

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

**DOMINIC J. McLAURIN,
Defendant**

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No. CR-650-2016

**Opinion and Order re Defendant's Omnibus
Pretrial Motion**

OPINION AND ORDER

On January 6, 2016, Trooper Tyson Havens and Trooper Edward Dammer of the Pennsylvania State Police were on patrol in the Newberry section of Williamsport. As they were driving by the Nittany Minute Mart located on the corner of Fourth and Poplar Streets, they observed a black Chevy Impala sedan in the parking lot with all of its doors open. Two black males were climbing in and out of the vehicle, rummaging through the vehicle. The troopers surmised that the black males were looking for drugs in hidden compartments of the vehicle (as opposed to looking for a lost or mislaid item such as keys or a cell phone). The troopers drove past the convenience store and then circled back and pulled into a parking stall near the Impala. Defendant Dominic McLaurin (hereinafter "McLaurin"), who originally was observed on the passenger side of the vehicle, was now seated in the driver's seat with the driver's door open. The other individual was entering the convenience store. The troopers exited their vehicle and approached the Impala.

Trooper Havens approached the vehicle and began questioning McLaurin. Trooper Havens asked McLaurin if he was Miss Tagliaferri (the individual to whom the vehicle was registered). McLaurin replied "No, that's my girlfriend" and then asked "Why, what's up?" Trooper Havens indicated that he saw "you guys" rooting around in

there looking for something. McLaurin explained that he “let the drawer down and the papers fell.” He was just making sure he had all of Miss Tagliaferri’s paperwork. Trooper Havens then asked, “You dropped a joint?” McLaurin said no and again explained that the papers fell and he was making sure that he had all of Ms. Tagliaferri’s paperwork. Trooper Havens then told McLaurin that he smelled “weed” and asked why he smelled weed so strong. McLaurin said he didn’t know. Trooper Havens then asked if there was marijuana in the car. McLaurin indicated that he didn’t have any weed.

Trooper Dammer was at the front passenger window of the vehicle. Trooper Havens directed McLaurin to open the passenger window. McLaurin explained that the car wasn’t even on. At that point the car was started and the passenger window was lowered, but the troopers were not sure whether McLaurin or Trooper Havens did so. Once the window was open, Trooper Dammer said, “oh yeah, there’s weed in there. I smell it too.” McLaurin then said, “Well, look for it if there’s weed in there.”

At this point the other individual exited the convenience store and briskly walked away. Trooper Dammer hollered “yo, come here” to him several times, but the individual continued west on West 4th Street. Trooper Haven told Trooper Dammer to jump in the car to go after the individual.

While Trooper Dammer left the parking lot to look for the other individual, Trooper Havens continued to interact with McLaurin. Trooper Havens said, “Let me see your ID.” McLaurin explained that he did not have his ID on him, because he just came up and went to the store. Trooper Dammer briefly turned on his sirens as he exited the parking lot. Trooper Havens told McLaurin that Trooper Dammer did that by accident. Trooper Havens directed McLaurin to stay in the car. He asked, “What’s that right

there?" McLaurin indicated that it was his money. Trooper Havens said, "Seems like ID to me. You mind takin' it out for me?" There is about a 20 second loss of sound on the recording. When the sound resumes, Trooper Havens is having McLaurin spell his name and provide his date of birth. Then there is another loss of sound on the recording for about 25 seconds.

Trooper Dammer was unable to locate the other individual. Trooper Dammer pulled back into the parking lot and parked directly behind the Impala. Trooper Havens indicated to Trooper Dammer that McLaurin had the money so the other guy must have had the drugs. McLaurin told them, "There ain't no drugs. I don't know what you talkin' about." Trooper Havens again said that he smelled marijuana. Trooper Dammer then walked over to the passenger side window and leaned over such that his entire upper body was inside the vehicle. While in this position, Trooper Dammer discovered eight packets of heroin in the front passenger door.

The troopers removed McLaurin from the vehicle, handcuffed him, and sat him on the concrete parking curb at the front of the adjacent parking spot. Then they searched the vehicle. No marijuana was found. They seized the heroin, as well as McLaurin's money (\$1626) and cell phone.

The troopers took McLaurin back to the barracks to be fingerprinted because he had no identification on him. Trooper Havens swabbed McLaurin's hands for the presence of drugs which showed the presence of opiates and cocaine.

Trooper Havens also asked McLaurin where the money came from. McLaurin indicated that he was doing carpentry and demolition work for the people at the Masjid and he also received money "from his folks, and his girl."

McLaurin was on parole out of Chester County. Trooper Havens spoke to McLaurin's parole agent, Kristi Lapinski. Ms. Lapinski informed Trooper Havens that McLaurin could not work due to an injury.

On February 22, 2016, Trooper Havens obtained a warrant to search McLaurin's cell phone for "any and all telephone call records, including incoming, outgoing and missed call; text messages sent/received with detail; social media messaging; photographs and videos containing pictures of drug contraband and/or drug dealing from 01/01/16 to 01/06/16." Incriminating text messages were found on the phone.

