

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**HAKIM HOPKINS,  
Defendant**

:  
:  
:  
:  
:  
:  
:

**CR: 948-2012  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed an Omnibus Pre-Trial Motion on October 31, 2012. A hearing on the Motion was held December 11, 2012. Afterwards, the parties filed briefs on whether the Commonwealth had to address the Defendant's Petition for Habeas Corpus, which this Court addressed in an Opinion and Order dated January 28, 2013. On April 16, 2013, the parties completed argument on the Motion to Suppress.

***Background***

On April 9, 2012, Sergeant Chris Kriner (Kriner) of the Old Lycoming Township Police Department was dispatched to the Days Inn in South Williamsport to assist Officer Keeler of the South Williamsport Police with a welfare check. N.T., December 11, 2012, p. 16. Upon arriving at the scene, Keeler informed Kriner that a father had called the Lycoming County Call Center and was concerned about his daughter, Dashika Wilson (Wilson). Id. The father stated that Wilson was at the Days Inn with her boyfriend and that he would not let her leave. Id. 16-17. As Kriner and Keeler were walking into the hotel they saw a male and a female exiting. Id. at 17. Kriner asked the female if she was Dashika Wilson and she stated that she was. Id. Keeler began speaking with Wilson while Kriner followed the male out of the hotel, who was later identified as Hakim Hopkins (Defendant). Id.

Kriner spoke with the Defendant and ascertained that Wilson was driving a gold Chrysler Pacifica. Id. Kriner ran the registration plate of the vehicle and it came back as registered to Wilson and her father, Rodney Wilson. Id. While running the registration, Kriner observed police evidence tape on the vehicle and remembered that a vehicle of the same description was involved in an assault in Williamsport a few days earlier. Id. at 18. In addition, while noticing a flat screen TV in the back of the vehicle, Kriner remembered that there was a home invasion robbery several days before the assault. Id. In the home invasion, a flat screen TV had been stolen. Id. Further, one of the suspects in the home invasion had a teardrop tattoo under his eye, which the Defendant also had. Id.

Kriner questioned the Defendant about the TV and he appeared suspicious. Id. at 19. As a result, Kriner asked Wilson if she would permit him to search the vehicle so that he could look at the TV and search for drugs and guns. Id. Wilson stated that he could search the vehicle, however, Kriner requested that she speak with her father first. Id. Wilson and her father spoke away from Kriner and eventually both consented to a search of the vehicle. Id. Kriner testified that he read the consent to search form, explained it in detail, and that they both signed the form. Id. The consent to search form stated that Kriner was searching in regards to a theft and drug investigation. Id. Kriner believed that the vehicle contained drugs based on the evidence tape, the TV from the home invasion was probably drug related, and that the Defendant told him that he had been arrested for drug offenses in the past. Id. at 20.

After signing the consent to search form, Kriner searched the vehicle. Id. The TV make and model matched the TV that was stolen and Williamsport Bureau of Police arrived and seized it as evidence. Id. at 21. Kriner then searched a gym bag and observed a 40 caliber round of ammunition and a box of sandwich bags. Id. Finally, Kriner searched a shoe box and found a

pair of men's 10 ½ sneakers, two (2) firearms, two (2) revolvers, and a bag of suspected crack cocaine. Id. at 22.

Kriner asked the Defendant if the gym bag was his after it was searched and he stated that it did belong to him. Id. at 27. Id. Kriner did not ask about the shoe box prior to opening it. Id. at 28. When the shoe box was opened he saw the men's sneakers and then assumed they belonged to the Defendant. Id. at 35. Kriner saw the shoes and guns when he opened the box. Id. at 36. After moving the shoes, Kriner observed the drugs. Id.

