

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

**COMMONWEALTH** : **No. CR-746-2009**  
**vs.** :  
:   
**MAURICE THOMAS,** : **Motion to Suppress**  
**Defendant** :

**OPINION AND ORDER**

This matter came before the Court on Defendant’s motion to suppress. The relevant facts follow.

On May 2, 2009, at approximately 1342 hours, Officer Nathan Moyer of the Williamsport Police Department observed a stop sign violation at the intersection of West Edwin Street and Walnut Street. Officer Moyer activated his lights and stopped the vehicle at the rear of Building 5 of Timberland Apartments. The vehicle contained four occupants. Officer Moyer radioed for assistance due to the number of occupants in the vehicle. He did not order anyone out of the vehicle before backup arrived, but he did obtain the names and dates of birth of the occupants. The driver did not have a valid license. Defendant was the front seat passenger.

Officer Jeremy Brown and Sergeant Timothy Miller were two of the officers who responded to Officer Moyer’s request for assistance; they arrived within about five minutes of Office Moyer’s request. They recognized the vehicle from a previous vehicle stop about a month or two earlier, but the occupants were different. During the previous stop, the police attempted to contact the registered owner of the vehicle, Daniel Heckert. They called to get consent to search the vehicle from the owner, but spoke to the owner’s son, Russell Heckert, who explained that his father was ill and he (Russell) had a power of attorney (POA). The POA indicated his girlfriend borrows the car and her son Mike was

supposed to have it. The POA gave the police consent to search the vehicle.

Since that previous stop, the police had seen the vehicle being operated by young, black males in high crime areas of the city.

None of the occupants of the vehicle knew the owner or the POA.

When Sergeant Miller and Officer Brown recognized the vehicle, Sergeant Miller called the POA while Officer Moyer wrote out citations against the driver for the stop sign violation and driving a motor vehicle without a license. Sergeant Miller asked the POA for verbal consent to search the vehicle, which the POA gave. Sergeant Miller also asked the POA to come to the scene so he could sign a written consent form (Exhibit C-1) and he could see who was driving the vehicle so he would quit letting the woman and her son use the vehicle. At some point during the search of the vehicle, the POA arrived, showed the police identification, and signed the consent form.

Based on the verbal consent, the police removed the occupants from the vehicle and had them sit on the curb. Sergeant Miller and Officer Deb Wasilewski kept an eye on the occupants while Officer Brown searched the vehicle. As Officer Brown searched the vehicle, Sergeant Miller watched Defendant's actions and demeanor. Sergeant Miller testified Defendant was outspoken and cracking jokes; the other occupants had no reaction. When Officer Brown got closer to the front passenger door, however, Defendant watched the search more intently, his breathing changed and he got more nervous. When Officer Brown popped off the clips and looked behind the power window and door lock switch, Defendant said, "Damn, he's tearing shit up." Inside the space surrounding the window and door switches, Officer Brown discovered three, clear plastic bags. One bag contained 16 to 17 grams of cocaine, another bag had 1 to 1 ½ grams of cocaine, and the third bag held a small

amount of marijuana.

The police arrested Defendant and charged him with possession with intent to deliver a controlled substance, possession of a controlled substance, two counts of possession of drug paraphernalia, and possession of a small amount of marijuana.

Defendant filed a motion to suppress all evidence seized from the vehicle.

Defendant first claims the police could not request consent to search from the owner of the vehicle or the POA without reasonable suspicion to believe that drugs were contained therein. The Court cannot agree. The Court believes case law only requires reasonable suspicion prior to requesting consent when the person from whom they are seeking consent has been detained or seized. See *Florida v. Bostick*, 501 U.S. 429, 437-38 (1991); *Commonwealth v. Reid*, 571 Pa. 1, 811 A.2d 530 (2002); *Commonwealth v. Freeman*, 563 Pa. 82, 757 A.2d 903 (2000). The POA was not detained at the time the police requested consent to search. In fact, he was not even present at the scene, as he initially gave verbal consent to the police over the telephone.

