

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-469-2021**  
 v. :  
 :  
 **TASHI CLAY,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Tashi Clay (Defendant) was charged with Persons not to Possess a Firearm<sup>1</sup>, Firearms Not to be Carried without a License<sup>2</sup>, Receiving Stolen Property<sup>3</sup>, Tamper With/Fabricate Physical Evidence<sup>4</sup>, and Possession of a Controlled Substance<sup>5</sup>. The charges arise from an encounter between Defendant and police on January 19, 2021. Defendant filed an Omnibus Pretrial Motion on June 2, 2021. This Court held a hearing on the motion on July 20, 2021. The parties were instructed to file briefs on the issues raised. Defendant submitted his brief on August 24, 2021, the Commonwealth responded on September 13th, and Defendant replied to the Commonwealth's brief on September 21st. In his Omnibus motions, Defendant first argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and the three (3) charges related to the firearm should be dismissed. Second, Defendant submits a motion for additional discovery<sup>6</sup>. Third, Defendant requests the dismissal of the case against him because of the lack of probable cause to stop Defendant's vehicle. Fourth, Defendant contends that the physical evidence obtained from his vehicle was a result of an illegal stop in violation of his constitutional rights and therefore the evidence

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<sup>1</sup> 18 Pa.C.S. § 6105(a)(1).

<sup>2</sup> 18 Pa.C.S. § 3106(a)(1).

<sup>3</sup> 18 Pa.C.S. § 3925(a).

<sup>4</sup> 18 Pa.C.S. § 4910(1).

<sup>5</sup> 35 Pa.C.S. § 780-113(a)(16).

<sup>6</sup> The request for additional discovery was addressed at the time of the hearing. The DNA evidence Defendant requested was not available at that time, though the attorney for the Commonwealth agreed to provide to defense counsel once the evidence was given to the District Attorney's office.

should be suppressed. Lastly, Defendant submits a motion to suppress incriminating statements made while in the back of the police car for violating his right to counsel and his right against self-incrimination.

### **Preliminary Hearing and Testimony**

At the preliminary hearing, Officer Andrew Stevens (Stevens) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. On the evening of January 19, 2021, Stevens was on patrol and training Officer Heath. N.T. 4/1/2021, at 4. The two officers were stopped at a red light at the intersection of Packer Street and Washington Boulevard. Id. They observed the Washington Boulevard traffic signal turn red when a light blue Chrysler proceeded through the red light at a high rate of speed. Id. Stevens testified that they attempted to conduct a traffic stop on the vehicle but were only able to try to keep up with the Chrysler. Id. Stevens was under the impression that the vehicle was attempting to evade them. Id. The officers continued to follow the Chrysler onto Mountain Avenue and eventually observed the vehicle park in front of what was later determined to be the driver's home. Id. at 5.

Stevens testified that, upon approaching the car, he noticed that the windows were completely fogged. Id. Stevens advised the driver, later identified as Defendant, why he was being stopped, namely the foggy windows, the speeding, and the red light and Defendant admitted to speeding. Id. at 6. Stevens testified that Defendant appeared very nervous and was breathing heavy, "to the point where it had fogged up his car windows, which is not normal." Id. Stevens asked Defendant why he was nervous and inquired if anything illegal was in the vehicle. Id. Defendant initially denied having anything in the car. Id. Stevens asked Defendant to step out of the vehicle and conducted a pat down search that yielded no results. Id. Defendant then asked to speak with Stevens away from the vehicle and Stevens agreed to do

so. Id. They walked over to the patrol car and Defendant admitted to having heroin and marijuana in the car in the center console. Id. at 6-7. Stevens contacted a canine unit to come to the scene that ultimately alerted on the car for the presence of drugs. Id. at 7. Stevens asked Defendant twice for permission to go into the vehicle to retrieve the drugs and Defendant consented. Id. The drugs were recovered from the center console, yielding a bundle of heroin and some suspected marijuana. Id.

Stevens further testified that after the drugs were discovered, Defendant was taken into custody in order to transport Defendant to City Hall and conduct a strip search. Id. at 8. Defendant was placed in the back of Stevens' patrol car while other officers continued to search Defendant's vehicle. Id. at 9. No additional contraband was found in Defendant's car, so Stevens went to his patrol unit and began putting the seized suspected narcotics in property envelopes. Id. At that time, a woman believed to be Defendant's grandmother who lived with him at the Rural Avenue address requested to have Defendant's car keys, which Defendant agreed to. Id. While in the backseat, Defendant made a phone call on speakerphone to an unknown male. Id. at 11. Sergeant McGee observed Defendant was on a phone call in the back of Stevens' patrol car and subsequently removed the phone and car keys from Defendant's person. Id. at 9. Stevens then stated that as he was wrapping up at the scene, he observed a handgun "right next to my patrol car just off the roadway on the curb on the north side of Rural Avenue." Id. The handgun was a Smith and Wesson semi-automatic 9mm. Id. Stevens ran a search of this firearm and determined that it was reported stolen by South Williamsport Police Department in 2020. Id. at 10.

