

COMMONWEALTH OF PENNSYLVANIA v. ANTHONY MORGAN, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch

Criminal Action No. 254-2007, 708-2007

Vehicle stop; Consent search

1. Probable cause justifies a vehicle stop for any reason up to and including the warrantless arrest of the occupants.
2. A vehicle stop may be made by an officer with no personal knowledge of the circumstances giving rise to probable cause when he has been ordered to stop the vehicle by an officer in possession of facts justifying the stop.
3. A valid consent search constitutes an exception to the warrant requirement.
4. A consent is valid when it is voluntary under the totality of the circumstances considering police actions and the characteristics and knowledge of the person consenting to the search.
5. The chief factor in an analysis of voluntariness concerns whether the person was improperly seized by police at the time at which consent was given.

Appearances:

Angela R. Krom, Esq., *First Assistant District Attorney*

Fred P. Lester, Esq., *Counsel for Defendant*

OPINION

Walsh, J., December 4, 2007

Facts

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The Court must decide Anthony Morgan's Pre-trial Omnibus Motion to Suppress Evidence. Morgan argues that a gun seized from a minivan in which he was riding should be suppressed since it was seized in violation of his Constitutional rights. He offers two bases to exclude the gun. First, he urges that police lacked sufficient cause to stop the minivan. Second, he posits that the minivan owner's consent was not free and voluntary. On August 3, 2007, a hearing was conducted exploring the circumstances of the vehicle stop and the search. On October 4, 2007, an additional hearing was conducted during which several previously unavailable witnesses testified. The record has been transcribed, and both parties have briefed their positions. The case is ready for decision.

The Court decides this motion in conformity with Pa. R. Crim. P. 581. The Commonwealth must prove by a preponderance of the evidence that the gun was not obtained in violation of Morgan's rights. Pa. R. Crim. P. 581 *Comment*. The Court must also make findings of fact and conclusions of law as to "whether the evidence was obtained in violation of the defendant's rights." Pa. R. Crim. P. 581(I).

Factual Findings

1. Around midnight on the night of November 9-10, 2006, Detective Darren North purchased illegal drugs from Keena Caron in a "controlled buy." T2 at 22-23.
2. Corporal MacDonald and other officers provided surveillance in case an identification of Caron was needed, but MacDonald was already familiar with her appearance. T2 at 21-22.
3. A confidential informant arranged the "controlled buy." T2 at 25.
4. Caron was driving a green minivan owned by Stephanie Kelly at the time she delivered the illegal drugs to Detective North. T2 at 24.
5. North was unable to determine if any other passengers were with Caron when she made the delivery, but he did positively identify Caron based upon a prior contact. T2 at 24-26.
6. While handing the drugs to Detective North, Caron informed him that she had more available; all he needed to do was call. T2 at 25-26.
7. Immediately following the "controlled buy" Caron left in the green minivan, and the same confidential informant who had arranged the "buy" called Detective North and told him that Caron was driving to the Fayetteville Sunoco to "more than likely" engage in another drug-related transaction. T2 at 26-27.
8. The informant was not at the "buy" with Detective North but had arranged "10 or so buys" with him in the past, which had resulted in arrests or convictions, and had proven reliable in the approximately two years that North had worked with him. T2 at 25.
9. Immediately after the informant's call, North placed two calls, one to Corporal MacDonald and one to Trooper Finkle. T2 at 22-29.
10. North gave both police officers a description of what had transpired including the controlled buy, Caron's involvement, the green minivan, and her proposed trip to the Fayetteville Sunoco. Id., T1 at 14.
11. North also gave the officers the minivan's registration. T2 at 30.
12. In response to this information, Trooper Finkle and Trooper Neidigh, who was with him, proceeded to patrol Fayetteville looking for the green minivan. T1 at 5.
13. Less than 45 minutes after the controlled buy, Finkle and his partner spotted the minivan at the Fayetteville Sunoco near a fuel pump. T2 at 13, T1 at 5.
14. Officer Finkle observed a woman standing near the minivan, a man and a woman exiting the Sunoco and walking towards the minivan, and another man who left the minivan and walked to a nearby car. T1 at 5-6.
15. The man who had walked to the nearby car placed his hands briefly in the vehicle before walking back to the minivan. T1 at 6, 16-17.
16. Based on the information that he had received from North, what he had just observed, and his eleven years of experience as a Pennsylvania State Police Officer, Trooper Finkle believed that he had just witnessed a drug transaction. T1 at 6, 18.
17. Trooper Finkle then contacted Detective North and Corporal MacDonald of the Chambersburg Drug Task Force, relayed what he had seen, and then followed the other vehicle before losing it. T1 at 7, 22-23.
18. Caron, Stephanie Kelly, the defendant, and another passenger left in the minivan and Caron drove back towards Chambersburg. T1 at 29-30.
19. At this point, Corporal MacDonald dispatched three uniformed officers and one plain clothes officer to stop the minivan and investigate Caron's drug activity. T2 at 8-9, 13.

