

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-814-2020**
 v. : **CR-879-2020**
 :
 RUSSELL SMITH, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Russell Smith (Defendant) was charged with Possession with Intent to Deliver Marijuana,¹ Marijuana—Small Amount Personal Use,² and Possession of Drug Paraphernalia³ in both of the above dockets. The charges arise from police conducting a traffic stop of the vehicle Defendant was travelling in for failure to have illuminated headlights after sunset. Defendant filed this timely Omnibus Pre-trial Motion on December 28, 2020. This Court held a hearing on the motion on January 21, 2021.

In his Motion, Defendant raises two issues. The first issue Defendant asserts is that search of the vehicle was not supported by probable cause. Defendant's second issue is that the search warrant obtained by police to search Defendant's hotel room and storage bay was also not supported by a fair probability that evidence of criminal activity would be found. Defendant believes that both of these searches violated his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. As such, Defendant argues that all evidence found because of these searches should be suppressed.

Background and Testimony

Trooper Aaron Brown (Brown) of the Pennsylvania State Police testified on behalf of the Commonwealth. On June 18, 2020 at approximately 9:00 p.m., Brown observed a red

¹ 35 Pa. C.S. § 780-113(a)(30).

² 35 Pa. C.S. § 780-113(a)(31).

³ 35 Pa. C.S. § 780-113(a)(32).

Subaru Forester in motion without illuminated lights after sunset. Brown initiated a traffic stop of the vehicle in a nearby parking lot. Brown's patrol vehicle was able to capture a video recording of the incident. A woman was operating the Subaru and there were two male passengers, one in the front passenger seat, later discovered to be Defendant, and another male in the rear. Brown approached the driver of the car to inform her of the reason why Brown pulled her over and to ask for her license and registration. Once the driver rolled a window down, Brown immediately smelled the odor of marijuana coming from inside the vehicle. Brown asked the driver to exit the car and began questioning her about the smell. Eventually, Brown ordered the remaining occupants to exit the vehicle in order for him to conduct a search of the car. Brown observed a black backpack on the floor in front of the front passenger seat. Defendant stated that this bag belonged to him. Once Brown informed Defendant and the other passenger that he smelled marijuana and would be searching the car, Defendant confessed to marijuana being located within the contents of his bag. Defendant told Brown that he uses marijuana medicinally but does not possess a medical marijuana card. Brown searched Defendant's backpack and found marijuana, scales, and other drug paraphernalia. Following the search, a search warrant was obtained for the hotel room Defendant was living in as well as a storage bay under Defendant's name. This search resulted in the discovery of additional marijuana in Defendant's hotel room at the Econo Lodge in Loyalsock Township.

Analysis

Vehicle Search

The first issue presented is whether Brown had probable cause to search the vehicle following the traffic stop. 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). The Pennsylvania Constitution provides greater protection to its citizens than that provided by the Fourth Amendment because Article 1 Section 8 requires “both a showing of probable cause and exigent circumstances to justify a warrantless search of an automobile.” Commonwealth v. Alexander, 243 A.3d 177, 181 (Pa. 2020). To determine if an exigency exists, “that inquiry is not amenable to per se rules and requires a consideration of the totality of the circumstances. Id. at 208. Probable cause “is a fluid concept turning on the assessment of probabilities in particular factual contexts not readily, or even usefully, reduced to a neat set of legal rules.” Commonwealth v. Barr, 240 A.3d 1263, 1274 (Pa. Super. 2020) *citing* Commonwealth v. Glass, 754 A.2d 655, 663 (Pa. 2000). To determine if police had the proper probable cause, “we apply a totality of the circumstances test.” Commonwealth v. Thompson, 985 A.2d 928, 931 (Pa. 2009).

The Pennsylvania Superior Court has held that “the odor of marijuana does not *per se* establish probable cause to conduct a warrantless search of a vehicle.” Barr, 240 A.3d at 1269. Absent other circumstances, “[t]he odor of marijuana alone...cannot provide individualized suspicion of criminal activity when hundreds of thousands of Pennsylvanians can lawfully produce that odor. What it does provide to police is a general, probabilistic suspicion of criminal activity based on the fact that most citizens cannot legally consume marijuana.” Id. at 1287. “[C]ourts have routinely held that the order of marijuana is a factor for consideration in a determination of the existence of probable cause....” Id. at 1275.

