

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CR-404-2024
	:	
JAYSON D. BANNERMAN,	:	
Defendant	:	

OPINION

On August 7, 2024, the Court held a hearing on the Defendant’s Omnibus Pretrial Motion, that contained a Motion to Suppress on the two separate legal grounds. First, the traffic stop was unnecessarily prolonged because the requisite reasonable suspicion did not exist; and, second, the consent to search the vehicle was not voluntary. The Defendant has been charged with Criminal Attempt–Possession with Intent to Deliver a Controlled Substance and the Criminal Attempt–Possession of a Controlled Substance pursuant to 18 Pa. C.S.A. §901(a).

Background

The charges stem from an incident on February 20, 2024, in which law enforcement conducted a traffic stop on the Defendant. Officer Esposito, South Williamsport Police Department, testified that he observed an inoperable license plate light in violation of the vehicle code on the vehicle driven by the Defendant. Officer Esposito also alleged that the Defendant acted as if the police officers did not exist as he drove by his patrol car.

Officer Esposito recounted that he pulled out behind the Defendant’s vehicle and ran the registration for the vehicle. The registration of the vehicle was registered to a residence in Milton, Pennsylvania. Officer Esposito then conducted the traffic stop on the basis of the inoperable license plate light. Officer Esposito approached the passenger side of the Defendant’s vehicle. He testified he could smell marijuana by the time he reached the trunk

of the Defendant's vehicle. Officer Esposito advised the Defendant and his passenger, Alexa DeSantis, of the inoperable license plate light for which he would issue a warning. During the interaction, the Defendant informed Officer Esposito that he has had an issue with his license, and Attorney George Lepley was addressing the issue. Officer Esposito indicated his willingness to accept the Defendant's explanation, but he would verify with Attorney Lepley. The conversation between the Defendant and Officer Esposito occurred at Officer Esposito's vehicle while Officer Esposito was preparing the warning. During the conversation, Officer Esposito asked the Defendant if he had a medical marijuana card and if there was anything illegal in the car. The Defendant answered in the negative to both questions. Officer Esposito informed the Defendant that he had smelled marijuana when he approached the vehicle.

Officer Esposito then approached the vehicle and spoke with Alexa DeSantis, the passenger. Ms. DeSantis is the registered owner of the vehicle. Officer Esposito asked her if she had a medical marijuana card or if there was anything illegal in the car. Officer Esposito informed her that he had smelled marijuana as he approached the vehicle. Ms. DeSantis answered in the negative to Officer Esposito's questions, and she indicated the smell could have been from her sister who had been in the car earlier in the day.

Officer Esposito informed Ms. DeSantis that he believed there was marijuana in the vehicle, and he indicated that if it was just a small amount that he would not file any criminal charges. He stated that he could not allow anything illegal to remain in the vehicle. Officer Esposito then requested Ms. DeSantis consent to a search of the vehicle. Ms. DeSantis initially declined to consent. Officer Esposito continued to talk with Ms. DeSantis, and he conveyed he could impound her vehicle until he got a search warrant for the vehicle. Officer Esposito informed her the process could take a few days. Officer Esposito reiterated his offer for Ms. DeSantis and the Defendant to avoid criminal charges if she allowed the search and

only a small amount of contraband was found. Officer Esposito testified that Ms. DeSantis struggled with deciding whether or not to consent to the search, and she was seeking assistance from her sister via cell phone. Ms. DeSantis eventually consented to the search. The Officers found around 200 grams of marijuana in a bag in the vehicle.

Analysis

The Defendant's first argument is that Officer Esposito extended the traffic stop beyond the time necessary to address the vehicle code violation that was observed. The Defendant argues that Officer Esposito did not possess the requisite reasonable suspicion to extend the traffic stop to further investigate whether criminal activity was afoot. The Commonwealth countered the argument by submitting the body camera footage of the traffic stop that corroborates Officer Esposito's testimony. While the traffic stop did take some time to effectuate for the warning on the inoperable license plate light, the body camera footage does not show any delay by Officer Esposito. (Commonwealth Exhibit #1, Body Camera Footage). To the contrary, Officer Esposito is continuously processing the vehicle code warning without any noticeable delay. (Commonwealth Exhibit 1). While processing the warning, Officer Esposito discovers police records reflecting that the Defendant has a suspended driver's license. (Commonwealth Exhibit 1). Officer Esposito informs the Defendant of his license status and allows the Defendant to explain the situation. (Commonwealth Ex. 1). Based upon the Defendant's explanation, Officer Esposito agrees not to cite the Defendant for driving without a license conditioned upon corroboration thereof by Attorney Lepley. (Commonwealth Ex. 1). However, the Officer could not allow the Defendant to drive the vehicle from the scene. Officer Esposito then explained this to Ms. DeSantis which took time. (Commonwealth Ex. 1). While interacting with the Defendant during the stop, Officer Esposito inquired of the Defendant whether he had a medical