After transporting Defendant to City Hall, Stevens reviewed any audio and video recordings available to him regarding this incident. Id. He stated that the reasons he did this

were that he discovered the stolen handgun near the traffic stop location and Defendant's home, and his suspicion that Defendant was attempting to evade police prior to their interaction. Id.

Stevens testified Defendant was

telling this guy that he just got the gun off him before the police got him and is trying to direct this male or have this male direct other people that are acquaintances to where the firearm's at, and he's looking out my side window from the back seat of my patrol car at the firearm and describing where it's at, multiple times is trying to say, I'm nervous, I was speeding, I got pulled over, but I was able to get the gun off of me before I got picked up by the police....

Id. at 11. Stevens also stated that Defendant can be heard saying "they found my gat" once Stevens discovered the firearm on the ground. Id. Stevens testified that "gat" is a common street term for handgun. Id. at 11-12. Stevens noted that, following a review of Defendant's criminal history, Defendant has plead guilty or been convicted of ungraded felony drug offenses which prohibit an individual from possessing firearms in Pennsylvania. Id. at 11. Stevens admitted that he did not personally observe Defendant throw the firearm out of his vehicle. Id. at 19. Stevens also testified that Defendant was not advised of his *Miranda* rights while at the scene of the traffic stop. Id. at 16. Results from DNA testing off the firearm have not been returned to the police or to the District Attorney's office. Id. at 20.

Stevens testified on behalf of the Commonwealth at the hearing on this motion similarly to his testimony at the preliminary hearing. Additionally, Stevens stated that the emergency lights on his patrol car were not activated after observing the traffic violation because it is his practice to wait to do so until he is behind the vehicle in question so he can note their license plate number in case they attempt to flee. After approaching Defendant, Stevens observed that Defendant was sweating and breathing hard. Stevens further stated that Defendant only has a left hand and does not have a right hand as the result of an injury. Stevens testified that there

are no written signs or warnings that would have alerted Defendant that he was being recorded while in custody in the back of the police car. Stevens noted that a microphone and camera were in Defendant's face in the back seat. However, Stevens believes that an average citizen should or would know that they are being recorded while inside a police vehicle.

At the hearing on this motion, Defendant submitted the MVR of the incident, marked as Defense Exhibit 1. This Court reviewed the footage, which shows two (2) different angles, one from the dashboard camera and one from the camera pointed at the back seat of the patrol car. The videos show the following. The police unit pulls up to Washington Boulevard and stops at the red light. The traffic signal for Packer Street is visible on the video footage. A few cars travel through the intersection during the green light. Soon after it turns yellow, another car goes through the intersection at a faster rate of speed than the other vehicles. The police car turns right onto Packer Street to pursue the vehicle. Once on Packer Street, the car makes a left hand turn and police follow. The car's brake lights can be seen on the footage before it makes another left turn. The car is no longer visible on screen after the police make the same turn, so the patrol unit turns left down an alley. After turning left out of the alley, a parked car on the right hand side of the road shuts its lights off and police pull up next to the vehicle and stop. Approximately three (3) minutes later, the patrol unit activates its emergency lights.

About five (5) minutes later, Defendant and Stevens are speaking in front of Stevens' patrol unit. Approximately twenty (20) minutes later, Defendant is placed in the back of the patrol car. Defendant is in handcuffs, but is able to get his phone out of his pocket and make a phone call on speakerphone. An unknown man answers the call and Defendant tells the man that he is going to be sent to prison for having a bundle of heroin in the car. Defendant then says, "the gat is right by the first tree...right by Rural" on the "corner of Rural and Elmira".

Defendant states he was able to “get it off” of him before the police found the gun on his person. Defendant is asking for the man on the other line to come get the firearm or to send someone else to get it. Defendant says, “I was not able to throw the gat far but the gat right by the cop car...I cannot get out and get it.”

