

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-481-2020**  
v. :  
 :  
**BREILUN McCLOE,** : **MOTION TO SUPPRESS**  
**Defendant** :

**OPINION AND ORDER**

Breilun McCloe (Defendant) was arrested by the Williamsport Bureau of Police on March 4, 2020 for one count of Possession of a Firearm with Altered Manufacturing Number,<sup>1</sup> one count of Persons not to Possess Firearms,<sup>2</sup> and one count of Firearms not to be Carried Without a License<sup>3</sup>. The charges arise from police pulling the Defendant over in the 400 block of Washington Boulevard in Lycoming County. Defendant filed this timely Motion to Suppress on July 29, 2020. This Court held a hearing on the motion on September 18, 2020.

In his Motion to Suppress, Defendant raises the issue of whether the police had the requisite reasonable suspicion to conduct a search of the passenger compartment. Defendant also contends that even if a wingspan search of the vehicle was permissible, the police exceeded the scope of the protected search when they searched the center console. Therefore, the Defendant argues, the results of the search of the center console should be suppressed.

**Background and Testimony**

Officer Nicholas Carrita (Carrita) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. On March 4, 2020 at approximately 9:43 a.m., Carrita pulled the Defendant over on the 400 block of Washington Boulevard for an expired inspection sticker. N.T. 9/18/20, at 3. The Defendant was the only person in the vehicle at the time of the stop. Id.

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<sup>1</sup> 18 Pa. C.S. § 6110.2.

<sup>2</sup> 18 Pa. C.S. § 6105(a)(1).

<sup>3</sup> 18 Pa. C.S. § 6106.

Carrita asked for Defendant's driver's license, registration and insurance, and explained to Defendant why he had been pulled over. Id. at 4. The Defendant handed over his license and was looking for the remaining cards when he told Carrita that he was on his way to work and that he was currently on probation. Id. Defendant told Carrita that he was on probation for "simple drug charges". Id. Carrita asked Defendant to clarify what "simple drug charges" meant and Defendant eventually answered, "PWID." Id. Carrita asked what drug was involved and Defendant responded "marijuana." Id. at 5. Carrita testified that, throughout this exchange, Defendant was hesitant to answer his questions and avoided eye contact with him. Id. Carrita also stated that Defendant was going to open the center console to look for his registration and insurance, but changed his mind when he looked over at Carrita. Id.

Carrita later confirmed through his car computer that the Defendant was on probation for weapon and cocaine delivery offenses. Id. At this point in time, Officer Hitesman (Hitesman) arrived on the scene. Id. at 10-11. Carrita re-approached Defendant's car and Defendant was talking on the phone. Id. at 5. When Carrita asked Defendant to step out of the vehicle, Defendant allegedly began breathing heavily, avoided eye contact with him and declined to get out of his vehicle. Id. at 6. Eventually, Defendant complied and was then subjected to a pat down search. Id. During the search, Defendant repeatedly told Carrita, "you're scaring me." Id. Nothing was found on the Defendant's person and Carrita had him sit on the rear bumper of his car while they continued to talk. Id.

Upon further questioning, Defendant denied having any drugs or firearms in his vehicle. Id. Carrita alleges that, during his response, Defendant looked in the direction of his vehicle, he hesitated to respond, and his voice cracked. Id. Carrita stated that, based on his training and experience, the reaction of looking to the subject in question is typical when there actually is

something contained in the vehicle and that he suspected the Defendant was being untruthful. Id. at 6, 9. Carrita testified that his intent was to return Defendant to his car and cite him for the expired registration, but he suspected there was “something in the vehicle.” Id. at 7. Then, Carrita asked Defendant for consent to search the car, which Defendant declined. Id. at 6. Nevertheless, Carrita conducted a wingspan search of the car for officer safety while Hitesman watched over the Defendant who remained seated on the rear bumper. Id. at 7, 11. A loaded firearm with an obliterated serial number was discovered in the center console. Id. at 7.

### **Analysis**

The issue presented is whether the police had the proper justification in searching Defendant’s vehicle without a warrant or consent. The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; P.A. Const. art. 1, § 8. Warrantless searches are unreasonable per se, “subject only to a few specifically established and well-delineated exceptions.” Katz v. United States, 389 U.S. 347, 357 (1967). As articulated in Terry v. Ohio, the “stop and frisk,” exception allows a police officer to briefly detain someone for an investigatory detention if the officer sees “unusual conduct which leads him to reasonably conclude, in light of his experience, that criminal activity may be afoot.” Terry v. Ohio, 392 U.S. 1, 30 (1967). Applying the Terry doctrine, the Supreme Court articulated the officer safety exception, which permits law enforcement to conduct a protective search of a vehicle for weapons without a warrant if it is justified by a “reasonable belief that the suspect poses a danger...and that danger may arise from the possible presence of weapons in the area surrounding the suspect.” Michigan v. Long, 463 U.S. 1032, 1049 (1983). The scope of the search is limited to “those areas in which a weapon may be placed or hidden.” Id. Reasonable

belief must be “based on specific and articulable facts which...reasonably warrant the officers in believing the suspect is dangerous and the suspect may gain immediate control of weapons.” Id. The totality of the circumstances is considered in order to determine if a “reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” Id. at 1050. The Pennsylvania Supreme Court has adopted this standard. Commonwealth v. Morris, 644 A.2d 721 (1994); *See also* Commonwealth v. Cartagena, 63 A.3d 294 (Pa. Super. 2013).

Defendant argues that the police did not have the proper justification to search his vehicle, which resulted in a violation of his rights under the Federal and Pennsylvania constitutions. Defendant relies on Commonwealth v. Arrington to further his position, arguing that the same rationale be applied in the case at hand. In Arrington, the Superior Court held that there was no reasonable suspicion that justified the search of defendant’s car while he was in handcuffs outside the vehicle after being pulled over for a valid traffic stop and officers found he had a revoked concealed-carry permit. Commonwealth v. Arrington, 233 A.2d 910 (Pa. Super. 2020). The Commonwealth’s position is that Arrington and its predecessors articulate a fact-specific approach to determine whether reasonable suspicion exists, which they argue, was present in the case at hand. Though this Court agrees that each case must be examined in its totality, combining all factors, we do not believe the cumulative factors provide reasonable suspicion to search the vehicle in this case. Here, the facts more closely follow Arrington wherein the defendant was stopped for a valid traffic offense and asked to step out of the vehicle for nervous behaviors and appearing intoxicated. Id. at 913, 917. An initial pat-down search of the defendant produced no results. Id. at 913. Arrington was put in handcuffs and kept outside his car at the rear of the vehicle where he was monitored by one officer while a second

officer searched Arrington's name in the National Crime Information Center. Id. The information from this search revealed that Arrington had a concealed-carry permit that had been revoked. Id. One officer searched the car while the other continued to supervise the defendant. Id. Similarly to Arrington, Defendant in the present case, after being stopped for a valid traffic violation, was ordered out of the vehicle based on his nervousness and subjected to a pat-down search that yielded no evidence. Defendant was moved to the rear bumper of the car and supervised by another officer while Carrita validated the cause of Defendant's probation and then conducted a search of the vehicle. There was no justification for the officers to search without a warrant as they had control of the vehicle and had time to obtain a warrant since Defendant refused to consent to the search. Therefore, the search is unlawful and since the Court found no reasonable suspicion for the search without a warrant or consent the issue of the scope of the wingspan search need not be reached.

### **Conclusion**

The Court finds that the requisite reasonable suspicion of danger to officer safety did not exist to justify a search of the Defendant's vehicle. Furthermore, since the search itself is not justifiable, police conduct clearly exceeded the scope of a warrantless constitutional search and the evidence obtained shall be suppressed.

**ORDER**

**AND NOW**, this 30th day of November, 2020, based upon the foregoing Opinion, the Defendant's Motion to Suppress Evidence is **GRANTED**. It is **ORDERED** and **DIRECTED** that the firearm seized from Defendant's vehicle shall be **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)  
Paul Petcavage, Esquire