

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CP-41-CR-1678-2021</b>
<b>v.</b>	:	
	:	
<b>BRIAN DUVALL, JR.,</b>	:	<b>OMNIBUS MOTION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

Brian Duvall, Jr. (Defendant) was charged with one (1) count of Driving under the Influence of Controlled Substances, First Offense<sup>1</sup>, two (2) counts of Possession of a Controlled Substance<sup>2</sup>, one (1) count of Possession of Drug Paraphernalia<sup>3</sup>, and one (1) count of Driving while Operating Privilege Suspended or Revoked<sup>4</sup>. The charges arise from a traffic stop initiated on Defendant's vehicle. Defendant filed this Omnibus Pretrial Motion on February 23, 2022. This Court held a hearing on the motion on May 27, 2022. In his Omnibus motion, Defendant first argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden on Count 1 at the preliminary hearing and the charge should be dismissed. Secondly, Defendant argues that the traffic stop lacked probable cause and all items seized pursuant to Defendant's arrest must be suppressed. Lastly, Defendant files another motion to suppress evidence obtained pursuant to the search warrant, which Defendant believes is invalid for lack of sufficient probable cause.

**Background and Testimony**

At the preliminary hearing, Officer Andrew Stevens (Stevens) of the Williamsport Police Department testified on behalf of the Commonwealth. On September 30, 2021, Stevens

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<sup>1</sup> 75 Pa.C.S. § 3802(d)(2).

<sup>2</sup> 35 Pa.C.S. § 780-113(a)(16).

<sup>3</sup> 35 Pa.C.S. § 780-113(a)(32).

<sup>4</sup> 75 Pa.C.S. § 1543(a).

was on patrol with Officer Dan Cole (Cole) in the city of Williamsport. N.T. 12/21/2021, at 2. A gold Malibu pulled out from 10th Avenue and began traveling eastbound on Memorial Avenue directly in front of the patrol unit. Id. Stevens stated that the Malibu was approximately fifty (50) to sixty (60) yards away from the patrol unit. Id. Stevens further indicated the windows on the patrol unit were rolled down and that “as soon as we began travelling behind that vehicle we immediately began to smell a very strong odor of burnt marijuana. It was so strong it was to the point that Officer Cole looked at me and was like, ‘wow that’s strong.’” Id.

After about a block, the driver pulled over to park and Stevens activated the emergency lights soon afterwards. Id. at 3. Both Cole and Stevens approached the Malibu, with Stevens approaching the driver side and Cole on the passenger side. Id. at 4. Stevens advised the driver, later identified as Defendant, why he was being pulled over, namely for the smell of burnt marijuana. Id. at 3. Stevens confirmed that the smell of burnt marijuana was the reason for the stop and interacting with the driver. Id. Stevens could not recall any other traffic violations that would justify a traffic stop. Id. Stevens was aware of legal ingestion of marijuana if an individual has a medical marijuana card, but even with such a card, it is illegal to consume marijuana by smoking it using a flame. Id.

Defendant became angry and argumentative, stating that the police had no reason to pull him over and that his vehicle did not smell like marijuana. Id. at 4. However, Defendant admitted that he did not have a driver’s license but police still did not have reason to conduct the traffic stop. Id. Defendant was streaming the interaction with law enforcement on Facebook Live, and Stevens believed that Defendant was more involved with speaking to his online friends and the livestream than to the officers. Id. Stevens further testified that the smell of marijuana was continuing to emit from the car during the traffic stop so he pulled Defendant

out of the vehicle. Id. Stevens indicated that Defendant's eyes were bloodshot so Stevens decided to have Defendant undergo field sobriety tests. Id.

In the midst of all this, a friend of Defendant arrived on the scene and "began causing a scene" and attempted to get into Defendant's car as if to remove the car from the area or retrieve something from the car itself. Id. Stevens also testified that Defendant consistently denied smoking marijuana and "tried to tell [Stevens] that if he did smoke marijuana he would have cotton mouth and then...he spit on the ground and it was cotton mouth, his spit was about as white as that table." Id. Stevens stated that Defendant showed signs indicative of cannabis impairment during the field sobriety tests and his person smelt like burnt marijuana throughout the exchange. Id. The traffic stop lasted about thirty (30) minutes. Id. Following the sobriety tests and Stevens' belief that Defendant was impaired, Defendant was taken into custody and transported to UPMC. Id. at 5. Defendant was asked to submit to a blood test, but he declined to do so. Id. Defendant's vehicle was impounded following Defendant's arrest. Id.

