IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-395-2023**
	:	
vs.	**:**	**Opinion and Order re**
	:	**Motion to Suppress/**
KEVIN EIGENBROD,	**:**	**Omnibus Pre-Trial Motion**
Defendant	**:**	

OPINION AND ORDER

On March 14, 2023 Kevin Eigenbrod (Defendant) was charged with one count of possession with the intent to deliver a controlled substance (methamphetamine),[1] possession of a controlled substance (methamphetamine),[2] possession of drug paraphernalia[3], driving while operator's privilege is suspended or revoked[4] and operation of a vehicle with unsafe equipment[5]. The charges arise from a traffic stop by the Lycoming Regional Police Department of the vehicle operated by Defendant.

Defendant filed this Omnibus Pretrial Motion on May 4, 2023. An initial hearing was scheduled July 23, 2023, but was continued as Defendant was not served with notice of the hearing. The hearing was rescheduled for August 29, 2023 however the affiant was unavailable. The hearing was again rescheduled for November 7, 2023. Defendant was attending inpatient treatment so the hearing was rescheduled and held on February 8, 2024. In his Omnibus motion, Defendant alleges that the police violated his constitutional rights when they threatened to search the vehicle he was in and failed to advise him of his *Miranda*[6] rights outside of the vehicle. Also, although Defendant told his attorney that he was on the way to the hearing shortly after the time

[1] 35 P.S. § 780-113(a)(30).
[2] 35 P.S. § 780-113(a)(16).
[3]35 P.S.§ 780-113(a)(32).
[4] 75 Pa. C.S.A. §1543(a).
[5] 75 Pa. C.S.A. §4107(b)(2).

the hearing was to begin, he ultimately never appeared.

Background and Testimony

At the hearing on the motion to suppress, the Commonwealth called two officers from the Lycoming Regional Police Department. Officer Dalton Lovell (Lovell) testified that on March 14, 2023 he was on patrol traveling southbound on South Route 220, Lycoming County, Pennsylvania. N.T. 2/8/24 at 4. While travelling to Jersey Shore he observed a dark and blue Chevy Tahoe registered to Travis Nichols of Oak Street Jersey Shore with an illegal window tint. *Id.* Lovell knew that Nichols' house was thought to be involved in drug transactions or was allowing people who engage in selling drugs to stay at the residence. *Id.* As the vehicle passed by, Lovell saw that the Tahoe had front windows with what he thought was an illegal tint. *Id.* He passed the vehicle near Reach Road and then travelled ahead so that he could observe the vehicle pass by. *Id.* Lovell thought that Defendant slowed down so that it took a while for the Tahoe to pass by Lovell's position. *Id.* As the vehicle drove past, he affirmed his belief that the front windows had an illegal tint. *Id.* Lovell then stopped the Defendant and upon approaching the vehicle asked for Defendant's license and registration. *Id.* Lovell testified that Defendant appeared nervous and lit a cigarette as Lovell was speaking with him. *Id.* Officer Tyler Bierly (Bierly) then came to the scene, and Lovell briefed him on what was happening. *Id.* Lovell testified that when he ran Defendant's license he discovered that it was suspended. *Id.* at 7. Lovell added that Bierly was the officer who assessed the window tint. *Id.*

Bierly testified that he worked that day and backed up Lovell on the traffic stop on March 14, 2023 when he heard him call it out on the radio. *Id.* at 9. Bierly testified that he was familiar with Defendant prior to the traffic stop as a result of an investigation of another individual,

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

Andrew Sauers, about a month prior that led to text messages between Sauers and Defendant where they "discussed pulling (sic) money to do a larger drug buy in Williamsport."[7] *Id*. He approached Defendant on the passenger side while he was seated in the vehicle. *Id.* Bierly described that Defendant did not want to look at him while he was talking. *Id.* Bierly asked him if he had drugs in the vehicle and if he would give consent to search. *Id.* Defendant told Bierly that he didn't want them to search the vehicle because it was not his and wanted to know why they wanted to search it. *Id.* Bierly explained that they were investigating "Mr. Sauers and the messages." *Id.* at 9-10. When he learned that Lovell stopped Defendant on his way from Williamsport, Bierly requested Officer Tyson Minier (Minier) from the Williamsport Bureau of Police bring his K9 down to the scene. *Id.* at 10. At some point Minier did arrive at the scene. *Id.* However, before Minier and the K9 arrived, Bierly had Defendant get out of the vehicle and wait with them at the rear of the vehicle. *Id.* Defendant still was denying that he had any illegal items in the car. *Id.* Bierly then explained that when the dog came, he was going to do a sniff of the vehicle. *Id.* Bierly then asked Defendant if he wanted to cooperate before the K9 came on scene and the Defendant agreed. *Id.* Defendant told Bierly and Lovell that he had about 10 grams of methamphetamine in the car's back seat. *Id.* at 11. Bierly testified that at no time had the Defendant been placed under arrest. *Id.* Bierly characterized that the information provided by Defendant was all part of the investigation as a consequence of the traffic stop. *Id.*

