

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:
	:
vs.	: No. CR-1302-2020
	:
ANTONIO CARPENTER,	: Omnibus Pretrial Motion
Defendant	:
* * * * *	* * * * *
COMMONWEALTH	:
	:
vs.	: No. CR-1301-2020
	:
ALSHAMEER PATTERSON,	: Omnibus Pretrial Motion
Defendant	:

**OPINION AND ORDER**

Antonio Carpenter (Defendant Carpenter) and Alshameer Patterson (Defendant Patterson) were arrested by the South Williamsport Police Department on August 13, 2020 following a traffic stop of a vehicle in which both Defendants were traveling. Defendant Carpenter was charged with Possession with Intent to Deliver<sup>1</sup>, Conspiracy to Deliver a Controlled Substance<sup>2</sup>, Firearms Not To Be Carried Without a License<sup>3</sup>, Possession of a Controlled Substance<sup>4</sup>, and three (3) summary offenses under the Motor Vehicle Code. Defendant Patterson was charged with Persons not to Possess a Firearm<sup>5</sup>, Conspiracy—Persons not to Possess a Firearm<sup>6</sup>, Firearms Not To Be Carried Without a License<sup>7</sup>, Possession with Intent to Deliver<sup>8</sup>, Conspiracy to Deliver a Controlled Substance<sup>9</sup>, Possession of a Controlled

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<sup>1</sup> 35 Pa.C.S. § 780-113(a)(30).  
<sup>2</sup> 18 Pa.C.S. § 903.  
<sup>3</sup> 18 Pa.C.S. § 6106(a)(1).  
<sup>4</sup> 35 Pa.C.S. § 780-113(a)(16).  
<sup>5</sup> 18 Pa.C.S. § 6105(a)(1).  
<sup>6</sup> 18 Pa.C.S. § 903.  
<sup>7</sup> 18 Pa.C.S. § 6106(a)(1).  
<sup>8</sup> 35 Pa.C.S. § 780-113(a)(30).  
<sup>9</sup> 18 Pa.C.S. § 903.

Substance<sup>10</sup>, and Marijuana—Small Amount<sup>11</sup>. Defendant Carpenter filed this timely Motion to Suppress on November 16, 2020 and Defendant Patterson filed his timely Motion to Suppress on November 17, 2020. This Court held an initial hearing on both motions on March 9, 2021 and reconvened for argument on May 13<sup>th</sup> after this Court viewed video footage of the incident in question.

In their Motions to Suppress, Defendants assert that the vehicle they were travelling in was stopped without proper reasonable suspicion or probable cause. Defendants further contend that, assuming the stop of the vehicle was lawful, the warrantless search of the vehicle was a violation of their rights under the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution. Therefore, the Defendants argue, the results of the search of the car should be suppressed.

### **Background and Testimony**

Corporal William MacInnis (MacInnis) and Officer Gary Esposito (Esposito) of the South Williamsport Borough Police Department testified on behalf of the Commonwealth. The Commonwealth submitted video footage of the traffic stop, marked as Commonwealth's Exhibit 1. On August 13, 2020, MacInnis was situated across from the Little League headquarters on Route 15 when he noticed a car with what he believed to be an impermissible window tint. MacInnis initiated a traffic stop on this vehicle around 5:56 p.m. for the window tint. The vehicle came to a stop on Main Street and East Seventh Avenue in South Williamsport. Soon after the car in question came to a stop, the man in the front passenger seat, later identified as Defendant Patterson, exited the car quickly. MacInnis pointed his weapon at Defendant Patterson and instructed him several times to get back in the car, to which he

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<sup>10</sup> 35 Pa.C.S. § 780-113(a)(16).

<sup>11</sup> 35 Pa.C.S. § 780-113(a)(31).

eventually complied. After Esposito arrived to provide backup, MacInnis made contact with the driver, identified as Defendant Carpenter. MacInnis asked Defendant Carpenter if there were any drugs or weapons present in the car. Defendant Carpenter answered that his wife's gun was on the passenger floorboard. At this point, both Defendants were removed from the vehicle and MacInnis conducted a consent search on Defendant Carpenter. Following the search of his person, Defendant Carpenter sat on the curb in front of the vehicle without handcuffs. Once he was seated, MacInnis asked him where the firearm was specifically located. Defendant Carpenter responded that the gun was in a fanny pack or bag on the passenger floorboard. Esposito removed the firearm out of the car from that location.

