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Commonwealth v. Adams

COMMONWEALTH OF PENNSYLVANIA  
v. WILLIAM EDWIN ADAMS, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 1576 of 2011

*Arrest: Seizure*

1. Not all contact between police and citizens is a seizure.
2. Police-citizen interactions rise to the level of a seizure only where a police officer restrains the liberty of an individual such that a reasonable person would not feel free to leave.
3. Where police happen upon a parked car with a driver who is asleep, no Fourth Amendment seizure has occurred.

*Arrest: Reasonable Suspicion*

1. Police must have reasonable suspicion to perform an investigative detention, or Terry stop.
2. Police had requisite reasonable suspicion to detain an individual on suspicion of DUI where individual was found asleep at the wheel of a parked car; the radio, lights and windshield wipers were on notwithstanding the sunny weather; the car was parallel-parked at an awkward angle; the driver was disheveled and shirtless; and one open bottle of vodka was near his hand and another vodka bottle was on the floor.

*Arrest: Miranda*

1. A person who is under custodial interrogation is entitled to Miranda warnings.
2. The subject of a routine traffic stop is not entitled to Miranda warnings.
3. Statements spontaneously made are not subject to suppression for lack of Miranda warnings because such statements are not in response to police interrogation.

Appearances:

Matthew R. Seeley, Esq., *Assistant District Attorney*

Steven N. Necaster, Esq., *Counsel for Defendant*

OPINION

Walsh, J., April 16, 2012

Found asleep behind the wheel of a parked car, Defendant William Edwin Adams moves to suppress evidence obtained when police awoke him and arrested him for DUI. Because the police's actions were constitutional in all respects, the Omnibus Motion to Suppress Evidence is denied.

Background

Officer Thomas Storey of the Waynesboro Police Department was on patrol on the summer evening of August 23, 2011. At around 6:00 or 6:15 p.m., he received a dispatch call reporting a possibly intoxicated driver on South Potomac Street

around Rutter's Farm Store (a gas station and convenience store). The report said that the car was a blue or silver Lincoln with Virginia license plates. He could not find the car, so he continued on patrol.

Officer Storey received a second dispatch at around 6:30 p.m. This call reported a male asleep in a car on Philadelphia Avenue. Philadelphia Avenue is a two-way street in a residential area abutted by townhouses and apartments. Officer Storey went to this new scene to investigate, which was literally a stone's throw away from Rutter's. Upon arriving, he saw a car parallel-parked along the side of the street. As luck would have it, the car was a blue Lincoln with Virginia plates. The car was parallel-parked alongside the curb, and the front end was sticking out into the traffic lane by about two to three feet. The car's windows were down, perhaps because it was August. The windshield wipers were activated, but not because of the weather. It was clear and sunny. A man's arm was hanging out of the driver's-side door window. Officer Storey thinks he turned on his patrol car's emergency red and blue lights — he can't remember for sure if he did — got out to investigate, and walked toward the car. At this point, even given the prior call and information, Officer Storey was unsure whether he was responding to a DUI or something else, like a medical emergency.

Officer Storey approached the car from the driver's side. Another policeman, Officer Taylor, approached from the passenger side. Officer Storey saw that a man was literally asleep behind the wheel. He was leaning back across the driver's seat. As mentioned above, his one arm was dangling out of the driver's-side window. The other hand was near a partially empty bottle of Laird's vodka. There was another empty bottle of Laird's on the floor of the car. The car reeked of alcohol. The keys were in the ignition, and the lights and radio (in addition to the wipers) were turned on. (It is unclear whether the engine was on, or whether the ignition was positioned so that only the car's electrical systems were able to function.) The man in the car looked disheveled. And he was shirtless.

Officer Storey reached in, turned the car off, and removed the keys from the ignition. He said he did so for safety reasons. In his experience, when sleeping drivers are awoken, they may try to drive away. He took the one vodka bottle out of the man's hand and placed it on the roof of the car along with the keys. He then tried to wake up the man several times. Eventually, the man awoke and sat straight up. Sure enough, and with a panicked look, he reached for the now key-less ignition. Officer Storey asked for identification, but did not read the man Miranda<sup>[1]</sup> warnings. The man looked in the glove box for his ID. He was unsuccessful, and quickly gave up. Officer Storey again asked for identification. At that point, he noticed that the man's wallet was on the passenger seat. So did the man, who told Officer Taylor, "you can get it." Officer Storey asked the man how much he had to drink. No response. He asked again. This time, the man said, "Well, obviously too much if I didn't answer the first time." He also may have asked the man if he had been arrested before.

