IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CP-41-CR-2119-2017**
v.	:	
	:	
ALIEK CARR,	:	**OMNIBUS PRETRIAL**
Defendant	:	**MOTION**

OPINION AND ORDER

Aliek Carr (Defendant) was arrested on October 21, 2017, for Possession of a Controlled Substance with the Intent to Deliver[1] and Criminal Use of a Communication Facility.[2] The charges arise from a police encounter of Defendant and the subsequent search of his vehicle at the Uni-Mart at the intersection of High Street and Sixth Avenue in Williamsport, Pennsylvania. Defendant filed a Motion for Permission to File Motion to Suppress Evidence Nunc Pro Tunc, which was granted over the objection of the Commonwealth on July 9, 2019. This Motion to Suppress was then filed on July 11, 2019. A hearing on the Motion was held by this Court on October 14, 2019. Both parties were then granted the opportunity to file briefs in the matter. Defendant filed his brief on November 7, 2019 and the Commonwealth filed its brief on November 26, 2019.

Background and Testimony

Officer Clinton Gardner (Gardner) of the Williamsport Bureau of Police and Detective Devin Thompson (Thompson) of the South Williamsport Police Department testified on behalf of the Commonwealth. The Commonwealth also submitted a copy of the Application for Search Warrant for Defendant's black flip phone. The evidence established the following. On October 21, 2017, Gardner was working alone in full uniform in a marked police vehicle in the area of High Street and Sixth Avenue near the Uni-Mart. N.T. 10/24/19, at 4. Gardner knew the

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[1] 35 P.S. § 780-113(a)(30).
[2] 18 Pa. C.S. § 7512.

area to be a high crime area, where he had conducted multiple narcotics related arrests. *Id.* When Gardner pulled into the parking lot he noticed a heavier set black male with a noticeable limp, later identified as Defendant, pumping gas into a vehicle with Illinois plates. *Id.* at 4-5. Defendant looked over at Gardner multiple times, and walked over to a nearby vehicle and began talking to an individual. *Id.* at 5. Gardner knew that a heavier set black male with a limp matching Defendant's description had recently fled from a narcotics related stop with a fellow officer. *Id.* at 5. Gardner took Defendant's actions of moving towards the white van as an attempt to separate himself from his vehicle. *Id.* at 26. Gardner then parked his vehicle, so as to not block in Defendant's, and walked over to him. *Id.* at 6. Gardner asked Defendant "what was going on and what he was doing in the area." *Id.* Defendant responded he was in town for court and to see friends. *Id.* Upon Gardner asking Defendant what his name was, Defendant provided Gardner with his Pennsylvania identification, which had a Philadelphia address. *Id.* Defendant then walked back to his vehicle and finished pumping gas as Gardner spoke with him and continued to ask him questions. *Id.* at 7. Defendant confirmed that the vehicle was a rental. *Id.* During the interaction, Gardner did not indicate to Defendant that he was not free to leave, he did not brandish his firearm, and he did not restrict Defendant's movements in any way. *Id.* Gardner then asked if Defendant had anything illegal on his person. *Id.* Defendant then began digging through his pockets, which Gardner asked him not to do. *Id.* While Defendant was digging through his pockets, Gardner observed a pocket knife, a second cell phone, and an unknown amount of currency. *Id.* Gardner asked why he had two cell phones and asked if there was anything illegal in the car. *Id.* at 7-8.

Gardner then asked if he could search the car. *Id.* at 8. At first, Defendant gave Gardner permission to search the driver side, but then withdrew consent prior to Gardner starting his

search. *Id.* Gardner then informed Defendant he would be calling a canine to the scene based on his observations. *Id.* Gardner's purpose for calling a canine was: Defendant's presence in high narcotics trafficking area, Defendant matching the description of an individual that fled during a narcotics related stop, Defendant having a Philadelphia address, which in Gardner's experience is common for drug traffickers in this area, the possession of two cell phones, the bundle of currency on Defendant's person, and Defendant's use of a rental vehicle, which in Gardner's experience was common among narcotics traffickers because the vehicles cannot be forfeited. *Id.* at 9. Gardner believed at that point Defendant was detained and would have to wait for a canine to arrive. *Id.* at 21. After being informed that a canine would be called, Defendant offered consent to search and Gardner explained that he did not have to provide consent and that he was not forcing him to search the vehicle. *Id.* at 8. Defendant still agreed to grant Gardner consent, and during the search, Gardner found small rubber bands, commonly used in the packaging of heroin in the sunglass visor. *Id.* at 11. When asked why he had the bands, Defendant stated for his hair, but Defendant had a shaved head at the time. *Id.* at 12.

At this time Gardner searched Defendant's person. *Id.* Search of Defendant yielded two cell phones and ninety-five dollars in mostly twenty dollar denominations in two separate bundles. *Id.* at 12. Gardner testified that the use of two cellphones, twenty dollar denominations, and separate bundles of cash were all factors consistent with narcotics trafficking. *Id.* at 9, 12. Thompson then arrived with his canine and was informed of the ongoing situation. *Id.* at 12-13. The canine alerted several times to the rear portion of the middle console. *Id.* at 13. Officers then popped off the rear portion of the console to find a grey colored satchel that contained a worn prescription bottle containing fifty Oxycodone pills with Defendant's name on it. *Id.* Based on Gardner's training and experience and because of the

location the pill bottle was stored, the worn condition the bottle was in, and the pills having different insignias/stamps, he reached the conclusion the pills were for illegal sale. *Id.* at 16. Defendant was then taken into custody and searched further. *Id.* at 14.

Gardner then obtained a search warrant for Defendant's black flip phone. *Id.* The search warrant had the items to be searched as "[a]ny electronically stored information and records, including all call logs, sms and mms messages, emails, contacts list, photographs, videos, or any other electronic storage devices contained within the above mentioned phone. In relation to 10/14/17 to 10/21/17 as described below CG#74." Commonwealth's Exhibit #1 10/26/17, at 4. The items to be seized were "[a]ny and all information relating to violations of the Controlled Substance, Drug, Device and Cosmetic Act and PA C.S.A (Criminal Use of a Communication Facility) from 10/14/2017 to 10/21/2017." *Id.* From the search officers took twenty six photographs of incoming/outgoing messages. *Id.* at 5; N.T. 10/24/19, at 15-16.

Discussion

In his Motion to Suppress, Defendant raises seven issues: (1) whether Defendant's consent to search was given during an impermissible investigatory detention; (2) whether the search of Defendant's person was impermissible; (3) whether the use of a canine search was permissible; (4) whether seizure of Defendant's prescription medication was illegal; (5) whether Defendant's subsequent arrest was based on probable cause; (6) whether the search warrant for Defendant's phone was based on probable cause and was not overbroad.

Whether Consent to Search the Vehicle was a Product of an Unlawful Detention

Defendant first alleges that the consent provided to Gardner was the result of an unlawful detention and therefore the evidence seized as a result of must be suppressed. The

courts have outlined three categories of interactions involving encounters between citizens and the police:

> The first is a "mere encounter" (or request for information) which need not be supported by any level of suspicions, but carries no official compulsion to stop or respond. The second, an "investigative detention," must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or "custodial detention" must be supported by probable cause.
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> *Commonwealth v. Gutierrez*, 36 A.3d 1104, 1107 (Pa. Super. 2012).

The Pennsylvania Supreme Court has adopted the United States Supreme Court's holding in *Terry v. Ohio*, 392 U.S. 1 (1968), permitting police to effectuate a precautionary seizure when there is "reasonable suspicion criminal activity is afoot." *Commonwealth v. Matos*, 672 A.2d 769, 773-74 (Pa. 1996) (citing *Commonwealth v. Hicks*, 253 A.2d 276 (Pa. 1969)). The Court views a totality of the circumstances to determine whether "a reasonable person would believe that he was not free to leave." *Commonwealth v. Collins*, 672 A.2d 826, 829 (Pa. Super. 1996). "[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences he is entitled to draw from the facts in light of his experience." *Commonwealth v. Cook*, 735 A.2d 673, 676 (Pa. 1999) (quoting *Terry*, 392 U.S. at 27). Case law has established certain facts alone do not create reasonable suspicion, but a totality of the circumstances may create it. *See Commonwealth v. DeWitt*, 608 A.2d 1030 (Pa. 1992) (flight alone does not establish reasonable suspicion); *Commonwealth v. Kearney*, 601 A.2d 346 (Pa. Super. 1992) (mere presence in a high crime area alone does not create reasonable suspicion). Reasonable suspicion is evaluated as an objective assessment and the officer's subjective intent

is irrelevant. *Commonwealth v. Foglia*, 979 A.2d 357, 361 (Pa. Super. 2009) (citing *Scott v. United States*, 436 U.S. 128, 136 (1978)).

Individuals are protected in their homes, papers, possessions, and persons from "unreasonable searches and seizures." U.S. Const. amend. IV; Pa. Const. art. I, § 8. "[I]n the absence of a warrant or a recognized exception to the warrant requirement, a search or seizure is presumptively unreasonable." *Commonwealth v. Romero*, 183 A.3d 364, 396 (Pa. 2018). One of those limited exceptions is consent. *Commonwealth v. Strickler*¸ 757 A.2d 884, 888 (Pa. 2000). Although consent is a limited exception, where that consent is obtained following an unlawful seizure the exclusionary rule applies and the evidence must be suppressed. *Id.* at 888-89.

Defendant submits that he was subjected to an unlawful investigatory detention and therefore his consent to search the vehicle was not valid. Defendant additionally argues that the detention occurred when Gardner approached Defendant and began asking him questions, but this contention is not supported by the case law. *See Commonwealth v. Lyles*, 97 A.3d 298, 351-54 (Pa. 2014) (merely approaching an individual and asking for identification and casual questioning does not constitute an investigatory detention). Similarly, the contention is not supported by the record. Gardner's testimony made clear that Defendant acted of his own accord during the interaction by voluntarily emptying his pockets, although told not to, and by walking back from one vehicle to his vehicle to finish pumping gas. N.T. 10/24/19, at 7. As the Commonwealth concedes, Defendant was subjected to an investigatory detention when Gardner informed him a canine would be brought to the scene. At that moment, a reasonable person would not believe he was free to leave, which in fact Gardner testified Defendant was not permitted to leave at that point. *Id.* at 21.

At this time, Gardner was required to have reasonable suspicion that criminal activity was afoot. *Matos*, 672 A.2d at 773-74. The Court believes the Commonwealth has demonstrated its burden of demonstrating reasonable suspicion. Gardner witnessed Defendant's presence in high narcotics trafficking area and he matched the description of an individual that fled during a recent narcotics related stop involving another officer. N.T. 10/24/19, at 9. Upon speaking with Defendant, Gardner further learned Defendant had a Philadelphia address and was driving a rental vehicle, which Gardner explained in his experience was an indicator of drug trafficking. *Id.* Additionally, Defendant displayed two cell phones and two bundles of currency, which Gardner also testified was common among narcotics traffickers. Based on the totality of these circumstances the Court finds Gardner had reasonable suspicion to conduct an investigatory detention when he told Defendant a canine was to be called. Therefore, Defendant's consent to search the vehicle was valid.

Whether the Search of Defendant was Permissible

Defendant next contends that Gardner's search of his person was impermissible and therefore the cell phone and currency seized as a result thereof needs to be suppressed. As stated above, individuals are protected from warrantless searches of their persons, absent a recognized exception. *Romero*, 183 A.3d at 396. One such exception is a search incident to a valid arrest. *Commonwealth v. Taylor*, 771 A.2d 1261, 1271-72 (Pa. 2001). Following a valid arrest, officers may search not only an individual's person, but also the area within the individual's immediate control. *Id.* at 1271. The rationale behind the exception is "the need to disarm the suspect in order to take him into custody and [ ] the need to preserve evidence for later use at trial." *Id.* In *Commonwealth v. Van Winkle*, officers seized currency from the defendant's pocket pursuant to a search incident to arrest. 880 A.2d 1280, 1285 (Pa. Super.

2005). However, the officers testified that they seized the currency prior to searching and seizing the contraband in the vehicle. *Id.* The Pennsylvania Superior Court held that "mindful that the contraband validly was seized from [the co-defendant]'s vehicle and that the currency would have been discovered on [the defendant]'s person incident to his arrest based on that seizure, we conclude that the currency falls within the inevitable-discovery exception." *Id.*

Based on the factual similarities of the present case and *Van Winkle*, the doctrine of inevitable discovery applies here. The testimony is clear that Gardner seized Defendant's cell phone and currency prior to finding the contraband within the vehicle. Therefore, based on *Van Winkle*, as long as the pill bottle in Defendant's vehicle was validly seized pursuant a proper search, seizure of Defendant's cell phone and currency should not be suppressed under the doctrine of inevitable discovery. Additionally, factoring into this Court's decision are the facts that Gardner was already aware of the cell phone and currency, due to Defendant taking the items out of his pants pockets and displaying them voluntarily and the information seized from within the cell phone was not taken until after a search warrant was obtained. Based on the Court's holdings below, seizure of the items from his initial search shall not be suppressed as the items would have been inevitably discovered.

