

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

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-118-2011**  
:   
**RICKIE JOHNSON,** :   
**Defendant** :

**OPINION AND ORDER**

Defendant is charged by Information filed on February 24, 2011 with one count of Possession with Intent to Deliver Heroin, one count of Possession with Intent to Deliver Cocaine, one count of Possession of Heroin, one count of Possession of Cocaine, one count of Possession of Drug Paraphernalia and one traffic summary.

It is alleged that on December 18, 2010, Defendant was operating a motor vehicle in the city of Williamsport. The vehicle committed a turning movements violation and was pulled over by the Pennsylvania State Police.

The Defendant was subsequently removed from the vehicle and a wingspan search was conducted of the passenger and driver's side compartments. During the search, the police accidentally discovered heroin and cocaine located in the plastic, bottom portion of a steel coffee cup located in a cup holder in the center console.

The vehicle was impounded by the State Police. An inventory search of the vehicle uncovered a safe in the trunk. Utilizing Defendant's keys, the police opened the safe and wiped the interior of the safe with a drug swipe.

Defendant filed an Omnibus Pretrial Motion/Motion to Suppress nunc pro tunc on April 7, 2011. A hearing was held on May 12, 2011.

Defendant requests that the Court suppress the evidence seized from the vehicle based on several different arguments. First, Defendant asserts that there was no probable cause

to effectuate the traffic stop of the vehicle. Next, Defendant argues that there was insufficient probable cause to request the Defendant to remove himself from the vehicle. The Defendant also argues that the wingspan search of the passenger and driver's compartments was conducted without probable cause. Further, Defendant argues that the inventory search of the vehicle was done "in violation of the Defendant's constitutional right" as a search warrant should have been secured. Finally, Defendant argues that the search of the safe was "unconstitutional" as a search warrant should have been obtained prior to searching it.

With respect to Defendant's first argument, case law is clear that police are permitted to stop an automobile after witnessing a motor vehicle violation. Commonwealth v. Reed, 19 A.3d 1163 (Pa. Super. 2011); Commonwealth v. Campbell, 862 A.2d 659 (Pa. Super. 2004). Clearly, the Pennsylvania State Police witnessed a motor vehicle violation being committed by the Defendant and accordingly had the requisite probable cause to effectuate a vehicle stop.

Trooper Tyson Havens testified on behalf of the Commonwealth. He indicated that on December 18, 2010 he and Trooper Davis were on patrol in a marked unit in the city of Williamsport. They began following Defendant's vehicle because of suspicions regarding recent criminal activity in the city. They observed the Defendant fail to use his right turn signal prior to traveling from the roadway to the right berm area to park. As a result, a traffic stop was effectuated.

The Court also observed a videotape of the events. The videotape was recorded from a recording device located on the dashboard of the patrol unit. It was marked and introduced in evidence as Commonwealth Exhibit 2. It clearly depicted Defendant's vehicle

traveling from the roadway to park on the right side without utilizing its turn signal in violation of 75 Pa. C.S. § 3334 (a).

Defendant next argues that the State Police did not have “probable cause” to request the Defendant to remove himself from the vehicle. Defendant’s argument, however, is misplaced.

“When a police officer lawfully stops a motorist for a violation of the Pennsylvania Motor Vehicle Code, the officer is permitted to ask the driver to step out of the vehicle ‘as a matter of right.’” Commonwealth v. Boyd, 17 A.3d 1274, 1277 (Pa. Super. 2011), citing Commonwealth v. Parker, 957 A.2d 311 (Pa. Super. 2008), appeal denied, 966 A.2d 571 (Pa. 2009); see also Reed, supra.; Campbell, supra.

Because Trooper Havens lawfully stopped the Defendant’s vehicle for a violation of the Pennsylvania Motor Vehicle Code, he was permitted to ask the Defendant, as the driver of the vehicle, to step out of the vehicle as a matter of right.

