

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CP-41-CR-863-2018</b>
<b>v.</b>	:	
	:	
<b>JAMAL THOMAS,</b>	:	<b>MOTION TO SUPPRESS</b>
<b>Defendant</b>	:	<b>EVIDENCE</b>

**OPINION AND ORDER**

Jamal Thomas (Defendant) was arrested on May 21, 2018 on one count of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,<sup>1</sup> one count of Possession of a Controlled Substance,<sup>2</sup> one count of Possession of Drug Paraphernalia,<sup>3</sup> and one count of Tampering with Physical Evidence.<sup>4</sup> The charges arise from a traffic stop conducted by Williamsport Bureau of Police in the area of Campbell St. and W. 4<sup>th</sup> St., Williamsport, PA 17701. Defendant filed this timely Motion to Suppress Evidence on October 24, 2018. A hearing on the motion was held by this Court on December 18, 2018.

In his Motion, Defendant challenges whether the police had reasonable suspicion of a motor vehicle violation to conduct a stop, whether there was probable cause to arrest Defendant without a warrant, and whether the search of the vehicle was in violation of Defendant constitutional rights. Defendant contends as a result any evidence obtained as a result of should be suppressed.

**Background and Testimony**

The Commonwealth and Defendant rested solely on argument and submitted the transcript of the preliminary hearing held on May 31, 2018, and the Motion Video Recording

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<sup>1</sup> 35 P.S. §780-113(a)(30).

<sup>2</sup> 35 P.S. §780-113(a)(16).

<sup>3</sup> 35 P.S. §780-113(a)(32).

<sup>4</sup> 18 Pa. C.S. § 4910(1).

(MVR) from the police cruiser, which established the following. On March 21, 2018 at approximately 12:33 A.M., Corter was operating a marked patrol vehicle in full uniform in the area of W. 4<sup>th</sup> St. and Campbell St. While on patrol he witnessed a silver sedan stopped at a blinking yellow light, which did not begin to move until after Corter passed. From the MVR the stop at the blinking yellow appears to be for approximately twenty seconds. *See* MVR at 1:10. Based on the prolonged stop and the time of night, Corter turned around and got behind the vehicle. The vehicle then turned into the section of UPMC near the emergency entrance, which Corter believed was in an attempt to evade him. He then turned on his lights signaling the vehicle to pull over. When he approached the vehicle the driver “couldn’t even hand [Corter] his paperwork without his hands shaking like he had Parkinson’s. He wouldn’t make eye contact with [Corter]. Extremely nervous. His voice was cracking. His story wasn’t making sense . . . . He was afraid to look at [Corter], which is [sic] sometimes can be an intoxicated driver.” P.H. 5/31/18, at 10. Corter then had the driver step out of the vehicle at which time he could tell the driver was not impaired, but based on his other observations of the driver he asked whether there were drugs in the car. He stated no but that officers could search the car if they wanted. After further questioning the driver stated that Defendant was “packing.” *Id.* at 5. The driver also showed Corter messages from Defendant stating: “That I’ve got Spice . . . pick me up so we can take it to your place and package it.” *Id.* at 6. At this point Corter asked Defendant to step out of the vehicle. Then, upon permission of the driver, Corter searched the vehicle and found a bag of what he knew to be synthetic marijuana or Spice. It was located at the feet of where Defendant would have been seated, under the driver’s seat, and within Defendant’s reach. Corter then arrested Defendant and placed him into the back of his cruiser, which nothing was located prior to placing Defendant back there. Once they reached City Hall

Corter opened the door and immediately saw smaller plastic baggies containing what he identified as Spice that had been chewed up and spit out.

**Whether there was Reasonable Suspicion to Conduct a Traffic Stop**

Police officers are granted the authority to effectuate stops pursuant to violations of the motor vehicle code. 75 Pa. C.S. § 6308(b). “Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle.” *Id.* Under 75 Pa. C.S. § 3802, a violation of this title occurs when a driver operates a vehicle while under the influence of alcohol or a controlled substance to the extent that they are incapable of safely driving or operating a vehicle. To establish the requisite reasonable suspicion the officer must point to “specific and articulable facts” which, under the “totality of the circumstances,” warranted a reasonable belief that criminal activity was afoot. *Commonwealth v. Holmes*, 14 A.3d 89, 95 (Pa. 2011). The Court must acknowledge that otherwise innocent facts that do not alone constitute reasonable suspicion might do so when taken collectively. *Id.* The inquiry for this Court is whether the officer's actions were reasonable in light of the facts. *Commonwealth v. Zahir*, 751 A.2d 1153, 1156 (Pa. 2000).

Corter testified that based on his experience vehicles stopping at the blinking light, especially for prolonged periods was indicative of someone driving under the influence. P.H. 5/31/18, at 3. The fact that the vehicle was stopped for almost twenty seconds must be viewed in conjunction with the time of night when the stop occurred, 12:30 A.M., and the fact the vehicle took off once it noticed the police vehicle. Lastly, the driver pulling in towards UPMC’s emergency entrance gave Corter the belief that the driver was attempting to elude him. All these specific and articulable facts taken as a totality of the circumstances shows Corter’s reasonable suspicion was founded.

### **Whether the Search of the Vehicle was Permissible**

Defendant contends that he had standing to object to the search of the vehicle. It is true Defendant has a reasonable expectation of privacy in vehicle as he is lawfully in the vehicle with the driver's permission. *Commonwealth v. Powell*, 994 A.2d 1096, 1104 (Pa. Super. 2010). But Defendant does not have standing to object to the driver's consent to search the vehicle. *See Commonwealth v. Viall*, 890 A.2d 419, 423 (Pa. Super. 2005) ("a co-occupant of the automobile, assume[s] the risk that the driver would permit the common areas of the car to be searched. Where joint access or control exists, there can be no reasonable or legitimate expectation of privacy."). Therefore, Defendant cannot object to the driver giving valid consent.

### **Whether the Arrest was Made without Probable Cause**

Defendant argues that his arrest was made without probable cause that he had committed a felony and therefore required an arrest warrant. An arrest without a warrant may occur when:

- (a) when the offense is a murder, felony, or misdemeanor committed in the presence of the police officer making the arrest; or
- (b) upon probable cause when the offense is a felony or murder; or
- (c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute.

Pa. R. Crim. P. Rule 502(2).

Possession of a Controlled Substance with the Intent to Manufacture or Deliver is an ungraded felony, and therefore probable cause of this offense was enough for a warrantless arrest of Defendant. For an arrest "[t]o be constitutionally valid, [it] must be based on probable cause," which is established by a totality of the circumstances. *Commonwealth v. Dunlap*, 941 A.2d 671, 674 (Pa. 2007). This requires a court to determine "whether the facts and circumstances

which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.” *Id.* at 674-75.

A larger Ziploc bag of synthetic marijuana was found at the feet of Defendant where he had full access to it. In addition, the driver showed Corter texts from Defendant stating to pick him up so they could package the Spice. This information would lead a reasonable man to conclude Defendant possessed this synthetic marijuana for the purpose of delivering or distributing it. Alternatively, Defendant had committed a misdemeanor offense of Possession of a Controlled Substance in the presence of Corter just by having full control over the synthetic marijuana, which made an arrest without a warrant permissible. *See* Pa. R. Crim. P. Rule 502(2)(a).

### **Conclusion**

The Court finds there was reasonable suspicion of a traffic violation to conduct a traffic stop, Defendant had no standing to object to consent of the search of the vehicle, and officers had the requisite probable cause to arrest Defendant without an arrest warrant. Therefore, there is no violation of Defendant’s constitutional rights and the evidence resulting shall not be suppressed.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of December, 2018, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)  
Peter Campana, Esquire

NLB/kp