Esposito testified that, upon his arrival at the scene, he asked Defendant Patterson to exit the car and meet MacInnis at the rear of the vehicle. MacInnis asked for consent to search Defendant Patterson and he agreed. This search revealed a small amount of marijuana in a fanny pack around his waist. Defendant Patterson then also took a seat on the curb without being placed in handcuffs. After confirming both Defendants were either on probation or parole, Esposito conducted a search of the car for officer safety and located a plastic bag filled with rice and bricks of suspected heroin in plain view on the rear passenger seat of the car. MacInnis identified this package as heroin immediately upon seeing it. Police discovered the car was registered to a woman named Erica Tyson (Tyson) who is alleged to be Defendant Carpenter's wife. It was also discovered that Tyson had a license to carry a firearm. However, Tyson was not in the car at the time of the traffic stop. At no point during this interaction did either Defendant attempt to flee from their sitting location on the curb or try to get back inside the car.

## **Analysis**

### *Traffic Stop*

The first issue presented is whether the traffic stop of the vehicle was justified.

Defendants argue that the police had no reasonable suspicion to stop the car in the first place. Police officers are granted the authority to effectuate stops pursuant to violations of the Motor Vehicle Code. 75 Pa. C.S. § 6308(b). “Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle.” *Id.* According to the Code, vehicles are not permitted to have a window tint that prohibits an officer from seeing into the car. Specifically, Defendant Carpenter is charged under 75 Pa.C.S. § 4107(b)(2) which states that it is unlawful for an individual to

[o]perate, or cause or permit another person to operate, on any highway in this Commonwealth any vehicle or combination which is not equipped as required under this part or under department regulations or when the driver is in violation of department regulations or the vehicle or combination is otherwise in an unsafe condition or in violation of department regulations.

MacInnis testified that the reason the Defendants were pulled over was for a window tint that was too dark. However, to support his argument that the traffic stop was unlawful, Defendant Carpenter cites to a case from the Pennsylvania Superior Court that discusses a similar issue with window tint. *See Commonwealth v. Houck*, 2016 WL 379561 (Pa. Super. 2016) (appeal denied). In that case, the defendant was pulled over for having tint on his windows. *Id.* at 1. After stopping defendant, the officer used a tint meter to see how much light transmittance occurred and the results only showed a level of seventeen (17) percent. Defendant was issued a citation under 75 Pa.C.S. § 4107(b)(2) for his violation of the sun screening regulation promulgated by PennDOT which required a vehicle to have at least seventy (70) percent light transmission for defendant’s particular vehicle model. *See* 67 Pa. Code § 175.67(d)(4). On appeal, defendant challenged his guilty verdict, arguing that the trial court should have applied

the specific legal standard for prohibitive window tint under 75 Pa.C.S. § 4524(e)(1) and that the court committed an error by incorporating 67 Pa. Code § 175.67(d)(4) into 75 Pa.C.S. § 4107(b)(2) to establish impermissible window tint. Id. at 1-2.

The Superior Court denied both of defendant's requests when it held that "because the general statute at section 4107(b)(2) is not encompassed by the more specific statute at section 4524(e)(1), there is no bar against the Commonwealth pursuing Houck under the general statute at section 4107(b)(2). Additionally, because the record supports Houck's violation of the 70% light transmittance standard referenced in section 175.67(d)(4) and Table X, the trial court did not err in determining that Houck was guilty of violation section 4107(b)(2). This Court believes that, following the Court's viewing of the MVR of this incident, it is clear that the windows of Defendant Carpenter's car appeared to be too dark to see through at the time it passed MacInnis and Esposito's patrol position on Route 15. The nature of the traffic stop immediately changed when, instead of waiting for officers to approach and issue a traffic citation, Defendant Patterson exited the car in what appeared to be an attempt to flee. This caused MacInnis to focus on the escalated safety concerns of what would have been an ordinary traffic stop and the issue of the window tint became secondary to addressing why Defendant Patterson exited the vehicle and determining what may be putting the officers on scene in danger. Therefore, MacInnis had proper reasonable suspicion to effectuate a traffic stop on the day in question.

### ***Vehicle Search***

The second issue presented is whether the police had the proper justification in searching Defendant Carpenter's vehicle. 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 detain someone briefly 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).

Defendants first argue that the police did not have the proper justification to search the vehicle, which resulted in a violation of their rights under the Federal and Pennsylvania constitutions. Defendants rely on two cases to further their position, arguing that the same rationale be applied in the case at hand. In Commonwealth v. 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). In the Commonwealth v. McCloe case decided by this Court, the defendant was pulled over for an expired inspection sticker and was asked to step out of the vehicle because defendant appeared exceedingly nervous for a routine traffic stop. Commonwealth v. McCloe, Docket No. CP-41-CR-481-2020 (Lycoming Cty. C.C.P.). The officer conducted a pat-down search of McCloe and this search yielded no results. Id. at 2. However, defendant was told to sit on the rear bumper of his car so the officer could continue speaking with him. Id. at 3. Police asked defendant if any drugs or firearms were in his vehicle and defendant said no, but the officers believed defendant was lying about not having anything in the car. Id. at 2. One officer then conducted a wingspan search of the vehicle while another officer watched over defendant at the rear bumper. Id. at 3. A loaded firearm was discovered as a result of the search of the car. Id. This Court held that the police lacked proper justification in searching McCloe's vehicle without a warrant or consent because the combination of the factors did not rise to the requisite level of suspicion. Id. at 5. Defendant Patterson further argues that he had no knowledge there was a firearm inside the car because he was the passenger during this incident and the car did not belong to him.