Defendant argues that the search of the vehicle and his backpack were not sufficiently supported by probable cause nor were there any exigent circumstances justifying the search of

the car as required under Pennsylvania law. Defendant relies on the holding in Barr to support his argument that Brown's detection of the odor of marijuana was not enough to give him probable cause to search the vehicle. Defendant believes that, since Brown's testimony did not articulate another reason for the search aside from the smell of marijuana, probable cause was lacking in this case and the search violated his rights. Furthermore, Defendant argues Brown did not specify any facts or circumstances that would support the exigency requirement. This Court agrees with Defendant on this issue. Though the traffic stop was valid, Brown solely relied on the scent of marijuana as a reason to search the vehicle and Defendant's backpack within the car. The Commonwealth argues that the applicable exigency here is the need to stop the destruction of any evidence of crime. However, no circumstances were presented to substantiate the idea that there would be an emergency requiring a search for officer safety, to prevent further crime or the destruction of evidence. No illegal substances were in plain view, neither the driver nor the passengers exhibited signs of excessive nervousness, and no testimony from the police on scene indicated that they feared for their safety. Even though Pennsylvania precedent has established that the odor of marijuana may be a factor in establishing probable cause, the case *sub judice* presented no other particulars to bolster this argument. Therefore, the search of Defendant's belongings was unconstitutional.

Additionally, Defendant asserts that his consent to search his backpack was not genuine because he was forced to agree by the circumstances of the traffic stop. Defendant believes that, since he only admitted to possessing marijuana after Brown communicated that he was going to search the car, his consent was not voluntary. Defendant does not allege that the traffic stop was a violation of his constitutional rights but does argue that the consent he gave was due to implied coercion from law enforcement on the scene. This Court agrees that Brown had the

authority to pull the Subaru over for failure to have illuminated lights after sunset. Therefore, the remaining question for this particular issue is to determine whether Defendant's consent was voluntary.

One exception to the warrant requirement is consent that has been "voluntarily given." Commonwealth v. Strickler, 757 A.2d 884, 888 (Pa. 2000); see Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). "The central Fourth Amendment inquiries in consent cases entail assessment of the constitutional validity of the citizen/police encounter giving rise to the consent; and, ultimately, the voluntariness of consent." Strickler 757 A.2d, at 888. Strickler acknowledged that the "prior, lawful detention" of defendant in that case was "a factor engrafting a degree of coercion upon the encounter." Strickler 757 A.2d, at 900. "[T]he Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice—not the result of duress or coercion, express or implied, or a will overborne—under the totality of the circumstances." Id. at 901.

The Court also agrees with Defendant on this issue. The presence of police and their insistence on searching the car and its contents did not give Defendant the opportunity to deny consent to search his backpack. Brown made it explicitly clear that he would be searching the car whether Defendant gave him permission to or not. Therefore, the search violated Defendant's rights because it did not fall under any exception to the warrant requirement and lacked probable cause and exigency. The evidence obtained as a result of this search shall be suppressed.

Search Warrant

Defendant challenges law enforcement's search of his hotel room at the Econo Lodge as well as the storage bay. Defendant argues that the affidavit of probable cause does not establish

a nexus between his hotel room and the marijuana and drug paraphernalia found in his backpack. Defendant asserts that Brown did not articulate any evidence that showed Defendant was conducting drug transactions from his hotel room. Instead, Brown indicated in the affidavit that PSP is often called to that area where the Econo Lodge is located for drug overdoses and reports of individuals selling drugs, but did not mention Defendant specifically. The Commonwealth simply states that the affidavit of probable cause was sufficient because, under a four-corners inquiry, the affidavit justified the search because it connected Defendant to any evidence likely to be found in the hotel room where he was living. Nevertheless, the Court agrees with Defendant on this issue as well. The United States Supreme Court has held that evidence seized as a result of illegally obtained evidence must also be inadmissible. Wong Sun v. United States, 371 U.S. 471 (1963); *see also* Nardone v. United States, 308 U.S. 338 (1939). Though the search of the vehicle was legally justifiable at the time it was conducted, it is no longer supported following the holding in Barr. Since the Court has already determined that the initial search of the car resulting in the discovery of marijuana was unconstitutional, the evidence found because of the search warrant founded on the basis of illegally obtained evidence must also be suppressed as fruit of the poisonous tree. Once the contraband seized from the car is removed from the affidavit of probable cause, the search warrant in this case no longer has probable cause. Therefore, the Court must invalidate the search warrant in the present case and the evidence seized because of the warrant must be suppressed.

Conclusion

The Court finds that the requirements for a warrantless search were not present in this case to justify a search of Defendant's bag. This Court also finds that the search warrant for

Defendant's storage bay and hotel room was not supported by probable cause. Therefore, the evidence obtained shall be suppressed.

ORDER

AND NOW, this 13th day of May, 2021, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **GRANTED**. It is **ORDERED** and **DIRECTED** that Defendant's statements made to police are **SUPPRESSED**. Any evidence seized as a result of the information obtained unlawfully is also **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
PD (MW)
Law Clerk (JH)