Defendant also asserts that since the alleged POA was not in possession of the vehicle at the time of the stop, the POA did not testify at the suppression hearing, and no documents were introduced to show the owner had signed a valid instrument giving the POA authority or the extent of the POA's authority, the Commonwealth has not presented sufficient evidence to show a valid consent to search the vehicle. Again, the Court cannot agree. Defendant may be correct if the Commonwealth was proceeding on the basis of actual authority, but it was not. The police can also search pursuant to apparent authority, and that was the Commonwealth's theory in this case. Under the "apparent authority" exception, "warrantless searches based upon the reasonable belief of a police officer that the third party

who has given consent to the officer to search has actual authority, will be upheld as reasonable even though that belief was mistaken.” *Commonwealth v. Hughes*, 575 Pa. 447, 456, 459, 836 A.2d 893, 898 (2003).

A third party with apparent authority over the area to be searched may provide police with consent to search. Third party consent is valid when police reasonably believe a third party has authority to consent. Specifically, the apparent authority exception turns on whether the facts available to police at the moment would lead a person of reasonable caution to believe the consenting third party had authority over the premises. If the person asserting the authority to consent did not have such authority, that mistake is constitutionally excusable if police reasonably believed the consenter had such authority and police acted on facts leading sensibly to their conclusions of probability.

*Commonwealth v. Graham*, 949 A.2d 939, 942 (Pa.Super. 2008), quoting *Commonwealth v. Strader*, 593 Pa. 421, 427-28, 931 A.2d 630, 634 (2007)(citations and quotations omitted), cert. denied 128 S.Ct. 1452, 170 L.Ed. 2d 281 (2008).

The Court finds this case is similar to *Graham*. In *Graham*, the police went to the home rented by appellant and his roommate Dave Grusek, for the purpose of speaking with appellant. Grusek was in the driveway, but told the police appellant was not home. The police told Grusek they also were interested in the Chevy Blazer parked in the driveway, and they asked him what he knew about the vehicle. Grusek told the police appellant had given him the vehicle as payment for a debt owed. Grusek gave the police permission to look through the vehicle. The police saw construction materials and tools in the vehicle. They took pictures of the items and showed them to the victims, who identified some of the items as belonging to them. A subsequent vehicle identification check revealed, contrary to Grusek’s averment, that title to the vehicle remained with appellant. The Superior Court found the trial court did not err in denying appellant’s suppression motion under the apparent

authority exception. In so finding, the Superior Court stated, “While perhaps it would have been more prudent of Sergeant Ruediger to wait until he absolutely verified ownership of the Blazer and secured a search warrant before opening the door to the vehicle, based on Grusek’s claim he owned the car, the officer *reasonably* concluded that roommate Grusek had, at a minimum, apparent authority to give consent for the search of, and intrusion into, the Chevy Blazer.” *Graham*, 949 A.2d at 943.

Here, the police reasonably concluded the POA had apparent authority to give consent for the search of his father’s vehicle. The police testified that in the prior incident when they sought consent to search, they called the **owner’s phone number** and the POA answered the phone. When the police explained why they were calling, the POA indicated he had a power of attorney for the owner of the vehicle, his father, who was ill. He then gave the police consent to search. In this incident, not only did the POA give oral consent to search, he showed the police photo identification when he came to the scene to sign the written consent form. The owner and the POA shared the same last name. Given the totality of the circumstances, the police reasonably believed the POA had at least apparent authority to consent to the search of the vehicle. Therefore, Defendant is not entitled to suppression of the evidence in this case.

### **ORDER**

**AND NOW**, this \_\_\_\_ day of November 2009, for the reasons set forth in the foregoing Opinion, the Court DENIES Defendant’s Motion to Suppress.

By The Court,

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Kenneth D. Brown, President Judge

cc: Nicole Spring, Esquire (APD)  
Michael Morrone, Esquire  
Henry Mitchell, Esquire  
Work file