

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-1403-2018**  
 v. :  
 :  
 :  
 **RASHEEM JOHNSON,** : **SUPPLEMENTAL**  
 **Defendant** : **MOTION TO SUPPRESS**  
 : **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,<sup>1</sup> two counts 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 (WBP) in the 100 block of Maynard St., Williamsport, PA 17701. Defendant filed an 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. At the time of the hearing, Defendant requested the record be held open until the driver of the vehicle, John Steinhilper (Steinhilper), was available to testify. N.T. 1/3/19, at 42. The Court informed Defendant that at that time Steinhilper was available to testify the Court would entertain a Motion for Reconsideration, instead of leaving the record open for an extended period of time. *Id.* Defendant's Motion was then subsequently denied by Opinion and Order of this Court on February 12, 2019. Defendant then filed a Supplemental Motion to Suppress on October 1, 2019.<sup>5</sup> The Court held a hearing on the Motion on November 22, 2019. Defendant contends as

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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).

<sup>5</sup> This Court will treat Defendant's Supplemental Motion to Suppress as a Motion for Reconsideration of Defendant's original filing in light of the Court's assertion made at the original hearing on the Omnibus Pretrial Motion.

a result of Steinhilper's testimony this Court should reconsider its February 12, 2019 Opinion and Order and any evidence obtained as a result of the arrest of Defendant should be suppressed.

## **Background**

The factual findings of this Court were originally recorded in the Opinion and Order denying Defendant's Omnibus Pretrial Motion dated February 12, 2019. The Court's findings were:

On August 30, 2018 at approximately 6:30 P.M., [Officers Joshua] Bell and [Clinton] Gardner were operating an unmarked patrol vehicle in 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. [Officers] Bell and Gardner approached the vehicle, which Defendant was the passenger, and asked for all his identifying paperwork. [Officer] 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 [Officer] Bell searched the driver and [Officer] Gardner searched Defendant incident to arrest. Nothing was found on the driver. While searching Defendant [Officer] 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 [Officer] Bell that Defendant has previously concealed narcotics within his body.

Opinion and Order 2/12/19, at 1-2.

### ***Steinhilper's Testimony***

Steinhilper testified on behalf of Defendant. Defendant also presented Defendant's Exhibit #1, which was a prescription in the name of Steinhilper for "Buprenorphine Hcl 8 mg Sub Hikm," filled on August 9, 2018. Steinhilper's testimony alleged the following. Defendant

was in the vehicle Steinhilper was driving on August 30, 2018. There was no reason for the traffic stop and he was not speeding. Steinhilper was asked to get out of the car. Officers asked Steinhilper if he had any drugs and he answered that he had “medicine,” for which he has a valid prescription. Steinhilper was then told a drug sniffing dog was coming so he better admit to anything. Steinhilper said there was nothing in the car and was never charged for the pills. Steinhilper always carried two pills on him either in the center console in a cigarette pack or wrapped in cellophane. Officers did not tell Steinhilper he was pulled over for a signal violation.

***Officer Joshua Bell’s (Bell) Testimony***

Bell of the WBP testified on behalf of the Commonwealth. His testimony alleged the following. Bell saw a vehicle in the area of Park Ave. circling the area, which was known to Bell to be a high narcotics area. Steinhilper, the driver of the vehicle, was pulled over on August 30, 2018 for speeding and a turn signal violation. As Bell always does during traffic stops he identified himself and stated the reason for the stop. There were two pills of Suboxone in the center console wrapped in cellophane. No one claimed ownership of the pills. Steinhilper was advised if he wished to have the pills returned to him, he would have to provide a valid prescription. No prescription was ever provided to WPD. Steinhilper was not charged at the time.

**Whether the Arrest of Defendant was Lawful**

Defendant contends that because Steinhilper informed the officers that he had a valid prescription that Defendant was impermissibly searched and arrested. This Court disagrees with Defendant’s argument. A suppression court hearing all the evidence at an omnibus pretrial hearing is “within the exclusive province . . . to pass on the credibility of witnesses and

determine the weight to be given to their testimony.” *Commonwealth v. Fudge*, 213 A.3d 321, 326 (Pa. Super. 2019). “A suppression court may find some evidence favorable to the Commonwealth to be credible, and other evidence favorable to the Commonwealth to be incredible.” *In re L.J.*, 79 A.3d 1073, 1085 (Pa. 2013).

The Court finds that Steinhilper was not credible and that Bell testified consistently with his previous testimony on January 3, 2019. At that time the Court found:

Bell testified that the pills were wrapped in cellophane and found either in the cup holder or on the center console. [Officer] 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. [*Commonwealth v. Sanes*, 955 A.2d 369, 373 (Pa. Super. 2008) (disapproved on other grounds) (equal access allows for joint constructive possession)]. [Officer] 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.

Opinion and Order 2/12/19, at 4.

Steinhilper never retrieved his pills although he was notified he could if he presented a valid prescription. Additionally, the manner in which Steinhilper stated that he transported his pills is not believable to this Court in its experience with delivery cases. There was a lack of a valid prescription present at the time of the stop, while driving around a high narcotics area and officers observed the vehicle’s suspicious driving. Steinhilper was not a credible witness and this Court instead believes the testimony of Bell. The manner in which the pills were packaged does not lend itself to an individual carrying his medicine with a valid prescription and instead appears to be an individual packaging his prescription for illegal sale. For the above reasons, this Court believes Bell and Officer Gardner’s previous testimony that no one took ownership of the pills for which no prescription was presented and therefore 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).

### **Conclusion**

This Court believes Bell and the previous testimony of Officer Gardner, which outlined that no one claimed ownership of the Suboxone pills and based on the theory joint constructive possession officers had the requisite probable cause to arrest Defendant without an arrest warrant and conduct a search incident to arrest. Similarly this Court disbelieves Steinhilper's testimony that he told police he had a prescription at the time. Regardless, no prescription was present at the time of the arrest, the pills were packaged in a manner consistent with packaging for illegal sale, and Defendant had a similar substance on his person when he was searched incident to arrest. Therefore, there is no violation of Defendant's constitutional rights and the evidence resulting shall not be suppressed.

### **ORDER**

**AND NOW**, this 11<sup>th</sup> day of December, 2019, based upon the foregoing Opinion, Defendant's Supplemental Motion to Suppress is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Jon Higgins, Esquire

NLB/kp