

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 vs. : No. CR-571-2021  
 :  
 ANGEL BATISTA, :  
 Defendant :  
 :

Cynthia Hatton, Esquire                      Counsel for Plaintiff  
Eric Wilttrout, Esquire                      Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - February 8, 2022

The Court has been tasked with determining whether a police officer, acting upon an anonymous tip by one driver about the driving actions of another, merely "encounters" a defendant in a parking lot or "detains" him to investigate that tip when the officer himself did not observe any *indicia* of erratic driving. After completing this task and analyzing the facts and law, this Court finds it appropriate to deny the defendant's suppression motion.

FACTUAL AND PROCEDURAL BACKGROUND

On March 3, 2021, Trooper Matthew Lento (hereinafter "Lento") of the Pennsylvania State Police was on duty at the Pennsylvania State Police barracks located on State Route 209 in Carbon County when an anonymous caller phoned the barracks stating that there was a black SUV with Alabama registration driving erratically

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towards that same barracks. Upon receiving this call, Lento went outside, entered his vehicle, drove it towards the exit of the barracks parking lot and positioned his vehicle at the stop sign facing State Route 209 waiting for the vehicle to approach. Eventually, Lento observed what he believed to be the subject vehicle and as it passed him, he initiated his turn signal, pulled out and began to follow this vehicle.<sup>1</sup> Lento then followed this vehicle for approximately one mile. While still travelling south behind this vehicle, Lento acknowledged that he did not observe it driving erratically nor in any way did the driver commit any traffic violations. Eventually, Lento observed this vehicle make a right turn into the Dollar General parking lot. Lento did the same.

At this point, Lento parked his vehicle near where the black SUV was located but not in such a way as to prevent the defendant's vehicle from leaving. At no time had Lento activated his emergency lights nor siren. As Lento walked towards the black SUV, he observed the driver exit that vehicle and stand near it. Ultimately, this driver was identified as the defendant, Angel Batista (hereinafter "Batista"). Based upon the circumstances presented to that point in time, Lento observed his interactions with Batista as a mere encounter.

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<sup>1</sup> Lento testified that he was unable to get directly behind the black SUV as other vehicles were behind it as it passed his location.

Once Lento encountered Batista, he could detect "an overwhelming strong odor of marijuana emanating from the area of where he was."<sup>2</sup> Lento also observed that Batista's eyes were watery. When asked, Batista denied having a medical marijuana card, but acknowledged that he smoked marijuana prior to driving. Lento then asked Batista to perform a series of standard field sobriety tests, which Batista agreed to do. Lento believed that based upon Batista's performance, clues of impairment were observed. Upon asking and receiving consent to search, Lento did in fact search the black SUV where he again detected a strong odor of marijuana in the passenger compartment. He also observed "marijuana flake" in the vehicle. Based upon all of this, Lento placed Batista under arrest for driving under the influence.<sup>3</sup>

After hearing and with both Batista and the Commonwealth lodging briefs, this matter is now ripe for disposition.

#### LEGAL DISCUSSION

In this suppression motion, Batista raises two issues: 1) Was the interaction between Lento and Batista a "mere encounter" requiring no level of suspicion that criminal activity was afoot; and 2) assuming arguendo this was not a mere encounter, was this investigative detention supported by a reasonable suspicion of unlawful activity?

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<sup>2</sup> (Notes of Testimony, September 28, 2021 Suppression Hearing, p.9).

<sup>3</sup> It is not necessary to develop any further record as to the facts as the premise for the motion is Lento's authority to stop Batista's vehicle.

"Interactions between citizens and police officers, under search and seizure law, is varied and requires different levels of justification depending upon the nature of the interaction and whether or not the citizen is detained." *Commonwealth v. Stevenson*, 832 A.2d 1123, 1126-27 (Pa. Super. 2003). In Pennsylvania, three types of interactions between police officers and citizens are recognized: mere encounter, investigative detention and custodial detention. *Id.*

The first category, a mere encounter or request for information, does not need to be supported by any level of suspicion, and does not carry any official compulsion to stop or respond. The second category, an investigative detention, derives from *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) [;] and its progeny: such a detention is lawful if supported by reasonable suspicion because, although it subjects a suspect to a stop and a period of detention, it does not involve such coercive conditions as to constitute the functional equivalent of an arrest.

*Commonwealth v. Gonzalez*, 979 A.2d 879, 884 (Pa. Super 2009)

(quoting *Commonwealth v. Moyer*, 954 A.2d 659, 663 (Pa. Super. 2008) (en banc) (quoting *Commonwealth v. Smith*, 836 A.2d 5, 10 (Pa. 2003))).

