

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-31-2021**
 v. :
 :
 MAURICE THOMAS, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Maurice Thomas (Defendant) was charged with Possession of Marijuana¹ and Possession of Drug Paraphernalia². The charges arise from an interaction between Defendant and law enforcement during a patrol. Defendant filed an Omnibus Pretrial Motion on March 22, 2021. This Court held a hearing on the motion on June 10, 2021. In his Omnibus motion, Defendant asserts that the smell of marijuana alone is not sufficient justification to support the warrantless search of his vehicle or to establish probable cause to justify a warrant for a subsequent search of Defendant's vehicle.

Preliminary Hearing Testimony

The Commonwealth submitted a transcript of the preliminary hearing, marked as Commonwealth's Exhibit 2, at the hearing on Defendant's motion. On January 7, 2021, Officer Gino Caschera (Caschera) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. N.T. 1/7/2021, at 3. Caschera testified that on July 14, 2020, he was on patrol in full uniform in the area of Hepburn Street and High Street. *Id.* at 4. While patrolling, Caschera was in a marked patrol vehicle with the windows down when he began to smell the strong odor of marijuana. *Id.* He noticed a man, later identified as Defendant, along with another male, believed to be Dorian Branch, who was known by police to deal marijuana and

¹ 35 Pa.C.S. § 780-113(a)(31).

² 35 Pa.C.S. § 780-113(a)(32).

heroin, and a female, standing in a parking lot off High Street next to a vehicle. Id. at 4-5. Caschera decided to approach the group because he believed the smell of marijuana was emanating from them. Id. at 4. Caschera testified that he attempted to make contact but “they wanted nothing to do with me.” Id. At some point, Caschera said he saw Defendant take car keys out of his pocket and lock the car while Caschera approached. Id. At the time of the preliminary hearing, Caschera could not recall if the vehicle in question was a rental under Defendant’s name or if one of the people seen on the day in question owned it. Id. at 7

Caschera further testified that he could still smell the odor of marijuana “emitting from the sealed windows of the car.” Id. at 4. Caschera stated that after locking the car, Defendant began to walk away and ignored commands to stop. Id. at 5. Officers Stevens and Garbrick later detained him on Hepburn Street while Caschera obtained a search warrant for the vehicle believed to contain marijuana. Id. at 5-6. A search warrant was issued and a search of the car was executed. Following this search, police found a black screw-top plastic container with an orange lid containing bud marijuana. Id. at 7-8. The container had a label on it but did not include a prescription number. Id. at 12. The marijuana was field-tested and came back positive for THC. Id. at 8. During this interaction, Defendant did not present a medical marijuana card to law enforcement. Id. at 9.

Discussion

Defendant argues that the search of the vehicle was unlawful because the odor of marijuana is not enough to establish probable cause to support the issuance of a search warrant. 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).

Defendant’s argument relies on the decision in Commonwealth v. Barr, which held that “the odor of marijuana does not *per se* establish probable cause to conduct a warrantless search of a vehicle.” Commonwealth v. Barr, 240 A.3d 1263 (Pa. Super. 2020). In that case, police pulled Barr over following a traffic violation and were able to smell burnt marijuana coming from the vehicle. Id. at 1270. When police informed Barr that the odor of marijuana gave them probable cause to search the car without a warrant, Barr produced a medical marijuana identification card. Id. at 1271. Police were unsure how medical marijuana was ingested, so a probable cause search of the car occurred anyway. Id. A firearm and marijuana were discovered in the vehicle as a result of the warrantless search. Id. The trial court granted Barr’s motion to suppress this evidence. Id. at 1272. On appeal, the Superior Court upheld this suppression,

stating that “courts have routinely held that the odor of marijuana is *a factor* for consideration in a determination of the existence of probable cause, a factor that was dispositive, or almost always controlling, in the prior factual context of the substance’s universal illegality.” *Id.* at 1275. “The odor of marijuana alone, absent any other circumstances, cannot provide individualized suspicion of criminal activity when hundreds of thousands of Pennsylvanians can lawfully produce that odor.” *Id.* at 1287.

The search warrant for the car in question, entered as Commonwealth’s Exhibit 1, was obtained by Caschera on July 14, 2020. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 7/14/2020, I, Officer Caschera, was patrolling the area of Hepburn St and High St when I detected the odor of burnt marijuana. I circled the block and determined the odor to be coming from the parking lot area behind 705 Hepburn St...I observed 2 males and 1 female standing next to a white Ford Fusion, VA UTS-9759. I approached the 3 subjects and noticed the odor of burnt marijuana became stronger. At this time I noticed a red solo cup sitting on the trunk of the Ford Fusion which smelled strongly of alcohol. One of the subjects, Dorian BRANCH admitted the cup contained alcohol. Maurice THOMAS, the possessor of the vehicle, began to walk away and locked the vehicle. THOMAS was detained. At this time I approached the Ford Fusion and could smell the strong odor of raw marijuana emitting from the windows of the Ford Fusion.

Commonwealth Exhibit 1, at 2.

Defendant avers that the affidavit in the application for a search warrant for the vehicle in this case is insufficient to establish probable cause. Defendant believes that Barr is applicable to situations like the case *sub judice* where only the smell of marijuana is averred as probable cause in the application for a search warrant. Defendant argues that in light of the passage of the Medical Marijuana Act allowing certain Pennsylvanians to possess and consume marijuana and the Superior Court’s holding in Barr that the odor of marijuana alone does not justify the granting of a search warrant, the search warrant in this case must be invalidated and

the evidence seized pursuant to the warrant must be suppressed. The Commonwealth believes that more than just the smell of marijuana existed in this scenario to provide law enforcement with enough probable cause for a search warrant. For instance, the Commonwealth contends that the conduct of the individuals, the open container of marijuana, the out-of-state license plate, and the smell of the marijuana all contributed to the establishment of probable cause.

This Court agrees with the Commonwealth on this issue. Defendant never produced a medical marijuana card that would permit him to possess and consume marijuana. Caschera testified that he was able to smell burnt marijuana coming from the Defendant and the two (2) other people he was with that day. Caschera was also able to smell raw marijuana the closer he got to the vehicle. Defendant was in possession of the keys which a reasonable person would assume places him in possession of that car. The group was openly drinking alcohol in a parking lot and Defendant attempted to walk away from police after commands to stop. For these reasons, this Court finds that the affidavit contained enough to rise to probable cause to justify the issuance of a search warrant and the evidence seized shall not be suppressed.

Conclusion

The Court finds that the affidavit of probable cause in the search warrant for the car in Defendant's possession 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 search warrant is denied.

ORDER

AND NOW, this 10th day of August, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (EW)
PD (HG)
Law Clerk (JMH)