The Commonwealth's position is that this case is distinguishable from McCloe for several reasons, namely because Defendant Carpenter admitted to having a firearm in the vehicle at the time of the stop and Defendant Patterson attempted to flee once the car was stopped. The Commonwealth cites to Commonwealth v. Tuggles to support its position that the search was lawful. Commonwealth v. Tuggles, 58 A.3d 840 (Pa. Super. 2012). In the Tuggles

case, the defendant was pulled over for running a stop sign. Id. at 841. The officers noticed that defendant made a motion consistent with closing a hinged center console as they approached the car. Id. Defendant obeyed instructions from police but the passenger refused to take his hands out of his pockets. Id. Both men were removed from the vehicle and put into the back of the patrol car so the officers could conduct an officer safety search and check the center console for a firearm. Id. at 842. This search resulted in the discovery of suspected crack cocaine and large amounts of United States currency. Id. The Superior Court ultimately held that the totality of the circumstances gave officers reasonable suspicion that they were in danger and could conduct a warrantless search. Id. at 845.

This Court does not dispute law enforcement's right to order the Defendants out of the car, even for a traffic stop. *See Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (holding police may exercise discretion to require driver who commits traffic violation to exit vehicle even if officer had no particularized reason for officer to believe driver possessed weapon consistent with Fourth Amendment). MacInnis and Esposito were within their lawful parameters to require Defendant Carpenter and Defendant Patterson to exit the vehicle, particularly after Defendant Carpenter informed police of the presence of the firearm in the car. Both Defendants consented to a search of their person and no evidence has been presented to suggest that either Defendant was under any compulsion to agree to the search. As a result, the marijuana found on Defendant Patterson shall not be suppressed since he agreed to the search.

However, this Court takes issue with the continuation of the interaction between law enforcement and the Defendants on the day in question. Despite his nervousness that caused him to exit the vehicle initially, Defendant Patterson complied with instructions to re-enter the car and remain seated. Police never observed any furtive movements while Defendants



remained in the car or while Defendants sat on the curb for an extended period. When asked if any drugs or firearms were in the car, Defendant Carpenter responded honestly that his wife's gun was in the vehicle. Police had implied consent to search the vehicle for the firearm, but only for the firearm. Additionally, Defendant Carpenter told police the exact location of the gun inside the car so no rummaging through the vehicle was necessary. Esposito testified that he was able to see what looked like a used bag filled with rice on the back seat in plain view while he was lawfully in the car retrieving the firearm. Esposito showed the bag to MacInnis who believed that the bag contained heroin based on his training and experience with narcotics. As in McCloe, Defendants in the cases *sub judice* were under the control of police while sitting on the curb after the scene had been secured following the discovery of the suspected heroin. At this moment, no exigent circumstances were present to justify the warrantless search of the car and police had control of the vehicle in question. *See Commonwealth v. Arrington*, 233 A.2d 910 (Pa. Super. 2020). Moreover, both Defendants had been searched and no additional weapons were found and the firearm was in control of law enforcement at this time. Following the removal of the firearm and the confirmation that neither Defendant possessed any weapons on their person, no reasonable belief existed that would indicate an officer was in danger in this situation. No reasonably prudent person would be justified in claiming that they were fearful for their safety after this exchange. In fact, the body language of the officers on scene following the search of Defendants and the removal of the firearm from the car appears to be relaxed. Furthermore, both Defendants remained very cooperative with police throughout the entire exchange. It appears to this Court that law enforcement took advantage of Defendants' cooperation to continue their investigation without a warrant. Therefore, considering the totality of the circumstances in this case, the marijuana and the firearm shall not be suppressed,

but the alleged heroin shall be suppressed on these grounds for failure to obtain a warrant prior to further investigation.

Defendant Carpenter argues that because he established the gun ownership with his wife, he should qualify for the exception to Firearms not to be Carried Without a License contained in 18 Pa.C.S. § 6106(b)(13) which states that a category of exception includes when

Any person who is otherwise eligible to possess a firearm under this chapter and who is operating a motor vehicle which is registered in the person's name or the name of a spouse or parent and which contains a firearm for which a valid license has been issued pursuant to section 6109 to the spouse or parent owning the firearm.

