

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CR-1753-2016</b>
	:	<b>CR-1754-2016</b>
<b>v.</b>	:	
	:	
<b>VALERIE TALLENT,</b>	:	<b>SUPPRESSION</b>
<b>DAVID RUTE,</b>	:	
<b>Defendants</b>	:	

**OPINION AND ORDER**

On December 5, 2016, Defendants each filed a Motion to Suppress styled as an Omnibus Pretrial Motion. A hearing on the motions, over objection by the Commonwealth, was held on March 30, 2017. The Commonwealth did not object to hearing the motions at the same time although the Court notes that the matters are not joined for trial.

**Background**

Defendants are each charged with one count of Possession of Drug Paraphernalia<sup>1</sup> arising out of an encounter with Williamsport police on July 2, 2016.

**Testimony of Officer Andrew Stevens**

Stevens has been employed with the Williamsport City police for two years. Prior to joining the Williamsport City Police, he was an officer in Athens and Sayre for three and ½ years. At the time of the incident he had been policing for less than four years.

On July 2, 2016, Stevens and his partner Officer Tyson Minier were in a marked patrol car east of Kramer Court when they observed a parked maroon Kia Sportage on

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<sup>1</sup> 35 P.S. § 780-113(a)(32).

Elmira Street. The lights were not on in the Kia and the officers were not aware whether the vehicle was running.

The officers observed two occupants, ultimately the Defendants in this matter. Rute was the driver and Tallent was the passenger, Stevens testified.

Stevens proceeded to run the registration and found that the vehicle was registered to an address in Sunbury, PA. He also observed the vehicle drive around the block, which he believed was done in an effort to “elude police”.

Stevens observed the individuals approach 715 Elmira Street, and that Rute was covering his face. Stevens is aware from his patrol of the area that the 700-800 block of Elmira Street in Williamsport, Pennsylvania is an active area in the sale of heroin. He has made numerous arrests in this area. He is also aware from his personal experience that people from out of the area come to Williamsport generally to purchase heroin. Stevens suspected drug activity. Stevens saw the individuals approach a home that he knew to be vacant as his partner had recently been called to 715 Elmira Street regarding a burglary and the house was found to be vacant.

Stevens observed Tallent knock on the door of the unoccupied home. Stevens and his partner approached the Defendants and asked them why they were in town. They responded that they were here to see fireworks. No follow up questions were asked and the encounter concluded.

Stevens and his partner looked into the Kia window and observed rubber bands, two small black and blue rubber bands that they know are used to package heroin. They proceeded to open the vehicle and search. Pursuant to the search, the

officers opened a purse in the vehicle and found a syringe and a spoon, items typically used by heroin user for the ingestion of heroin.

## **Discussion**

***Whether search of Defendant's vehicle occurred without the requisite probable cause required by Commonwealth v. Gary, 91 A.3d 102 (Pa. 2014).***

Commonwealth v. Gary adopted the federal exception to the warrant requirement for automobile searches to the Commonwealth<sup>2</sup>. As such, when a police officer has probable cause to believe a crime has been committed, he may search an automobile without seeking a warrant from a detached magistrate. The Court finds that Stevens did have the probable cause required for a warrantless search of Defendants' vehicle. If the officer had testified he only observed rubber bands on the floor of a parked vehicle there may not be probable cause supporting the search, but that observation came after observing suspicious behavior by the Defendants. Factors in support of finding probable cause: One, Defendants were out of county people in a high crime area of Williamsport known for drug dealing activity. Two, Defendant Rute covered his face when observed by police officers. Three, the Defendants approached a vacant house and knocked on the door. Four, the Defendants gave a spurious response to officers when asked about their reason for being in town: "To see fireworks or something".

The officers suspected from their experience patrolling the neighborhood that the individuals were in town to make a heroin purchase. Finally, the observation of the black rubber bands in plain view in their vehicle confirmed that suspicion. The Court finds that at that time the facts and circumstances known to Stevens warranted a belief

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<sup>2</sup> Id. at 104.

that a crime had occurred. As automobiles are an exception to the warrant requirement when such probable cause exists, his subsequent search of the vehicle was lawful. When the Court finds that there is probable cause for a vehicle search, the power to search includes containers that might contain contraband. Commonwealth v. Runyan, No. 1498 WDA 2016, 2017 PA Super 114 (Decided April 20, 2017). As in Wyoming v. Houghton, 526 U.S. 295, 119 S. Ct. 1297, 143 L.Ed.2d 408 (1999), police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of May, 2017, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: PD (MW)  
DA (KO)  
Gary Weber, Esq. Lycoming Law Reporter