Officer Storey told the man to get out of the car. When he complied, the man noticed the car keys and vodka bottle on the roof, and asked if he had placed them there. The man's dress slacks then fell down, exposing his naked rear end to Officer Storey. Officer Storey had the man pull his pants up, performed a pat down, and told him to go to the sidewalk. The man asked if he could sit down. The officers said no, that they needed to conduct field sobriety tests. The man refused to submit to any tests.

Officer Storey has been trained to recognize impaired drivers. He has performed at least 100 suspicion-of-DUI stops. That training and experience may have been unnecessary in this case. Based on his observations, Officer Storey arrested the man for suspicion of DUI and took him to Waynesboro Hospital for a blood test.

The man was later identified as Adams. At the hospital, Officer Storey read Adams O'Connell<sup>[2]</sup> and implied consent warnings. Adams asked if he should talk to an attorney, to which Officer Storey responded that it was Adams's decision whether to submit to a blood test. Ultimately, Adams refused to allow his blood to be drawn.

Police charged Adams with one count of DUI (general impairment), 75 Pa. C.S. § 3802(a)(1). At the appropriate time, he moved to suppress all evidence that the Waynesboro Police obtained when they happened upon him on August 23, 2011.

### Discussion

Adams advances two arguments. First, he argues that all evidence should be suppressed because the Waynesboro Police lacked grounds to detain and arrest him. Second, he claims that the statements he made to the officers were obtained in violation of Miranda.

#### **I. Adams's Detention Was Legal**

The Fourth Amendment and Article I §8 of the Pennsylvania Constitution prohibit unreasonable searches and seizures. Not all contact between police and citizens is a "seizure" under our constitutions. See Commonwealth v. Ellis, 662 A.2d 1043, 1047 (Pa. 1996). Rather, police-citizen encounters rise to the level of a seizure only where "an officer, by means of

physical force or show of authority, has restrained the liberty of an individual.” Commonwealth v. Key, 789 A.2d 282, 288 (Pa. Super. 2001). The test for whether police action rises to the level of a seizure focuses on the perspective of the person seized. Commonwealth v. Au, 986 A.2d 864, 867 (Pa. Super. 2009) (en banc) (quotation omitted), *alloc. granted*, 995 A.2d 349 (Pa. 2010). If a reasonable person would not feel free to leave, the encounter is a seizure. Id.

Because the test does not focus on the subjective intentions of the police officer, the Superior Court has held that drivers who voluntarily pull off a road are seized, at least when police subsequently activate emergency lights and stop to ostensibly render aid to the motorist. See Commonwealth v. Hill, 874 A.2d 1214 (Pa. Super. 2005) (person who was being followed by a car nine car lengths behind him and voluntarily stopped to let it pass, was seized when it turned out to be a police car that also stopped and activated its emergency lights). *But see* Commonwealth v. Kendall, 976 A.2d 503 (Pa. Super. 2009) (person who was being followed by a car 150 – 200’ behind him and voluntarily stopped was not seized when it turned out to be a police car that also stopped and activated its emergency lights).

The level of police suspicion necessary to stop is different for each level of police-citizen interaction. Where there is no seizure, i.e. a mere encounter, no suspicion is required. Ellis, 662 A.2d at 1047. An investigative detention, or Terry<sup>[3]</sup> stop, requires at least reasonable suspicion. Id. Finally, a custodial detention, or arrest, requires probable cause. Id.

Adams argues that Officer Storey had no legal grounds to stop him. He points out that it is perfectly legal to sleep in a car. He also claims that it is legal to drive shirtless and to refuse field sobriety tests. The Commonwealth responds that there was no traffic stop in this case. It contends that Officer Storey’s actions, specifically in removing the car keys, were for his safety. It also argues that Officer Storey had ample grounds to detain and arrest Adams.

The Commonwealth is correct that no traffic stop initially occurred. No police actions caused Adams to stop and attempt to park. When Officers Storey and Taylor arrived, Adams’s car was already stationary. This case is different from Hill, where the defendant voluntarily pulled over to the side of an isolated, rural road because a police cruiser was following behind. Hill, 874 A.2d at 1216-17. Here, Adams was asleep and blissfully unaware that police officers had stopped their car, activated the emergency lights, and got out to investigate. It is physically impossible to perform a traffic stop of a parked car whose driver is asleep. Because police did not cause Adams to stop his car, no traffic stop occurred.