Defendant Carpenter asserts that he was driving his wife's car and that her firearm was discovered in that car. Police were able to identify that a woman named Erica Tyson had a license to carry a firearm and also owned the vehicle that Defendant Carpenter was driving. Defendant Carpenter was on probation/parole which makes him presumptively not permitted to possess a firearm. However, the Commonwealth presented no evidence to the Court that Defendant Carpenter was prohibited from possessing firearms as a condition of his probation/parole. Furthermore, no evidence disproving a marital relationship between Tyson and Defendant Carpenter was shown to this Court. The Commonwealth has failed to attempt to proffer any evidence that Defendant Carpenter is ineligible to possess a firearm other than the sole fact that he is on probation/parole. This failure taken in conjunction with the fact that Tyson owned the vehicle Defendants were in and Tyson had a license to carry a firearm, this Court cannot make a determination whether or not Defendant Carpenter is able to benefit from the exception in 18 Pa.C.S. § 6106(b)(13).

Lastly, Defendant Patterson argues that he had no knowledge of the firearm that was found inside Defendant Carpenter's car because he was only a passenger. However, this Court

finds that this type of challenge is not suited for a suppression motion like the one in front of the Court at this time. As such, we will not address this contention because there may be more appropriate ways to assert this particular challenge.

### ***Miranda Rights***

Defendant Carpenter further argues that he was in custody when police asked him what was inside the vehicle and therefore he should have been advised of his right to remain silent as well as his right to an attorney. Three levels of interactions between citizens and police officers exist. “A mere encounter can be any formal or informal interaction between an officer and a citizen, but will normally be an inquiry by the officer of a citizen. The hallmark of this interaction is that it ‘carries no official compulsion to stop or respond.’” Commonwealth v. DeHart, 745 A.2d 633 (Pa. Super. 2000) (quoting Commonwealth v. Allen, 681 A.2d 778, 782 (Pa. Super. 1996). “In contrast, an investigative detention, by implication, carries an official compulsion to stop and respond, but the detention is temporary, unless it results in the formation of probable cause for arrest, and does not possess the coercive conditions consistent with a formal arrest.” DeHart, 745 A.2d at 636. “An investigative detention constitutes a seizure of the person and must be supported by reasonable suspicion that those detained are engaged in criminal activity.” Commonwealth v. Phinn, 761 A.2d 176, 181 (Pa. Super. 2000). “A court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ request or otherwise terminate the encounter.” Florida v. Bostick, 501 U.S. 429 (1991); *See also* Commonwealth v. Lewis, 636 A.2d 619, (Pa. 1994). “A custodial detention occurs when the nature, duration and conditions of an investigative detention become so coercive as to be, practically speaking, the functional equivalent of an

arrest.” Id. A custodial detention must be supported by probable cause. Commonwealth v. Ellis, 662 A.2d 1043, 1047 (Pa. 1995).

This Court disagrees with Defendant Carpenter on this issue. At the time he was asked what was in the car, Defendant Carpenter had just been pulled over for what this Court has already ruled as a valid traffic stop. Police have the right to pull citizens over following a violation of the Motor Vehicle Code, respond accordingly, and hold that citizen in an investigative detention until a citation is issued or the situation escalates into creating probable cause for additional interaction with law enforcement. To hold that an individual is in police custody when they are only being asked questions during a traffic stop, without additional facts, would be untenable and would require advising citizens of their *Miranda* rights for an investigative detention, which is counter to the prerequisites of *Miranda*. Therefore, Defendant Carpenter’s argument is without merit and the evidence seized as a result of the vehicle search will not be suppressed on these grounds.

### **Conclusion**

The Court finds that law enforcement were justified in conducting a traffic stop of Defendant Carpenter’s vehicle for improper window tint. The Court further finds that the requisite reasonable suspicion of danger to officer safety did not exist following the removal of the firearm and the search of both Defendants to justify a search of the Defendant Carpenter’s vehicle. The Court makes no finding on whether Defendant Carpenter falls into the exception for Firearms not to be Carried Without a License contained in 18 Pa.C.S. § 6106(b)(13). This Court does not address Defendant Patterson’s claim that his lack of knowledge of the presence of the firearm in the vehicle justifies suppression because this contention is more properly brought in front of this Court as separate relief than a suppression motion. Lastly, this Court

finds that Defendant Carpenter was not entitled to his *Miranda* rights at the time when police were asking if drugs or firearms were located in the car as the Court believes that it has insufficient information to make that determination.

**ORDER**

**AND NOW**, this 24th day of September, 2021, based upon the foregoing Opinion, the Defendant's Motion to Suppress Evidence is **GRANTED** in part and **DENIED** in part. Any contraband found in the vehicle when the police went to retrieve the gun is hereby suppressed. All other items as set forth in the opinion are hereby **DENIED** and shall not be suppressed.

By the Court,

Nancy L. Butts, President Judge

cc: DA (EW)  
Paul Petcavage, Esq.  
Peter Campana, Esq.