

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-718-2018</b>
	:	<b>CR-719-2018</b>
<b>v.</b>	:	
	:	
<b>KHALEEF DAVIS,</b>	:	<b>OMNIBUS MOTION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On April 25, 2018, Khaleef Davis (Defendant) was arrested on two counts of Delivery of a Controlled Substance,<sup>1</sup> four counts of Possession with the Intent to Deliver a Controlled Substance,<sup>2</sup> four counts of Possession of a Controlled Substance,<sup>3</sup> one count of Criminal Conspiracy of Criminal Use of a Communication Facility,<sup>4</sup> one count of Criminal Use of a Communication Facility,<sup>5</sup> and one count of Possession of Drug Paraphernalia.<sup>6</sup> On August 21, 2018, Defendant filed an Omnibus Pretrial Motion seeking a remand of the proceedings to juvenile court and suppression of the evidence seized as a result of a traffic stop. Defense counsel raises two issues which this Court must address: Whether Defendant's waiver of his certification hearing was knowing, intelligent, and voluntary and if not should his cases be remanded to juvenile court; and Whether Officer Joshua Bell (Bell) of the Williamsport Bureau of Police had probable cause to stop a vehicle for a turn signal violation when the driver of the vehicle came to a complete stop at a stop sign prior to activating the left turn signal. A brief conference was held with both the Commonwealth and defense counsel present,

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<sup>1</sup> 35 P.S. § 780-113(a)(30).

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 35 P.S. § 780-113(a)(16).

<sup>4</sup> 18 Pa. C.S. § 903(a)(1).

<sup>5</sup> 18 Pa. C.S. § 7512.

<sup>6</sup> 35 P.S. § 780-113(a)(32).

off the record, on April 11, 2019, and a hearing on the motion was held on April 12, 2019. Defendant's Omnibus Motion is denied in its entirety based upon the following reasoning.

### **Background**

The issues stem from two alleged controlled buys that occurred between Defendant and a confidential informant of October 12, 2017 and October 18, 2017 and the stop of a vehicle, in which Defendant was the passenger, on April 25, 2018. A subsequent search of the vehicle and Defendant yielded heroin and cocaine. Both defense counsel and the Commonwealth stipulated to the facts surrounding the stop of the vehicle. Bell observed a motor vehicle approach the intersection of Campbell St. and Glenwood Ave., come to a complete stop at the stop sign, and then activate the left turn signal before turning left onto Campbell St. The seizure and search following the stop of the vehicle are not being disputed at this time by Defendant. At the time of the incidents, Defendant was seventeen (17) years old. On May 3, 2018 Defendant appeared before the Honorable Richard A. Gray where he waived his right to contest the Commonwealth's Petition to Transfer the matter to the Court of Common Pleas in lieu of holding a certification hearing. Defendant claims the waiver of his certification hearing was not knowing, intelligent, and voluntary and that the evidence seized as a result of the vehicle stop on April 25, 2018 should be suppressed.

### **Whether Waiver of his Certification Hearing was Knowing, Intelligent, and Voluntary**

For a juvenile's case to be transferred to the Court of Common Pleas for criminal proceedings a court must determine certification in accordance with 42 Pa. C.S. § 6355(a) or "[t]he child may request that the case be transferred for prosecution in which event the court may order this chapter not applicable." 42 Pa. C.S. § 6355(c). The Commonwealth at both the conference and hearing raised concerns that this Court would not have the authority to remand

the case until it after its resolution and remand would raise double jeopardy concerns. These contentions are misplaced. When a juvenile challenges an order transferring the case for criminal proceedings “the juvenile impliedly waives his claim to relief under the double jeopardy clause.” *Commonwealth v. Johnson*, 669 A.2d 315, 318 (Pa. 1995). Additionally, the Pennsylvania Superior Court has previously determined that a Court must evaluate whether a waiver of a certification hearing is knowing, intelligent, and voluntary before denying a defendant’s motion to transfer back to juvenile court. *See Commonwealth v. Ghee*, 889 A.2d 1275, 1281 (Pa. Super. 2005); *but cf. Commonwealth v. Pitt*, 385 A.2d 574, 575 (Pa. Super. 1978) (When “[t]he issue of appellant’s nonamenability to treatment within the juvenile court system had been determined . . . [it] is final and should not be relitigated in another court,” but the Pennsylvania Superior Court seemingly does not apply the same rationale to consensual waivers as seen in *Ghee*). “An analogy may be drawn between a guilty plea and a juvenile’s waiver into the adult court.” *Id.* at 1279. Such a waiver will “be considered knowing, intelligent, and voluntary under the Due Process Clause only if it constitutes ‘an intentional relinquishment or abandonment of a known right or privilege.’” *Commonwealth v. Flanagan*, 854 A.2d 489, 512 (Pa. 2004) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). A juvenile is entitled to a counseled decision where he or she is on notice of the nature of the charges against him or her. *See Kent v. United States*, 383 U.S. 541, 557 (1966); *Commonwealth v. Batty*, 393 A.2d 435 (Pa. 1978).