This conclusion does not end our inquiry, however, because an investigative detention eventually occurred — when Adams awoke. At that point, he was not free to leave, and no reasonable person in his situation would have felt free to leave. Indeed, it would have been very difficult for Adams to try to walk away. Adams’s car keys were on the roof, and to open either the passenger or driver’s side door, the police officers would probably have had to step away from the car. And Officer Storey admitted that he would have followed Adams had he tried to leave.

Officer Storey, however, had reasonable suspicion to detain Adams. He had received a dispatch call of a possibly intoxicated driver near Rutter’s. Fifteen minutes later, he received a second dispatch call of a man asleep in a parked car at nearby location.<sup>[4]</sup> Adams was found asleep at the wheel of a parked car. The radio and headlights were on. So were the windshield wipers, the clear and sunny weather notwithstanding. Adams was holding one bottle of vodka, with another empty one close by. He looked disheveled, was shirtless, and smelled of booze. Adams is correct in that it is perfectly legal to sleep in a car. It is also legal for Adams (as he is male) to be shirtless in public. But it is not legal to have open alcoholic beverages in a car on a highway, 75 Pa. C.S. § 3809, or to “operate or be in actual physical control of the movement” of a car while intoxicated. Id. §3802(a)(1); see Commonwealth v. Toland, 995 A.2d 1242, 1246 (Pa. Super. 2010) (holding that defendant was in actual physical control of a vehicle when found asleep at the wheel while engine was on). Based on the totality of the circumstances, Officer Storey had reasonable suspicion that Adams was operating or controlling a motor vehicle while intoxicated. He had sufficient grounds to detain Adams. And those grounds ripened into probable cause after the Officer’s further interactions with Adams. For the above reasons, the Court holds that Officer Storey had sufficient grounds to detain Adams.

## **II. Adams Was Not Entitled to Miranda Warnings**

Having concluded that Adams was under investigative detention when he awoke, the Court must address his second argument: that some of his statements to Officer Storey must be suppressed due to the lack of Miranda warnings.

A person who is under custodial interrogation is entitled to Miranda warnings. See, e.g., Commonwealth v. Turner, 772 A.2d 970, 973 (Pa. Super. 2001) (en banc). Interrogation means express questioning or its functional equivalent. E.g., Commonwealth v. McAiley, 919 A.2d 272, 278 (Pa. Super. 2007). A routine traffic stop is not custodial interrogation for the purposes of Miranda. Berkemer v. McCarty, 468 U.S. 420 (1984); accord Pennsylvania v. Bruder, 488 U.S. 9 (1988) (per curiam). Furthermore, a suspect under **investigative** — as opposed to **custodial** — detention is not entitled to Miranda warnings. Commonwealth v. Clinton, 905 A.2d 1026, 1033-34 (Pa. Super. 2006).

There is no basis to suppress any statements that Adams made to police. When Officer Storey twice asked Adams if he had been drinking, Adams was not entitled to receive Miranda warnings because he was not under custodial interrogation. His inculpatory statement, "Well obviously too much if I didn't answer you the first time," was therefore legally obtained. The rest of Adams' statements were spontaneous — not in response to questioning by Officers Storey or Taylor. And spontaneous statements are not suppressible under Miranda.

#### Conclusion

There are no grounds to suppress any evidence in this case. Police were not responsible for stopping Adams's car. Thus, they needed no suspicion to approach the vehicle and investigate. When Adams awoke, the encounter rose to an investigative detention, one with sufficient supporting reasonable suspicion. Finally, Adams was not entitled to receive Miranda warnings because he was merely under investigative detention. Adams's suppression motion must be denied.

#### ORDER OF COURT

April 16, 2012, upon consideration of the Defendant's Omnibus Motion to Suppress Evidence, and for the reasons in the attached opinion, it is ordered that the motion be, and hereby is, denied. This determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable, but Defendant shall not be prevented from opposing such evidence at trial upon any ground except its suppressibility.

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

[2] PennDOT v. O'Connell, 55 A.2d 873 (Pa. 1989).

[3] Terry v. Ohio, 392 U.S. 1 (1968).

[4] There is no transcript of the omnibus hearing, and it is unclear whether Officer Storey testified that the parked car's location was close to Rutter's. But the Court can take judicial notice of the car's proximity to Rutter's. Geography and the general location of streets, highways, and landmarks are matters of common knowledge. See Schmidt v. Allegheny County, 154 A. 803, 804 (Pa. 1931); Commonwealth v. Varner, 401 A.2d 1235, 1236 (Pa. Super. 1979) (en banc) (court properly took notice that the area near the Shippensburg Fairgrounds where defendant was arrested was in Franklin County).