

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-733-2022
v.	:	
	:	
MAURICE JOHNSON,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Maurice Johnson (Defendant) was charged by the Williamsport Bureau of Police on March 28, 2022 with one count of Possession of Drug Paraphernalia¹ and one count of Possession of a Controlled Substance.² The charges arise from a motor vehicle stop of a Kia Soul in which Defendant was a passenger. Defendant filed this timely Omnibus Pretrial Motion on August 12, 2022. The Motion alleges the Commonwealth did not have sufficient cause to believe that there was criminal activity afoot. Defendant also alleges that the subsequent detention of the driver and Defendant was illegal. As a result of that illegal detention, any K9 search of the vehicle was improper and the operator of the vehicle did not have the authority to consent to the officers searching any property belonging to Defendant. A hearing on the Motion was held on November 15, 2022.

Background

At the hearing on the suppression motion Officer Gino Caschera (Caschera) of the Williamsport Bureau of Police was called to testify. Caschera stated that he was working the evening shift on February 23, 2022 with his partner Officer Nikita Bonnell (Bonnell). While on routine patrol travelling in a marked unit and in full uniform, they observed a white Kia Soul

¹ 35 P.S. § 780-113(a)(32)

² 35 P.S. § 780-113(a)(16).

going southbound on Hepburn St. near the movie theater. A check of the registration plate revealed that it was expired so they stopped the Kia Soul on Hepburn Street just south of Third Street. Caschera approached the driver's side of the vehicle and spoke with Heather Gingerich (Gingerich). Defendant was the passenger. Caschera testified that he asked for the vehicle's registration, and Gingerich stated that it was her aunt's vehicle. He did not see or smell any narcotics. Gingerich told them they were there from the Lock Haven/Mill Hall area. Caschera related that when asked about the passenger, Gingerich said that he was a "friend from Philadelphia." Gingerich told Caschera that she and Defendant were "door dashing". Caschera testified he observed nothing confirming that they were "door dashing". He described Gingerich as slightly nervous and stumbling over her words. She said that the last delivery that evening was in the west end of the city, west of Campbell St. Caschera thought it unusual that if they were headed back to the Lock Haven area why they travelled this far east since there were at least two different ways they could have accessed the route back toward Lock Haven if they really had been in the west end of the city. He also testified that he has encountered people coming from Mill Hall and Lock Haven to Williamsport to purchase drugs. Gingerich was asked to get out of the vehicle "for her comfort." Caschera requested a K9 search and Officer Minnier (Minnier) with Tacoma was on scene within minutes. Since the K9 alerted to the car, Caschera requested permission to search from Gingerich. After giving her consent, a pill grinder was found in the console and empty heroin bags in a duffle bag on the back seat. Defendant remained in the car until the K9 arrived.

Officer Bonnell also testified at the hearing. She testified that she was partnered with Caschera and approached the passenger side of the Kia. She identified Defendant, who told her that he was with his friend "door dashing." He related that he has family in Williamsport and a

history of gun and drug offenses. He appeared to Bonnell to be nervous but willing to communicate with her. Defendant also told Bonnell that he had recently been released from prison and had even been “shot at” the last time he was in Williamsport. When Bonnell knew that the K9 was being requested, she asked Defendant to get out of the vehicle. Defendant requested his jacket from the car because it was cold. Before Bonnell handed it to him, she told him that she needed to search it for weapons or contraband, and she found a rock of cocaine. Once the K9 alerted to the vehicle, Bonnell requested consent to search the duffle bag on the back seat behind the driver. Had they objected, Bonnell stated that she and Caschera would have requested a search warrant. Bonnell testified that Defendant gave his consent. The duffle bag contained men’s clothes, socks, and underwear along with 4 ziplock baggies and 1 ½ waxen baggies. Bonnell’s experience told her that those bags were used with drugs. Defendant, although not free to leave, was not restrained. He was free to stand or sit while they were searching the car. While the car was being searched, the shift sergeant arrived on scene.

Defendant alleges that although the motor vehicle stop may have been valid for the registration violation, the officers’ continued detention of Defendant and Gingerich was not justified. Because they were in custody, defense counsel argues that the police needed probable cause to request the K9 to search the vehicle. Defendant also alleges that the consent of the driver, Gingerich, was not valid as to any of the property belonging to Defendant.

Was the stop of Defendant’s vehicle lawful

Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense. *Commonwealth v. Harris*, 2017 PA Super 402, 176 A.3d 1009, 1019 (2017) citing *Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108 (2008). The United States Supreme Court

has held that any violation of the Motor Vehicle Code legitimizes a stop, even if the stop is merely a pretext for an investigation of some other crime. *See Whren v. U.S.*, 517 U.S. 806, 812–13, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (establishing a bright-line rule that any technical violation of a traffic code legitimizes a stop, even if the stop is merely a pretext for an investigation of some other crime); *Chase, supra* (indicating that if the police can articulate the necessary quantum of cause a constitutional inquiry into the officer's motive for stopping the vehicle is unnecessary); *Harris*, 176 A.3d at 1020.