Defendant in lieu of a certification hearing on the Commonwealth’s Petition to Transfer, waived his right and requested the matter be transferred to the Court of Common Pleas as a criminal matter on May 3, 2018. In exchange for Defendant’s waiver “the Commonwealth [recommended] for bail, signature bail, 50,000.” N.T. 5/3/18, at 2 (under

docket numbers JV 290-18 and JV 153-18). Defendant was represented by Attorney Don Martino at the waiver proceeding. Attorney Martino assured the Court in the presence of Defendant that Defendant understood the “ramifications of transferring the case to adult court, . . . he will be scheduled for an arraignment, . . . the application process for a public defender and also the possibility that he may hire a private attorney to represent him, and . . . the concept of signature bail.” *Id.* at 3. When asked if Attorney Martino believed this was a “knowing agreement on the part of [Defendant]” he stated “I do, Your Honor.” *Id.* The Court asked about Defendant’s age and education level, as well as whether he had enough time to go over this decision with Attorney Martino, which Defendant answered “[h]e explained it to me.” *Id.* at 3-4. The Court addressed the absence of parents’ presence, which Defendant stated he had some input from them and “part of the reason why I did the bail, so I can communicate with her.” *Id.* at 4. The Court explained to Defendant he would “be in the adult system and there is advantages and disadvantages in going to the adult system. Probably the advantages you’ll have the right to a jury trial. The disadvantage of it is you can be faced with longer time than you would in the juvenile system,” which Defendant stated he understood. *Id.* Attorney Martino outlined that “he would probably be facing something like Glenn Mills or George Jr. which are both 12 month programs” if he stayed in juvenile court and that “there’s certainly the possibility given the nature of the charges that he would receive a sentence of state incarceration.” *Id.* at 6. The Court reiterated “[a]gain then, [Defendant], you are in agreement with the decision to transfer,” which he replied “[y]es sir.” *Id.*

It is clear to this Court from the transcript of the hearing on May 3, 2018 that the requirements outlined in *Kent* and *Batty* have been met. Defendant was assisted by counsel in making an informed decision and he was made aware of the serious nature of the offenses,

including the potential outcomes. In addition Defendant received the benefit of his bargain and was released on signature bail shortly thereafter. *See Commonwealth v. Williams*, 481 A.2d 1230, 1234 (Pa. Super. 1984) (outlining the importance of the “benefit of the bargain” system and the binding nature upon not only defendant, but also the Commonwealth). Since it can be established from the record below Defendant knowingly, intelligently, and voluntarily waived his certification hearing and agreed to have his cases transferred to the Court of Common Pleas as a criminal matter, Defendant’s portion of his Omnibus Motion seeking remand of the proceedings to juvenile court is denied.

### **Whether Bell Had Probable Cause to Effectuate 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.* “Traffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose.” *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010). In contrast, a vehicle stop that does not require further investigation to determine whether a violation has occurred requires an officer to “have probable cause to make a constitutional vehicle stop.” *Commonwealth v. Chase*, 960 A.2d 108, 116 (Pa. 2008). Under the applicable statute regarding turn signals the following is required:

(b) Signals on turning and starting.--At speeds of less than 35 miles per hour, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The signal shall be given during not less than the last 300 feet at speeds in excess of 35 miles per hour. The signal shall also be given prior to entry of the vehicle into the traffic stream from a parked position.

75 Pa. C.S. § 3334(b).

“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921(b). The definition of “park” or “parking” is defined as “[w]hen permitted, means the temporary storing of a vehicle, whether occupied or not, off the roadway.” 75 Pa. C.S. § 102.

Defendant argues that it is incorrect to interpret 75 Pa. C.S. § 3334(b) to require an individual to signal one hundred feet prior to stopping at a stop sign, but this Court disagrees. The plain language of the statute attaches distance requirements to signaling prior to a turn, whereas only a signal is required when a vehicle is “starting,” as the heading suggests, and leaving a parked position, otherwise defined as a “temporary storing of a vehicle, whether occupied or not, off the roadway.” 1 Pa. C.S. § 1921(b). Many other jurisdictions have interpreted similar statutes and ruled in the same manner. *See United States v. Adler*, 590 F.3d 581, 585 (8th Cir. 2009) (“we interpret Section 60-6,161(2) to require Adler to have signaled her turn 100 feet in advance, we hold that Trooper Townsend had probable cause to stop her vehicle for the traffic violation he observed”); *Tucker v. State*, 183 S.W.3d 501, 507 (Tex. Crim. App. 2005) (violation occurred when “testimony was clear that at least at the time the car reached the stop sign the driver had not signaled to turn”); *State v. Kelly*, 211 P.3d 932 (Or. Ct. App. 2009) (“Defendant, once he had already stopped at a stop sign, signaled his turn in violation of ORS 811.335(1)(b), which requires drivers to ‘signal continuously during not less than the last 100 feet traveled by the vehicle before turning.’”).<sup>7</sup> Bell therefore had the requisite probable cause of a vehicle violation under 75 Pa. C.S. § 3334(b) and effectuated a valid traffic stop.

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<sup>7</sup> This issue has also already been addressed by the Lycoming County Court of Common Pleas twice previously. *See Commonwealth v. Sims*, CR 1976-2017, at 3-4 (Lyco. Ct. Com. Pl. 2019); *Commonwealth v. Edwards*, CR 834-2018, at 5-6 (Lyco. Ct. Com. Pl. 2018).

## **Conclusion**

The Court finds Defendant's waiver of his certification hearing and transfer of his cases to criminal court was knowing, intelligent, and voluntary and therefore will not be remanded to juvenile court. The Court also finds that based on the stipulated facts the vehicle Defendant was a passenger in violated the motor vehicle code by not properly employing his turn signal one hundred feet prior to the stop sign and therefore the evidence seized as a result of the valid traffic stop shall not be suppressed.

## **ORDER**

**AND NOW**, this 25<sup>th</sup> day of April, 2019, based upon the foregoing Opinion, it is **ORDERED** and **DIRECTED** that Defendant's Omnibus Pretrial Motion is hereby **DENIED**.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA (TB)  
Peter Campana, Esq.