

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-610-2022
v.	:	
	:	
JUMICHAEL K. DRUMMOND,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

JuMichael Drummond (Defendant) was charged by the Williamsport Bureau of Police on January 24, 2022 with one count of Possession with the Intent to Deliver (PWID)- cocaine,¹ one count of Possession of a Controlled Substance,² and one count of Tampering with Physical Evidence.³ The charges arise from a motor vehicle stop of a Chevy Cruze in which Defendant was a passenger. Defendant filed this timely Omnibus Pretrial Motion on June 14, 2022. The Motion alleges the Commonwealth did not have sufficient cause to believe that there was criminal activity to justify the stop of the motor vehicle and the subsequent detention of the driver and Defendant was illegal. As a result of that alleged illegal detention, any evidence obtained from Defendant was illegal as the fruit of the poisonous tree. A hearing on the Motion was held on January 24, 2023.

Background

At the hearing on the suppression motion, Narcotics Enforcement Unit (NEU) Detective Tyson Havens (“Havens”) was called first to testify. Although only working with the NEU for about 5 years, Havens had served previously for 25 years as a member of the Pennsylvania State Police (PSP) working in the area of narcotics law enforcement. Havens stated that he was

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 18 Pa. C.S. § 4910(a)(1).

working on February 25, 2021, and had planned to work in an undercover capacity that day. He had received information from two sources: (1) Captain Joshua Bell, of the Williamsport Bureau of Police (WBP), who shared with Havens that he suspected drug activity on the north side of the street; and (2) Trooper Robert Williamson, of the vice narcotics unit of the PSP, who told Havens that a confidential informant Williamson worked with informed him that a black male would be delivering controlled substances to Frank Beaghley at 325 High St. Apt. 4 around the same time they were surveilling that property.⁴ Havens was to relay information to the others if he saw anything so the others could make a traffic stop. Havens testified that he radioed WBP Officer Clinton Gardner (“Gardner”) and NEU Detective Jonathan Rachel (“Rachel”), who were riding together, what he observed. Havens said he saw a black male get out of the passenger side of a silver Chevy Cruze, look around in all directions, and then walk to the door of Apt. 4. The way the male was looking around was a “red flag” to him. He saw the male knock on the door, look around again and then go into Apartment 4 for about 30 seconds to a minute. Havens further testified he saw a resident of the building come out to tell the remaining occupant(s) of the Chevy that they had to move. The vehicle left the parking lot travelled down High Street, turned south on Elmira, turned around, and came back. The vehicle returned and pulled into the Highland lot. Havens observed the male exit the apartment, look around again, and get into the car. Havens observed the vehicle turn West onto High Street and then he observed Gardner and Rachel follow the vehicle.

Gardner and Rachel stopped the vehicle, but Havens was unable to see what the reason was for the stop. Havens arrived at the scene after the vehicle was pulled over. Defendant was in handcuffs, and Havens recognized JuMichael Drummond as being the Defendant. Havens

⁴ 325 High Street is the address of the Highland Apartments.

testified that he prepared a report, which would have been completed several days after the incident. Haven did not recognize or identify the male passenger exiting and re-entering the Chevy on High Street as Defendant; he was not able to recognize him until he saw him at the scene of the traffic stop. Havens testified he only described to Gardner and Rachel what he observed; he did not tell them to stop the vehicle. If the vehicle was to be stopped, it was up to them to decide to stop the car.

Rachel also testified at the suppression hearing. He stated that he and Gardner were working on February 25, 2021 in a marked patrol vehicle. This vehicle did not have an MVR camera. Rachel described that his role was to do a traffic stop as a uniformed presence or to be a uniformed presence. When asked why they performed the traffic stop, he testified that Havens observed suspicious drug activity in the area of Victoria Gardens. Rachel did not remember if Havens specified that Drummond was in the front seat or whether he was described as a black male. Rachel testified that the driver of the vehicle was Courtney Shearer. After he received the report from Havens, Rachel testified that he and Gardner traveled West on High Street behind the vehicle. As it approached Rose St. and the vehicle applied its brakes, Rachel and Gardner observed that the vehicle did not activate its turn signal at least 100 feet before turning onto Rose Street in violation of the Vehicle Code.⁵ He did not know the specific Vehicle Code section for the violation, but he indicated that both he and Gardner believed a turn signal violation occurred. Rachel said they pulled over the vehicle in the 600 block of Rose Street. Rachel would have been the first to contact Defendant. As Gardner approached Defendant, Rachel then went to talk to the driver, Ms. Shearer. He described her as being nervous, crying, and very pregnant but she remained in the vehicle. WBP Officers Jordan Stoltzfus (“Stoltzfus”)

⁵ 75 Pa. C. S. Section 3334(b)

and Charles Schwab (“Schwab”), who were in full uniform, appeared on the scene as backup officers. Gardner have asked Defendant if he could pat him down. Rachel testified that he did not observe Gardner discover anything on Defendant during the pat down. Gardner then went back to the cruiser and Defendant was standing with Schwab and Stoltzfus. Once Gardner returned to the vehicle, he placed Defendant in handcuffs. Rachel testified that he did not remember what Havens told them on the radio.