20. The officers stopped the minivan with three cruisers with flashing lights and no sirens. T2 at 8-9, T1 at 29.

21. Caron was driving, the van's owner, Stephanie Kelly was in the front passenger seat, Morgan was behind the driver's seat, and Jonathan Pollard was behind the front passenger seat. T2 at 10-11.

22. The officers began by questioning the driver, Caron, and the other officers stood around the vehicle maintaining cover. T2 at 9.

23. At this point, Corporal MacDonald took control and ordered Caron out of the minivan and to a point several car lengths behind it. T2 at 9-10.

24. He then read Caron her rights and advised her that she was not under arrest, despite the strong police presence. T2 at 10.

25. At this point, Caron consented to a search of the vehicle. Id.

26. However, Corporal MacDonald did not search at this time but ordered Kelly, the owner, out of the minivan and to the rear. Id.

27. Corporal MacDonald then read Kelly her rights and advised her that she was not under arrest regardless of the strong police presence. Id.

28. MacDonald asked Kelly only one question at this point, "Can we search your vehicle?" T1 at 37, 43.

29. MacDonald also informed Kelly that if she did not consent, he would obtain a warrant and conduct the search. T1 at 43.

30. Kelly consented to the search and was not under the influence of any controlled substances at the time of her consent. T2 at 10-11, T1 at 33.

31. At the time of the search, Kelly was 22 years old and had a two-year degree in science. T1 at 33.

32. Kelly consented because she "had nothing" in the van "to be worried about." T1 at 39-40.

33. While testifying at the hearing, Kelly maintained that, although she did not feel free to leave at any point, her consent was voluntary. T1 at 31, 41.

34. At no time did the police draw their sidearms. T2 at 17.

35. Officer MacDonald then ordered Morgan and Jonathan Pollard out of the car and searched the interior of the minivan. T2 at 11.

36. Between the van's front seats, Officer MacDonald found a partially open overnight bag that contained a loaded firearm. Id.

37. The search also turned up marijuana blunts and \$800 in cash. T2 at 11-12.

38. When MacDonald found the gun, all of the van's occupants were arrested for constructive possession of the handgun. T2 at 12.

Discussion

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Morgan requests that the Court suppress the handgun found by the police. He offers two bases for suppression. First, he argues that Officer Leshner's stop of the green minivan was improper because the police lacked sufficient cause. Second, he contends that the consent search was defective due to the circumstances in which it was conducted. Based upon the above findings of fact and the Court's survey of the law, the Court rejects both contentions.

I. Justification for the Vehicle Stop

Before embarking on an analysis of the justification for the vehicle stop, the Court notes the confusing state of the law concerning the legal justification required for a vehicle stop. [1] Although the Court believes that reasonable suspicion governs the minivan stop, it does not ground this opinion on that basis, because it finds that probable cause existed in this case and justified the vehicle stop.

Probable cause permits a vehicle stop for any reason up to and including the warrantless arrest of the occupant. Commonwealth v. Pitner, 928 A.2d 1104 (Pa. Super. Ct. 2007). Probable cause exists when “the facts and circumstances which are within the knowledge of the officer at the time of the arrest and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.” Commonwealth v. Reddix, 513 A.2d 1041, 1043 (Pa. Super. Ct. 1986). Probable cause does not require that the officer be certain that the suspect committed a crime, but it “exists where criminality is a reasonable inference based on the factual and practical considerations of reasonable and prudent persons.” Pitner, 928 A.2d at 1110. Moreover, the stop may be made by an officer who has no personal knowledge of the circumstances giving rise to the probable cause when he has been ordered to stop the vehicle by an officer in possession of facts justifying police action. Reddix, 513 A.2d at 1043.

