



A District Court finds that a State Trooper had reasonable suspicion to stop the Defendant's vehicle and, therefore, denies the Defendant's motion to suppress



January 2018

For duplication & redistribution of this article, please contact Public Agency Training Council by phone at 1.800.365.0119.
PATC 5235 Decatur Blvd Indianapolis, IN 46241

Article Source : http://www.patc.com/weeklyarticles/2018_us_v_powell_chapman.shtml

In *United State v. Powell*, 2017 WL 2535892 (M.D. Pa. June 12, 2017), Defendant Alshaqah Tariq Powell asked the United States District Court of the Middle District of Pennsylvania to suppress the evidence that Pennsylvania State Troopers obtained against him. Powell argued that the District Court should suppress the evidence because the States Troopers' actions in obtaining the evidence against him violated his constitutional rights. The District Court made the following factual determinations after conducting an evidentiary hearing on Powell's motion to suppress.

On November 3, 2015, Trooper David Long of the Pennsylvania State Police was observing southbound traffic on Interstate 81 from the interstate median. Trooper Long positioned his unmarked SUV perpendicular to the interstate to watch traffic pass from right to left through Dauphin County, Pennsylvania. During this time, Powell drove past Trooper Long in a black Ford Taurus. The Ford Taurus had tinted windows, displayed a temporary New Jersey tag, and was not speeding.

However, as Powell passed by his patrol car, Trooper Long observed Powell wearing white headphones over his left ear. Trooper Long could not tell whether Powell wore headphones over his right ear. Nonetheless, Trooper Long crossed into the interstate and activated his lights. Powell pulled over to the side of the interstate. Trooper Long approached the passenger window and witnessed Powell talking on the phone with headphones over both ears. Trooper Long told Powell that driving with headphones over both ears violated Pennsylvania's vehicle code. Powell responded that he used the headphones' Bluetooth to talk on the phone. Trooper Long explained that he would not give him a citation for driving with headphones.

Trooper Long then proceeded to ask Powell for his license and registration, whether he drove from New Jersey, and who owned the Ford Taurus. Powell stated that he was driving from the New Jersey state line to visit his girlfriend who worked in York County, Pennsylvania. Powell first suggested that his girlfriend worked at a Wendy's in York County. Powell later stated that the girlfriend worked at a Walmart and that they planned to meet at a Wendy's in York County for lunch. As to the Ford Taurus' owner, Powell initially suggested that his girlfriend owned the car, though he then clarified that the girlfriend's father owned the Ford Taurus.

Powell provided Trooper Long with a North Carolina identification, offered a New Jersey temporary registration card, and acknowledged that he was not licensed to drive. Trooper Long returned to his SUV, messaged Trooper Travis Martin of the Pennsylvania State Police for backup, and started his inquiry into the vehicle's registration as well as Powell's criminal history. Trooper Long also detected a possible odor of marijuana from the vehicle. However, Trooper Long did not initially confront Powell with his suspicion and sought Trooper Martin's opinion as to the presence of marijuana because Trooper Long had a cold at the time. Trooper Martin appeared on the scene approximately five minutes later. Trooper Martin spoke with Powell, inquired into the purpose of his trip, and did not detect an order of marijuana in the Ford Taurus.

Approximately twenty-four minutes into the stop, Trooper Long returned to Powell and asked him to step out of the Ford Taurus. A pat-down of Powell's person revealed only a pack of "Indian cigarettes." Again, Trooper

©2018 Online Article: 800.365.0119

Link to article online: http://www.patc.com/weeklyarticles/2018_us_v_powell_chapman.shtml
<http://www.patc.com>

Long asked Powell questions about the purpose of his trip. Trooper Long then asked Powell for permission to search the Ford Taurus. Trooper Long informed Powell that his consent must be a “either a yes or a no,” discussed the purpose of the search, and later explained how to fill out portions of the waiver form. Powell completed the consent form on the side of the road and outside of the view of Trooper Long’s dashcam video. Trooper Martin’s search of the Ford Taurus’s trunk revealed paper-wrapped packages of heroin and bricks of heroin. Trooper Martin discovered the heroin by unzipping a backpack located in the vehicle’s trunk. Trooper Martin pointed his Taser at Powell upon seeing the narcotics and instructed Trooper Long to take Powell into custody, and so, Trooper Martin read Powell his Miranda rights.

