IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	
	:	**CR-1724-2017**
CHRISTOPHER CRANMER	:	
	:	**Motion to Suppress**

OPINION AND ORDER

On December 29, 2017, Defendant, Christopher Cranmer, filed a Motion to Suppress. Defendant is seeking to suppress the police seizure of his 2006 Nissan Titan vehicle and all evidence recovered from the vehicle. Additionally, Defendant is seeking to suppress photographs taken of his vehicle while it was parking in the lot next to his apartment. A hearing on the motion was held March 13, 2018. The parties requested the opportunity to brief the issues with the last brief filed on June 11, 2018.

Background

Defendant is charged with four counts of Aggravated Assault by Vehicle while DUI,[1] four counts of Aggravated Assault by Vehicle,[2] one count of Accident Resulting in Death or Injury,[3] one count of Accident involving Death or Injury- not properly licensed,[4] one count Driving under the Influence of Alcohol or Controlled Substance,[5] one count Tampering with or Fabricating Physical Evidence,[6] one count Habitual Offenders,[7] one count Accident involving Damage to Attended Vehicle or Property,[8]

[1] 75 Pa.C.S.A. § 3735.1(a)
[2] 75 Pa.C.S.A. § 3732.1(a)
[3] 75 Pa.C.S. § 3742
[4] 75 Pa.C.S.A. § 3742.1
[5] 75 Pa.C.S.A. § 3802(a)(1)
[6] 18 Pa.C.S. § 4901(1)
[7] 75 Pa.C.S.A § 6503.1
[8] 75 Pa.C.S.A. § 3743(a)

one count Careless Driving- serious bodily injury,[9] one count Driving without a License,[10] one count Driving while Operating Privilege Suspended or Revoked,[11] one count Driving while Operating Privilege is Suspended or Revoked, DUI related,[12] one count of Following too Closely,[13] one count Driving Vehicle at Safe Speed,[14] one count Careless Driving,[15] one count Reckless Driving,[16] one count Duty to Give Information and Render Aid,[17] one count Immediate Notice of Accident to Police Department,[18] one count False Reports,[19] one count Recklessly Endangering Another Person,[20] one count Driving under the Influence with highest rate of alcohol.[21] These charges arise out of a traffic accident which occurred on September 24, 2017.

Findings of Fact

On September 24, 2017, at approximately 10:00 P.M., Corporal Michael Shipman (Shipman) of the Pennsylvania State Police (PSP) was dispatched to a two-vehicle crash that had occurred thirty minutes prior. Witnesses reported that a black pick-up truck, traveling at a high speed, had struck an Amish horse and buggy carrying seven people, two adults and five minors. The truck then fled the scene

[9] 75 Pa.C.S.A. § 3714(c)
[10] 75 Pa.C.S. § 1501(a)
[11] 75 Pa.C.S.A. § 1543(a)
[12] 75 Pa.C.S.A. § 1543(B)(1)
[13] 75 Pa.C.S. § 3310(a)
[14] 75 Pa.C.S. § 3361
[15] 75 Pa.C.S. § 3714(A)
[16] 75 Pa.C.S. § 3736
[17] 75 Pa.C.S. § 3744(a)
[18] 75 Pa.C.S. § 3746(a)(1)
[19] 75 Pa.C.S. § 3748
[20] 18 Pa.C.S. § 2705
[21] 75 Pa.C.S.A. § 3802(c)

without stopping. At least four of the occupants were transported via Life Flight to Geisinger Medical Center due to serious injuries.

Shortly thereafter, PSP received a call from Defendant's neighbor who reported that a truck matching the description of the hit-and-run vehicle, a black pick-up truck with heavy front-end damage, was located at 146B Montgomery Street in Montgomery, Pennsylvania. Shipman was dispatched to the apartment address; upon arrival, he saw a black truck parked in the lot adjacent to the apartment building. Shipman noted that the truck had visible damage, which he characterized as collision damage, mostly on the front passenger side of the vehicle. In addition, he noted that the windshield was cracked. The vehicle is registered to Defendant.