Here, Officer Leshar stopped the minivan pursuant to Corporal MacDonald’s orders; MacDonald possessed the requisite factual cause to justify the stop. MacDonald observed the controlled buy of illegal drugs between Keena Caron and Detective North, and he knew who Caron was, what she looked like, and the registration of the minivan she was driving. Indeed, MacDonald’s personal knowledge of the drug transaction alone would clearly warrant a man of reasonable caution to believe that Caron had committed or was committing a crime. Further adding to the mountain of evidence against Caron, MacDonald knew that Caron had told North that she could get North more drugs. MacDonald also knew that an informant with a reliable track record had told North that Caron was about to be involved in another drug transaction. Furthermore, MacDonald was aware that Caron and the green minivan had turned up where the informant had predicted, within a short time of the prediction, and that at least one occupant of the van had engaged in the suspicious behavior observed by Trooper Finkle. These facts, in the totality of the circumstances, clearly demonstrate that Corporal MacDonald had probable cause to stop the minivan; the law allowed him to order Officer Leshar to actually perform the stop. Thus, Leshar’s stop of the green minivan was sufficiently justified.

II. The Consent Search

Next, Morgan contends that Corporal MacDonald’s search of the minivan was illegal because Stephanie Kelly rendered an invalid consent to the search of the green minivan. Basically, he argues that her consent was invalid because it was not freely given or because she was subject to an illegal seizure. Based on its evaluation of the facts and law, the Court concludes that Kelly’s consent was proper.

Preliminarily, a search warrant is not needed when a person with the required authority unequivocally and specifically consents to a search. Commonwealth v. Rosas, 875 A.2d 341, 349 (Pa. Super. Ct. 2005). However, this consent must also be voluntary, and the Commonwealth bears the burden of proof on this point. Id. The Court must evaluate the voluntariness of a consent search by looking at the totality of the circumstances and determining that the consent was “the product of an essentially free and unconstrained choice — not the result of duress or coercion, express or implied, or a will overborne.” Id.

Whether there was an improper seizure of the person constitutes a key consideration for the validity of a consent search. Commonwealth v. Strickler, 757 A.2d 884, 888-889 (Pa. 2000). The officers did not frisk, handcuff, or put Kelly in a police cruiser at all prior to their discovery of the handgun. Kelly’s removal from the van constituted an investigatory detention and was supported by reasonable suspicion. Reasonable suspicion requires that the police officer possess specific and articulable facts that would cause a reasonable person to believe that criminal activity is occurring. Commonwealth v. Tither, 671 A.2d 1156, 1158 (Pa. Super. Ct. 1996).

Here, Corporal MacDonald possessed such facts. He knew that Kelly was in a minivan driven by a person who just sold drugs to an undercover policeman. He was also aware that a reliable informer had predicted that the driver and the minivan would likely be involved in another drug transaction in the near future. MacDonald also knew that Officer Finkle had observed a passenger in the van engage in what Finkle believed was the drug transaction referred to by the informant. Furthermore, MacDonald realized that the vehicle involved in all of this suspicious activity was the green minivan owned by Kelly. Finally, Corporal MacDonald knew that Kelly was present in the van at the vehicle stop. In such circumstances, a reasonable person would have concluded that Kelly was likely involved in criminal activity; this justifies her brief investigative detention by Corporal MacDonald. Accordingly, the Court holds that Kelly was not

subjected to an improper seizure when she was ordered out of the minivan.

Case law has identified some of the key circumstances that a court may consider in evaluating the voluntariness of a consent search. Id. First, a court may analyze “the person’s knowledge of the right to refuse to consent to the search.” Id. Second, a court may consider the personal qualities of the person, chiefly, their maturity, sophistication, mental or emotional state, age, intelligence, and capacity to exercise free will. Id. Third, a court may evaluate “the presence or absence of physical contact or police direction of the subject’s movements, the demeanor of the police officer, the manner of expression used by the officer in addressing the subject, the location of the encounter, and the contents of the interrogatories or statements.” Id.

Here, the Court has access to a record that has developed in some depth all of the factors listed above, and the Court now addresses each in turn. The initial factor consists of the person’s knowledge of the right to refuse to consent to the search. Although Officer MacDonald failed to directly inform Kelly that she had the right to refuse consent, the Court finds that Kelly was already aware of this right. Her awareness of this right is evidenced by the fact that Kelly consented to the search because she knew she “had nothing to be worried about” in the minivan. Implicit in this statement is Kelly’s knowledge that if she did feel she had something to hide in the van then she knew she could refuse consent. Kelly’s consent was not preordained but resulted from a conscious choice that she made. If she did not know of her right to refuse consent she would have testified that she consented because she had no other choice. Thus, Kelly’s knowledge of her right to refuse consent militates in favor of voluntariness.