Whether the Canine Search of the Vehicle was Permissible

Defendant claims the pill bottle seized as a result of the search of the vehicle should be suppressed because the canine search of the vehicle was unconstitutional. When analyzing a vehicle search the Pennsylvania Supreme Court in a plurality opinion stated that there is

> no compelling reason to interpret Article I, Section 8 of the Pennsylvania Constitution as providing greater protection with regard to warrantless searches of motor vehicles than does the Fourth Amendment. Therefore, we hold that, in this Commonwealth, the law governing warrantless searches of motor vehicles is coextensive with federal law under the Fourth Amendment. The prerequisite

> for a warrantless search of a motor vehicle is probable cause to search; no exigency beyond the inherent mobility of a motor vehicle is required.
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> *Commonwealth v. Gary*, 91 A.3d 102, 138 (Pa. 2014).

The Pennsylvania Superior Court adopted the holdings of *Gary* in subsequent opinions. *See Commonwealth v. Runyan*, 160 A.3d 831, 836 fn. 2 (Pa. Super. 2017) ("*Gary* was a plurality opinion announcing the judgment of the Supreme Court. However, this Court has adopted the holdings of *Gary* in subsequent Opinions.").

Additionally, a canine sniff is considered a search, which is beholden to the requirements of Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution. *Commonwealth v. Johnston*, 530 A.2d 74, 79 (Pa. 1987). Pennsylvania Courts have further delineated canine searches and found that canine searches of the exterior of a vehicle only require reasonable suspicion, whereas canine searches of the interior of a vehicle ***may require*** the more stringent probable cause. *Commonwealth v. Rodgers*, 849 A.2d 1185, 1191-92 (Pa. 2004). Once again, consent is a valid exception to the requirement of probable cause. *Strickler*, 757 A.2d at 888. When evaluating consent for a dog sniff a court must make two determinations whether the consent was voluntarily given during a lawful police interaction and what was the scope of that consent. *Commonwealth v. Valdivia*, 195 A.3d 855, 861-62 (Pa. 2018) (internal quotations and citations omitted). "For a finding of voluntariness, the Commonwealth must establish that the consent given by the defendant is the product of an essentially free and unconstrained choice – not the result of duress or coercion, express or implied, or a will overborne – under the totality of the circumstances." *Id.* at 862. Once it is established consent was voluntarily obtained, "[t]he standard for measuring the scope of an individual's consent is one of 'objective reasonableness.'" *Id.* Scope is not evaluated based on an "individual's subjective belief or the officer's understanding based on his or her

training and experience," but based on what a reasonable individual would have ascertained from the interaction with the officer. *Id.*

In *Valdivia*, the defendant was pulled over by two officers and asked for consent to search his vehicle. *Id.* at 859. After the defendant consented, officers called for a canine to conduct the search. *Id.* The defendant was not informed that the canine would be conducting the search nor was he told that he would have to wait for the canine to arrive. *Id.* The defendant then waited approximately forty minutes for the canine to arrive before a search of the vehicle was conducted. *Id.* The Pennsylvania Supreme Court determined that the canine search was outside the scope of the defendant's consent. *Id.* at 869. Important to its determination were the factors that the search occurred forty minutes after consent was given and "[t]here was no canine officer or handler present at the time, nor did the circumstances surrounding the interaction between [the defendant] and the troopers suggest that a canine unit was going to be used to conduct the search." *Id.* at 867. The Pennsylvania Supreme Court found that under these circumstances a reasonable person in that position would not have expected their consent to be to a search forty minutes later by a canine trained in drug detection. *Id.*

As explained above, Defendant's consent was part of a lawful police interaction and was voluntarily given to Gardner despite Gardner informing him multiple times that he did not have to consent. . N.T. 10/24/19, at 8, 10, 12-13, 22. As held above, reasonable suspicion was established at the point of the canine's arrival to conduct a dog sniff. *Id.* at 22. But even if officers are required to establish probable cause for a canine search of the interior of a vehicle, this Court finds officers acted within the scope Defendant's consent. Unlike in *Valdivia*, Defendant was aware that a canine was called or was being called. N.T. 10/24/19, at 9-10. Additionally, the entirety of the stop took approximately ten to twenty minutes. *Id.* at 23. The

canine arrived within eight minutes of being called. *Id.* at 32. In *Valdivia*, the Pennsylvania Supreme Court was very clear its determination hinged on the defendant being completely unaware of the possibility of a canine search occurring, here Defendant was told a canine was being called prior to him giving consent. Therefore the canine search of the interior of the vehicle was not outside his scope of consent.

Whether the Seizure of the Prescription Bottle was Valid

Defendant next argues that officers did not have authority to seize Defendant's prescription bottle, relying heavily upon the analysis in *Commonwealth v. McCree*. In *McCree*, the Pennsylvania Supreme Court held that three prongs needed to be satisfied to seize items in plain view: "(1) the police must be at a lawful vantage-point; (2) the incriminating character of the object must be immediately apparent; and (3) the police must have a lawful right of access to the object." 924 A.2d 621, 625 (Pa. 2007). Disregarding the fact that *McCree* dealt with contraband officers could see in plain view of a vehicle they did not have probable cause to search, all three prongs are satisfied in the present case. As explained above, officers were validly searching the vehicle and therefore at a lawful vantage point when officers found the prescription bottle. Gardner explained the manner in which the pills were stored, the worn condition the bottle was in, and the fact the pills were all different insignias/stamps made it apparent to him the evidence was incriminating in nature. N.T. 10/24/19, at 16. Lastly, officers had a right to access the item as it was found pursuant to a valid and legal search. Therefore, the seizure of the prescription bottle was valid and Defendant's contention is incorrect.

Whether Defendant's Arrest was Based on Probable Cause

Defendant asserts that he was arrested without the adequate probable cause to substantiate the underlying charges. To be constitutionally valid a warrantless arrest may not be

made absent probable cause. *In Interest of O.A.*, 717 A.2d 490, 495 (Pa. 1998). "Where probable cause to arrest does not exist in the first instance, any evidence seized in a search incident to arrest must be suppressed." *Id.* Officers "must have a warrant to arrest an individual in a public place unless they have probable cause to believe that 1) a felony has been committed; and 2) the person to be arrested is the felon." *Commonwealth v. Clark,* 735 A.2d 1248, 1251 (Pa. 1999). An individual is guilty of an ungraded felony if he/she "possess[es] with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance." 35 P.S. § 780-113(a)(30). Oxycodone is a Schedule II narcotic under the Controlled Substances Act. *See* 35 P.S. § 780-104(2)(i)(1).

This Court finds the totality of the circumstances more than establish probable cause to effectuate an arrest for Possession with the Intent to Deliver. Although pursuant to *Commonwealth v. Kelly* mere presence of a prescription vial is not sufficient by itself to establish probable cause to arrest, the presence of the prescription bottle was not the only evidence, which led to Defendant's arrest. *See Commonwealth v. Kelly*, 409 A.2d 21 (Pa. 1979). Defendant, who was located in an area known for narcotics trafficking, matched the description of an individual who fled from a fellow officer during a narcotics stop. N.T. 10/24/19, at 5, 9. When Gardner observed Defendant he kept looking his way and tried to separate himself from his vehicle. *Id.* at 5, 6. The vehicle Defendant was driving was a rental and Defendant's address was in Philadelphia. *Id.* at 6-7. Defendant had two cell phones on his person and the cash he was carrying was in two bundles of predominately twenty dollar bills. *Id.* at 7-8, 12. Upon searching Defendant's vehicle, Gardner found, what in his experience he

knows as, packaging bands. *Id.* at 11. Lastly the prescription bottle was secreted away behind the center console, the bottle was worn and used, and the pills had different insignias/stamps. *Id.* at 13, 16. All of this evidence taken in light of Gardner's training and experience cumulatively is more than the mere presence of a prescription bottle and is sufficient to establish probable cause to effectuate an arrest of Defendant for Possession with the Intent to Deliver.

Whether Search Warrant for Defendant's Phone was Overbroad.

Lastly, Defendant contends that the search warrant was based upon prior illegally obtained evidence and information and the search warrant did not specify the items to be searched for and seized. The first part of Defendant's argument, based on the Court's holdings above, is meritless.

"[N]o warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be." Pa. Const. Art. I § 8. Therefore a search warrant "must name or describe with particularity the property to be seized and the person or place to be searched." *Commonwealth v. Orie*, 88 A.3d 983, 1002 (Pa. Super. 2014). A warrant is impermissibly overbroad if it authorizes the seizure of an entire set of items, or documents, many of which will prove unrelated to the crime under investigation. *Commonwealth v. Rivera*, 816 A.2d 282, 290 (Pa. Super. 2003). "However, search warrants should be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description will suffice." *Commonwealth v. Kane*, 210 A.3d 324, 332 (Pa. Super. 2019) (quoting *Commonwealth v. Rega*, 933 A.2d 997, 1012 (Pa. 2007)). Because the requirements are more stringent under Article I Section 8 of the Pennsylvania Constitution if its requirements

are satisfied the federal Constitution is also satisfied. *Orie*, 88 A.3d at 1003. Pennsylvania courts have found the description of items to be searched and seized, "Acer Aspire Model 6930 laptop computer and the hard drive contents contained therein," as not overbroad when the accompanying affidavit was thorough. *Id.* at 1005; *see also Commonwealth v. Iannelli*, 634 A.2d 1120, 1130-31 (Pa. Super 1983) (The nature of the charges can also affect whether a search warrant is overbroad). Additionally the breadth of an officer's request is important as it could mean the language is or is not overbroad. *Commonwealth v. Dougalewicz,* 113 A.3d 817, 828 (Pa. Super. 2015). "A search warrant cannot be used as a general investigatory tool to uncover evidence of a crime," but a warrant is not overbroad if there is probable cause to search all the items. *Rega*, 933 A.2d at 1011.

The search warrant at issue lists the items to be searched as: "Any electronically stored information and records, including all call logs, sms and mms messages, emails, contacts list, photographs, videos, or any other electronic storage devices contained within the above mentioned phone. In relation to 10/14/17 to 10/21/17 as described below CG#74." Commonwealth's Exhibit #1 10/26/17, at 4. The portion hand written in stating "[i]n relation to 10/14/16 to 10/21/17 as described below CG#74" refers to the items to be seized, which states"[a]ny and all information relating to violations of the Controlled Substance, Drug, Device and Cosmetic Act and PA C.S.A (Criminal Use of a Communication Facility) from 10/14/2017 to 10/21/2017." The accompanying Affidavit is clear that based on Gardner's observations and evidence seized the search warrant is for believed narcotics trafficking. The items to be searched and seized are specified to only information related to the "violation of the Controlled Substances, Drug, Device and Cosmetic Act and PA C.S.A (Criminal Use of a Communication Facility)." This specificity is sufficient and narrowly tailored. *See*

Commonwealth v. Green, 204 A.3d 469, 483 (Pa. Super. 2019) ("warrant contain[ing] a general description of electronic items to be seized, but permitt[ing] the seized devices to be searched only for evidence relating to the possession and/or distribution of child pornography" was constitutionally permissible). Additionally, the search warrant is contained within a distinct set of dates to keep officers from conducting a fishing expedition. *See Dougalewicz*, 113 A.3d at 828 (search warrant covering a span of ten months was important in finding search warrant not overbroad). Therefore this Court finds the search warrant was appropriately specific in what information could be looked at, what information was being looked for, and what information could be subsequently seized.

Conclusion

This Court finds the Commonwealth has provided sufficient evidence to show Defendant's Motion to Suppress Evidence should be denied. Defendant's consent to search the vehicle was given during a lawfully permissible investigatory detention. The use of a canine to search was within the scope of Defendant's consent. Seizure of Defendant's prescription medication was legal due to the totality of the circumstances demonstrating its incriminating nature. Defendant's subsequent arrest was therefore based in probable cause, and the previous search of his person should not be excluded because the evidence was inevitably going to be discovered. Finally, the search warrant for Defendant's phone was based on probable cause and was sufficiently specific as to what was to be searched and seized.

ORDER

AND NOW, this 31st day of December, 2019, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
Peter Campana, Esquire