Gardner also testified at the suppression hearing for the Commonwealth. Gardner testified that there was no MVR for the vehicle, and he was not wearing a body cam. In his role that day, he was on patrol in a marked unit, looking for drugs, firearms, and violent crimes. He described his job as an interdiction officer. He was targeting those crimes after getting leads from patrol, confidential sources, and numerous other ways on that day. Officers were surveilling 325 High St., Apt. 4, but he was not sure why. He remembers hearing a radio transmission that a silver sedan dropped off a black male at that location, the vehicle circled the apartment and came back, and the black male got back into the car but he did not recall any names of the driver or passenger of the vehicle being given. Havens did not direct the officers to stop the silver vehicle. Gardner believed it was his responsibility to look for probable cause through a traffic violation. Gardner testified that he observed that the vehicle did not activate its turn signal at least 100 feet from the intersection. While there may have been a vehicle in between Gardner and the silver sedan, he did not believe that he picked the wrong vehicle. Once the vehicle pulled over on Rose Street, he initially approached the driver side, then was redirected to the passenger side of the vehicle. Gardner described the conversation he had with the passenger as casual conversation. He recognized Defendant from a prior interaction. Gardner asked Defendant if he could pat him down, and Defendant asked why. Nothing was

discovered in the pat down, so Gardner returned to the vehicle to run Defendant's name through the computer. While Gardner was in his vehicle, Stoltzfus and Schwab observed Defendant stretch out and throw a clear plastic bag over Stoltzfus' shoulder. One of the patrol officers saw where the baggie landed, which was near a row of shrubs. Gardner retrieved the baggie, which contained a hard, white substance consisting of crack cocaine. As a result, Gardner arrested Defendant.

DISCUSSION

At the hearing on the suppression, defense counsel argues that the stop of the vehicle was pretextual, that is, it was not valid since neither Rachel nor Gardner knew the motor vehicle code section the operator of the vehicle violated and, even if it was a valid stop based upon that violation, the officers did not testify to any basis for requiring Defendant to be removed from the vehicle. As a result, Defendant was not free to leave, and since there was no probable cause to detain Defendant, the discarded drugs should be suppressed.

The Commonwealth argues that the stop was based on probable cause to believe that the vehicle in which Defendant was riding was committing a violation of Vehicle Code. The Commonwealth believes that Havens' information about drug activity at the location where the Defendant came from and his behavior at the scene when stopped by the police justified reasonable suspicion to continue the investigation beyond the traffic stop.

Was the vehicle stop lawful?

The law is clear that a traffic violation, even a minor one, legitimizes a stop, even if the stop is a pretext for an investigation for some other crime. *Commonwealth v. Harris*, 2017 PA Super 402, 176 A.3d 1009, 1019 (2017); *see also Whren v. United States*, 517 U.S. 806, 813 (1996); *Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108 (2008).

The police had the requisite probable cause to stop the Chevy Cruze for the motor vehicle violation. Section 3334(b) of the Vehicle Code states: “At speeds of less than 35 miles per hour, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.” 75 Pa. C.S.A. §3334(b).⁶ Both Gardner and Rachel testified that the driver of the Cruze failed to activate the turn signal at least 100 feet before turning onto Rose Street. The fact that they could not recall the specific statutory citation for turning movements and required signals is of no moment. Similarly, the Court does not doubt that the detectives wished to investigate Defendant for possible drug activity but since there were objective facts of a traffic violation, the detectives’ subjective motives do not matter. *See Whren*, supra. Therefore, the stop of the silver Chevy Cruze was lawful.

Was Defendant’s detention and ultimate arrest lawful?

During a lawful traffic stop, “police may require the driver of a lawfully stopped vehicle to exit the vehicle without any additional probable cause or reasonable suspicion without violating an individual's Fourth Amendment rights.” *Commonwealth v. Lear*, 290 A.3d 709 (Pa. Super. 2023). This authority also extends to passengers of a lawfully stopped vehicle. *Maryland v. Wilson*, 519 U.S. 408, 415 (1997); *see also Commonwealth v. Campbell*, 862 A.2d 659, 663 (Pa. Super. 2004)(officers can ask a passenger to exit a lawfully stopped vehicle and can ask the passenger to identify himself or herself regardless whether there is reasonable suspicion that the passenger is engaged in criminal activity).

⁶ Although there is no evidence in the record regarding the speed limit in the area or the speed at which the Cruze was travelling, 100 feet is the minimum distance during which the turn signal must be activated. At higher speeds, the signal must be given for at least 300 feet.