On cross examination, Bierly testified that Lovell called him before he pulled Defendant over and then Bierly called for the K9. *Id.* at 12. Bierly was explaining the prior history that they

7 Bierly filed charges against Sauers on January 26, 2023. *See* CP-41-CR-0000381-2023. Sauers was charged with criminal use of a communication facility, manufacture of a controlled substances (26 live marijuana plants), and possession of a controlled substance (methamphetamine). The affidavit describes Sauers' use of texts messages and cash apps to sell controlled substances to third parties.

had with Defendant to Minier and Minier told him that he would come if he was needed. *Id.* So before Bierly was even on scene, he called Minier to come and bring his K9. *Id.* at 13. Bierly would have asked Defendant three times if he had anything illegal in the car before he acknowledged that he did. *Id.* So that the first time he was asked, Defendant said he wanted to know why, and denied consent. *Id.* The next time, when Defendant was outside of the car at the back with the officers, they asked again and Defendant again denied consent to search. *Id.* After a short time, after being asked again, he offered that there was methamphetamine in the car, but would still not permit the officers to search the car. *Id.* at 14. Defendant offered to get the drugs for the officers but he would not let them in the car. *Id.* Sometime after the last request and admission, Minier and the K9 arrive on scene and the dog alerted to the car. *Id.* Bierly characterized that the officers only observed Defendant's "behaviors" to justify the request to search the vehicle. *Id.* Bierly did not observe any drugs or paraphernalia. *Id*. Bierly acknowledged that due to Defendant's license status, he was not going to be able to drive from the scene. *Id.* at 15.

Discussion

The issues raised by Defendant were that the police had no reasonable suspicion to justify the K9 search and that the police failed to Mirandize Defendant because he was being detained and that he was not free to leave. While acknowledging that Defendant could not have driven away, the police continued to ask Defendant if he had anything illegal in the car.

The Commonwealth asserts that the officers combining their observations and reasonable inferences had reasonable suspicion to believe that criminal activity was afoot. Since Defendant was not in custody when the police were speaking with him, *Miranda* rights did not need to be given to the Defendant.

Was the Defendant in custody requiring Miranda warnings be given

Defendant alleges that he was detained by the police in violation of his constitutional rights and as a result the police engaged in a custodial detention requiring *Miranda* warnings be given to him. In the absence of *Miranda*, any statements need to be suppressed.

> There are three categories when dealing with interactions between citizens and the police:
> The first is a "mere encounter" (or request for information) which need not be supported by any level of suspicions but carries no official compulsion to stop or respond. The second, an "investigative detention," must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or "custodial detention" must be supported by probable cause.

Commonwealth v. Gutierrez, 36 A.3d 1104, 1107 (Pa. Super. 2012). *Miranda* warnings are only required for the third-level interaction, *i.e.*, custodial interrogation. *Commonwealth v. Spence*, 290 A.3d 301, 314 (Pa. Super. 2023). A motor vehicle stop is generally a second-level interaction, an investigation. *Id*.

> No bright lines separate these types of encounters, *Commonwealth v. Mendenhall*, 552 Pa. 484, 715 A.2d 1117, 1120 (1998), but the United States Supreme Court has established an objective test by which courts may ascertain whether a seizure has occurred to elevate the interaction beyond a mere encounter. *Lyles*, 97 A.3d at 302-03. The test, often referred to as the "free to leave test," requires the court to determine "whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Bostick*, 501 U.S. at 437, 111 S.Ct. 2382 (quoting *Michigan v. Chesternut*, 486 U.S. 567, 569, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988)). "[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry*, 392 U.S. at 16, 88 S.Ct. 1868.