Trooper Haven charged McLaurin with possession of a controlled substance, possession of drug paraphernalia, possession with intent to deliver heroin, and criminal use of a communication facility.

McLaurin filed an omnibus pretrial motion which contained a motion to suppress the alleged heroin seized on January 6, 2016, a motion to suppress the seizure of the cellular telephone, a motion to suppress the results of the search of the seized cellular telephone, a motion to suppress the information extracted from the cellular phone as fruit of the poisonous tree, and a motion to suppress the cellphone extraction on the basis that the affidavit failed to establish probable cause for the issuance of the search warrant.

Initially, the court notes that it does not believe that Trooper Dammer observed the heroin "in plain view." To see the heroin in the passenger door, Trooper Dammer had to insert his entire upper body into the vehicle through the passenger window. The passenger window was not open when Trooper Dammer approached the vehicle; it was opened either by Trooper Havens or by McLaurin after being directed to do so by

Trooper Havens. Therefore, the troopers had to have probable cause to search the vehicle in order for the discovery of the heroin to be lawful.

Under the facts and circumstances of this case, however, the troopers had probable cause to search the vehicle for controlled substances. The troopers parked their police cruiser several parking stalls away from the Impala. Trooper Havens walked over to the vehicle to talk to McLaurin. As he got close to the vehicle, however, he immediately smelled the odor of marijuana. At that point, he had probable cause to believe that there was marijuana inside the vehicle. ***Commonwealth v. Stoner***, 344 A.2d 633, 635 (Pa. Super. 1995). This probable cause gave him the right to search the vehicle without a warrant. ***Commonwealth v. Gary***, 91 A.3d 102, 104 (Pa. 2014).

Trooper Dammer walked over to the passenger side of the vehicle. Trooper Havens had McLaurin open the passenger window of the vehicle. As soon as the window was lowered, Trooper Dammer indicated that he also smelled the marijuana.

Trooper Dammer did not insert his upper body in the window until after both he and Trooper Havens noticed an odor of marijuana. Therefore, Trooper Dammer's actions were part of a lawful search of the vehicle for marijuana.

When Trooper Dammer's upper body was inside the vehicle, he observed eight bags of heroin in the passenger door. At that point the troopers had probable cause to arrest McLaurin for possession of a controlled substance and possession of drug paraphernalia and then search him incident to arrest. They also had probable cause to search the entire vehicle for additional controlled substances.

Although Trooper Havens testified that he thought that the best he could prove that day was possession of heroin (as opposed to possession with intent to deliver), the

court finds that Trooper Havens had probable cause to believe that McLaurin possessed the heroin with the intent to deliver it based on the totality of the circumstances. While the eight bags of heroin alone are not sufficient to establish probable cause that McLaurin possessed them with the intent to deliver, McLaurin also possessed a large amount of cash (\$1626) and he did not possess any paraphernalia to ingest the heroin. Furthermore, McLaurin's companion fled from the police. Based on the totality of the circumstances, Trooper Havens had probable cause to seize the phone and the money and to retain them even after McLaurin was released from custody.

In the hours and days following McLaurin's arrest, the probable cause that McLaurin possessed the heroin with the intent to deliver only strengthened. Trooper Havens swabbed McLaurin's hands to test for the presence of controlled substances, and the results were positive for several different controlled substances. Trooper Havens also spoke to McLaurin's parole agent, who informed Trooper Havens that McLaurin was unable to work due to an injury, making it even more likely that the \$1626 was from selling drugs and not from working under the table doing carpentry work and other odd jobs at the Masjid in Philadelphia as claimed by McLaurin.

The following day, McLaurin reported to his parole agent and provided a urine sample. The parole agent informed Trooper Havens that the urine sample tested positive for prescription opiates, but not heroin. Therefore, McLaurin likely was not a heroin user.

When the facts and circumstances are considered as a whole, Trooper Havens clearly had sufficient probable cause to believe that McLaurin had recently been

involved in drug dealing. Given Trooper Havens experience with drug cases and the ways in which drug dealers communicate with their buyers to make it more difficult for law enforcement authorities to identify and/or intercept their conversations, a reasonable officer in Trooper Havens' position would believe that the cellular telephone contained evidence of McLaurin's drug dealing activities, specifically evidence of communications via phone calls, text messages or social media messaging between McLaurin and his suppliers and/or buyers.

The court also rejects McLaurin's challenge that the warrant to search the telephone was not sufficiently specific. Although the description begins with the broad words "[a]ny and all" call records, text messages, social media and photographs/videos, the description is limited by the last phrase of the description "of drug contraband and/or drug dealing from 01/01/16 to 01/06/16."

ORDER

AND NOW, this ____ day of April 2017, the court DENIES Defendant's omnibus pretrial motion.

By The Court,

Marc F. Lovecchio, Judge