The *Stevenson* Court has explained the distinction between the various categories of detention as follows:

A "mere encounter" can be any formal or informal interaction between an officer and a citizen, but will normally be an inquiry by the officer of a citizen. The hallmark of this interaction is that it carries no official compulsion to stop or respond.

In contrast, an "investigative detention," by implication, carries an official compulsion to stop and

respond, but the detention is temporary, unless it results in the formation of probable cause for arrest, and does not possess the coercive conditions consistent with a formal arrest. Since this interaction has elements of official compulsion it requires "reasonable suspicion" of unlawful activity. In further contrast, a custodial detention occurs when the nature, duration and conditions of an investigative detention become so coercive as to be, practically speaking, the functional equivalent of an arrest.

Stevenson, 832 A.2d at 1127-29.

In the case *sub judice*, Lento received information from an anonymous source that a black SUV with an Alabama registration was driving in an erratic manner and that this vehicle would be passing the State Police Barracks where Lento was then located. Ultimately, Lento, armed with this information, followed this vehicle into the Dollar General parking lot and positioned his cruiser away from Batista's vehicle. Lento did not initiate any type of traffic stop, nor did he activate the vehicle's lights or sirens. At no time did Lento prevent Batista's vehicle from exiting the parking lot by the way he positioned his vehicle nearby. At that point, Lento walked towards Batista's vehicle where he merely encountered him at the driver's side door to follow up on the information possessed. Upon approaching Batista, Lento detected the smell of marijuana.

There are times when police officers are "entitled to approach ordinary citizens on the street and ask a few questions." *Commonwealth v. Guzman*, 44 A.3d 688, 694 (Pa Super. 2012). Acting upon a tip regarding possible erratic driving, Lento approached

Batista to do just that.<sup>4</sup> Thus, this Court finds this initial interaction to be a mere encounter.<sup>5</sup> (See also, *Commonwealth v. Au*, 42 A.3d 2002, (Pa. 2012), and *Commonwealth v. Lyles*, 54 A.3d 76 (Pa. Super. 2012)).

Almost immediately upon Lento encountering Batista, he detected the smell of marijuana. Armed with a heightened sense that criminal activity may now be afoot, Lento's mere encounter with Batista turned into an investigative detention. Questioning suggested that Batista had smoked marijuana before driving to the Dollar General; observation made by Lento noted watery eyes; consent given by Batista led Lento to locate "marijuana flake" in the car . . . all evidence that criminal activity was afoot justifying a transitioning of the mere encounter into an investigative detention and ultimately custodial detention and arrest.

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<sup>4</sup> While a tip can be a factor, an anonymous tip would be insufficient by itself to form the basis for a traffic stop based upon reasonable suspicion, (See *Commonwealth v. Wimbush*, 790 A.2d 807, 811 (Pa. 2000)) and such tips must be treated with particular suspicion (see *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997)). We do not find a basis to analyze this tip with these concepts in mind as Lento did not effectuate a traffic stop but simply followed Batista's car into a parking lot. Batista's driving was never impeded nor directed by Lento but done by his own volitional conduct of intending to shop in this store.

<sup>5</sup> It appears undisputed that, when the interaction between Lento and Batista began there was a lack of reasonable suspicion that would justify either a traffic stop or an investigative detention. However, the vehicle Batista was occupying was already stopped when Lento pulled up upon it. "We are unaware of any search and seizure law that treats a police officer approaching a stopped vehicle as a 'traffic stop.'" Further, since a mere encounter between police officer and citizen requires no suspicion at all, the key to analyzing the within case is a determination of the point in time when Appellees were subjected to an investigative detention and whether, at that time, there existed sufficient justification for that classification of a detention." *Commonwealth v. DeHart*, 745 A.2d 633, 636 (Pa. Super. 2000).

CONCLUSION

Based upon the foregoing, this Court enters the following:

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Cynthia Hatton, Esquire	Counsel for Plaintiff
Eric Wiltrout, Esquire	Counsel for Defendant

ORDER OF COURT

AND NOW, this 8<sup>th</sup> day of February, 2022, upon consideration of the "Suppression Motion" filed by the defendant, Angel Batista, the briefs lodged by the parties and after hearing thereon, the motion to suppress evidence is DENIED.

BY THE COURT:

  
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Joseph J. Matika, J.

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