The entire parking lot was visible from the road and was accessible from Montgomery Street by a short gravel driveway. The lot was also accessible from the neighboring residence by a small area of grass. Shipman did not receive permission from the landlord to enter the parking lot. There were no signs to indicate that the lot was private property or that entering the lot would be considered trespassing. Further, the parking lot provided the only entry to the apartment building, there was no street parking or other alternatives available. Multiple vehicles were parked in the lot, as well as what appeared to be either an old boat or truck sitting in the lot which looked as though it did not run. Defendant's daughter, who had previously lived with Defendant at the residence, testified that the parking lot was used purely for parking. She also testified tenants and all guests of tenants were free to park in the lot.

The apartment building had multiple apartments. Defendant and a female with the last name Smith (Smith) were located in his residence at approximately 10:24

PM. Both parties claimed the other had been driving the vehicle. Defendant and Smith were taken into custody and transported to the hospital for blood testing. Smith had glass fragments on her scalp and shoulders. She told police that she was unaware how the crash occurred and woke up in Defendant's driveway. Additionally, the passenger side windshield of the vehicle was cracked.

Photographs were taken of the truck in the parking lot. On September 25, 2018 at approximately 1:15 A.M., the black Nissan Titan was towed to the Montoursville police barracks, prior to the police obtaining a search warrant. Once approval for a search warrant from the District Attorney was obtained Defendant's vehicle was searched. As a result, multiple plastic pieces, two airbags and computer data from the vehicle were taken from inside the truck as well as paint samples from the hood, swabs from the windshield or exterior of the truck.

Discussion

I. Police lawfully seized Defendant's vehicle from the parking lot without a warrant pursuant to the automobile exception

Defendant argues that the Court should suppress the seizure of Defendant's vehicle from the parking lot and all evidence recovered from the vehicle because either he possessed a reasonable expectation of privacy in his vehicle and/or because the parking lot is within the curtilage of his residence and therefore, the automobile exception cannot apply.

The Supreme Court of the United States has held that an automobile exception exists to the warrant requirement. *Caroll v. United States*, 267 U.S. 132 (1925). The Court emphasized that justification for the automobile exception is two-

fold. On one hand, automobiles are readily mobile, which gives rise to an element of exigency, and on the other hand, automobiles afford a lesser expectation of privacy than one's home or office does. *California v. Carney*, 471 U.S. 386, 391 (1985).

The Supreme Court of Pennsylvania has adopted the automobile exception, stating that the officers need only probable cause to search a motor vehicle, exigency beyond the inherent mobility of an automobile is not required. *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014).

In a recent decision, the Supreme Court of the United States held that the automobile exception does not apply to vehicles seized from the curtilage of a home. *Collins v. Virginia*, 584 U.S. __ (2018) (not yet paginated). Curtilage is the area adjacent to a home that is afforded the same constitutional protections as the home itself. *Commonwealth v. Oglialoro*, 579 A.2d 1288, 1292 (Pa. 1990). Thus, a warrantless seizure of property from the curtilage requires both probable cause and exigent circumstances. *Commonwealth v. Loughnane*, 173 A.3d 733, 736 (Pa. 2017). Therefore, the key determination in this case is whether the parking lot adjacent to Defendant's apartment building constitutes curtilage of the home; if it does not, the automobile exception may apply.

The Supreme Court of the United States has stated that curtilage is determined by an evaluation of factors that determine whether an individual may reasonably expect that an area immediately adjacent to a residence may remain private. *Oliver v. United States*, 466 U.S. 170, 180 (1984). The Court has held that a curtilage analysis should be made on a case-by-case basis and based on four factors: "(1) the proximity of the area to the home; (2) whether the area is within an

enclosure surrounding the home; (3) the nature and uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by passersby." *United States v. Dunn*, 480 U.S. 294, 294–95 (1987). A central component of the curtilage inquiry is "whether the area harbors the intimate activity associated with the sanctity of a man's home and the privacies of life." *Id*. at 300. The Supreme Court of Pennsylvania has also noted that a curtilage inquiry is a case-by-case, multi-factorial inquiry*. See Commonwealth v. Loughnane*, 173 A.3d 733 at 739 n.7 (Pa. 2017) (citing *Commonwealth v. Simmen*, 58 A.3d 811, 815 (Pa. Super. 2012) (applying a multi-factorial approach to determine that the driveway in question was not part of the curtilage)). The court in *Loughnane* found that the automobile exception did not apply when police officers had the defendant's car towed from the driveway of his residence without obtaining a warrant, as the defendant had a reasonable expectation of privacy in his vehicle parked directly outside his home.