Defense counsel argues that even if the initial stop is valid, to detain Defendant beyond the time necessary to complete the investigation is not supported by law. Counsel cites *Commonwealth v. Martin*, 636 A.2d 559 (Pa. 1993) in support of the position that the canine search was unlawful. In *Martin*, the Pennsylvania Supreme Court found that canine sniffs are lawful provided that police can articulate reasonable grounds to believe that drugs may be found and they are lawfully present to perform the search. *Martin*, 626 A.2d at 559. Furthermore, a determination must be made whether the canine sniff is a search of the person or property. *Id.* at 560-562. However, a canine search is inherently less intrusive and probable cause is not required for a search of a place. *See Commonwealth v. Johnston*, 515 Pa. 454, 530 A.2d 74, 79 (1987). Sniffing the exterior of a vehicle needs to be supported merely by reasonable suspicion. *Martin*, 626 A.2d 556.

As to the length of time a defendant may be held at the scene, “a police officer may detain an individual in order to conduct an investigation if that officer reasonably suspects that the individual is engaging in criminal conduct.” *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673, 676 (1999) as cited in *Commonwealth v. Rogers*, 578 Pa. 127, 134, 849 A.2d 1185, 1189 (2004). “This standard, less stringent than probable cause, is commonly known as reasonable

suspicion.” *Cook*, 735 A.2d 676. In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. *In re D.M.*, 566 Pa. 445, 781 A.2d 1161, 1163 (2001). In making this determination, the 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.” *Cook*, 735 A.2d at 676 (quoting *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). 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, “[e]ven a combination of innocent facts, when taken together, may warrant further investigation by the police officer.” *Cook*, 735 A.2d at 676.

Here officers, after stopping the vehicle for a violation of the Vehicle Code, identified several factors discussed above which gave them a basis for further investigation of Gingerich and Defendant and believed they were engaged in criminal activity. This information gave the officers a reasonable suspicion to justify the K9 sniff of the vehicle. When the canine alerted on the Kia, the police now had probable cause for the search of the vehicle.

Was the consent search of the vehicle valid

Defendant also challenges the authority of Gingerich to permit the search of the Kia. Gingerich told the police that the vehicle belonged to her aunt. Caschera testified that she called her aunt after the vehicle stop to confirm the registration. Gingerich had her aunt’s keys and permission to operate the vehicle. As a result of the search the police discovered a pill grinder in the console and empty baggies in the duffle bag.

In ascertaining [Appellant's] privacy interest...the controlling consideration is whether the individual challenging the search and seizure has a legitimate expectation of privacy in the premises or area searched. *Commonwealth v. Viall*, 890 A.2d 419, 423 (Pa. Super. 435); *see*

also Commonwealth v. Davis, 743 A.2d 946, 950 (Pa.Super.1999). In order for such an individual to establish an expectation of privacy that individual must demonstrate a significant and current interest in the searched premises. *Commonwealth v. Govens*, 632 A.2d 1316, 1319 (Pa. Super. 1993). “An ordinary passenger in an automobile does not by his mere presence have a legitimate expectation of privacy in the entire passenger compartment of that vehicle. While passengers in an automobile may maintain a reasonable expectation of privacy in the contents of luggage they placed inside an automobile, *Viall*, 890 A.2d at 423, it would be unreasonable to maintain a subjective expectation of privacy in locations of common access to all occupants. *Id.* See *Commonwealth v. Grundy*, 859 A.2d 485, 488 (Pa. Super.2004).

The two items belonging to Defendant which were searched by the police which contained contraband were a coat and duffle bag. Defendant’s coat was searched by the police before he was permitted to have possession of it outside the vehicle. According to Bonnell, Defendant gave permission to search the duffle bag. Therefore, the fact that Gingerich gave permission to search the vehicle did not affect the items belonging to Defendant which were searched.

Conclusion

The officers lawfully stopped the vehicle to investigate a violation of the Vehicle Code. While talking with Defendant and Gingerich, the operator of the vehicle, police developed reasonable suspicion, based on the totality of the circumstances, that Defendant and the operator were engaged in criminal activity. The totality of the circumstances included the officers observations of Defendant, Defendant’s statements about being recently released from jail for drug and firearm offenses, Gingerich’s nervousness, her story about “door dashing” without observing stickers on the vehicle or a delivery bag in the car, the inconsistency of the

“door dashing” story with the route traveled, along with Caschera’s experience with Lock Haven/Mill Hall residents coming to Williamsport to purchase drugs justified the K9 sniff of the vehicle.

ORDER

AND NOW, this 14th day of March, 2023, based upon the foregoing Opinion, the Defendant’s Motion to Suppress is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge