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Commonwealth v. Mendez-Mota

COMMONWEALTH OF PENNSYLVANIA v. JUAN MENDEZ-MOTA, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 1148-2006

Search and Seizure After a Motor Vehicle Stop

1. When one police officer says words to a driver that indicate that the driver is free to go and a second officer reapproaches that driver shortly thereafter and stands at the driver-side door and asks questions, the driver has been seized again. One police officer cannot "piggy-back" on another police officer's statement that a driver is free to go.

Appearances:

Franklin County District Attorney's Office

Eric J. Weisbrod, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., November 3, 2006

This matter is before the Court for consideration regarding the cases of Juan Mendez-Mota, docketed at 1148-2006 and Alonso Herrera-Reyes, docketed at 1167 of 2006 and 1241 of 2006. The Commonwealth has not moved to try these defendants together at one trial. However, there was a joint hearing on September 21, 2006 where both defendants had an opportunity to elicit testimony regarding their respective positions on the suppression issue.

The matter is now ripe for decision. Since this decision will affect both defendants, the Court is simultaneously issuing identical opinions and orders for both defendants' cases.

Facts

On June 18, 2006, at approximately 3:30 a.m., Corporal Daniel Diehl of the Pennsylvania State Police was using radar at the Walker Road interchange north of Chambersburg. He detected a vehicle traveling at 100 m.p.h. on Interstate 81, north of the interchange, proceeding south. The posted speed limit on Interstate 81 at this location is 65 m.p.h. Corporal Diehl decided to stop this vehicle and traveled south on Interstate 81 pursuing it. When he pulled up behind it with his emergency lights activated, the vehicle did not stop immediately. Therefore, Corporal Diehl radioed for assistance. However, before the other troopers arrived, the vehicle stopped. Corporal Diehl testified that he believed that the vehicle did not stop at first because the driver was concentrating on driving at 100 m.p.h. He did not believe that the driver was intentionally ignoring his request to stop.

Two other troopers and their partners responded to Corporal Diehl's request for assistance and arrived shortly after Corporal Diehl's vehicle and the defendants' vehicle had stopped on the shoulder of Interstate 81. These troopers were: Trooper William Dubbs and his partner and Trooper Craig Finkle and his partner. The vehicle stopped had two occupants, Juan Mendez-Mota and Alonso Herrera-Reyes, who

were the driver and passenger, respectively.

Corporal Diehl made initial contact with Mr. Mendez-Mota, who was unable to produce identification. Corporal Diehl asked him for identifying information (such as his name and his birthday). Corporal Diehl then returned to his vehicle to attempt to verify Mr. Mendez-Mota's identity.[1]

Trooper Dubbs approached the passenger side of the vehicle and began speaking with Mr. Herrera-Reyes. At first, according to Trooper Dubbs, Herrera-Reyes was able to speak in English. However, once Trooper Dubbs asked Mr. Herrera-Reyes for identification, Mr. Herrera-Reyes no longer wanted to communicate in English and insisted that Mr. Mendez-Mota translate for him. Trooper Dubbs became concerned for his safety while he was bending down to talk with Mr. Mendez-Mota in his darkened vehicle and so asked Mr. Herrera-Reyes to step out of the vehicle. Mr. Herrera-Reyes complied.

Trooper Finkle approached and also began conversing with Mr. Herrera-Reyes. Trooper Finkle was concerned for his safety, because he had to stoop to talk to Mr. Mendez-Mota. He was also concerned because there was a bulge in Mr. Herrera-Reyes' pocket, Mr. Herrera-Reyes had no identification, and Mr. Herrera-Reyes was nervous and fidgety.

Mr. Herrera-Reyes was cooperative during this search. When Trooper Finkle asked what the bulge in his pocket was, Mr. Herrera-Reyes produced a large roll of U.S. currency. This was handed to Trooper Finkle. Trooper Finkle inspected it for a very brief period of time. He then immediately returned it to Mr. Herrera-Reyes. Mr. Herrera-Reyes was then permitted to return to his vehicle.

Trooper Finkle then asked Mr. Mendez-Mota if he knew of any damage to the rear passenger-side rim. Mr. Mendez-Mota replied that he was not aware of any such damage. He requested permission to exit the vehicle and look at the damage. Trooper Finkle agreed to allow this, so Mr. Mendez-Mota exited his vehicle. Trooper Finkle conducted a pat-down search of Mendez-Mota, because he was concerned about the bulge in his pocket. He was also concerned about being on a highway late at night. He also asked Mr. Mendez-Mota what was contained in his pants pocket. Mr. Mendez-Mota then produced a roll of U.S. currency. Trooper Finkle inspected it and then immediately returned it to Mr. Mendez-Mota. Mr. Mendez-Mota and Trooper Finkle were now standing at the rear of Mr. Mendez-Mota's vehicle.

Corporal Diehl then approached, issued Mr. Mendez-Mota a citation for speeding and explained how Mr. Mendez-Mota should resolve the citation. Corporal Diehl then told Mr. Mendez-Mota that he was free to go or spoke words to that effect. He may have said, "I'm done with you."

Mr. Mendez-Mota asked for directions into Chambersburg. Trooper Finkle gave these directions to him and gave him a friendly slap on the back as Mr. Mendez-Mota turned to return to his vehicle. Mr. Mendez-Mota then walked away from the troopers and sat down in the driver's seat of his vehicle. Approximately one to one and a half minutes later, Trooper Finkle walked around to the driver's side door and said something to the effect of: "There's nothing in this vehicle that I should know about, is there?" Mr. Mendez-Mota then told Trooper Finkle that he could search the car.[2] Trooper Finkle searched the car and discovered 3.5 ounces of crack cocaine. Both Mr. Mendez-Mota and Mr. Herrera-Reyes were arrested as a result of this discovery.

Mr. Mendez-Mota and Mr. Herrera-Reyes have filed motions asking this Court to suppress the evidence against them.

Legal Analysis

The Commonwealth makes two arguments. First, it argues that the initial searches of Mr. Herrera-Reyes and Mendez-Mota were lawful, because the police officers were concerned for their safety. Second, the Commonwealth argues that the search of the vehicle was valid because Mr. Mendez-Mota consented to the search. On this second point, in particular, the Commonwealth argues that Mr. Mendez-Mota spontaneously volunteered permission to search his vehicle, with little if any prodding by the state police. The Commonwealth also argues that Mr. Mendez-Mota was not seized because a reasonable person would have felt free to go. This Court will address the Commonwealth's first argument briefly and then turn to its second argument.

Pat-Down Searches of Both Mr. Herrera-Reyes and Mendez-Mota

The Commonwealth argues that the pat-down searches of the defendants were Terry searches,

and as such, the evidence from them should be admissible. See Terry v. Ohio, 392 U.S. 1 (1968).

In one case that the Commonwealth cites, Commonwealth v. Shelly, 703 A.2d 499 (Pa. Super. 1988), there were a number of factors that were considered in determining whether or not there was reasonable suspicion to conduct a pat-down search of a passenger of the vehicle. There were six factors in that case that the court found to be valid reasons for conducting a pat-down search of the passengers. The court noted that: "[i]t was after midnight; neither driver nor passenger had identification .; [the passenger] lied about his identity.; [the passenger's] statements were very vague, inconsistent with the driver's, and contradictory within themselves; the vehicle was registered to a third party [and neither the driver nor the passenger could tell them how to contact the owner]; [and the passenger] was abnormally nervous." Id. at 503.

The Commonwealth argues that because many of these factors were present, the search of both Mr. Herrera-Reyes and Mr. Mendez-Mota was proper. Mr. Herrera-Reyes does not address these searches in his letter-brief, although he does ask this Court to suppress the seizure of the money because the money, in and of itself, was not contraband. It is important to note, however, that the troopers returned the money to Mr. Herrera-Reyes and Mr. Mendez-Mota after completing their search. The money may have fueled Trooper Finkle's suspicions, but the money was returned to both defendants after it was shown to Trooper Finkle.

This Court believes that the police officers may have had reasonable suspicion to search the defendants during the initial traffic stop. Whether the officers had reasonable suspicion to conduct a pat-down search is not dispositive of this case because the major issue is whether the search of the vehicle was proper. The vehicle search resulted in the evidence that led directly to the defendants' arrests. The brief seizures of the defendants' rolls of money did not.

Search of the Motor Vehicle

The Commonwealth cites Commonwealth v. Hoak, 700 A.2d 1263 (Pa. Super. 1997) for its argument that the search was validly consented to. In that case, after an officer had returned a defendant's identification and registration and told the defendant he was free to go, the police officer asked the defendant if he would mind answering a few questions. The defendant ultimately consented to a search of a duffle bag in his trunk, where drugs were found. Id. at 1265.

The Commonwealth argues that, just like the defendant in Hoak, Mr. Mendez-Mota was told that he was free to go before he consented to the search. The Superior Court has rejected the notion that "all post-traffic stop questioning necessarily constitutes detention." Id. at 1267. The determining factor is whether "a reasonable person would have felt free to go about his or her business." Id. at 1266 (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)). The Superior Court has also stated that subjective intent of the police officer is not relevant. An examination of the police officer's actions - particularly a statement indicating that someone was free to go, was the relevant inquiry. Id. at 1268. The Commonwealth argues that a reasonable person in Mr. Mendez-Mota's position would feel free to go.

Mr. Mendez-Mota, on the other hand, cites Commonwealth v. Freeman, 757 A.2d 903 (Pa. 2000), arguing that a person in Mr. Mendez-Mota's position would not have felt free to go. In Freeman, the police officer who had initially told the defendant she was free to go returned to the vehicle and continued to question her. He then asked Ms. Freeman to get out of the vehicle, and asked for her consent to a search. Ms. Freeman gave consent for the search and then argued that it was coerced because she was seized. Id. at 904-7.

The Superior Court has suggested the use of a number of different factors to determine whether or not a seizure has occurred or whether a reasonable person would have felt free to leave. These include: "the existence and nature of any prior seizure; whether there was a clear and expressed endpoint to any such prior detention, the character of the police presence and conduct in the encounter under review (for example, the number of officers, whether they were uniformed, whether police isolated subjects, physically touched them or directed their movement.); geographic, temporal, and environmental elements associated with the encounter, and the presence or absence of express advice that the citizen-subject was free to decline the request for consent to search." Id. at 906-7 (citing Commonwealth v. Strickler, 563 Pa. 47 (2000)).

The Superior Court noted that even though the trooper had released Ms. Freeman, his later behavior was inconsistent with this statement. He continued to question her and ordered her from her vehicle. The Superior Court found that the trooper's order that Ms. Freeman get out of her vehicle was the most important factor in determining whether or not Ms. Freeman was seized. Id. at 907-8.

In another case that dealt with whether someone was seized following a traffic stop, the Superior Court (in determining that there was no seizure) noted the fact that an officer (who was uninvolved with the stop) was off to the passenger side of the vehicle and therefore could not have intimidated the defendant. Commonwealth v. By, 812 A.2d 1250, 1256-7. The police officer doing the questioning in By also specifically told the appellant that he was free to leave - twice. Id. at 1256.

Obviously, to prove a lack of seizure, it is not a requirement that an officer explicitly tell the person alleging seizure that he or she is free to go. However, it is considered to be a factor in cases. See By at 1256. Advising a defendant of his or her right not to consent to a search is also considered to be a factor. "[I]t is especially significant that the respondent was twice expressly told that she was free to decline to consent to the search, and only thereafter explicitly consented to it. Although the Constitution does not require proof of knowledge of a right to refuse as the *sine qua non* of an effective consent to a search, such knowledge **was highly relevant to the determination that there had been consent**." United States v. Mendenhall, 446 U.S. 554, 558-9 (1980) (internal citations and quotation marks omitted, emphasis added).

In cases that have not involved automobiles, the United States Supreme Court has found the position of officers relevant to determining whether someone was seized or not. In United States v. Drayton, 536 U.S. 194 (2002) (a case where defendants on a bus argued that they were illegally seized), the Supreme Court discussed the positions of officers and noted that the fact that both officers did not prevent people from leaving helped indicate that the defendant was not seized. Id. at 203-205.

Here, during the second encounter, it is true that Mr. Mendez-Mota was not ordered out of his vehicle like the defendant in Freeman was. However the Court finds that other coercive elements were present. Trooper Finkle followed Mr. Mendez-Mota to the driver's door of his vehicle and began questioning him again. These actions were inconsistent with Corporal Diehl's statement that Mr. Mendez-Mota was free to go. Further, if Corporal Diehl said "I'm done with you," a reasonable person might think that the word "I'm" meant that even though Corporal Diehl was done with him, Trooper Finkle might not be. A reasonable person in Mr. Mendez-Mota's situation might have been confused by these inconsistent messages. A reasonable person in Mr. Mendez-Mota's shoes might think that even though Trooper Diehl was no longer detaining him, Trooper Finkle might still need to detain him for questioning. This impression would be reinforced when Trooper Finkle walked around to the front of this person's car, blocking his return to the highway.

Mr. Mendez-Mota would not be able to re-enter the highway without closing the door while the police officer was standing there conversing with him. He would then have had to pull forward along the shoulder, because if he pulled directly off the shoulder and into the travel lanes of the interstate, he might have struck Trooper Finkle with his vehicle. Although not necessary, the fact that Trooper Finkle never indicated that Mr. Mendez-Mota was free to go militates in favor of determining that Mr. Mendez-Mota was seized. If Trooper Finkle had said "you're free to go" after Mr. Mendez-Mota had gotten into the vehicle, this Court's opinion would have been different. Trooper Finkle cannot piggy-back on Corporal Diehl's statement that Mr. Mendez-Mota was free to go.[3]

It is true that Trooper Finkle slapped him on the back and gave him directions to enter Chambersburg, which might have implied that he was free to go. However, Trooper Finkle's actions afterwards were inconsistent with the actions of a police officer who did not wish to detain someone.

Therefore, based upon the discussion above, this Court has determined that there was a seizure of Mr. Mendez-Mota prior to when Mr. Mendez-Mota gave permission to search. The Court believes that the fact that a second officer had resumed questioning Mr. Mendez-Mota is of particular significance to this case. Had Corporal Diehl performed the additional questioning, the Court might not have considered the defendant to be seized during this additional questioning. Although the Commonwealth has not argued that there was a lawful seizure, this Court will determine whether or not the seizure that Trooper Finkle caused was lawful.

Trooper Finkle may have had a "hunch" that Mr. Herrera-Reyes and Mr. Mendez-Mota were engaged in criminal activity, but a "hunch" is not reasonable suspicion. Freeman at 908. There must be a "particularized and objective basis for suspecting the detainee of criminal activity." Id. at 908. Reasonable suspicion to suspect transport of drugs has been found where a vehicle traveling in an area frequented by drug couriers had taken evasive action to avoid police officers and had suspicious characteristics (such as riding low to the ground and having its windows covered in quilts). United States v. Sharpe, 470 U.S. 675 (1985).

It is not a crime to use someone else's vehicle with authorization. It is not a crime to carry large sums of money. None of the troopers testified that Interstate 81 is frequented by drug couriers. Although Corporal Diehl testified that the vehicle did not stop immediately, he also noted that this was likely because the driver was concentrating on driving at 100 miles per hour. Corporal Diehl did not believe that

the vehicle was intentionally avoiding stopping. The factors that were present in Sharpe were not present here. While an aggregate of different types of innocuous noncriminal activity can, combined, constitute reasonable suspicion, the Court finds that the evidence here was insufficient to justify the continued seizure. There was no reasonable suspicion. The seizure was therefore unlawful.

The Commonwealth argues that Trooper Finkle never asked to search the vehicle, he merely asked whether there was anything illegal in the car. No evidence was presented by the defense to contradict the Commonwealth. However, it is a small logical step to determine that a police officer asking about the contents of one's vehicle would probably also be interested in searching it. The Court finds that Trooper Finkle's question about the contents of Mr. Mendez-Mota's vehicle was an implicit request to search the vehicle.

A request to search that leads to consent when someone is unlawfully seized is invalid, unless the Commonwealth can prove that the "consent was an independent act of free will and not the product of the illegal detention." Freeman at 909 (citing Florida v. Royer, 460 U.S. 491, 501 (1983) and other cases, internal quotation marks omitted).

Some factors that can be considered are: "the temporal proximity of the detention and the consent, any intervening circumstances, and particularly, the purpose and flagrancy of the officer's unlawful conduct." Freeman at 909 (citing Brown v. Illinois, 422 U.S. 590).

While Trooper Finkle's actions were not flagrant, the Superior Court held the consent invalid in Freeman where the conduct was not flagrant. Freeman at 909. When the other factors are considered, they militate in favor of finding that the consent was coerced. The illegal detention immediately preceded the consent to search, so there was close temporal proximity to the initial seizure. Second, there were no intervening circumstances that could separate the consent to search from the initial illegal seizure. Therefore, the Court finds that the Commonwealth has not proven that Mr. Mendez-Mota's consent was not caused by his unlawful seizure.

Where consent to a search is invalid, the results of that search are fruits of a poisonous tree and will be suppressed. Id. at 909. The consent to the search was invalid; therefore the cocaine that was found as a result of that search will be suppressed.

Since the cocaine is suppressed because Mr. Mendez-Mota's consent has been deemed void, the Court does not discuss Mr. Herrera-Reyes' claim that his consent was also required to search the vehicle.

The Court is also concerned about the propriety of issuing a speeding citation to someone who has no identification on him when the police have not otherwise positively ascertained his identity. While, at some point in this case, an American Express card was discovered by one of the defendants, the Court notes that it does not consider an American Express card to be an acceptable means of verifying someone's identity.

ORDER OF COURT

And now this 3rd day of November, 2006, Defendant's motion to suppress the cocaine seized as a result of the search of his vehicle is granted. The Court orders that the cocaine seized as a result of the search of Mr. Mendez-Mota's vehicle is suppressed.

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[1] Apparently Corporal Diehl was never able to positively ascertain Mr. Mendez-Mota's identity.

[2] Mr. Mendez-Mota argues in his Motion to Suppress that there was no consent to search the car, however Trooper Finkle testified that there was consent. There was no contrary evidence at the hearing, therefore, the Court finds that consent was given. The Court discusses the validity of this consent below.

[3] The Court also notes that the Supreme Court of Pennsylvania has stated that: "an officer who wishes to approach a citizen to investigate crime but who does not wish to "stop" that citizen, can best predict the consequences of his behavior by advising the citizen he is free to leave without answering questions." *Commonwealth v. Jones*,

378 A.2d 835 (Pa. 1977)