Defendant repeats the location of the gun and asks again for someone to retrieve the firearm. Defendant also says, “I hope they don’t find that shit...I hope they don’t find that strap right there...that shit right there, I hope they don’t come looking over here.” Throughout the video, Defendant appears nervous and is twisting and turning in the back seat to watch the police investigation. Eventually an officer asks Defendant if he has his keys on his person and he responds yes. Defendant asks if he can give the keys to his grandmother. At one point, another officer, presumably McGee, says, “I’m assuming you’re audio and video recorded back here, just so you know that.” The officer explains to Defendant that he will be taken to City Hall for a strip search to make sure Defendant does not have anything else on his person and his parole officer will be contacted. If his parole officer does not object, Defendant will be released and his grandmother can pick him up and take him home.

A few minutes later, Defendant notices that police found a firearm and is muttering to himself, but it is difficult for the Court to decipher what was said. It sounds like Defendant said, “oh shit, they found the fucking gat...they found the fucking gat” but this is an estimation based on a few intelligible words. Defendant gets McGee’s attention and McGee informs him a firearm was found and they are going to make a determination of whether Defendant or someone else put the firearm there. Defendant asks to speak with his grandmother and denies having any involvement with the gun. After McGee ends their conversation, Defendant begins to backpedal, apparently talking to himself, saying that the gun is not his, he was lying the

whole time, he did not put the firearm there, and he only saw it laying on the ground after he got into the police car. Defendant calls Stevens back over to the patrol unit and starts another conversation about the firearm. Defendant asks Stevens what he has to do with the gun and they talk about DNA evidence testing on the firearm. Defendant asks if he is going to jail for the gun. Stevens replies that Defendant will probably not go to prison, but he believes that Defendant threw the gun out of the car while he was trying to evade police. Defendant denies this and says he was going so fast because his friend was telling him to meet him and was waiting outside in the dark in an unsafe neighborhood. While Stevens transports Defendant to City Hall, Defendant continues to deny touching the firearm and denies seeing police at the red light intersection.

## **Discussion**

### ***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 is charged with four (4) counts related to the firearm found during the traffic stop. Namely, Persons not to Possess a Firearm, Firearms Not to be Carried without a License, Receiving Stolen Property, and Tamper With/Fabricate Physical Evidence. Defendant argues that the Commonwealth has failed to establish a nexus between him and the firearm. Specifically, Defendant believes that the Commonwealth is unable to establish Defendant ever possessed the firearm, which is a critical element for all the challenged offenses. Defendant contends that the MVR footage does not show Defendant in possession of the gun and does not show Defendant discarding the gun from his vehicle prior to his interaction with police. Defendant’s position is that the best evidence the Commonwealth has is Stevens’ speculation that Defendant threw the firearm out of his car. Defendant further believes that the Commonwealth has failed to establish constructive possession. Defendant reiterates that, following an injury, Defendant only has a left hand. Additionally, the firearm was found approximately thirty (30) to forty (40) feet away from Defendant’s parked vehicle.



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). Constructive possession can be established in one or more actors where the item at issue is in an area of equal access. Commonwealth v. Murdrick, 507 A.2d 1212, 1214 (Pa. 1986).

The Commonwealth argues that they have established a sufficient nexus between Defendant and the firearm for the following reasons. The firearm was found within a close proximity to Defendant and his vehicle. Defendant made multiple incriminating statements on the phone while in the back of the police vehicle stating that he got rid of the gun before the police made contact and asked for a third party to retrieve it for him. Additionally, the Commonwealth contends that the Court must view the evidence in the light most favorable to the Commonwealth and accept the evidence as true. *See* Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003). The Commonwealth asserts that Defendant claimed dominion and control over the firearm based on his statements while on the phone and therefore a sufficient nexus between Defendant and the gun exists.

Viewing the evidence in the light most favorable to the Commonwealth and assuming the evidence is true as is required, this Court agrees with the Commonwealth that a nexus between Defendant and the firearm has been established. Defendant admits on video multiple

times that he had the firearm and tossed it out of his car in an attempt to keep police from finding it on his person or in his vehicle before their interaction began. Defendant also asked the man on the phone to send someone to retrieve the gun for him while he was being taken to City Hall. Police located the gun relatively close to his car and Defendant was extremely nervous for a routine traffic stop. In consideration of the totality of the evidence presented at the preliminary hearing, this Court finds that the Commonwealth established constructive possession and met their *prima facie* burden for Counts 1 through 4.