Even if a traffic stop is lawful, transforming the stop into “[a]n investigatory stop, which subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute an arrest, requires a reasonable suspicion that criminal activity is afoot.” *Lear*, 290 A.3d at 715 citing *Commonwealth v. Fuller*, 940 A.2d 476[, 479] (Pa. Super. 2007) (citing *Terry v. Ohio*, 392 U.S. 1[, 21] [88 S.Ct. 1868, 20 L.Ed.2d 889] (1968)).

In order to determine if an officer had reasonable suspicion, the totality of the circumstances must be considered. In making this determination, [a court] must give “due weight ... to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.” Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, “even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Commonwealth v. Rogers, 578 Pa. 127, 849 A.2d 1185, 1189 (2004)(citations omitted).

The Court finds that the police had reasonable suspicion to investigate whether the black male passenger of the vehicle was engaged in criminal conduct. The police had information that a black male was going to deliver controlled substances to Frank Beaghley at 325 High Street Apt. 4. A silver Chevy Cruze pulled into the parking lot (but not into a parking space) at 325 High Street. A black male exited the passenger side of the vehicle. He looked all around, walked to the door of Apt. 4, motioned to the driver to keep the vehicle where it was, looked around again, knocked on the door and went inside. Another resident told the driver that she had to move her vehicle. The driver exited the parking lot, turned around on Elmira Street, immediately returned and parked in the parking spot directly in front of Apt. 4. The black male exited the apartment. He looked around again and got back into the car. Havens indicated that the way the black male was looking around was a “red flag” to him. Gardner and Rachel stopped the vehicle for a turn signal violation, and they lawfully had the passenger exit the vehicle. Gardner patted down the passenger, but nothing was discovered as a result of the pat

down.⁷ Gardner recognized the passenger as Defendant from prior interactions with him and went to his police vehicle to run Defendant's name. While Gardner was doing that, Defendant stretched out his arms and threw a clear plastic bag over Stoltzfus' shoulder. Gardner saw that the baggie landed near a shrub and he retrieved it. The baggie contained a hard, white substance consistent with crack cocaine. Gardner then arrested Defendant.

In *Terry*, the police officer did not observe the two suspects engage in any illegal activity. Instead, he observed them alternately walk down the block, peer into a store window, walk to the end of the block, turn around, peer into the same store window again and return to the other suspect and confer several times. They briefly met and spoke with a third individual, who walked away, and they continued pacing up and down the block a few more times. This peering, pacing and conferring went on for 10-12 minutes. When the suspects met up again with the third individual, the police officer (who had nearly 40 years of experience) suspected the men were "casing a job, a stick-up" and feared that they were armed. He stopped the men and patted them down. Two of the men possessed firearms and were charged accordingly. 392 U.S. at 5-7. The men sought to have the evidence suppressed because the officer lacked probable cause to arrest them. Although the Court found insufficient evidence for probable cause to immediately arrest the suspects, the officer had reasonable suspicion investigate further to confirm or dispel his suspicions and to frisk the suspects for weapons.

Here, as in *Terry*, the officers lacked probable cause to believe that Defendant delivered controlled substances inside 325 High Street Apt 4. However, in light of information obtained from Bell about drug activity in that block of High Street and the information relayed by Williamson to Havens that a black male was going to deliver crack cocaine to Frank Beaghley

⁷ The Court does not believe it needs to address the legality of the pat down, because no evidence was discovered as a result of it.

at 325 High Street Apt 4 that afternoon, in conjunction with Defendant's manner of looking around as if to ensure no one was watching him and the short time he was inside the apartment, the court finds the police had reasonable suspicion to believe that Defendant was engaged in criminal activity and they could briefly detain him at the traffic stop to confirm or dispel those suspicions. Before they could finish running his name, however, Defendant discarded a baggie of suspected crack cocaine, confirming their suspicions that he was involved in criminal activity related to controlled substances.

"A defendant has no "standing to complain of a search or seizure of property that he has voluntarily abandoned." *Commonwealth v. Shoatz*, 366 A.2d 1216, 1220 (Pa. 1976); *see also Commonwealth v. Pizarro*, 723 A.2d 675, 679 (Pa. Super. 1998) ("A criminal defendant has no privacy expectation in property that he has voluntarily abandoned or relinquished.").

Therefore, the detention of Defendant was lawful and Defendant voluntarily abandoned the baggie of suspected crack cocaine.

Conclusion

The officers lawfully stopped the vehicle based on the turn signal violation. The officers lawfully detained Defendant after the traffic stop to briefly confirm or dispel their reasonable suspicions that he was involved in illegal drug activities. Defendant voluntarily abandoned the baggie of suspected crack cocaine, confirming the officers' suspicions that Defendant was involved in criminal activity related to controlled substances. Therefore, Defendant is not entitled to suppression.

ORDER

AND NOW, this 23rd day of June, 2023, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge