

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 v. : **CR-1462-2010**
 : **CRIMINAL DIVISION**
TROY MATTY, :
 Defendant :

COMMONWEALTH :
 :
 : **CR-1461-2010**
 : **CRIMINAL DIVISION**
JESSICA ECKMAN, :
 Defendant :

OPINION AND ORDER

Defense Counsel filed an Omnibus Pretrial Motion on December 20, 2010. The Commonwealth filed a Motion to Consolidate on January 24, 2011. A hearing on both Motions was held February 17, 2011. At the time of the hearing, the Court granted the Commonwealth's Motion to Consolidate with the understanding that the Motion could be revisited in the event that another issue develops in the future.

Background

On July 4, 2010, Trooper Edward Dammer (Dammer) of the Pennsylvania State Police (PSP) was traveling west on Interstate 180 through the City of Williamsport. As Dammer approached the US Route 15 spur, he observed a blue Audi Sedan stopped in the emergency vehicle crossover attempting to make a u-turn from eastbound Interstate 180 to westbound Interstate 180. Dammer then activated his emergency lights and stopped the Audi vehicle.

Dammer approached the driver's side of the vehicle and requested the driver's documents. Dammer smelled an overwhelming odor of marijuana when the window to the vehicle was rolled down. Dammer instructed both individuals to remain in the vehicle while he returned to his patrol car. Since Dammer could smell a strong odor of marijuana coming from the vehicle, he called for a second trooper to come and assist him. Upon returning to the vehicle, Dammer requested that the driver, Troy Matty (Defendant Matty), exit the vehicle. Dammer asked Defendant Matty if he had any drugs. Defendant Matty responded that he did not have any drugs. Dammer then asked Defendant Matty for consent to search the vehicle. Defendant Matty refused to consent to a search of the vehicle. The front seat passenger, Jennifer Eckman (Defendant Eckman) stated that she did not know anything about the marijuana. Defendant Matty was told not to go near the vehicle as he had indicated that he wanted to get inside the vehicle. Dammer discovered that the registered owner of the vehicle was Defendant Matty's father, Larry Matty. Dammer attempted to get in touch with Larry Matty, but was unsuccessful and was only able to speak to Defendant Matty's Mother. Trooper Gary Beadle (Beadle), also of the Pennsylvania State Police, arrived as backup. When Beadle approached the vehicle, he could smell a strong odor of marijuana from about a foot away from the vehicle. The Defendants were not detained further and Beadle transported them to a Sheetz gas station. A tow truck was called for and came and towed the vehicle to the PSP Montoursville barracks.

According to PSP regulations, an inventory search of a vehicle taken into custody must be completed to check for any valuables in the vehicle. Upon doing the inventory search, the PSP opened the center console of the vehicle and found: three (3) plastic bags of marijuana, a glass vial of marijuana, and two (2) marijuana pipes. The suspected marijuana was field tested and tested positive for marijuana. Thereafter, the PSP did ultimately obtain a search warrant for

the vehicle. After execution of the search warrant, the PSP found fireworks in the trunk of the vehicle.

Discussion

Petition for Writ of Habeas Corpus

The Defendants filed a Petition for Writ of Habeas Corpus as to the charges of Possession of a Small Amount of marijuana and Possession of Drug Paraphernalia. A petition for habeas corpus is the means by which a party can challenge at the pre-trial level whether the Commonwealth presented sufficient evidence against them to establish a prima facie case. Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003). The standard for a prima facie case is met when the Commonwealth “produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003). Probable cause is established when the facts and circumstances as they are presented from reasonably reliable sources are “sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime¹.” Commonwealth v. Rodriguez, 585 A.2d 988, 990 (Pa.1991). (Citing Commonwealth v. Wagner, 406 A.2d 1026 (Pa.1979)).

Defendant Matty and Defendant Eckman were each charged with four (4) counts of Possession of a Small Amount of Marijuana and two (2) counts of Possession of Drug Paraphernalia. A person violates 35 P.S. §780-113(A) (31) (i) Possession of a Small Amount of

¹ At the time of the hearing on February 17, 2011, Defense Counsel cited to Commonwealth v. Chenet, 373 A.2d 1107 (Pa.1977), to indicate that since the vehicle was registered to the Defendant’s father, there was not enough evidence presented to establish that the Defendant himself possessed the marijuana or the drug paraphernalia. In Chenet, the Court held that the “[C]ommonwealth . . . failed to prove beyond a reasonable doubt that appellant knew about and was in possession of two marijuana cigarettes found in a third party’s car.” As the standard for a habeas corpus petition is not proof beyond a reasonable doubt, the Court finds that Chenet is not applicable to the Defendant’s Petition.

Marijuana (less than 30 grams), if that person possesses a small amount of marijuana for the purpose of personal use. A person violates 35 P.S. §780-113(A)(32) Possession of Drug Paraphernalia if that person uses or possesses with intent to use, drug paraphernalia for the purpose of.... packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

In this case, the Defendants were stopped in a vehicle from which emanated an overwhelming odor of marijuana. In the center console of the vehicle, which was located between the two Defendants, the police found three (3) plastic bags of marijuana, a glass vial of marijuana, and two (2) marijuana pipes². The Court finds that the evidence presented establishes sufficient probable cause to warrant the belief that the offenses of Possession of a Small Amount of marijuana and Possession of Drug Paraphernalia were committed, and that the Defendant's were probably the people who committed the offenses.

