

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 :  
 v. : **No. 715-2008**  
 : **CRIMINAL**  
**LAMONT CRADLE,** :  
 **Defendant** :

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**COMMONWEALTH OF PENNSYLVANIA,** :  
 :  
 v. : **CR-924-2008**  
 : **CRIMINAL DIVISION**  
**MARCELLUS TURNER,** :  
 **Defendant** :

**OPINION AND ORDER**

Before this Honorable Court is Defendant Cradle’s Omnibus Pre-Trial Motion filed June 18, 2008 and Defendant Turner’s Omnibus Pre-Trial Motion filed June 23, 2008. A hearing on the Motions was held on August 7, 2008. At the time of the hearing, some of the issues raised in the Omnibus Motions had been resolved as outlined in the Order following this Opinion. The main issues remaining before the Court at this time will be addressed in the order in which they were raised in the motions.

***Background***

The following is a summary of the facts presented at the Suppression hearing. On April 15, 2008, around 1:00 a.m, while patrolling I-180, Pennsylvania State Troopers Gary Beadle (“Beadle”) and Kenneth Fishel (“Fishel”) observed a blue Chevy Cobalt (“vehicle”) take the Faxon exit, accelerate and then make a right turn onto East Third Street in Williamsport, without

using a turn signal. The vehicle was clocked on East Third Street for 3 tenths of a mile going 80 miles per hour in a 35 miles per hour zone. Beadle activated the sirens and proceeded to follow the vehicle. The Troopers observed the vehicle enter through the exit way at Dunkin Donuts. Trooper Fishel testified that as he observed the vehicle go past the drive through window, a plastic bag appeared to come out of the vehicle.<sup>1</sup> The Troopers then entered Dunkin Donuts through the entrance way and as they did so, the vehicle passed in front of them and ran into an embankment. Beadle radioed the State Police Barracks of their location and then both Troopers exited their police cruiser with their weapons drawn.

Beadle focused on the driver and Fishel on the passenger. Beadle ordered the driver to raise both his hands, while Fishel ordered the passenger to do the same. Fishel testified that both occupants were non-compliant and were making furtive movements such as reaching towards the floor and dashboard area. Fishel testified that he believed the occupants were attempting to either conceal or gain something from their reaching. He further testified that after ordering the occupants to raise their hands more than half a dozen times, the passenger complied. Fishel ordered the passenger to exit the vehicle and to prone out with his face to the asphalt and his hands behind his back. The passenger was handcuffed, identified as Lamont Cradle (“Defendant Cradle”), and placed in the back of the police cruiser.

After Defendant Cradle was in custody, Beadle continued to order the driver to raise both his hands. Beadle testified that while he was ordering the driver to raise both his hands, the

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<sup>1</sup> According to the testimony presented at the Suppression Hearing, Fishel did not include in his official report or the Affidavit of Probable Cause submitted in conjunction with the juvenile filing in Defendant Turner’s case that he personally observed the bag being thrown from the vehicle. The report only states that a known Dunkin Donuts employee observed the bag being thrown from the vehicle. Additionally, Beadle testified that he did not observe anything being thrown from the vehicle. The item allegedly thrown from the vehicle was later identified as a plastic bag containing one blue glassine bag with suspected cocaine, one plastic bag with approximately 17 grams of suspect marijuana and 197 empty blue glassine bags.

driver was reaching with his right hand up and his left hand down. Beadle testified the driver said “You won’t shoot me” and Beadle responded, “Yes, I will.” Beadle further testified the driver complied at this point and was removed from the vehicle where he was placed in handcuffs. The driver was identified as Marcellus Turner (“Defendant Turner”) and was taken to the rear of the vehicle where he was in the presence of four other troopers.