***Motion to Dismiss for Lack of Probable Cause***

Defendant challenges law enforcement's justification in making contact with Defendant. Defendant argues that Stevens lacked reasonable suspicion and/or probable cause to believe that criminal activity had taken place, and therefore the case against Defendant ought to be dismissed. Defendant asserts that he passed through the light while it remained yellow and not red, so a violation never occurred and the police had no reason to investigate him other than a hunch. While Defendant concedes that law enforcement can conduct traffic stops for violations of the Motor Vehicle Code, Defendant argues that a violation must first occur, and no violation occurred in this instance. As a result, Defendant's position is that his encounter with police was an investigative detention, which triggers the protections of the Fourth Amendment. Defendant argues that law enforcement failed to articulate specific facts to support their inference that Defendant was armed and dangerous to conduct a pat-down search as is required by law. *See Commonwealth v. Gray*, 896 A.2d, 601, 606 (Pa. Super. 2006). Defendant also argues that his nervousness alone at the time of the interaction does not permit law enforcement to conduct a search. *See Commonwealth v. Cartagena*, 63 A.3d 294 (Pa. Super. 2013).

In their brief, the Commonwealth concedes the traffic signal was not red at the time Defendant went through the intersection. However, the Commonwealth argues that Defendant went through the intersection at a high rate of speed and drove carelessly through the residential neighborhood in an attempt to evade police. This behavior resulted in approximately two (2) violations of the Motor Vehicle Code justifying a traffic stop. The Commonwealth further asserts that police officers do not have to be factually accurate in their belief that a traffic violation occurred, but only need to produce facts that establish a reasonable belief that the violation took place. Whren v. United States, 517 U.S. 806, 809-10 (1996); United States v. Delfin-Colina, 464 F.3d 392, 396 (3d Cir. 2006). Based on an objective analysis of law enforcement's actions, the Commonwealth believes that Stevens had probable cause to stop Defendant after the high speed of travel through the intersection and hastily cutting through small alleys near people's homes. *See* Commonwealth v. Perry, 982 A.2d 1009, 1012 (Pa. Super. 2009). Alternatively, the Commonwealth contends that police had reasonable suspicion to stop Defendant's vehicle based on the foggy windows, Defendant's suspicious behavior of sitting in his car after he turned it off, the speeding, Defendant's nervousness, and cutting down alleyways.

In Defendant's response brief to the Commonwealth, Defendant argues that Stevens was not accurate or truthful in his testimony following the Commonwealth's concession that the traffic light was yellow instead of red. Furthermore, Defendant asserts that Stevens' testimony also lacked a proper basis to establish Defendant was speeding. Specifically, Defendant argues that an officer must be able to articulate specific facts possessed by him at the time of the stop which would establish probable cause to believe that Defendant was in violation of the Motor Vehicle Code. *See* Commonwealth v. Gleason, 785 A.2d 983 (Pa. 2001).

Defendant cites to Commonwealth v. Salter, 121 A.3d 987 (Pa. Super. 2015) to support his argument that the interaction between police and Defendant was not supported by probable cause or reasonable suspicion. In Salter, the Superior Court stated

If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop. Illustrative of these two standards are stops for speeding and DUI. If a vehicle is stopped for speeding, the officer must possess probable cause to stop the vehicle. This is so because when a vehicle is stopped, nothing more can be determined as to the speed of the vehicle when it was observed while traveling upon a highway.

Probable cause exists “where the facts and circumstances within the officer’s knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed.” Commonwealth v. Hernandez, 935 A.2d 1275, 1284 (Pa. 2007).

Determining whether probable cause exists requires an examination of the totality of the circumstances and “factual and practical considerations of everyday life on which reasonable and prudent [persons] act.” Commonwealth v. Salter, 121 A.3d 987, 995 (Pa. Super. 2015) (citations omitted).

Defendant also argues that the Superior Court determined that probable cause to establish a violation of Driving a Vehicle at Safe Speed, as the Commonwealth suggests Defendant was doing but was not charged with, that “speeding alone does not constitute a violation of this section.” Commonwealth v. Heberling, 678 A.2d 794, 795 (Pa. Super. 1996). “There must be proof of speed that is unreasonable or imprudent under the circumstances (of which there must also be proof), which are the ‘conditions’ and ‘actual and potential hazards then existing’ of the roadway.” Id. at 795-797. Defendant contends that Stevens never

articulated any actual or potential hazards that would demonstrate that Defendant's speed was greater than reasonable or prudent.

