

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1863-2018**
 v. :
 :
 TYLER ANSPACH, : **OMNIBUS PRETRIAL**
 Defendant : **MOTION**

OPINION AND ORDER

Tyler Anspach (Defendant) was charged on November 5, 2018 with Possession of a Controlled Substance/Altered or Misbranded,¹ Adulteration/Misbranding of any Controlled Substance,² and Possession of Drug Paraphernalia.³ The charges arise from a traffic stop that occurred following a violation in the Borough of Montgomery, of Lycoming County, where Defendant was the passenger of the vehicle. Defendant filed this Omnibus Pretrial Motion seeking the return of his property and the suppression of the evidence on January 24, 2019.⁴ A hearing on the Motion was held by this Court on March 21, 2019.

Background and Testimony

Officer Eric Winters (Winters) of the Montgomery Bureau of Police and Probation Officer Ashley Van Horn (Van Horn) of the Montour County Probation Office testified on behalf of the Commonwealth. Based on the testimony the following was established. On October 5, 2018 at approximately 9:26 p.m., Winters was acting in his official capacity as a police officer when he ran the plate of a tan sedan, which came back “Type F suspended” and expired. At this time Winters conducted a traffic stop. He spoke with the driver of the vehicle and noticed the odor of alcohol emanating from the vehicle. The driver stated she was not

¹ 35 P.S. § 780-113(a)(1).

² 35 P.S. § 780-113(a)(2).

³ 35 P.S. § 780-113(a)(32).

⁴ The Motion for Return of Property was addressed at the hearing and with consent of the Commonwealth was granted by this Court in an Order filed March 26, 2019.

drinking, but her boyfriend, Defendant, had been. Defendant had bloodshot glassy eyes and was slurring his speech. Defendant stated that he had been drinking and Winters could observe open bottles of rum and coke in the back seat area. Defendant stated he did not have his ID on him, but Winters knew him as Tyler Anspach and believed him to be on probation. When asked, Defendant stated he knew he was on probation and that he did have a no drink clause as a condition of his probation. A tow truck was then called for the vehicle and Defendant was patted down. A portable breath test (PBT) was administered on Defendant, which registered a .132. Winters then contacted the Montour County Probation office to see how they wished to proceed. Van Horn, who was Defendant's supervisor, stated he was to be taken into custody and the probation office supervisor signed the detainer. Winters then performed a search incident to arrest and found a plastic baggie with orange crushed pills in it, which Defendant stated was Adderall and his identification, which he previously stated he did not have.

Whether Winters had Probable Cause to Effectuate an Arrest and Search Defendant

Defendant does not challenge the validity of the vehicle stop, but does challenge whether police officers have the authority to effectuate an arrest pursuant to probable cause of a parole/probation violation. Police officers are granted broad authority to enforce the laws within their primary jurisdiction under 42 Pa. C.S. § 8952:⁵

Any duly employed municipal police officer shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office anywhere within his primary jurisdiction as to:

- (1) Any offense which the officer views or otherwise has probable cause to believe was committed within his jurisdiction.
- (2) Any other event that occurs within his primary jurisdiction and which reasonably requires action on the part of the police in order to preserve,

⁵ Although Winters was outside of his primary jurisdiction when he made the stop, it was conceded by defense counsel that Winters was in hot pursuit of an ongoing traffic violation, which occurred within his primary jurisdiction in conjunction with 42 Pa. C.S. § 8953(a)(2).

protect or defend persons or property or to otherwise maintain the peace and dignity of this Commonwealth.

Probation and parole officers are similarly granted the authority “to arrest, with or without warrant . . . any person on probation, intermediate punishment or parole under the supervision of the court . . . for any other violation of that person's probation, intermediate punishment or parole.” 42 Pa. C.S. § 9913. Pennsylvania courts have long recognized the interworking relationship between police officers and probation/parole officers. In *Commonwealth v. Lyons*, the Pennsylvania Superior Court determined that a parole officer could authorize local law enforcement to effectuate an arrest based on a technical violation of parole. 555 A.2d 920, 923 (Pa. Super. 1989). The court determined that the parole officer need not be physically present for the police officer to effectuate the arrest of the defendant at the parole officer’s request without an arrest warrant. *Id.* at 923-24. Additionally the court distinguished the facts from past case law by determining that because “the violation of parole was the sole reason of the arrest” and not just merely relevant, the warrantless arrest was permissible. *Id.* at 924 fn. 4.

In this case, Defendant was in a vehicle that was permissibly stopped by Winters. Winters was familiar with Defendant and his status as a probationee. Winters could immediately detect the odor of alcohol and could see open containers in the back seat area. Defendant admitted to drinking, admitted to being on probation, and admitted to having a no drinking clause as a condition of his probation, effectively admitting to violating the conditions of his probation. At this point Winters detained Defendant and contacted his probation office to determine how they wished to proceed. Defendant was not arrested and subsequently searched incident to arrest until after Van Horn determined he should be taken into custody and a supervisor signed off on a detainer. *Lyons* is clear once Winters was given authorization by the Montour County Probation Office to arrest Defendant a warrant was not required. *Id.* at 923-24.

The only potential issue is whether the brief detainment by Winters prior to Van Horn's authorization was permissible. This Court determines that it was. The situation "reasonably require[d] action on the part of the police in order to preserve, protect or defend persons or property or to otherwise maintain the peace and dignity." 42 Pa. C.S. § 8952(2). If the Court were to disallow a brief detention, such as this, when a probationee admits to violating parole and there is sufficient evidence present to create probable cause that his parole was being violated, then it would severely impede 42 Pa. C.S. § 8952(2) and undermine the holding in *Lyons*.

Conclusion

Winters had valid authority to arrest Defendant and conduct a search incident to arrest in accordance with *Lyons*. Therefore, Defendant's Motion to Suppress shall be denied. There is no violation of Defendant's constitutional rights and the evidence resulting shall not be suppressed.

ORDER

AND NOW, this 11th day of April, 2019, based upon the foregoing Opinion, Defendant's Motion to Suppress is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (ND)
Peter Campana, Esquire

NLB/kp