

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-765-2021**  
 v. :  
 :  
 **SHARIF JONES,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Sharif Jones (Defendant) was charged on June 16, 2021 with Persons not to Possess a Firearm<sup>1</sup>, Receiving Stolen Property<sup>2</sup>, Possession of a Small Amount of Marijuana<sup>3</sup>, and Possession of Drug Paraphernalia<sup>4</sup>. The charges arise from an incident alleged to be in connection with suspected credit card fraud resulting in searches of Defendant, his vehicle, and his residence. Defendant filed a timely Omnibus Pretrial Motion on June 30, 2021. This Court held an initial hearing on the motion on August 30, 2021 and another hearing on September 28, 2021 following the preparation of the appropriate transcript. In his Omnibus motion, Defendant first argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and all charges should be dismissed<sup>5</sup>. Second, Defendant submits four (4) suppression motions requesting that the evidence obtained from the traffic stop and search of Defendant and any evidence obtained pursuant to the two (2) search

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<sup>1</sup> 18 Pa.C.S. § 6105(a)(1). Defense counsel withdrew the contention that the Commonwealth did not present enough evidence that Defendant is a person not to possess a firearm, but maintains their allegation that Defendant did not possess the firearm in question.

<sup>2</sup> 18 Pa.C.S. § 3925(a).

<sup>3</sup> 35 Pa.C.S. § 780-113(a)(31).

<sup>4</sup> 35 Pa.C.S. § 780-113(a)(32). Amended to include “on his person” by agreement of counsel.

<sup>5</sup> Count 3 against Defendant was primarily filed as Possession of a Controlled Substance pursuant to 35 Pa.C.S. § 780-113(a)(16). Defense counsel requested this charge be amended to reflect the small amount of marijuana believed to be for personal use seized from Defendant’s person. This request was granted by this Court following an oral motion by the Commonwealth to amend Count 3 at the first hearing on the Omnibus motion. The order granting this request was issued on August 30, 2021.

warrants in this incident be suppressed. Third, Defendant requests leave of court to file additional pretrial motions in the event that he receives additional discovery<sup>6</sup>.

### **Background and Testimony**

Trooper Brett Herbst (Herbst) of the Pennsylvania State Police testified on behalf of the Commonwealth at the preliminary hearing. On February 3, 2021, Herbst was involved in the execution of a search warrant of a residence located at 718 Elmira Street, Apartment 2 in the city of Williamsport. N.T. 6/10/2021 at 2. Herbst testified that a gray package and a black package that were to be shipped to a man named Kyle Betz were found in the apartment bedroom. Id. Police also located an iPhone as well as a packaging label with Defendant's name on it in the bedroom closet. Id. Another officer on scene located marijuana in the living room. Id. at 3. Following the discovery of the marijuana, Herbst stated that a second search warrant was obtained for the same residence located at 718 Elmira Street. Id. at 3. Herbst testified that a second search of the home commenced and eight (8) additional items were discovered. Id. The police located a plastic bag of marijuana, packaging material, blue foil packaging labeled "Bunnies", a vacuum sealed bag containing marijuana, a digital scale, and a vacuum sealer in the kitchen and a black Smith & Weston firearm and ammunition in the bedroom closet. Id. at 3-4. Herbst indicated that approximately fifty-eight (58) grams of marijuana were seized from the residence. Id. at 4. Based on his experience and training, Herbst believed that this marijuana was possessed with the intent to deliver because of several factors. Id. In particular, the vacuum sealed bag that held some of the marijuana, the multiple bags to divide the marijuana and other empty bags, the digital scale, and the vacuum sealer lead Herbst to believe this was consistent with marijuana distribution and not for personal use. Id. at 3-4.

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<sup>6</sup> This request was also addressed at the time of the hearing. Should Defendant receive any additional discovery, he shall be permitted to file additional motions as a result thereof if necessary. No additional motions have been filed as of the date of the issuance of this opinion and order.

Trooper Logan Webb (Webb) of the Pennsylvania State Police also testified on behalf of the Commonwealth at the preliminary hearing. Webb testified that he was involved in an investigation into the evidence found pursuant to a search warrant of 718 Elmira Street. Id. at 6. Webb spoke with the resident of that address, identified as Carmen Flanders (Flanders). Id. Flanders informed Webb that Defendant pays her approximately two hundred (200) dollars per month in exchange for access to her residence, including a key for entry. Id. at 7. Flanders stated that Defendant stores items in her bedroom closet. Id. Webb further testified that he took Defendant into custody and a small amount of marijuana was located on his person. Id. The marijuana was packaged in a bag labeled “Bunnies”, similar to the marijuana bags found inside the apartment. Id. Webb stated that after reviewing Defendant’s criminal history, Defendant is not permitted to legally possess a firearm in Pennsylvania. Id.