In *Collins*, the driveway where the defendant's vehicle was parked was determined to be curtilage of the home. The top portion of the driveway, which was situated next to the house, was enclosed on one side by the house and two sides by a brick wall. There was a side door leading from the partially enclosed area into the house. When the officer in *Collins* searched the defendant's vehicle, it was parked inside this partially enclosed area and was covered by a tarp. The *Dunn* analysis performed by the Court showed that the defendant's driveway was indeed curtilage of the home. However, it is important to note that the Court did not create a blanket rule that any parking area adjacent to a home would be considered curtilage.

In applying the *Dunn* multi-factor test, both state and federal courts have ruled that there is no reasonable expectation of privacy in the parking lot of an apartment building; therefore, such parking lots do not make up the curtilage of a home. The Ninth Circuit Court in *United States v. Soliz*, 129 F.3d 499, 503 (9th Cir. 1997) held that a parking area between two apartment buildings, used by residents and guests, was not part of the defendant's curtilage. Additionally, in *Mack v. City of Abilene*, 461 F.3d 547, 554 (5th Cir. 2006) the circuit court held that, based on an analysis of the four *Dunn* factors, a parking space in an apartment parking lot did not constitute the curtilage of a home. Even though the lot was adjacent to the residence and fenced in, outside observation of the lot was not prevented and the area was not used for anything besides parking.

Further, the Fourth Circuit Court held in *United States v. Stanley*, 597 F.2d 866, 870 (4th Cir. 1979), that a common area parking lot was not within the curtilage of a mobile home. Moreover, in *United States v. Sparks*, 750 F.Supp.2d 384, 389 (D. Mass. 2010), the court held that the private parking area outside of the defendant's apartment was not curtilage as it was not enclosed, was used only for parking, and the only attempt to protect the area were two signs which stated "Private Property No Trespass." *Id*. The court explained that "no one tenant has the right to exclude others from using the [common] area, and therefore. . . [t]here can be no reasonable expectation of privacy. . . ." *Id*. at 389.

In this case, using the multi-factor analysis, it is clear that the Defendant did not have a reasonable expectation of privacy. Defendant argues that *Loughnane* should control the outcome of this case; however, the facts of *Loughnane* are

distinguishable. The private driveway in *Loughnane* affords the defendant a reasonable expectation of privacy. The Court finds no similarity in the driveway of defendant's apartment building. Additionally, *Collins* is distinguishable from this case. The Court in *Collins* found the private driveway where the police officer performed a search of the vehicle to be curtilage based upon its proximity to the house and the fact the vehicle was hidden under a tarp; therefore, the automobile exception cannot apply.

Here, the Court finds the Defendant could have had no reasonable expectation of privacy and that the parking lot cannot be considered curtilage. The parking lot was entirely visible from the road and fully exposed to outside observation. Further, the parking lot was between Defendant's multi-unit apartment building and a neighboring property, readily accessible to both properties. Additionally, there was no evidence that the parking lot was closed to the public. There was no fence or enclosure around the parking lot to protect the area from intrusion or observation, and there were no signs to indicate that the lot was private property or that entering the lot would be considered trespassing. In fact, it was a neighbor that called in the description of the Defendant's vehicle having seen it in the lot.

Further, Defendant does not allege that it was unlawful for the officers to enter the parking lot. As noted by Shipman, the driveway to the parking lot was also the only driveway that led to the apartment building; there was no street parking in the vicinity, therefore, Shipman was legally present in the parking lot where he observed Defendant's vehicle. Further, as the lot was accessible to all tenants and their

guests, Defendant had no right to exclude people from the parking lot. Thus, the parking lot was a public area in which the Defendant could have had no reasonable expectation of privacy and cannot be considered curtilage.

Therefore, the Court finds that the seizure of the vehicle was lawful pursuant to the automobile exception of the warrant requirement as it was seized from a location where the Defendant had no reasonable expectation of privacy. The police officers had probable cause to search Defendant's vehicle based on the physical evidence and witness statements which linked the vehicle to the hit-and-run. They are not required to show exigency further than the inherent mobility of an automobile.

II. Inevitable discovery

Had the Court found that Defendant's vehicle was unlawfully seized from the parking lot of his apartment building, the Commonwealth argues, in the alternative, the evidence obtained from the vehicle would still be admissible pursuant to the independent source doctrine and the inevitable discovery rule. Defendant argues, under *Melendez*, that the independent source doctrine cannot apply because the independent source is not truly independent from the tainted evidence and the police who engaged in the misconduct. *Commonwealth v. Melendez*, 676 A.2d 226 (Pa. 1996). Because of the serious nature of the charges filed here, the Court will address this alternative argument as well.

The Supreme Court of the United States has stated that the inevitable discovery doctrine is an extrapolation of the independent source doctrine. *Murray v. United States,* 487 U.S. 533, 539 (1988). Because "tainted evidence would be admissible if in fact discovered through an independent source, it should be

admissible if it inevitably would have been discovered." *Id*. The independent source doctrine allows the introduction of evidence discovered initially during an unlawful search if the evidence is later discovered through a source untainted by the original illegality. *United States v. Salgado*, 807 F.2d 603, 607 (7th Cir. 1986). Under *Murray*, the first question to ask is whether the illegally obtained evidence affected the magistrate's decision to issue the search warrant. *Murray*, supra. at 542. The second question is then whether the decision to seek the warrant was prompted by what the officer had seen during his illegal search or seizure*. Id*.

The Supreme Court of Pennsylvania has recognized that the independent source doctrine indeed exists in Pennsylvania, however, contrary to Defendant's claim, they have stated that they will not enforce the "true independence" rule in *Melendez* in the absence of police misconduct. *Com. v. Henderson*, 47 A.3d 797, 804 (Pa. 2012). The court in *Henderson* elected to limit the "independent police team requirement" to situations in which the rule prevents police from exploiting the fruits of their own willful misconduct. *Id*. The court in *Henderson* held that the detective's status as a member of the same police department as the detective who committed the initial illegality did not require suppression of the obtained evidence. Id. at 805.

Defendant relies on *Commonwealth v. Mason*, A.2d 251, 257 (Pa. 1993), where police forcibly entered an apartment through use of a battering ram. *Id.* at 12. Defense counsel argues citing from the concurring opinion of *Mason* that any decision requires that to be an independent source requires that the evidence is "truly independent from the tainted evidence and the police or investigative team" who discovered the evidence. *Citation omitted*.

Defendant's assertion that the independent source doctrine is not applicable because the officers who searched Defendant's vehicle after procuring the search warrant were from the same barracks as the officers who had Defendant's vehicle towed is unfounded. As stated previously, under *Henderson*, true independence is not required and the officers being members of the same department does not automatically preclude the independent source doctrine from applying.

Applying the standard as set forth in *Murray,* the Court finds police have satisfied the two-pronged test. As noted previously in this opinion, the officers had probable cause to search Defendant's vehicle before the seizure occurred and no additional evidence was obtained after or as a result of the seizure that influenced the magistrate's decision to issue the search warrant.

Smith told police that Defendant had been driving the vehicle at the time of the crash; this was supported by the glass on Smith's scalp consistent with the cracking on the passenger side of the windshield. The vehicle had observable damage that was consistent with a motor vehicle crash. The officers obtained a search warrant based on the probable cause they had gathered prior to towing the vehicle to the barracks; no new information was given in order to secure the warrant. Defendant does not allege that the search warrant application was defective or lacked probable cause. With regard to the vehicle, the only actions which the officers took at the scene were capturing photographs of the vehicle and having it towed to the police barracks. They did not perform a full search of the vehicle until after the search warrant was obtained. Therefore, the first prong in the independent source doctrine is satisfied.

Since the officer's decision to seek the warrant was based upon facts obtained before the vehicle was towed, the Court finds the second question in the analysis is satisfied as well.

Therefore, had this Court not found the Commonwealth's initial argument to be sufficient, the Court finds that the independent source doctrine would have applied to the actions of the police and suppression of the evidence would still not be warranted.

ORDER

AND NOW, this _____ day of June, 2018, after hearing and reviewing briefs submitted by counsel, the Court finds that the parking lot adjacent to Defendant's apartment building is not curtilage of the home. Further, the officers had probable cause to search Defendant's vehicle and need not prove any exigency further than the inherent mobility of an automobile. Thus, the seizure of Defendant's vehicle from the parking lot is lawful under the automobile exception to the warrant requirement.

Therefore, Defendant's Motion to Suppress is DENIED.

By The Court,

Nancy L. Butts, President Judge

Cc: Martin L. Wade, Esq. First Assistant District Attorney
William J. Miele, Esq. Defense Counsel