Thereafter, a grand jury returned a one-count indictment charging Powell with possession with intent to distribute heroin. Powell entered a plea of not guilty and filed a motion to suppress the evidence that the State Troopers had obtained from him. Specifically, Powell argued that the District Court should suppress the evidence against him because: (1) Trooper Long lacked probable cause to effectuate the traffic stop; (2) the length and nature of the traffic stop was unreasonable; (3) Trooper Long lacked reasonable suspicion to warrant an investigative detention; and (4) his consent to the vehicle search was not voluntary.

The District Court began its consideration of Powell’s motion to suppress by reiterating that the Fourth Amendment to the United States Constitution protects the public against unreasonable searches and seizures. “Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause.” *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). “Under the exception to the warrant requirement established in *Terry*, however, an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008). “Any evidence obtained pursuant to an investigatory stop (also known as a ‘*Terry stop*’ or a ‘stop and frisk’) that does not meet this exception must be suppressed as ‘fruit of the poisonous tree.’” *Id.* The District Court then proceeded to reject each of Powell’s arguments tendered in support of his motion to suppress.

As for Powell’s argument that Trooper Long did not have probable cause to stop his vehicle, the District Court explained that the Fourth Amendment permits a traffic stop based on reasonable suspicion that a traffic violation has occurred regardless of the officer’s subjective motivations for making the stop. A traffic stop will be deemed a reasonable seizure when an objective review of the facts shows that an officer possessed specific, articulable facts that an individual was violating a traffic law at the time of the stop. In other words, an officer need not be factually accurate in her belief that a traffic law had been violated but, instead, need only produce facts establishing that she reasonably believed that a violation had taken place.

Here, the District Court concluded that Trooper Long had a reasonable suspicion to stop Powell’s vehicle based upon Powell’s violation of Pennsylvania law, i.e., wearing headphones while driving. The District Court was “unpersuaded” by Powell’s argument that Trooper Long did not have reasonable suspicion to stop his vehicle merely because Trooper Long could not confirm whether Powell wore the headphones on both ears. The District Court held that wearing the headphone over one ear constituted a reasonable suspicion necessary to justify the traffic stop of Powell’s vehicle.

Furthermore, the District Court held that the scope and the duration of the traffic stop did not violate Powell’s constitutional rights. The District Court explained that the 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 to attend to related safety concerns. Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. However, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry beyond the reason for the stop and detain the

vehicle and its occupants for further investigation. This exception to the rule requires independent suspicion that some other crime is afoot.

In this case, the District Court found that Trooper Long had independent, articulable suspicion of illegal activity sufficient to extend the traffic stop. Powell made inconsistent statements concerning the destination of his trip and the owner of the Ford Taurus. Powell appeared nervous even after being told that he would not receive a citation, and at one point, Trooper Long witnessed Powell's hands shaking. Powell later acknowledged that he was not licensed to drive, and Trooper Long believed that he may have smelled an odor of marijuana in the vehicle.

The District Court further found that Trooper Long's request that Powell step outside of the vehicle did not impermissibly extend the traffic stop. The United States Supreme Court has held that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." *Maryland v. Wilson*, 519 U.S. 408, 415 (1997). As such and viewing Trooper Long's conduct under the totality of the circumstances, the District Court could not say that Trooper Long was not justified in extending the stop by questioning Powell about the purpose of his trip, calling Trooper Martin for backup, running a criminal background check, investigating the Ford Taurus' registration status, and later requesting Powell to step out of the vehicle.

Finally, the District Court held that Powell voluntarily consented to the search of his vehicle. A voluntarily given consent is an exception to the search warrant requirement and is, therefore, constitutionally permissible. Whether a consent to a search was in fact "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances. Factors that courts use in determining whether a confession is voluntary include the age of the accused, his education, his intelligence, whether he was advised of his constitutional rights, and whether the questioning was repeated and prolonged.

In finding the search to be voluntary, the District Court relied primarily upon the consent form that Powell signed. The District Court noted that Powell did not object to the form being offered into evidence at the hearing on his motion to suppress and further noted that no other evidence was presented to question to validity of Powell's consent that Trooper Martin testified that Powell gave. Accordingly, the District Court denied Powell's motion to suppress and allowed the evidence obtained during the traffic stop to be used against Powell.