Flanders also testified on behalf of the Commonwealth at the preliminary hearing. Flanders indicated that Defendant had access to her apartment and paid her monthly to use her home as additional storage. Id. at 9-10. She also stated that no one else had a key to access her apartment. Id. at 9. Flanders testified that Defendant was storing items in her home in January and February of 2021. Following the search by police, Flanders said that a firearm and marijuana were discovered in her home. Id. at 9. Flanders denied storing those items in her house and believed they belonged to Defendant and that he stored these objects in her bedroom closet. Id. at 12. Flanders admitted to having a large party a few months prior to law enforcement conducting the search and she expressed uncertainty over whether other people stored anything in her apartment following the party. Id. at 16. Flanders was also unfamiliar with Kyle Betz and did not know him personally. Id. at 15.

Herbst also testified on behalf of the Commonwealth at the hearing on this motion. On February 3, 2021, Herbst testified that he was involved in the execution of a search warrant at 718 Elmira Street, Apartment 2 in the city of Williamsport. N.T. 8/30/2021, at 10. Herbst stated he was part of the entry team who conducted a sweep for other people but did not find anyone inside the residence. Id. at 11. Once inside the apartment, Herbst testified that he immediately smelled the odor of marijuana and believed someone had smoked recently. Id. at 13. Herbst said that the police were at this apartment to look for packages sent to this residence using the name of someone who did not live there. Id. at 12. During this first search, said packages were found in the bedroom but Herbst indicated that the search team was also looking for ATM cards, the alleged victim's debit card, and electronic devices as articulated in the first search warrant. Id. at 12, 17. The Commonwealth entered the first search warrant for 718 Elmira Street as Commonwealth's Exhibit 1. Herbst noted that no ATM cards were discovered, but a packaging label bearing Defendant's name was found in the bedroom closet. Id. at 13. Police also discovered an iPhone in the bedroom. Id. at 17. Herbst further stated that Trooper Williamson found marijuana in the kitchen area of the apartment. Id. at 18.

Trooper Andrew Dalkiewicz (Dalkiewicz) of the Pennsylvania State Police also testified on behalf of the Commonwealth at the hearing on this motion. Dalkiewicz testified that he was also involved in the investigation of the suspected stolen packages. Id. at 20. Dalkiewicz stated his role was to sit and wait for an individual to pick up the packages and then to arrest and detain whoever picked them up. Id. Dalkiewicz was notified that a silver Audi stopped in front of the house on Elmira Street, removed the packages from the front stoop, took the packages inside, and then returned to their vehicle. Id. Dalkiewicz was informed which direction the Audi was traveling and eventually he and Corporal Stelene (Stelene) conducted a

traffic stop of the Audi in the area of Park Avenue and Cherry Street. Id. Dalkiewicz was in uniform travelling in a marked vehicle and Stelene was utilizing an unmarked vehicle while in uniform. Id. at 21. The driver of the Audi was identified as Defendant. Id. Dalkiewicz testified that the traffic stop was based off the theft of stolen packages and receiving stolen property. Id. Dalkiewicz did not recall any traffic violations because he was following Stelene and could not see any violations occurring. Id.

Once the traffic stop was initiated, Stelene approached the driver's side while Dalkiewicz approached the passenger side of the Audi. Id. at 22. Defendant was in the driver's seat and another man was sitting in the passenger seat. Id. Stelene removed Defendant from the vehicle and detained him based on the stolen packages. Id. A search incident to Defendant's arrest yielded a bag of suspected marijuana found on his person. Id. Dalkiewicz further testified that he was a member of the search team for the first search warrant executed at 718 Elmira Street. Id. at 23. Once he entered the apartment, he observed the alleged stolen packages, marijuana packaging and a stem of marijuana. Id. Dalkiewicz also noted a strong odor of marijuana in the home that he believed was raw marijuana. Id.

This Court held a second hearing on Defendant's Omnibus motion on September 28, 2021. Counsel for both parties provided additional argument on all issues and Defense Counsel presented Defense Exhibit 1, which is a photo of the closet area where the firearm was found, and Defense Exhibit 2, the shipping label with Defendant's name and an address unassociated with 718 Elmira Street listed on it.

## **Discussion**

### ***Motions to Suppress***

#### ***First Search Warrant***

Defendant raises four (4) suppression issues for the Court to consider. To begin, Defendant challenges the first search warrant issued for the residence at 718 Elmira Street, Apartment 2 in Williamsport as facially invalid, claiming the results of the search of the residence need to be suppressed because the search warrant did not allege sufficient facts to establish probable cause. When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-technical manner." Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a "totality of the circumstances." Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985) (adopting U.S. v. Gates, 462 U.S. 213 (1983)). The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause." Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013). It is "not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location." Commonwealth v. Forster, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Commonwealth v. Manuel, 194 A.3 1076, 1081 (Pa. Super. 2018).

The search warrant, entered as Commonwealth's Exhibit 1 and Exhibit A in Defendant's Omnibus Motion, was obtained by Webb on February 3, 2021. It was the result of fraudulent online purchases utilizing a debit card under the name of an individual known as

Kyle Betz resulting in the delivery of three (3) packages to 718 Elmira Street. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 02/02/21, I was dispatched to a report of fraudulent purchases made on a Kyle BETZ's Jersey Shore State Bank debit card ending in 7551. Multiple charges were made on online websites such as Nike.com, Zumiez.com, Afterpay.com, Quadpay.com (Fashion Nova), and Nordstrom.com. The fraudulent purchases totaled \$1,994.42. On 02/03/21, I was notified by Zumiez with the order number for one of the fraudulent purchases made to the victim's debit card...The package was set to be delivered to 718 Elmira St Apartment 2, Williamsport City, Lycoming County on 02/03/21, and addressed to the victim. On 02/03/21, UPS notified me that there were three packages being delivered to the above address, all addressed to Kyle BETZ. Tpr Zachary MARTIN did deliver said packages with the cooperation of UPS. They were described by Tpr MARTIN as being Packages delivered by UPS on 02/03/21 consisting of three packages, one white, one orange and white, and one black and white in color. On 02/03/21 at approximately 1315 hours, the packages were observed to be picked up by and [sic] individual identified as Sharif JONES and placed inside of the above-mentioned residence. JONES then left the residence in a Gray Audi bearing PA Registration LJR6451.

Id. at 2.

Defendant asserts the affidavit of probable cause does not support the request for the credit card information or electronic devices. However, this Court does not agree. The facts presented in the affidavit of the search warrant demonstrate sufficient evidence to establish probable cause to search for credit card information and electronic devices as well as the stolen packages. In addition to the specific quotation above, Webb articulated in the application for the first search warrant that he had reason to believe that the stolen property and other information related to Betz's identity and banking would be found in the residence. The application includes information that the alleged victim's debit card was being fraudulently used to make several online purchases. Webb had confirmation from UPS that these purchases

were to be sent to 718 Elmira Street. These facts demonstrate a fair probability that evidence of the device used to make the online purchases and potentially stolen debit card information could be found in the residence where the fraudulently ordered packages were being sent. Therefore, Defendant's argument fails and the four corners of the affidavit of the search warrant establish sufficient probable cause for all items listed to be found.

Defendant also contends that the police exceeded the proper scope of the warrant in the execution of the search of the residence. In particular, Defendant argues that the police should have limited their search to the packages and once those packages were located, the search should have concluded. Since this Court found that the affidavit of probable cause in the first search warrant supported the inclusion of searching for debit card information and electronic devices, this argument also fails and the police maintained the proper scope of their search pursuant to this warrant.

### ***Second Search Warrant***

Defendant also argues that the second search warrant issued for the same residence was not properly supported by probable cause and therefore any evidence seized pursuant to this warrant must be suppressed. The search warrant, entered as Exhibit B in Defendant's Omnibus Motion, was obtained by Webb on February 3, 2021. It was the result of additional evidence discovered in the apartment pursuant to the first search warrant issued in this case. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 02/03/21, members of PSP-Montoursville were serving a search warrant on 718 Elmira St., Apt 2, Williamsport City, Lycoming County. Upon entry into the residence, I observed a blue container in the bedroom of the residence in plain view that contained a marijuana stem. Also, a strong overwhelming odor of raw marijuana was also present inside the residence, indicating there is a large amount of raw marijuana inside the residence.



Based on the above listed facts, Your Affiant believes such probable cause exists that there is additional controlled substances, namely marijuana inside of the residence.

Id. at 2.