As a result of the search, the Defendant was charged with two counts of Persons not to Possess,<sup>1</sup> two counts of Firearms Not to be Carried Without a License,<sup>2</sup> Possession with Intent to Deliver,<sup>3</sup> Receiving Stolen Property,<sup>4</sup> Possession of a Controlled Substance,<sup>5</sup> and Possession of Drug Paraphernalia.<sup>6</sup> On October 31, 2012, the Defendant filed a Motion to Suppress. The Defendant stated that the Defendant has standing to contest the search because he was a passenger of the vehicle and that his personal property was stored in the vehicle. The Defendant also states that the search was in violation of both the United States and Pennsylvania Constitution because nobody with authority gave consent to search his bags. Specifically, the Defendant argues that Kriner should have known that the bags belonged to him and that the search was outside of the scope of the consent.

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

The Court must first address whether the Defendant has standing to contest the search of the vehicle he had previously been a passenger of and had stored his personal property within.

---

<sup>1</sup> 18 Pa.C.S. § 6105(a)(1).

<sup>2</sup> 18 Pa.C.S. § 6106.

<sup>3</sup> 35 Pa.C.S. § 780-113(a)(30).

<sup>4</sup> 18 Pa.C.S. § 3925(a).

<sup>5</sup> 35 Pa.C.S. § 780-113(a)(16).

<sup>6</sup> 35 Pa.C.S. § 780-113(a)(32).

A defendant moving to suppress evidence has the preliminary burden of establishing standing and a legitimate expectation of privacy. Standing requires a defendant to demonstrate one of the following: (1) his presence on the premises at the time of the search and seizure; (2) a possessory interest in the evidence improperly seized; (3) that the offense charged includes as an essential element of the element of possession; or (4) a proprietary or possessory interest in the search premises.

Commonwealth v. Powell, 994 A.2d 1096, 1104-04 (Pa. 2010) (citations omitted). As the search of the vehicle resulted in multiple charges that have possession as an essential element, the Defendant has standing to challenge the search of the vehicle.<sup>7</sup>

While the Defendant has standing under the Pennsylvania Constitution, the Defendant must still establish a legitimate expectation of privacy to merit the evidence to be suppressed.

A defendant must separately establish a legitimate expectation of privacy in the area search or thing seized. Whether [a] defendant has a legitimate expectation of privacy is a component of the merits analysis of the suppression motion. The determination whether [a] defendant has met this burden is made upon evaluation of the evidence presented by the Commonwealth and the defendant.

Id. at 1103-04 (citations omitted). “Establishment of the expectation of privacy in a search vehicle applies not only to drivers, but also to its passengers.” Id. at 1096, 1104. “[U]nder both our state and the federal constitutions, ‘a defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests.’” Id. (citing Commonwealth v. Millner, 888 A.3d 680, 692 (Pa. 2005)).

An expectation of privacy is present when the individual, by his conduct, exhibits an actual (subjective) expectation of privacy and that the subjective expectation is one that society is prepared to recognize as reasonable. The constitutional legitimacy of the expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances.

Id. (quoting Commonwealth v. Burton, 973 A.2d 428 (Pa. Super. 2009)).

---

<sup>7</sup> The Pennsylvania Constitution gives greater protection for privacy rights than the United States Constitution. Under the U.S. Constitution, a defendant must first prove a legitimate expectation of privacy in order to have standing.

In Viall, the driver of a vehicle gave police permission to search the vehicle. (Commonwealth v. Viall, 890 A.2d 419 (Pa. Super. 2005)). The defendant argued that he had a reasonable expectation of privacy in the backseat area of the car, where he was located in the vehicle. The Superior Court likened the search of a vehicle with a passenger to a search of a home with a visitor. The Superior Court stated:

Much as a visitor would not have a legitimate privacy interest in the entire area of another's home absent circumstances indicating otherwise, an ordinary passenger in an automobile does not by his mere presence have a legitimate expectation of privacy in the entire passenger compartment of that vehicle. While passengers in an automobile may maintain a reasonable expectation of privacy in the contents of luggage they placed inside an automobile, *see United States v. Pardron*, 657 F. Supp. 840, 847 (D. Del. 1987), it would be unreasonable to maintain a subjective expectation of privacy in locations of common access to all occupants. *See Commonwealth v. Grundy*, 2004 PA Super 351, 859 A.2d 485, 488 (Pa. Super. 2004).