marijuana card because Officer Esposito smelled marijuana as he initially approached the vehicle. (Commonwealth Ex. 1). Officer Esposito asked Ms. DeSantis the same questions immediately after completing the initial stop. (Commonwealth Ex. 1). As both the Defendant and Ms. DeSantis stated they did not have medical marijuana cards, Officer Esposito asked Ms. DeSantis what would cause an odor of marijuana coming from the vehicle. (Commonwealth Ex. 1).

Both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures by the government. *Commonwealth v. Sands*, 887 A.2d 261, 268 (Pa. Super. 2005). However, “the Fourth Amendment does not prevent police from stopping and questioning motorists when [an officer] witness[es] or suspect[s] a violation of traffic laws, even if it is a minor offense.” *Commonwealth v. Chase*, 599 Pa. 960 A.2d 108, 113 (2008) citing *United States v. Booker*, 496 F.3d 717, 721-22 (D.C.Cir.2007). “A stop of a single vehicle is unreasonable where there is no outward sign the vehicle or the operator are in violation of the Motor Vehicle Code...there must be specific facts justifying this intrusion.” *Commonwealth v. Sands*, 887 A.2d 261, 266 (Pa. Super. 2005) citing *Commonwealth v. Swanger*, 453 Pa. 107, 307 A.2d 875, 878 (1973). “The legal standard of proof required by a police officer when engaging or interacting with a citizen varies depending on whether the citizen has been detained, and if so, the degree of the detention and the circumstances surrounding the interaction.” *Commonwealth v. Cauley*, 10 A.3d, 321, 325 (Pa. Super. 2010).

There are three types of interactions with law enforcement requiring three different levels of suspicion:

The first is a mere encounter, sometimes referred to as a consensual encounter, which does not require the officer to have any suspicion that the citizen is or has been engaged in criminal activity...The second type of interaction, an investigative detention, is a temporary

detention of a citizen. This interaction constitutes a seizure of a person, and to be constitutionally valid, police must have a reasonable suspicion that criminal activity is afoot. The third, a custodial detention, is the functional equivalent of an arrest and must be supported by probable cause. A custodial detention also constitutes a seizure.

Commonwealth v. Powell, 228 A.3d 1, 4 (2020), citing *Commonwealth v. Adams*, 205 A.3d 1195, 1199-200 (Pa. 2019). To maintain constitutional validity, an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity. *Commonwealth v. Brame*, 239 A.3d 1119, 1127 (Pa. Super. 2020).

When evaluating whether reasonable suspicion exists in a particular case, the court must view the circumstances through the eyes of a trained officer, not an ordinary citizen. *Commonwealth v. Milburn*, 191 A.3d 891, 898 (Pa. Super. 2018). Although the law enforcement officers' own observations, knowledge and experience weighs heavily in determining whether reasonable suspicion exists, our courts remain mindful that the officer's judgment is necessarily colored by his or her primary involvement in the often-competitive enterprise of ferreting out crime. *Commonwealth v. Beasley*, 761 A.2d 621, 626 (Pa. Super. 2000). The test to be applied remains an objective one and will not be satisfied by an officer's hunch or unparticularized suspicion. *Id.*

