

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1403-2018
v.	:	
	:	
RASHEEM JOHNSON,	:	MOTION TO SUPPRESS
Defendant	:	EVIDENCE

OPINION AND ORDER

Rasheem Johnson (Defendant) was arrested on August 30, 2018 on two counts of Possession of a Controlled Substance with the Intent to Deliver,¹ two counts of Possession of a Controlled Substance,² one count of Possession of Drug Paraphernalia,³ and one count of Tampering with Physical Evidence.⁴ The charges arise from a traffic stop conducted by Williamsport Bureau of Police (WBP) in the 100 block of Maynard St., Williamsport, PA 17701. Defendant filed this timely Omnibus Pretrial Motion requesting the suppression of evidence on November 30, 2018. A hearing on the motion was held by this Court on January 3, 2019. In his Motion, Defendant challenges whether the police had reasonable suspicion of criminal activity for the initial detention of Defendant and/or whether there was probable cause to arrest and search Defendant without a warrant. Defendant contends as a result any evidence obtained should be suppressed.

Background and Testimony

Officers Joshua Bell (Bell) and Clinton Gardner (Gardner) of the WBP testified on behalf of the Commonwealth. Their testimony established the following. On August 30, 2018 at approximately 6:30 P.M., Bell and Gardner were operating an unmarked patrol vehicle in

¹ 35 P.S. §780-113(a)(30).

² 35 P.S. §780-113(a)(16).

³ 35 P.S. §780-113(a)(32).

⁴ 18 Pa. C.S. § 4910(1).

full uniform in the area of Park Avenue and Seventh Avenue. While on an “aggressive patrol” the officers witnessed a silver sedan speeding up to 45-50 miles per hour in a residential area zoned for 25-35 miles per hour. As officers followed the vehicle they noticed it pull over to the curb and then pull back into traffic twice without signaling. As the vehicle looped back around to where officers originally observed the vehicle they initiated a stop. Bell and Gardner approached the vehicle, which Defendant was the passenger, and asked for all his identifying paperwork. Bell spoke with the driver at the rear of the vehicle and the driver stated that Defendant was getting a ride to a bar and that there was Suboxone in the car. Gardner then had Defendant get out of the vehicle and patted him down before searching the vehicle. In the area of the center console, two Subutex pills with no prescription were found. Neither individual took responsibility for the pills, so Bell searched the driver and Gardner searched Defendant incident to arrest. Nothing was found on the driver. While searching Defendant Gardner found a Suboxone strip cut into pieces with no prescription, two cellular phones, and \$557. Defendant was then transported to WBP station where he was strip searched and found to be concealing 3.15 grams of crack cocaine within his underwear and crack cocaine residue was around his rectum. This indicated to Bell that Defendant has previously concealed narcotics within his body.

Whether the Initial Encounter and Subsequent Arrest was Lawful

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.* It is well-settled that once a valid traffic stop has occurred officers have “an absolute right to ask the occupants of a vehicle to step out of the car for the duration of the traffic stop This is

true even absent a reasonable suspicion that criminal activity is afoot.” *Commonwealth v. Palmer*, 145 A.3d 170, 173 (Pa. Super. 2016). In a plurality opinion by the Pennsylvania Supreme Court, it was established that following a valid traffic stop “[t]he prerequisite for a warrantless search of a motor vehicle is probable cause to search.” *Commonwealth v. Gary*, 91 A.3d 102, 104, 138 (Pa. 2014) (When a defendant states there is some controlled substance in the motor vehicle “there is no dispute that probable cause exist[s] to search [the defendant]’s motor vehicle.”); *see also Commonwealth v. Runyan*, 160 A.3d 831 (Pa. Super. 2017) (if probable cause exists to search the vehicle any container which may contain the contraband can also be searched, including a passenger’s purse). When searching the vehicle the application of constructive possession is necessary because commonly the contraband is not found on the defendant’s person.

Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Commonwealth v. Brown, 48 A.3d 426, 430 (Pa. Super. 2012).

Additionally, it is possible for two people to have joint constructive possession of one item of contraband if both parties have equal access to that contraband. *Commonwealth v. Sanes*, 955 A.2d 369, 373 (Pa. Super. 2008) (disapproved on other grounds). Upon a finding of constructive possession a search incident to arrest of the passenger is permissible. *See Commonwealth v. Hopkins*, 67 A.3d 817 (Pa. Super. 2013).

Bell testified that he observed at least three motor vehicle code violations while following the vehicle, which Defendant does not refute. Bell was justified in having the driver

step out and speak with him at the rear of the vehicle. *Palmer*, 145 A.3d at 173. Then once the driver proffered the information that there was Suboxone in the vehicle, that there was no prescription for, probable cause was established. *Gary*, 91 A.3d at 104, 138. Bell testified that the pills were wrapped in cellophane and found either in the cup holder or on the center console. Gardner testified that neither individual laid claim to the pills, that they were in direct reach of both individuals, and that either could have controlled them. At this point the officers determined that both men were going to be searched incident to arrest and taken into custody based on the theory of joint constructive possession. *Sanes*, 955 A.2d at 373 (equal access allows for joint constructive possession). Gardner conducted a valid search incident to arrest based on the circumstances and found a Suboxone strip cut into pieces, two cellular phones, and \$557. Based on the results of the search, only Defendant was taken into custody.

Conclusion

There is no dispute that reasonable suspicion of a traffic violation was present to necessitate the stop, Bell was permitted to ask the driver to step out of the vehicle, the driver freely provided information that gave officers probable cause to search the vehicle, and based on joint constructive possession officers had the requisite probable cause to arrest Defendant without an arrest warrant and conduct a search incident to arrest.⁵ Therefore, there is no violation of Defendant's constitutional rights and the evidence resulting shall not be suppressed.

⁵ Defendant also argues that the pat down, which occurred prior to the search of the vehicle, was impermissible, but this point does not need to be addressed as no physical evidence resulted from that search.

ORDER

AND NOW, this _____ day of February, 2019, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (ND)
Michael Morrone, Esquire

NLB/kp