Id. at 423. The Superior Court also noted that the drugs and drug paraphernalia were not shielded from the view of other passengers and “[w]here joint access or control exists, there can be no reasonable or legitimate expectation of privacy.” Id.

Following the comparison used by Courts of homes and vehicles, in Zock, police went to serve an arrest warrant at a house and in doing so saw twenty-two clear plastic bags with drugs. Commonwealth v. Zock, 454 A.2d 35, 37 (Pa. Super. 1980). The police waited while a search warrant was obtained and while doing so saw the defendant running away from the house with three suitcases. The defendant did not own or live in the house. Id. The police apprehended the defendant and after they received the search warrant for the house searched the suitcases. The Superior Court acknowledged that a search warrant on a property cannot extend to a search of things not belonging to or under the control of that specific person. Id. at 38. A separate warrant, however, would only be needed if the police were clearly notified that the bag belongs to a guest and not the resident of the premises. Id. It was not enough that the defendant

committed “nonverbal acts” of possession. Id. The suitcases had to be expressly claimed by the defendant as not part of the premises and without doing so the police are permitted to assume under the circumstances that they may search the bags. Id., see also Commonwealth v. Reese, 549 A.2d 29 (Pa. 1988) (finding that police may search a visitor’s personal property located on a premises).

The United States District Court for Western Pennsylvania addressed a similar case as the one addressed in this opinion and in doing so also distinguished whether a container was identified by a passenger prior to the search. United States v. Green, 2006 U.S. Dist. LEXIS 97997 (W.D. Pa. Jan. 11, 2006). In Green, a non-owner driver was pulled over for speeding and excessive window tint. The owner of the vehicle was a passenger and consented to a search of the vehicle for contraband and drugs. State Police found a Nike shoe box and a plastic shopping bag, which contained heroin. The District Court found that the non-owner driver did not have standing to contest the search of the vehicle and his bag because “when the owner of a vehicle is traveling with a non-owner driver, the latter has no reasonable expectation of privacy in the vehicle because a reasonable person would expect that the owner can handle or remove any item within the vehicle.” Id. (citing United States v. Schofield, 80 Fed.Appx. 798 (3d Cir. 2003)). The District Court, in *dicta* and assuming standing, went on to determine whether the bag was within the scope of consent given by the owner. The District Court noted that the driver failed to raise any objection to the search of the bag by claiming ownership and therefore it was within the scope of consent.

While Federal and State law are not the same, they entail the same analysis. In order to succeed in a suppression, a defendant must prove an expectation of privacy, whether in Federal or State court. The mere distinction is that Federal courts use the expectation of privacy to

determine standing to raise the issue while Pennsylvania uses it to determine the merits of the suppression.

Applying the case law previously cited this Court finds that the Defendant did not have a reasonable expectation of privacy. The Defendant's gym bag and shoe box were located in a vehicle owned by Wilson and her father. The owners of the vehicle could have handled and removed the items from the car. In addition, the gym bag and shoe box were not secured and could have easily been opened and viewed by any occupant in the vehicle. These factors are weighed even heavier by the fact that the Defendant's Motion states that the bags were "stored" in the vehicle. The Defendant was not merely a passenger of the vehicle, but using the vehicle to store his bags unsupervised. The facts provided at the suppression hearing show that the Defendant did not have a legitimate expectation of privacy when he stored his possessions in the vehicle.

Finally, the search of the gym bag and shoe box were within the scope of the consent to search given by Wilson and her father. The Defendant was present and never identified the objects as his own prior to the search. As in Zock, it is not enough for a Defendant to constructively show possession. Without the Defendant expressly claiming the gym bag and shoe box, the police were permitted to search the items. The reasoning behind Zock, is that the Courts do not want to make police investigate every item before it is searched. Following the same reasoning, this Court finds that the police were within the scope of consent to search the gym bag and shoe box.

**ORDER**

AND NOW, this \_\_\_\_\_ day of May, 2013, based upon the foregoing Opinion, the Court finds that the Defendant did not have a legitimate expectation of privacy in his possessions searched in the vehicle and that the search was within the scope of consent. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (MW)  
Pete Campana, Esq.  
Eileen Dgien, DCA