Defendant next asserts that the warrantless search of the driver’s and passenger’s compartments of the vehicle was without probable cause. Defendant, however, misstates the applicable standard regarding such searches.

A police officer has the right to conduct a weapons search of an automobile if there is a reasonable belief that the suspect is dangerous and that the suspect might gain immediate control of weapons. Boyd, supra, citing Commonwealth v. Austin, 428 Pa. Super. 466, 631 A.2d 625, 627 (Pa. Super. 1993). Where a police officer has sufficient facts at his disposal to warrant a reasonably prudent man to believe that his safety was compromised, a

protective weapons search of the vehicle's passenger compartment is permitted.

Commonwealth v. Morris, 644 A.2d 721, 723 (Pa. 1994).

In this particular case, the State Police did not, as Defendant contends, conduct a warrantless search of his vehicle. To the contrary, the State Police performed a protective weapons search of the interior passenger compartment.

The Court concluded that the protective search of the driver's and passenger compartment was premised on the reasonable suspicion by Trooper Havens that the Defendant may pose a danger to the police officers.

Specifically, Trooper Havens credibly testified that when he first approached the vehicle, he approached the passenger side and initially spoke with and identified a Mr. Blagman. Mr. Blagman was overly nervous, made no eye contact, was shaky and exhibited involuntary muscle spasms in his face. Trooper Havens previously had contact with Mr. Blagman and never witnessed said similar involuntary muscle spasms.

Trooper Havens was aware of Mr. Blagman's criminal history which included previous arrests for possession with intent to deliver narcotics, prior "crimes of violence," a prior "gun charge" and a disposition unreported with respect to a murder charge.

The Defendant also was very nervous. He made no eye contact and his hands were shaking despite the fact that Trooper Havens indicated to the Defendant that it was their intention only to issue a warning.

Moreover, Trooper Havens determined that the vehicle was owned by a third party, and that the passenger, Mr. Blagman, traveled from the Philadelphia area to Williamsport for the apparent purpose of shopping. This did not make much sense to Trooper

Havens and he, in fact, felt it was “unusual.” Usually, those who intended to shop for the holidays did so by traveling from Williamsport to an urban area such as Philadelphia. Trooper Havens eventually discovered that Mr. Blagman was released from State Prison only six days earlier and that he was actually in violation of his parole by being present in Williamsport.

Finally, the stop occurred during a timeframe in which violence had escalated in the Williamsport area. Just the night before there was a shooting between two vehicles. The most recent shooting was the fourth or fifth shooting in the previous five days.

The Defendant was not securely in police custody and it was intended that following the protective search, the Defendant would be returned to the vehicle and given a warning. The protective weapons search of the car’s interior was an appropriate manner in which to protect the police and public from any possible danger.

The courts in this Commonwealth have found sufficient reasonable suspicion to support a weapons search in circumstances similar to the facts of this case. Commonwealth v. Micking, 17 A. 2d 924 (Pa. Super. 2011)(opinion in support of affirmance)(extreme nervousness including shaking and trembling which out of proportion for minor turn signal violation during a nighttime traffic stop gave police reasonable suspicion that suspect may be armed and dangerous); See also Commonwealth v. Morris, 537 Pa. 417, 644 A.2d 721 (Pa. 2004)(furtive movements toward the floor area near driver’s legs during a nighttime stop gave police reasonable suspicion to believe driver may be armed and dangerous); Commonwealth v. Boyd, 17 A.3d 1274 (Pa. Super. 2011)(midnight traffic stop for impeding traffic by sitting through several traffic lights in a high crime area and police observed driver reaching into or toward center console); In Re: O.J., 958 A.2d 561 (Pa. Super. 2008) (en banc)(nighttime stop

of juvenile for traffic light violation where juvenile initially refused to heed police efforts to stop his vehicle and made furtive movements in the console area once vehicle was stopped); Commonwealth v. Murray, 936 A.2d 76 (Pa. Super. 2007) ( turn signal violation that result in nighttime traffic stop of vehicle with tinted windows in a known drug area), reargument and reconsideration denied, 2007 Pa. Super. Lexis 2052 (Pa. Super. 2007).