Once both Defendants were in handcuffs and removed from the vehicle, for officer safety, Beadle and Fishel began a search of the vehicle. First, they checked under the driver and passenger seats for a weapon. After no weapons or contraband was found under the seats, Beadle located a dashboard compartment, found between the steering column and the driver’s side door. Again for officer safety, Beadle opened the compartment and found a closed Newport cigarette box. He then opened the cigarette box and found inside a clear plastic bag containing white residue, which he suspected was cocaine.

### ***Discussion***

#### ***Habeas Corpus/Motion to Dismiss***

In Defendant Cradle’s Habeas Corpus/Motion to Dismiss, he asks the Court to dismiss the two counts of Possession of a Controlled Substance, the two counts of Possession with the Intent to Deliver, and the one count of Possession of Drug Paraphernalia. Defendant Cradle alleges there is insufficient direct and circumstantial evidence to show he had control or intended to exercise control over any illegal substances, or that he exercised control with the intent to deliver.

A transcript of the Preliminary Hearing was not prepared in this case. As a result, this Court must accept the Magisterial District Justice's ruling as it has no specific testimony to review. Therefore, Defendant Cradle's Habeas Corpus/Motion to Dismiss shall be denied.

### ***Motion to Suppress***

Both Defendants allege that there was no police protection exigency to validate the officers' warrantless, non-consensual search. Specifically, Defendants point to the fact that they were both in handcuffs and removed from the vehicle at the time of the search. Further, Defendants argue that even if a search of the vehicle was reasonable, the search of the Newport cigarette box exceeded the scope of a reasonable search. In opposition, the Commonwealth argues the Officers search of the Newport cigarette box was reasonable because of exigent circumstances, specifically danger to the officers and/or the public.

In Pennsylvania, warrantless vehicle searches "must be accompanied not only by probable cause, but also by exigent circumstances beyond mere mobility; 'one without the other is insufficient.' Commonwealth v. Hernandez, 935 A.2d 1275, 1280 (Pa. 2007) quoting Commonwealth v. Luv, 735 A.2d 87, 93 (Pa. 1999). "[W]here there is potential danger to police or others in the context of a vehicle stop, exigency has been established for purposes of a warrantless search." Id. at 1282. However, the mere assertion of danger is not sufficient. "[P]olice must be able to articulate the danger posed under the specific circumstances of the case." Id.

In Commonwealth v. Timko, the Pennsylvania Supreme Court found that no exigencies existed when the Defendant was outside of his van, under the control of officers, and possibly handcuffed at the time the evidence was seized. 417 A.2d 620, 623 (Pa. 1980). See also

Commonwealth v. White, 669 A.2d 896 (Pa. 1995).

Here, the Court finds that no exigencies existed to support the search of the Defendants' vehicle. At the time the search was conducted, both Defendants' Cradle and Turner were handcuffed, with Cradle inside of the police cruiser and Defendant Turner under the control of other officers at the rear of the vehicle. Clearly, at the time of the search the officers were in no way in danger to justify a search of the vehicle. However, even if the Court was to find the Defendants' furtive movements and failure to keep their hands raised sufficient to justify a quick search of the vehicle for weapons, the seizure and opening of the Newport cigarette package purportedly to secure a weapon is still not permissible. The Court finds since both Defendants had been removed from the vehicle prior to its search, no potential police danger existed.

**ORDER**

AND NOW, this \_\_\_\_day of September 2008, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

- I. Defendants' Cradle and Turner's Motion to Suppress evidence is GRANTED and the evidence found inside the Newport cigarette box is hereby SUPPRESSED.
- II. Defendant Cradle's Habeas Corpus/Motion to Dismiss is DENIED.
- III. The Court does not need to address the Defendant Turner's Motion for Discovery, as Counsel has indicated that the items requested would be provided. Defense Counsel's record is preserved as to this issue.

By the Court,

Nancy L. Butts, Judge

cc. DA (MK)  
Ronald C. Travis, Esq.  
Marc F. Lovecchio, Esq.  
Hon. Nancy L. Butts  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)