Commonwealth v. Adams, 651 Pa. 440, 449, 205 A.3d 1195, 1200 (2019).

In *Adams,* the defendant was approached by police at about 3 a.m. when he pulled his vehicle behind two closed businesses where vehicles would not ordinarily park. *Adams*, 205 A.3d at 1197. The officer approached Adams in his vehicle and pushed the door shut when he attempted to open it as the officer felt that being by himself in a poorly lit area was unsafe. *Id.* When another officer arrived to assist, the first officer opened Adams' door and began to speak with him, subsequently determining that he was under the influence of alcohol. Adams was then arrested for driving under the influence of alcohol. *Id*. at 1198. The Supreme Court held that the officer communicated to defendant a demand rather than a request, and in demonstrating force and authority, a person in Adams' situation would not have felt free to leave and was 'seized' by the police. *Id.* at 1202.

Regarding custody, the test is whether, considering the totality of the circumstances, there was a "formal arrest or restraint on the freedom of movement of the degree associated with a formal arrest. *Commonwealth v. Cooley*, 632 Pa. 119, 118 A.3d 370, 376 (2015). It is an objective test with due consideration given to the impression given to the person questioned. *Id*.

> The factors a court utilizes to determine, under the totality of the circumstances, whether a detention has become so coercive as to constitute the functional equivalent of arrest include: the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions. The fact that a police investigation has focused on a particular individual does not automatically trigger "custody," thus requiring Miranda warnings.

Commonwealth v. Mannion, 725 A.2d 196, 200 (Pa. Super. Ct. 1999)(citations omitted). Furthermore, "a custodial detention involves something more than mere exercise of control over the suspect's freedom of movement." *Commonwealth v. Douglass*, 539 A.2d 412, 419 (Pa. Super.

1988).

Here, although Defendant was not free to leave, he was not placed under or arrest or in custody. Rather, he was subject to an investigative detention. He was not in handcuffs, or placed under arrest. He was not transported anywhere until after he was arrested for the methamphetamine. The police did not use force or authority. The police controlled his movements by having Defendant exit the vehicle and wait at near the officers' vehicles, but they did not place him inside a police vehicle. Therefore, the stop did not rise to the level of custodial detention.

A law enforcement officer must administer *Miranda* warnings prior to custodial interrogation. *Mannion,* 725 A.2d at 200. However, since the Defendant was not in custody, Miranda warnings were not required.

Was the canine sniff a violation of the Defendant's constitutional rights

Defendant asserts that the canine search of the vehicle was unsupported by reasonable suspicion and as a consequence, anything discovered should be suppressed. The Commonwealth argues that all law enforcement needs to justify the use of the canine is a reasonable suspicion to believe that drugs will be found.

The Commonwealth has the burden of establishing by a preponderance of the evidence that the challenged evidence was not obtained in violation of the defendant's rights. Pa. R. Crim. P. 581(H); *Commonwealth v Bonasorte*, 486 A.2d 1361, 1368 (Pa. Super. 1984). A preponderance of the evidence is a more likely than not inquiry. *Commonwealth v. Parson*, 259 A.3d 1012, 1019 (Pa. Super. 2021).

> During a traffic stop, the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. [I]f there is a legitimate stop

> for a traffic violation...additional suspicion may arise before the initial stop's purpose has been fulfilled; then, detention may be permissible to investigate the new suspicions.

Commonwealth v. Sloan, 2023 PA Super 173, 303 A.3d 155, 163 (2023)(*quoting Commonwealth v. Harris*, 176 A.3d 1009, 1020 (Pa.Super. 2017) (quotations and quotation marks omitted)).

> [T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission" - to address the traffic violation that warranted the stop and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are - or reasonably should have been - completed. [The U. S. Supreme Court has] concluded that the Fourth Amendment tolerates certain unrelated investigations that do not lengthen the roadside detention. [A] traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket....The seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop. [A police] officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. [The police officer, however,] may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

Sloan, 303 A.3d at 163-164.

