 was Defendant's residence or a convenient escape. Geary briefly caught Defendant before he entered the apartment. Despite Defendant's testimony that he was not wearing the coat where the narcotics were found, both officers testified that the coat was taken off Defendant's person and their testimony is verified on the MVR footage as well. For these reasons, Defendant's argument on this issue fails and the warrantless entry into the home to arrest Defendant was supported by the totality of the circumstances and any evidence obtained pursuant to the entry and arrest shall not be suppressed.

Searches Incident to Arrest

Defendant asserts that even if his arrest were proper, the search of his coat was not a valid search incident to arrest. The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; P.A. Const. art. 1, § 8. Warrantless searches are unreasonable per se, "subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). "A search incident to a lawful arrest is one of the well-recognized exceptions to the warrant requirement." Commonwealth v. Rickbaugh, 706 A.2d 826, 836 (Pa. Super. 1998). The scope of such a search "extends not only to the arrestee's person, but also into the area within the arrestee's immediate control." Commonwealth v. Taylor, 771 A.2d 1261, 1271 (Pa. 2001). The United States Supreme Court has defined immediate control as "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence." Chimel v. California, 395 U.S. 752, 763

(1969). “Whether an item has been properly seized pursuant to a search incident to an arrest depends upon the facts of each case.” Commonwealth v. Bess, 382 A.2d 1212, 1214 (Pa. 1978).

Defendant believes that the search of the coat was not a valid search incident to arrest. The Defendant further argues that the coat was nowhere near Defendant or on his person at the time of his arrest and Defendant had no access to it at the time of the search. The Defendant states that the police report failed to indicate a concern that evidence was likely to be destroyed or found. Defendant seeks the suppression of evidence obtained from the coat. The Commonwealth argues the law does not prevent such a search of the coat because the coat was worn by Defendant and discarded or removed a few feet away from him. The Commonwealth believes that this exception to the warrant requirement is not so hyper-technical as to make this search unlawful. This Court agrees with the Commonwealth on this issue. Two (2) officers testifying consistently that the coat containing the narcotics was removed from Defendant’s person by Geary in his attempt to halt Defendant’s attempt to flee directly contradict defendant’s testimony that he was not wearing a coat that evening. Defendant was taken into custody close to where the coat was left following Defendant and Geary’s struggle at the threshold of the apartment. Defendant’s conduct raised significant safety concerns for the officers that evening and other people inside the apartment could have accessed the coat. Furthermore, Defendant’s behavior demonstrated he was a flight risk and the officers had no knowledge of what evidence or firearm may have been inside the coat within Defendant’s reach. Additionally, Geary’s testimony indicated that Defendant made deliberate actions to remove the coat from his person to enable his escape, thereby abandoning the coat in Geary’s hands. “It is axiomatic that a defendant has no standing to contest the search and seizure of items which he has voluntarily abandoned.” Commonwealth v. Byrd, 987 A.2d 786, 790 (Pa.

Super. 2009). “Although abandoned property may normally be obtained and used for evidentiary purposes by the police, such property may not be utilized where the abandonment is coerced by unlawful police action.” *Id.* at 791. Since this Court has already determined that law enforcement’s pursuit of Defendant was lawful, Defendant’s abandonment of his coat leaves him with no basis to suppress the evidence found therein. Therefore, this Court believes the search was valid incident to arrest and the evidence seized from the coat shall not be suppressed.

Lastly, Defendant contends that even if his arrest were proper, the search of his vehicle was not a valid search incident to arrest. The Commonwealth did not proffer a specific argument about this issue, so the Court assumes their position is that it is a valid search incident to arrest. However, the Court agrees with Defendant on this issue. The MVR footage in Commonwealth’s Exhibit 1 shows multiple officers searching the car while Defendant is in handcuffs at the front of the patrol vehicle under Geary’s supervision. The vehicle was not in Defendant’s immediate control so he could not have had access to the car to destroy any potential evidence or flee the scene. The facts of this case do not support the search of the vehicle as a valid search incident to arrest. Additionally, at the time the search was conducted, no probable cause or exigent circumstances existed to support a warrantless search. Unless the phone was found in plain view during the process of preparing the car to be towed, the phone was seized in violation of Defendant’s rights. However, as previously stated, no testimony or evidence establishing where in the car the phone was seized was provided to the Court. Furthermore, instead of having the vehicle towed, an officer got in the driver’s seat and drove it off himself. The officers had plenty of time to request a search warrant for the vehicle and

failed to do so. Therefore, in consideration of the evidence available to the Court on this issue, the evidence obtained from Defendant's vehicle shall be suppressed.

Conclusion

The Court finds that warrantless entry into Defendant's residence was supported by exigent circumstances. The Court also finds that the search of the coat was a valid search incident to arrest. Lastly, the Court finds that the search of Defendant's car was not a valid search incident to arrest.

ORDER

AND NOW, this 24th day of November, 2021, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **GRANTED IN PART AND DENIED IN PART**. It is **ORDERED** and **DIRECTED** that the suspected crack cocaine seized from Defendant's coat shall not be suppressed. It is **ORDERED** and **DIRECTED** that the phone obtained from the Defendant's vehicle and any evidence discovered therefrom shall be **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
PD (JF)
Law Clerk (JH)