Second, the Court evaluates Kelly’s personal qualities, namely, her maturity, sophistication, mental or emotional state, age, intelligence, and capacity to exercise free will. At the time of the search, Kelly was a mature, twenty-two year old adult. Furthermore, Kelly holds a two-year degree in science; so, she possesses a substantial degree of sophistication and an adequate level of intelligence to evaluate her options. Additionally, although there is no direct evidence of Kelly’s emotional state at the time that she consented, the clarity, precision, and consistency with which she recounted the events of the night in question reveal that she was not in an emotional state that would have clouded her cognition. Furthermore, since Kelly testified that she was not under the influence of any controlled substances when she consented, she seems to have had the full human capacity to exercise her free will. Her free will is also borne out by her calculated decision to consent to the search, because she had nothing to hide in the minivan. Finally, Kelly testified that her consent was free and voluntary. Thus, Kelly’s personal qualities indicate that her consent was voluntary.

Third, the Court evaluates the setting in which the consent occurred. To begin, the record reveals no physical contact between the police and Stephanie Kelly until after Kelly had consented to the search and a gun had been found. Corporal MacDonald did order Kelly out of the minivan to a location behind it. But, such orders are standard fare when police are investigating a potentially dangerous traffic stop, and the Court declines to give this any significant weight towards a finding of involuntariness. Additionally, Corporal MacDonald did not interrogate Kelly outside the minivan; rather he Mirandized her, informed her that she was not under arrest and asked for her consent to search. These actions are benign, and they would not have adversely affected Kelly’s free will. Next, since Corporal MacDonald’s demeanor and manner of expression in addressing Kelly can best be described as professional and informative and not threatening or ominous, neither the demeanor of the police officer nor his manner of address can have constrained Kelly’s free choice. Moreover, the stop constituted a typical road-side pullover, the strong police presence notwithstanding, and, as such can not have unduly undercut Kelly’s will. Finally, since Corporal MacDonald merely read Kelly her rights and asked her if she would consent, the content of the interrogatories and statements he used could not bend Kelly’s will to any legally cognizable degree. Although MacDonald added that if Kelly refused he would get a warrant, under the circumstances of this case, this constitutes a simple statement of fact and not an illegal threat. With the probable cause that the police had, they could have obtained a warrant. Furthermore, this case is distinguishable from Bumper v. North Carolina, 391 U.S. 543 (1968), since Officer MacDonald did not state that he already had a warrant to search the van. Thus, the Court concludes that the consent was voluntary.

Conclusion

In conclusion, probable cause supported Officer Leshner’s stop of the green minivan. Leshner stopped the vehicle pursuant to Corporal MacDonald’s Orders, and MacDonald knew the identity of the driver, the appearance of the minivan, its registration, and the driver’s participation in selling drugs to Detective North just prior to the stop. This information gave MacDonald probable cause to stop the minivan, and the law allowed him to order Leshner to stop the van even when Leshner had no probable

based upon his own knowledge.

Also, the Court finds that Kelly validly consented to the minivan search. Kelly was aware of her right to refuse the search. Additionally, Kelly's personal qualities are such that she was able to consent voluntarily. Furthermore, although there was a strong police presence, police actions did not vitiate Kelly's consent. Moreover, Kelly was not subject to an illegal detention when she was ordered out of the minivan. Thus, the Court finds that Kelly's consent was voluntary, and the Court denies the Motion to Suppress Evidence.

ORDER OF COURT

December 4, 2007, this matter having come before the Court on Defendant's Omnibus Motion to Suppress, and the Court having reviewed the record, the motion, the Commonwealth's and the Defendant's briefs, the arguments, and the law, it is hereby ordered that Defendant's request for relief is denied. This determination shall be final, conclusive, and binding at trial except upon a showing of evidence that was heretofore unavailable, and the Defendant shall not be prevented from opposing this evidence at trial upon any ground except its suppressibility.

[1] In its brief, the Commonwealth cites both reasonable suspicion and probable cause before arguing that probable cause exists in this case. Morgan, for his part, seems to concede that reasonable suspicion applies.