After a review of the MVR footage and the testimony presented at the preliminary hearing and the hearing on this motion, this Court does not believe that probable cause or reasonable suspicion was properly established to justify the traffic stop of Defendant and his vehicle. "The proper analysis, when considering whether a police officer's actions violated the Fourth Amendment to the United States Constitution, is an objective one." Commonwealth v. Johnson, 202 A.3d 125, 128 (Pa. Super. 2019). The United States Supreme Court and the Pennsylvania Supreme Court have repeatedly rejected the approach wherein the subjective intent of the officer at the time of the challenged incident, such as the officer's state of mind, is considered when determining if a defendant's Fourth Amendment rights were violated. *See* Brigham City, Utah v. Stuart, 547 U.S. 398 (2006); Commonwealth v. Martin, 101 A.3d 706 (Pa. 2014). "In the Fourth Amendment context, 'the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" Martin, 101 A.3d at 721 (quoting Whren v. United States, 517 U.S. 806, 813 (1996)). Simply put, the objective approach to potential Fourth Amendment violations "regulates conduct rather than thoughts." Ashcroft v. al-Kidd, 563 U.S. 731, 736 (2011).

The Court agrees that the traffic light was not red at the time Defendant traveled through the intersection. The Commonwealth did not show objective evidence to justify the actions of the police on the night in question. The MVR footage does not corroborate the interaction between Defendant and law enforcement and neither does Stevens testimony, some

of which was inaccurate. Although Stevens testified that Defendant was travelling at a high rate of speed, this Court can make no determination of the veracity of that statement. A significant issue in the Commonwealth's case is that no evidence or testimony was presented to this Court identifying the speed limit on Packer Street where Defendant was travelling and police did not conduct a reading of Defendant's speed on the night in question. The footage shows Defendant pass through the intersection faster than other vehicles did seconds before him, but this Court has no method of determining whether Defendant exceeded the speed limit. Furthermore, as Defendant argued, no testimony was shown that there were any hazards in the condition of the road that indicated Defendant was travelling beyond what was reasonable. Despite Stevens' best efforts in his testimony to assert reasons under the Motor Vehicle Code to substantiate a lawful traffic stop, the record objectively does not support either assertion.

Moreover, Defendant was not actually charged with speeding. As previously stated, the Superior Court has held that speeding alone is not enough to give rise to probable cause. *See Commonwealth v. Heberling*, 678 A.2d 794, 795 (Pa. Super. 1996). The Commonwealth has not shown any other evidence aside from a suspicion that Defendant was trying to evade police. The evidence presented to the Court fails to show that law enforcement possessed probable cause as required to pull Defendant over for speeding and the totality of the circumstances do not rise to the level of reasonable suspicion. Therefore, Defendant was subjected to an unlawful traffic stop.

### ***Suppression Motions***

Defendant also argues that the evidence seized pursuant to the illegal traffic stop must be suppressed as fruit of the poisonous tree. Defendant further contends that any incriminating statements on the recording of Defendant while in the back of the patrol unit must also be

suppressed following Defendant's illegal detention. "The 'fruit of the poisonous tree' doctrine excludes evidence obtained from, or acquired as a consequence of, lawless official acts."

Commonwealth v. Lukach, 163 A.3d 1003, 1013 (Pa. Super. 2017) (*quoting* Commonwealth v. Brown, 700 A.2d 1310, 1318 (Pa. Super. 1997)).

We need not hold that all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.

Id. at 1013-14 (*quoting* Commonwealth v. Loughnane, 128 A.3d 806, 815 (Pa. Super. 2015)).

The burden of proving that the evidence would have been found absent the illegality rests on the Commonwealth. Id. at 1014.

This Court has determined that the encounter between Defendant and law enforcement violated Defendant's Fourth Amendment rights. Consequentially, this Court also finds that no facts or circumstances were presented to purge the primary taint of the illegal stop on the evidence discovered in Defendant's vehicle and any incriminating statements recorded while in custody in the police car. Therefore, all evidence and statements shall be suppressed as fruit of the poisonous tree.

### **Conclusion**

The Court finds that the Commonwealth satisfied their *prima facie* burden on Counts 1 through 4 at the preliminary hearing and established a sufficient nexus between Defendant and the firearm found at the scene. Therefore, Counts 1 through 4 shall not be dismissed. The Court also finds that the traffic stop conducted on Defendant lacked the requisite probable cause and Defendant was subjected to an unlawful traffic stop. The Court further finds that the evidence

seized from Defendant's car and any statements made by Defendant while in the back of the police vehicle are fruits of the poisonous tree. As a result, Defendant's Motion to Suppress is granted.

**ORDER**

**AND NOW**, this 28th day of February, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Habeas corpus is **DENIED**. The Defendant's Motion to Suppress Evidence is **GRANTED**. The stop of the Defendant's vehicle and all evidence seized from it, including any statements made by the Defendant in the police car, are hereby **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

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