> Beyond determining whether to issue a traffic [citation, a police] officer's mission includes ordinary inquiries incident to the traffic stop. Typically[,] such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. *Rodriguez v. United States*, 575 U.S. 348, 354-55, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015) (citations, original brackets, and some quotation marks omitted). *See Commonwealth v. Galloway*, 265 A.3d 810, 814-15 (Pa.Super. 2021) (discussing *Rodriguez* and holding "a police officer may use information gathered during an initial traffic stop to justify a second investigatory detention, regardless of whether the officer has indicated at some point during the initial stop that the subject is free to leave"); *Commonwealth v. Malloy*, 257 A.3d 142 (Pa.Super. 2021) (discussing *Rodriguez*). The "new detention" must be supported by reasonable suspicion. *See Commonwealth v. Smith*, 917 A.2d 848 (Pa.Super. 2007).
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> To establish grounds for "reasonable suspicion"...the officer must articulate specific observations which, in conjunction with reasonable inferences derived

> from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and the person he stopped was involved in that activity. In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. In making this determination, we must give due weight...to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience. 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, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Sloan, 303 A.3d at 164.

> Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to specific and articulable facts leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.

Commonwealth v. Clemens, 66 A.3d 373, 379 (Pa. Super. 2013) (quoting *Commonwealth v. Holmes*, 609 Pa. 1, 14 A. 3d 89, 95); *see also Commonwealth v. Parker,* 161 A.3d 357, 362 (Pa. Super. 2017).

The Pennsylvania Supreme Court has adopted the United States Supreme Court's holding in *Terry v. Ohio*, 392 U.S. 1 (1968), permitting police to effectuate a precautionary seizure when there is reasonable suspicion criminal activity is afoot. *Commonwealth v. Matos,* 672 A.2d 769, 773-74 (Pa. 1996) (citing *Commonwealth v. Hicks*, 253 A.2d 276 (Pa. 1969)). The Court views a totality of the circumstances to determine whether "a reasonable person would believe that he was not free to leave." *Commonwealth v. Collins*, 672 A.2d 826, 829 (Pa.Super. 1996). "[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific

reasonable inferences he is entitled to draw from the facts in light of his experience." *Commonwealth v. Cook*, 735 A.2d 673, 676 (Pa. 1999) (quoting *Terry*, 392 U.S. at 27). Case law has established certain facts alone do not create reasonable suspicion, but a totality of the circumstances may create it. See *Commonwealth v. DeWitt*, 608 A.2d 1030 (Pa. 1992) (flight alone does not establish reasonable suspicion).

On the record presented, the court questions whether the Commonwealth established that the police had reasonable suspicion or probable cause to conduct a traffic stop for a window tint or driving too closely.

The Vehicle Code provides that: "No person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle." 75 Pa. C.S. §4524(e)(1). The Vehicle Code also precludes operating a motor vehicle in violation of department regulations. 75 Pa. C.S. §4107(b)(2). Department regulations require passenger cars to have a light transmittance level of 70% or greater. *See* 67 Pa .Code §175.67(d)(4); 67 Pa. Code 175 Table X. With respect to following too closely, the Vehicle Code states: "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway." 75 Pa.C.S. § 3310

The Commonwealth only presented conclusory statements that the vehicle had dark window tint and that Defendant was driving too closely to another vehicle. There was no testimony that the windows were so dark that the officers could not see into the vehicle or the specific results of Officer Bierly's use of a tint meter on the windshield and there were no

photographs of the tinted windshield.[8] There also was no testimony of the approximate distance between the tractor trailer and the Tahoe that Defendant was driving. The court needs the facts upon which the officers made their conclusion, not simply their conclusions, so that the court can conduct a review and determine whether **based on the facts** the conclusions are objectively reasonable.

Even if the police had reasonable suspicion to believe that there was a window tint violation that needed further investigation with a tint meter or if they had probable cause to believe that Defendant was following the tractor trailer too closely, the court finds that the record does not establish reasonable suspicion to extend the traffic stop to await the arrival of Officer Minier and his canine to investigate drug activity.