Defendant next attacks the inventory search of the vehicle claiming that a search warrant should have been obtained prior to the vehicle being searched.

In determining whether a proper inventory search of an automobile has occurred, the Court first determines whether the police had lawful custody of the vehicle and second whether the police conducted a reasonable inventory search. Commonwealth v. Lagenella, 17 A.3d 1257, 1261 (Pa. Super. 2011), citing Commonwealth v. Thompson, 999 A.2d 616, 619 (Pa. Super. 2010).

Defendant does not contest whether the police had lawful custody of the automobile; rather, Defendant contests whether the inventory search was reasonable. More specifically, Defendant argues that the search was for the purpose of investigation.

Trooper Havens testified that as a result of the drugs that were found in the plastic portion of the coffee cup, he suspected that there would be additional drugs and contraband in the vehicle and accordingly intended to make an application for a search warrant. Upon taking custody of the vehicle, however, he was required by Pennsylvania State Police written policy to inventory the contents of the vehicle. The State Police policy regarding inventory searches was marked as Commonwealth Exhibit 1. It is contained in the Operations Manual. It is specifically noted in the written policy that a custodial/inventory search must be

conducted on every vehicle seized, confiscated or otherwise taken into custody through official action of the department. The policy further notes that the search cannot be conducted for the purpose of gathering incriminating evidence and/or contraband but that if such is discovered during a custodial/inventory search it shall be seized. The purpose of such a search is to protect items of property carried in the vehicle from loss during storage. Any locked container is required to be opened and searched if the keys to such are available.

The purpose of an inventory search is to protect the contents of a vehicle for the benefit of the owner, not to uncover evidence. Commonwealth v. Brandt, 366 A.2d 1239, 1241 (Pa. Super. 1976) (en banc). The officer's motive in conducting the search distinguishes a criminal investigatory search from a non-criminal inventory of an automobile's contents. Lagenella, supra. citing Commonwealth v. Thompson, supra. at 621.

The vehicle was in PSP's lawful custody and was searched pursuant to proper inventory procedures required by the Pennsylvania State Police up to and including the point when the safe was opened. While Trooper Havens suspected that there would be contraband in the vehicle, the inventory search was mandated by PSP policy. It was conducted pursuant to reasonable standard police procedures and in good faith and not for the sole purpose of investigation. See Lagenella, supra.; Henley, supra.; Thompson, supra. One would reasonably expect items of value to be contained in a safe and, pursuant to PSP policy, Trooper Havens was required to inventory such.

The police in this case exceeded the scope of an inventory search, however, when they utilized a drug swipe on the interior of the safe. The purpose of an inventory search is the safe-keeping of property, not to uncover evidence. When the police opened the safe,

there was no property for safe-keeping contained therein. Clearly, the police utilized the drug swipe for investigatory purposes, i.e., to determine whether the safe had been utilized to store controlled substances. Such a search should have been conducted pursuant to a warrant. See U.S. v. Charles, 290 F. Supp.2d 610 (D.V.I. 1999)(memorandum)(warrantless swipe of door knob to residence suppressed), *aff'd* 29 Fed. Appx. 892 (3d Cir. 2002).

The Court concludes that the initial inventory search of Defendant's vehicle was lawful, but that the police exceeded the proper scope of an inventory search when they utilized a drug swipe on the interior of the safe. Accordingly, the following Order is entered:

**ORDER**

AND NOW, this \_\_\_\_ day of August 2011 following a hearing and argument, Defendant's Omnibus Pretrial Motion/Motion to Suppress nunc pro tunc is GRANTED with respect to the drug swipe of the safe and any information obtained as a result thereof; it is DENIED in all other respects.

BY THE COURT,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)  
George Lepley, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File