Motion to Suppress Physical Evidence

The Defendants filed a Motion to Suppress Physical Evidence. The Defendants argue that the warrantless seizure and impoundment of the vehicle were unlawful in that the police neither had probable cause nor exigent circumstances to allow a warrantless seizure. The Defendants further allege that the inventory search done in this case was unlawful because the

² Defense Counsel cited to Commonwealth v. Spencer, 621 A.2d 153 (Pa.Super.1993) to demonstrate that Defendant Eckman's mere presence in the vehicle was insufficient to show her possession of either the marijuana or the paraphernalia. The facts of this case differ from those in Spencer. In Spencer, the drugs were found in the armrest storage compartment of the driver's side door. In this case, the marijuana and paraphernalia were found in the center console of the vehicle, located between both of the Defendants. Furthermore, the Court in Spencer found that the evidence presented was insufficient to prove beyond a reasonable doubt that the passenger of the vehicle knew the drugs were present in the vehicle or that she intended to exercise control over the contraband. Again, proof beyond a reasonable doubt is not the standard used to determine a habeas corpus petition.

vehicle was not lawfully impounded and because the police did not act in accordance with a reasonable, standard policy.

In this case, the vehicle was stopped by Dammer as the passenger vehicle was observed to be stopped in the emergency vehicle crossover lane attempting to make a u-turn. The initial stop of the vehicle appears to be lawful. The vehicle was then seized as a result of the odor of marijuana coming from the vehicle. “The Supreme Court of the United States has held that an odor may be sufficient to establish probable cause for the issuance of a search warrant.” Commonwealth v. Stoner, 344 A.2d 633 (Pa.Super.1975) (See United States v. Ventresca, 380 U.S. 102 (1965). Warrantless searches of vehicles done based on the mere odor of marijuana have also been upheld in court. Stoner at 636. (See United States v. Martinez-Miramontes, 494 F.2d 808 (9th Cir. 1974)). The Stoner Court noted that although Martinez and similar cases dealt with issues concerning warrants for searching a house, the same rationale used to establish probable cause applies equally to the search of a vehicle. Stoner at 635. In this case, rather than conducting a warrantless search of the vehicle, the police had the vehicle towed to the PSP Montoursville barracks where they intended to search the vehicle subject to a warrant. Before the warrant was obtained, the vehicle was searched subsequent to an inventory search. The marijuana and paraphernalia were discovered as a result of the inventory search. An inventory search is a valid exception to the warrant requirement. See Commonwealth v. Burney, Pa. Dist. & Cnty. Dec. LEXIS 105 (Pa. Dist. & Cnty. 2010). “A warrantless inventory search is permitted where: (1) police have legally impounded the vehicle; and (2) they conduct the search in accordance with a reasonable, standard policy of routinely securing and inventorying the contents of the impounded vehicle.” *Id.* In this case, the police had the authority to impound the vehicle as they stopped the vehicle for a traffic violation, smelled an overwhelming odor of

marijuana coming from the vehicle, and intended to get a search warrant to search the vehicle. Furthermore, according to PSP regulations, an inventory search of a vehicle taken into custody must be completed to check for any valuables in the vehicle.

The Court finds that the police in this case took more precautions than are required as they could have simply searched the vehicle at the scene. However, the police decided to impound the vehicle and obtain a search warrant. As the vehicle was parked in the emergency vehicle crossover lane, it would not have been feasible to leave the car locked and parked in that location while a search warrant was obtained. As neither of the Defendants was in custody, they would have had the opportunity to return to the car and remove any contraband present if the vehicle was left in its current location. See Stoner at 167. Where the possibility that the owner of a vehicle could return and remove contraband if the vehicle was left along the highway led police to tow the vehicle. Furthermore, the Court also agrees with the Stoner Court that it would have been cumbersome and unreasonable to have one officer stay and guard the vehicle, while the other officer went to obtain a search warrant. Id. In the course of obtaining the search warrant, the vehicle was searched subsequent to a valid inventory search during which the marijuana and paraphernalia were found. The Court is satisfied that the inventory search was not a pretext to search for contraband, as the police did request and ultimately obtain a search warrant for the vehicle. Based upon these facts, the Court finds no reason to suppress the evidence.

ORDER

AND NOW, this ____day of March, 2011, based upon the foregoing Opinion, it is

ORDERED and DIRECTED as follows:

1. As to Defense Counsel's Petition for a Writ of Habeas Corpus, said Petition is hereby DENIED.
2. As to the Defense Counsel's Motion to Suppress Physical Evidence, said Motion is hereby DENIED.
3. As to Defense Counsel's Motion in Limine pertaining to Defendant Matty, said Motion is hereby GRANTED. At the time of the hearing on February 17, 2011, the Commonwealth agreed that Defendant Matty's refusal to consent to search the vehicle would not be used against him to infer guilt.
4. As to the Commonwealth's Motion to Consolidate, said Motion is GRANTED and it is ORDERED and DIRECTED that the two cases be consolidated for trial. This Motion could be revisited at a later time in the event that another issue develops requiring their severance.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter T. Campana, Esq.