Defendant asserts the search warrant does not contain enough information to establish probable cause to justify the issuance of a search warrant. Specifically, Defendant argues that the assertion in the affidavit of probable cause that Webb saw a marijuana stem and smelled a strong odor of raw marijuana is insufficient to substantiate a search warrant. Defendant further contends that Webb was unsure if the marijuana stem was legal or illegal at the time it was found during the first search. Therefore, the search pursuant to the second warrant was in violation of Defendant's constitutional rights. The Commonwealth argues that the second search warrant was properly substantiated when law enforcement found items in the house that support another search warrant.

This Court believes the facts presented in the affidavit of the search warrant demonstrate sufficient evidence to establish probable cause. Webb testified that the smell of raw marijuana was so powerful once he entered the house that he believed a significant amount of raw marijuana was secreted in the residence. Following this observation, Webb found a stem of marijuana in an open container. The Medical Marijuana Act (MMA) permits individuals to consume enumerated forms of marijuana. 35 Pa. Stat. § 10231.303. Nevertheless, there is no indication that Defendant possessed a medical marijuana card at the time of the search that would permit him to lawfully consume specific forms of marijuana. Additionally, the stem was found in an open pill container and not in the prescribed container from a licensed dispensary as required by the MMA. Furthermore, the MMA specifically prohibits the consumption of "dry leaf or plant form" marijuana. Id. For these reasons, this Court finds the four corners of the

affidavit of the search warrant establish sufficient probable cause for the issuance of the second search warrant.

### ***Traffic Stop***

Defendant also challenges the traffic stop conducted by police for lacking the requisite probable cause. At the second hearing on this motion held on September 28, 2021, counsel for the Commonwealth conceded that the evidence seized pursuant to the traffic stop must be suppressed. As a result, this Court will grant Defendant's motion to suppress on this particular issue following the agreement of the parties. Any evidence seized pursuant to the traffic stop, including the marijuana obtained from Defendant's person, shall be suppressed.

### ***Habeas corpus Motion***

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). "The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence." Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d

108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the Commonwealth’s evidence on Counts 1, 2, and 4 brought against him. Defendant asserts that the Commonwealth failed to establish their *prima facie* burden on Count 1: Person Not to Possess a Firearm. Pursuant to 18 Pa.C.S. § 6105(a)(1), “a person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth...shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.” Defendant argues that the Commonwealth failed to establish their *prima facie* burden because they did not present evidence to establish that Defendant possessed, used, controlled, sold, transferred or manufactured the firearm in question. Defendant contends that the Commonwealth failed to establish Defendant had constructive possession of the firearm in question. Particularly, Defendant reiterates that the residence did not belong to him and that entering the residence to bring in packages does not equate to possession of a firearm found in the bedroom closet. The Commonwealth relies on the transcript of the preliminary hearing and believes that they have presented enough evidence to satisfy their burden. The Commonwealth further argues that Flanders testified that the gun did not belong to her and that Defendant pays her to store things in the closet in which the firearm was found.

When contraband is not found on a defendant's person, the Commonwealth must establish “constructive possession,” that is, the “power to control the contraband and the intent to exercise that control.” Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992); *see also* Commonwealth v. Gutierrez, 969 A.2d 584, 590 (Pa. Super. 2009). As with any other element of a crime, constructive possession may be proven by circumstantial evidence. Commonwealth v. Macolino, 469 A.2d 132, 134-35 (Pa. 1983). The requisite knowledge and intent necessary for constructive possession may be inferred from a totality of the circumstances. Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004).

Viewing the evidence in the light most favorable to the Commonwealth as required, this Court agrees that the Commonwealth has satisfied their *prima facie* burden. The Commonwealth demonstrated that the Defendant had access to the apartment and stored his personal items in the bedroom closet. The firearm in question was discovered by police in the closet in which Defendant had permission to store his things. The actual resident of the apartment testified that she had no knowledge of a firearm being stored in her home and that the gun found did not belong to her. This Court believes the totality of the circumstances establishes Defendant’s constructive possession of the firearm at this stage. However, additional evidence will likely be required for the Commonwealth to satisfy their burden in for a conviction by jury. Therefore, Count 1 against Defendant shall not be dismissed.

Defendant also challenges the Commonwealth’s evidence on Count 2: Receiving Stolen Property. According to 18 Pa.C.S. § 3925(a), an individual commits this offense when he “intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.” “[K]nowledge that the property was

stolen or a belief that it probably was ('guilty knowledge') is an essential element of the crime of receiving stolen property. Id. Many appellate decisions have discussed that circumstances attending a defendant's possession of stolen goods are highly relevant in determining whether such defendant had "guilty knowledge." See Commonwealth v. Williams, 362 A.2d 244 (Pa. 1976); Commonwealth v. Henderson, 304 A.2d 154 (Pa. 1973); Commonwealth v. Phillips, 392 A.2d 708 (Pa. Super. 1978); Commonwealth v. Bailey, 378 A.2d 998 (Pa. Super. 1977); Commonwealth v. Litman, 419 A.2d 121, 123 (Pa. Super. 1980). "[C]riminal intent or guilty knowledge may be inferred where facts and evidence are such as to show that element of the crime." Commonwealth v. Stevenson, 363 A.2d 1144, 1145 (Pa. Super. 1976).

