

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-594-2020**
 v. :
 :
 DERON SHADD, : **MOTION TO SUPPRESS**
 Defendant :

OPINION AND ORDER

Deron Shadd (Defendant) was charged on June 1, 2020 with two counts of Possession of a Controlled Substance with the Intent to Deliver, both crack and powder cocaine,¹ two counts of Possession of a Controlled Substance,² and one count of Possession of Drug Paraphernalia.³ The charges arise from an encounter the Williamsport Bureau of Police (WBP) had with Defendant on Baldwin Street in the City of Williamsport, Pennsylvania in Lycoming County serving a felony warrant. Defendant filed an Omnibus Pretrial Motion seeking both a Writ of Habeas Corpus and suppression of the evidence as a result of the police contact. The Omnibus motion was filed on August 13, 2020. A hearing on the Motion was held by this Court on September 18, 2020 where the Habeas Corpus was withdrawn. The only issue for the Court to decide was the propriety of the search of the vehicle at the scene of Defendant's arrest on the felony warrant.

Background and Testimony

On April 14, 2020, the WBP were notified that a person wanted by the police was last seen on Baldwin Street in the City of Williamsport. Officer Gino Caschera (Caschera) responded to the call where he observed the Defendant standing next to a minivan that he thought was a Nissan. Notes of Testimony, 9/18/2020, at 4. Caschera knew directly from South

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 35 P.S. § 780-113(a)(32).

Williamsport police that Defendant had a felony warrant for his arrest. *Id.* Once on scene, Caschera placed Defendant under arrest. As he was taken into custody, Caschera searched him and found 54.4 grams of what he thought was crack cocaine in the Defendant's left pant pocket. *Id.* at 5. In addition to the crack cocaine, another 8.9 grams of a "more white crack cocaine" were found along with 2 cell phones, about \$2500.00 in cash and some other items including a fishing license. *Id.* As he was placing the Defendant into his cruiser to transport him, Defendant spontaneously said that the drugs found on him he had found inside the vehicle and he "was going to turn it in later". *Id.* Caschera then told the other officers who had now arrived that they could search the vehicle. *Id.* Caschera acknowledged that he neither asked for nor did the Defendant or anyone else give permission to search the vehicle. *Id.* The vehicle he had been standing next to that the police were searching was not owned by Defendant and Caschera thought it was an Altima. *Id.*

Officer Andrew Stevens (Stevens) of the WBP also testified about the events of that day. He testified that while working on patrol that day he was called to the 1100 block of Baldwin Street to assist with service of a felony warrant. *Id.* at 11. Once on scene he was tasked with the responsibility to search a silver/gray Nissan four-door sedan. *Id.* When Stevens searched the car the Defendant was in custody with Caschera and Stevens knew that Defendant had been found with drugs on him. *Id.* After searching the car, he found a drawstring backpack, several clear plastic bags of a white substance and scales. *Id.* Stevens believed the white powder to be cocaine. *Id.* at 12. While searching the vehicle, Steven found a hard plastic medical insurance card in the front console. *Id.* Stevens acknowledged that he searched the car after both officers asked who owned the vehicle to no response and that the Defendant was in custody. *Id.*

Whether the search of the Defendant's vehicle was unlawful

Defendant alleges that the search of the vehicle he was standing next to at the time he was taken into custody was unlawful. Defendant contends that the police did not have consent to search the vehicle and therefore anything they found should be suppressed. Commonwealth argues that pursuant to *Commonwealth v. Talley*, 634 A.2d 640 (Pa. Super. 1993) the police executed a probable cause search which did not require a warrant. Defense counsel has not alleged the constitutional basis for their challenge of the actions of the police -- Fourth Amendment of the U.S. Constitution or Article 1 § 8 of the Pennsylvania Constitution.

The "automobile exception" to the Fourth Amendment's warrant requirement established in *Carroll v. United States*, 267 U.S. 132, (1925),

applies to searches of vehicles that are supported by probable cause to believe that the vehicle contains contraband. In this class of cases, a search is not unreasonable if based on objective facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained. Pp. 2162-2164.

United States v. Ross, 456 U.S. 798, 798, 102 S. Ct. 2157, 2159, 72 L. Ed. 2d 572 (1982). So the Court would find that the police action on June 1, 2020 would not have violated the Fourth Amendment's prohibition against unreasonable searches and seizures. Caschera was told by Defendant that he had found the drugs in the vehicle, and based upon the paraphernalia found on the Defendant, he had probable cause to believe there would be other drugs to be found within the vehicle.

Prior to December 2020, the controlling law in Pennsylvania on this issue was set forth in *Commonwealth v. Gary* that adopted the federal automobile exception that, with respect to a warrantless search of a motor vehicle supported by probable cause, finding that Article I, § 8 of the Pennsylvania Constitution affords no greater protection than the Fourth Amendment to the United States Constitution. *Commonwealth v. Gary* 91 A.3d 102, 104 (Pa. 2014). However

very recently, the Pennsylvania Supreme Court overruled *Gary* with its decision in *Commonwealth v. Alexander*, 2020 WL 7567601 (Pa. Dec. 22, 2020). In *Alexander*, the court held that Article 1 § 8 of the Pennsylvania Constitution in fact offers greater protection than the Fourth Amendment of the U.S. Constitution in searches of vehicles and an officer is required to have both probable cause and “obtaining a warrant is the default rule.” *Id.* at 25. However, if an officer does conduct a warrantless search, the court must then determine if an exigency existed to justify the officer’s action in not seeking a warrant. *Id.* If the suppression court determines that obtaining a warrant was not reasonably practicable the warrantless search may be justified. *Id.*

Based upon the evidence presented and using the standard set forth in *Alexander*, this Court is hard pressed to identify exigent circumstances justifying the search without a warrant. The defendant was in the custody of police and no one claimed ownership of the vehicle. The officer would have been able to have the other officers watch the vehicle while he sought a warrant. The need for the warrant occurred during the day so that there would have been a Magisterial District Judge on duty to quickly review the necessary documents to issue a warrant if appropriate for the Defendant’s vehicle. The Court does acknowledge that the Commonwealth was not in a position to predict the change in the law and could not have anticipated the need to present testimony on the issue of exigency at the time of the original hearing. Therefore, the Court would grant the opportunity for the Commonwealth to present evidence on the question of exigency should they request it. However, on the record before this Court, while the police may have had probable cause for the search, no exigent circumstances can be found to justify the failure to obtain a warrant. Therefore, the evidence found by Officer Stevens in the vehicle must be suppressed.

Conclusion

Because of the spontaneous statement given by Defendant, the police believed there were other drugs to be found in the vehicle so that they had probable cause to search the vehicle. However, without a search warrant or evidence of exigency as required by *Commonwealth v. Alexander*, the police search of the vehicle was in violation of Article 1 § 8 of the Pennsylvania Constitution and must be suppressed.

ORDER

AND NOW, this 19th day of January, 2021 based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **GRANTED**. It is **ORDERED AND DIRECTED** that the items found by Officer Stevens in the silver/gray Nissan shall be **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Andrea Pulizzi, Esquire

NLB/n