

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-2119-2017
	:	
vs.	:	
	:	CRIMINAL DIVISION
ALIEK QUASIM CARR,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Post-Sentence Motion filed on April 28, 2021 wherein Defendant asserts he is entitled to a new trial due to the Court’s error in denying his motion to suppress.¹ This Court hereby adopts the Opinion and Order issued by Judge Butts on December 31, 2019 denying Defendant’s Motion to Suppress and for the reasons set forth below, will deny Defendant’s Post-Sentence Motion.

I. Factual Background

As Judge Butts as set forth all relevant facts of this case in her December 31, 2019 Opinion, this Court will not recite the same but will summarize them below.

Officer Gardner of the Williamsport Bureau of Police came into contact with Defendant on October 21, 2017 at a gas station due to Officer Gardner’s suspicions of drug activity. Defendant was pumping gas into his car when Officer Gardner approached him. When Officer Gardner asked if Defendant had anything illegal on his person, Defendant dug through his pockets, revealing a pocket knife, a second cell phone, and an unknown amount

¹ Defendant’s Motion to Suppress was heard and decided by the Honorable Nancy L. Butts, President Judge. This Court presided over the bench trial, found Defendant guilty of all counts, and sentenced the Defendant and for those reasons, this Motion is before the undersigned.

of currency. Officer Gardner then asked Defendant if there was anything illegal in his car and if he could search the car. Defendant initially gave Officer Gardner consent to search the vehicle and then withdrew it prior to the start of the search. Officer Gardner then indicated that he would be calling in a canine for several reasons, including the fact that Defendant possessed two cell phones and a bundle of currency, indicative of drug trafficking. Defendant was then detained and again gave Officer Gardner consent to search the vehicle. Within the vehicle, Officer Gardner found small rubber bands, commonly used for packaging heroin. Upon finding the rubber bands, Officer Gardner searched Defendant's person, finding additional items indicative of drug trafficking.

Detective Devin Thompson of the South Williamsport Police Department arrived with the canine, who alerted several times to the rear portion of the middle console of the vehicle where Oxycodone pills were found in a worn prescription bottle. Officer Gardner concluded that the pills were for illegal sale and took Defendant into custody.

II. Procedural Background

Defendant was charged on October 21, 2017 with Possession with Intent to Deliver a Controlled Substance and Criminal Use of a Communication Facility. He filed a Motion to Suppress Evidence, which was heard by Judge Butts on October 14, 2019. Defendant raised several issues in his Motion, the relevant one being whether the use of a canine search of Defendant's vehicle was permissible. Judge Butts issued her Order and Opinion on December 31, 2019 denying the Motion in its entirety.

A bench trial was held January 27, 2021 and this Court found Defendant guilty of all

counts. Defendant was sentenced on April 23, 2021 and filed his Post Sentence Motion on April 28, 2021. Argument was held June 11, 2021.

III. Discussion

Defendant argues that he is entitled to a new trial because new case law, *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020) overrules a case relied upon by Judge Butts, *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014), a plurality opinion. The Commonwealth argues that *Alexander* is not dispositive under these facts. For the reasons set forth below, the Court agrees that *Alexander* is not dispositive in this case.

a. Coordinate Jurisdiction

Preliminarily, the Court notes that judges of coordinate jurisdiction hearing the same case should not overrule one another's decisions. *Commonwealth v. Starr*, 664 A.2d 1326, 1331 (Pa. 1995). "This rule, known as the 'coordinate jurisdiction rule,' is a rule of sound jurisprudence based on a policy of fostering the finality of pre-trial applications in an effort to maintain judicial economy and efficiency. *Id.* As with any rule, there are exceptions to the coordinate jurisdiction rule, including where there has been an intervening change in the controlling law. *Id.* at 1332. A review of *Alexander* reveals that it does in fact overrule *Gary*, a case cited and relied upon by Judge Butts in her Opinion on the Motion to Suppress. Therefore, this matter is appropriate for this Court's review.

b. Judge Butts' Motion to Suppress Opinion and Order

Judge Butts' analysis of the constitutionality of the canine's search of the interior of Defendant's vehicle begins on page 8 of her Opinion. *Gary's* holding is cited, stating that

“in this Commonwealth, the law governing warrantless searches of motor vehicles is coextensive with federal law under the Fourth Amendment. The prerequisite for a warrantless search of a motor vehicle is probable cause to search; no exigency beyond the inherent mobility of a motor vehicle is required.” *Gary*, 91 A.2d at 138. However, as Judge Butts aptly points out, consent, when it is voluntarily given, is a valid exception to the probable cause requirement. *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000) (“A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies One such exception is consent, voluntarily given.”). Additionally, the search must be within the scope of the consent. *Commonwealth v. Valdivia*, 195 A.3d 855, 861-62 (Pa. 2018).

Judge Butts goes on to hold that Defendant’s consent to search his vehicle, given for the second time, was voluntary and that the officers acted within the scope of Defendant’s consent. Because of her holding regarding the consent as well as the case law current at that time, Judge Butts does not discuss whether the officers had probable cause to search the vehicle or whether exigent circumstances existed.

c. *Commonwealth v. Alexander*

Alexander, in holding that “Article I, Section 8 [of the Pennsylvania constitution] affords greater protection to our citizens than the Fourth Amendment” and that “the Pennsylvania Constitution requires both a showing of probable cause and exigent circumstances to justify a warrantless search of an automobile,” overrules *Gary*. *Alexander*, 243 A.3d at 181. In that case, Alexander was pulled over by police, who smelled marijuana in the vehicle. *Id.* Alexander told the officers that he and his passenger had just smoked a

blunt at which point Alexander was placed in the patrol vehicle and the passenger was removed from the vehicle. *Id.* The officers searched the interior of the vehicle and found a metal box containing bundles of heroin. *Id.* Based on *Gary*, Alexander’s suppression motion was denied and he was convicted. *Id.* The Supreme Court reversed and ultimately held that “warrantless vehicle searches require both probable cause and exigent circumstances” *Id.* at 207.

d. Analysis

What is missing from *Alexander* and is present here is the fact that here, Defendant gave his consent for Officer Gardner to search the vehicle. *Alexander* contained no such facts. *Alexander* does not contemplate cases where there is consent given and therefore, applies only to cases where consent is not given. *Alexander* would be relevant and applicable here had Judge Butts not considered Defendant’s consent or had Defendant not actually consented at all. However, the opposite is true. In fact, Judge Butts places great weight on Defendant’s consent and found that the consent was lawful and that the search was within the scope of the consent. The denial of the suppression rests on the consent given by the Defendant and therefore, Judge Butts does not even discuss whether probable cause and exigent circumstances existed.

IV. Conclusion

For the reasons set forth above, the Court finds that *Alexander* is not applicable to this case. Judge Butts has previously found Defendant’s consent to be lawful and the search within the scope of the consent, irrespective of whether exigent circumstances existed at the time of the search. This Court will not disturb that finding. Defendant’s Motion is denied.

ORDER

AND NOW, this **1st** day of **July, 2021**, upon consideration of Defendant's Post Sentence Motion and the Commonwealth's response, and for the reasons set forth above, Defendant's Motion is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (JR)
Peter Campana, Esq.
Honorable Nancy L. Butts, President Judge
Gary Weber, Esq.
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