Circumstantial evidence of guilty knowledge may include, *inter alia*, the place or manner of possession, alterations to the property indicative of theft, the defendant's conduct or statements at the time of arrest (including attempts to flee apprehension), a false explanation for the possession, the location of the theft in comparison to where the defendant gained possession, the value of the property compared to the price paid for it, or any other evidence connecting the defendant to the crime.

Commonwealth v. Robinson, 128 A.3d 261, 268 (Pa. Super. 2015).

Here, the Commonwealth has merely shown that Defendant was in possession of the items by the fact that he carried them inside a residence. Although Flanders testified that Defendant had a key to access her home and paid to store items within the residence, the Commonwealth has only shown that Defendant brought packages inside the apartment without looking at them. This Court was not presented with evidence that Defendant had ordered the packages or that Defendant even knew that the items were procured through fraudulent purchases on another's debit card account. It is entirely possible that Defendant thought Flanders had ordered those packages and brought them inside for her as a favor. "The mere possession of stolen property is insufficient to prove guilty knowledge, and the Commonwealth

must introduce other evidence, which can be either circumstantial or direct, that demonstrates that the defendant knew or had reason to believe that the property was stolen.” Commonwealth v. Matthews, 632 A.2d 570, 571 (Pa. Super. 1993). Since mere possession without more evidence is not sufficient to establish the charge of receiving stolen property, the Commonwealth’s *prima facie* burden has not been met for this charge.

Lastly, Defendant argues that the Commonwealth also failed to establish a *prima facie* case for Count 4 Possession of Drug Paraphernalia. Pursuant to 35 Pa.C.S. § 780-113(a)(32), “the use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance” is considered a crime. The drug paraphernalia was located on Defendant following the unlawful traffic stop. Since this Court has determined the traffic stop and subsequent search of Defendant’s person violated his constitutional rights, the paraphernalia seized has been suppressed. Said drug paraphernalia is the only evidence connected with this offense and can no longer be attributed to the Commonwealth’s *prima facie* case. Therefore, the Commonwealth’s burden at the preliminary hearing has not been established for Count 4 as well.

### **Conclusion**

The Court finds that the Commonwealth did present enough evidence at the preliminary hearing to establish a *prima facie* case for Count 1 against Defendant. Therefore, Defendant’s Petition for Writ of Habeas Corpus is granted in part and denied in part. The Court also finds that the Commonwealth failed to establish their burden for Counts 2 and 4. As a result, Count

2: Receiving Stolen Property, and Count 4: Possession of Drug Paraphernalia, shall be dismissed. This Court also finds that the affidavit of probable cause for the first search warrant of 718 Elmira Street, Apartment 2 provided sufficient evidence to establish probable cause for law enforcement to search. As a result, Defendant's Motion to Suppress the evidence seized pursuant to the first search warrant is denied. Additionally, this Court finds the affidavit of probable cause for the second search warrant of 718 Elmira Street also established probable cause to support another search of the apartment. Therefore, Defendant's Motion to Suppress the evidence seized pursuant to the second search warrant is denied. Lastly, this Court accepts the agreement of counsel and finds the traffic stop and subsequent search of Defendant's person violated Defendant's constitutional rights. The marijuana seized along with the drug paraphernalia in connection with the unlawful traffic stop and search shall be suppressed.

**ORDER**

**AND NOW**, this 17th day of December, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Suppress Evidence is hereby **GRANTED** in part and **DENIED** in part. Any contraband found in Defendant's vehicle and on his person as a result of the unlawful traffic stop and warrantless search of Defendant is hereby **SUPPRESSED**. The Defendant's Petition for Writ of Habeas Corpus is **GRANTED** in part and **DENIED** in part. The Commonwealth has satisfied their *prima facie* burden on Count 1 and that charge shall not be dismissed. The Commonwealth has failed to present sufficient evidence on the remaining counts in Defendant's petition and therefore, Count 2: Receiving Stolen Property, and Count 4: Possession of Drug Paraphernalia are hereby **DISMISSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Robert Hoffa, Esq.  
Law Clerk (JMH)