It is clear from the testimony that the police called for the canine before they made any observations of Defendant. It is also clear that the police were keeping Defendant at the scene until Officer Minier and his canine arrived. The officers did not testify to any new or additional information that they did not already have before the stop was made to justify a "new detention." They did not observe any drug paraphernalia or any drugs. They also did not notice an odor consistent with drugs. The Commonwealth did not provide any testimony or evidence regarding the reliability of the information that the police had regarding Mr. Nichols, the owner of the

[8]*See* for example, *Commonwealth v. Prizzia*, 260 A.3d 263 (Pa. Super. 2021)(Trooper Segar testified that the windows were so darkly tinted that he could not see inside and his testimony was corroborated by photographs); *Commonwealth v. Postie*, 110 A.3d 1034, 1040 (Pa. Super. 2015)(Trooper McDaniel testified that he could not see inside the vehicle and he had previously issued a warning for the dark window tint on the vehicle and instructed the owner to remove it); *Commonwealth v. Brubaker*, 5 A.3d 261 (Pa. Super. 2010)(evidence was insufficient to sustain the defendant's conviction for a violation of section 4524(e)(1) of the Vehicle Code when officer admitted that he could see into the vehicle and the defendant was not charged with a violation of section 4107(b)(2) for operating a vehicle in violation of department regulation regarding 70% light transmittance for passenger vehicles); *Commonwealth v. Dales*, 820 A.2d 807(Pa. Super. 2003)(Officer Clee, who observed that the vehicle had heavily tinted windows such that he could not see inside to determine how many people occupied it or who might be operating it, had basis to stop the vehicle for window tint violation but he did not have reasonable suspicion to extend the detention to investigate potential drug activity despite smell of bactine, numerous air fresheners and the

vehicle. The information that they had, of unknown reliability, was that Mr. Nichols was allowing individuals to sell drugs out of his residence. There was no testimony or evidence that Mr. Nichols was allowing individuals to utilize his vehicle for drug trafficking activities. There also was no testimony that Defendant was residing with Mr. Nichols or utilizing his residence for drug activity. There was no information regarding when or from whom the police obtained this alleged information.[9] The only information to connect Defendant to any drug activity related to Mr. Sauers. In investigating Mr. Sauers, Officer Bierly observed text messages from Mr. Sauers phone where Sauers and Defendant were discussing pooling their money to purchase a quantity of methamphetamine. The text messages, however, were exchanged at least a month or more prior to the traffic stop. The court finds that this information was insufficient to establish reasonable suspicion that Defendant was currently engaging in criminal activity related to controlled substances. *See Parker*, 161 A.3d at 364 (Although Officer Hagy observed Appellant engage in a drug transaction on June 24, 2014, over one month earlier, that did not provide reasonable

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defendant's nervousness).

[9] Due to the lack of factual development at the suppression hearing, the court has no way of knowing if the information was based on an anonymous tip from years ago, the prosecution of Mr. Nichols for drug offenses in 2021 (see CP-41-CR-0000244-2021), or multiple complaints within days of the stop from named citizens who resided near Mr. Nichols.

suspicion to detain Appellant on the date in question). Defendant's admission to possessing methamphetamine did not occur until after the time necessary to complete the traffic stop; it occurred while the police were waiting for Officer Minier and his canine to arrive. Under the totality of the circumstances, and after the purpose of the initial stop was completed, the police did not have sufficient current and reliable information to establish reasonable suspicion to believe to Defendant was currently engaging in criminal activity related to the possession and/or trafficking of drugs. Therefore, the detention was unlawful and did not justify the use of the canine. Furthermore, since Defendant's statements and the discovery of the methamphetamine were as a result of the police unlawfully extending Defendant's detention to await the arrival of the canine, the Court will suppress Defendant's statements and the methamphetamine in addition to any evidence discovered as a result of the use of the canine.

Conclusion

Defendant, while he was stopped by the police, was not in custody and so the police were not required to advise Defendant of his rights under *Miranda.* While the police were investigating the violations for which the Defendant was stopped, they were unable to articulate any 'new' reasonable suspicion to justify keeping the Defendant detained until Minier and his canine partner arrived at the scene. The canine sniff of the vehicle that Defendant was operating was illegal.

ORDER

AND NOW, this 25TH day of June, 2024, the Omnibus Pretrial Motion to suppress is hereby GRANTED, and the Court SUPPRESSES Defendant's statements, the methamphetamine discovered as a result of Defendants' statements, and any evidence obtained as

a result of the canine sniff of the vehicle.

By the Court,

_____
Nancy L. Butts, President Judge

cc: DA(LS)
Howard B. Gold, Esquire
Jerri Rook