Pennsylvania law provides that odor of marijuana alone can no longer be per se probable cause of a criminal violation in light of the approval of medical marijuana. *Commonwealth v. Barr*, 266 A.3d 25, 32 (Pa. 2021) and *Commonwealth v. Grooms*, 247 A.3d 31 (Pa Super 2021). Instead, an officer must be able to articulate additional circumstances that would support there is probable cause of criminal activity. *Commonwealth v. Barr*, 266 A.3d 25, 43 (Pa. 2021). An officer can consider the failure to provide a valid medical marijuana card as a factor in determining if there is probable cause. *Commonwealth*

v. Boyd, 296 A.3d 1270 (Pa Super 2023). The reasoning for this requirement is that an individual can now legally possess marijuana if they have a medical marijuana card. *Id.* Thus, there cannot be a presumption that the odor of marijuana alone is proof of criminal activity. *Id.*

Officer Esposito discovered the odor of marijuana immediately upon approaching the vehicle during the initial stop. Thus, he did not extend the stop in order to discover the odor, rather, he had reasonable suspicion to believe criminal activity was or could be afoot upon approaching the driver. Further, he inquired, during the initial stop, regarding the Defendant and Ms. DeSantis' medical marijuana status. All of this information was learned during the initial traffic stop and Officer Esposito had not unlawfully extended the traffic stop to investigate an unrelated matter.

Next, the Defendant seeks suppression on the basis that Ms. DeSantis' consent to the search was not voluntary. The Defendant claims Officer Esposito put undue pressure on Ms. DeSantis to allow the search. The crux of this argument is that Officer Esposito provided the alternative of impounding the vehicle for days while a search warrant was obtained. Based on this argument, it is necessary to evaluate whether or not Officer Esposito had a basis to assert the right to impound the vehicle. It is not disputed that Officer Esposito made such an assertion but rather if his assertion was proper. In order for the assertion to be proper, Officer Esposito needed to have probable cause to obtain a search warrant.

Section 6309.2 of the Motor Vehicle Code outlines the procedure the procedures for immobilizing or towing of a vehicle when the driver is operating without a license or proper registration:

General rule:

- (1) If a person operates a motor vehicle...on a highway or trafficway of this Commonwealth while the persons' operating privilege is suspended, revoked, canceled, recalled or disqualified or where the person is

unlicensed,...the law enforcement officer shall immobilize the vehicle...or, in the interest of public safety, direct that the vehicle be towed and stored by the appropriate towing and storage agent pursuant to subsection (c), and the appropriate judicial authority shall be so notified.

Commonwealth v. Peak, 230 A.3d 1220, 1225 (Pa. Super. 2020).

Searches by the state must be allowed only when a search warrant is obtained by a neutral and detached magistrate. *Commonwealth v. Bell*, 871 A.2d 267, 272 (Pa. Super. 2005). Thus, as a general rule, warrantless searches are unreasonable for constitutional purposes. *Id.* at 273 citing *Perry*, 798 A.2d at 699-700. Law enforcement officers may not conduct a warrantless search or seizure except for one of several exceptions. *Id.*

“Pennsylvania’s jurisprudence under Article I, Section 8 or the Pennsylvania Constitution, however, would not sustain a consent search conducted in the context of, but which is wholly unrelated in its scope to, an ongoing detention, since there can be no constitutionally-valid detention independently or following a traffic stop *absent reasonable suspicion.*”

Commonwealth v. Strickler, 563 Pa. 47, 70 (2000)(emphasis added). When reasonable suspicion ripens into probable cause to search a constitutionally protected area, and provides more than sufficient information to justify the authorization of a search warrant, officers can conduct a search. *Commonwealth v. Bell*, 871 A.2d 267, 273 (Pa. Super. 2005). “Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most reasonable inference.” *Commonwealth v. Spieler*, 887 A.2d 1271, 1275 (Pa. Super. 2005).

In the case at bar, the odor of marijuana was the first thing that caught the attention of the officer. However, it was not the only factor the officer considered when determining if there was probable cause for a search of the vehicle. Both the Defendant and Ms. DeSantis told the Officer that neither of them possessed a medical marijuana card. Thus, at that point, neither passenger could legally possess marijuana and the fact that the vehicle was giving off

an odor of marijuana would be probable cause that criminal activity was afoot in the vehicle. Since the officer had probable cause, his assertion that he could impound the vehicle and apply for a search warrant was proper.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 7th day of **January, 2025** upon consideration of the Defendant's Motion to Suppress on both separate legal grounds, the argument of counsel on August 7, 2024, and for the reasons set forth above, the Court hereby **DENIES** the Defendant's Motion to Suppress.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA

PD

Gary Weber-Lycoming Reporter