

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1052-2018**
 v. :
 :
 NIHEEM KEYS, : **MOTION FOR**
 Defendant : **RECONSIDERATION**

OPINION AND ORDER

Niheem Keys (Defendant) was arrested on June 24, 2018 on two counts of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,¹ two counts of Possession of a Controlled Substance,² one count of Possession of Drug Paraphernalia,³ one count of Aggravated Assault,⁴ one count of Simple Assault,⁵ one count of Escape,⁶ one count of Tampering with Physical Evidence,⁷ one count of Resisting Arrest,⁸ one count of Disorderly Conduct,⁹ and one count of Use of Headphones While Driving.¹⁰ The charges arose from a traffic stop conducted by police. Defendant filed an Omnibus Pretrial Motion on August 22, 2018. A hearing on the motion was held by this Court on October 4, 2018 and a decision denying Defendant's Omnibus Pretrial Motion was rendered on October 25, 2018. A Motion for Reconsideration was filed on November 9, 2018 by Defendant's former counsel, which this Court denied without a hearing on November 16, 2018. Defendant's new counsel filed this Motion for Reconsideration Nunc Pro Tunc on February 9, 2019. This Court held a hearing on

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. § 2702(a)(3).

⁵ 18 Pa. C.S. § 2701(a)(1).

⁶ 18 Pa. C.S. § 5121(a).

⁷ 18 Pa. C.S. § 4910(1).

⁸ 18 Pa. C.S. § 5104.

⁹ 18 Pa. C.S. § 5503(a)(4).

¹⁰ 75 Pa. C.S. § 3314(a).

the Motion on April 25, 2019. Based on the following this Court denies Defendant's Motion for Reconsideration Nunc Pro Tunc.

Discussion

The Court will not reiterate the facts as they were outlined in full in this Court's October 25, 2018 Opinion and Order. In his Motion, Defendant argues that this Court has the power to reconsider its ruling, the Court should find the officers' testimony was directly contradicted by the Motor Vehicle Recording (MVR), and former counsel's ineffectiveness at the prior hearing justifies reconsideration. Defendant's Motion for Reconsideration Nunc Pro Tunc, 2/9/19 at 10-18. The Court agrees with Defendant that this Court may reconsider a suppression order and does have the authority to dispose of his Motion. *See Commonwealth v. James*, 69 A.3d 180, 186 (Pa. 2013) (when reevaluating a determination to suppress evidence a "trial court had the authority to revisit its initial ruling and to reach a different result; moreover, it did not have to do so within 30 days").

As for the merits of Defendant's argument he contends that both officers' testimony was directly contradicted and the stop was strictly pre-textual. Defendant argues that Officer Caschera's testimony was inconsistent with MVR when he stated the officers were at a red light when Defendant went by them and that is when they saw the headphones. But Defendant ignores the testimony of Officer Carrita that was consistent with the MVR, and occurred prior to the playing of the MVR. Additionally the Affidavit of Probable Cause is consistent with the MVR. Defendant also argues that the white ear buds cannot be seen in the MVR and that the still-frames he attached of the video show conclusively that earbuds were not in Defendant's ears. He bolsters this point by saying earbuds were not in inventory of items taken from Defendant. This Court disagrees that the still-frames show the existence or non-existence of

headphones. The officers' explained at the hearing that the MVR is not as clear as they could see on that afternoon and they also addressed the issue of the earbuds not being in the inventory. N.T. 10/4/18, at 13-17, 33-34. Defendant has provided no information that would change this Court's determination made on October 25, 2018 and the Court still finds no reason to discredit the testimony of the officers. Therefore Defendant's Motion to Reconsider Nunc Pro Tunc is denied.¹¹

Conclusion

The Court holds in accordance with its originally determination on October 25, 2018. The officers' justification for the stop has not been clearly disputed and contradicted by Defendant and therefore Defendant's Motion for Reconsideration Nunc Pro Tunc is denied. Additionally the Court denies Defendant's request to certify the issue for immediate appeal.

ORDER

AND NOW, this 10th day of May, 2019, based upon the foregoing Opinion, Defendant's Motion for Reconsideration is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
David Lampman II, Esq.
2 Public Sq.
Wilkes-Barre, PA 18701

NLB/kp

¹¹ The Court will not address the claim of ineffective assistance of prior counsel. Since it was determined by this Court that reconsideration could be granted, but will not be on the merits the issue is moot.