Stevens applied for a search warrant for the car, which was ultimately granted. Id. Upon executing the search warrant, Stevens discovered two (2) ounces of marijuana in the center console in plastic bags and a prescription bottle without a label that Stevens believed contained Oxycodone. Id. at 6. Also found in the vehicle were "packs of Backwoods cigars that had the blunt guts in there like when you strip a cigar open to roll marijuana in it you take the guts out of...the tobacco itself." Id. These "tobacco guts" were inside a plastic container. Id. Additionally, at the hearing on this motion, Officer Dan Cole (Cole) testified similarly on behalf of the Commonwealth.

The Commonwealth presented the MVR footage of the traffic stop for this Court's review, marked Commonwealth's Exhibit 2. This footage shows the following. The patrol unit

is travelling down a residential street when a gold sedan makes an appropriate left turn in front of the officers. Both cars travel straight through an intersection, Defendant utilizes his right turn signal to park alongside the curb and the emergency lights are activated shortly thereafter. Stevens approaches the car on the driver's side and engages Defendant in conversation. Cole joins Stevens at the vehicle on the passenger side. After a few minutes, Defendant steps out of the car and places his hands on the roof with his phone in his hands while Stevens pats him down. Following the search Defendant sits on the curb and the officers continue to talk to him.

Stevens returns to the patrol unit and confirms that Defendant's driver's license is suspended. Stevens walks back to Defendant and informs him of the suspended license, which Defendant was already aware of. Stevens asks Defendant how long had it been since he smoked marijuana. Defendant tells Stevens to look at his eyes. Stevens asks if someone else was smoking in Defendant's vehicle. Defendant says his tongue would be white from cotton mouth if he had been smoking, then spit on the ground. Stevens tells Defendant that his mouth appears white, resembling cotton mouth. Defendant responds that he just woke up which is why his mouth looks like that. Stevens then runs Defendant through some field sobriety tests. During the field sobriety tests, another man begins to approach Defendant's car. Stevens tells him to stay away from the vehicle and other officers approach the car to deter the unknown man. Stevens places Defendant in handcuffs and asks for consent to search Defendant's car. Defendant denies consent for the vehicle search and is placed in the back of the patrol unit.

## **Discussion**

### ***Habeas Corpus Motion***

This Court will first consider Defendant's contention with the Commonwealth's evidence presented at the preliminary hearing for Count 1. 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 challenges the sufficiency of the Commonwealth's evidence on one of the charges brought against him. Defendant asserts that the Commonwealth failed to establish their *prima facie* burden on Count 1: Driving under the Influence of Controlled Substances. To commit this offense, an individual must be “under the influence of a drug or combination of

drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle." 75 Pa.C.S. § 3802(d)(2). Defendant's position is that the Commonwealth has failed to present evidence sufficient to establish a *prima facie* case that Defendant was under the influence of a drug or combination of drugs that would impair his ability to safely operate a car. Namely, Defendant contends that no blood was drawn from Defendant that would demonstrate his degree of impaired driving ability and no evidence was presented to the Court of Defendant driving erratically. Nevertheless, the Commonwealth relies on the transcript of the preliminary hearing to assert that their burden was met.

This Court finds that the Commonwealth has not established their burden on Count 1. This Court concedes that the Commonwealth has asserted evidence to satisfy a *prima facie* case that Defendant was under the influence of marijuana. The officers testified to smelling a very strong scent of burnt marijuana from Defendant and his car. Pursuant to the Medical Marijuana Act (MMA), it is unlawful to smoke marijuana, even if an individual possesses a medical marijuana card, which Defendant did not. *See* 35 P.S. § 10231.304(b)(1). Stevens also indicated that Defendant's eyes were bloodshot and he had cotton mouth, both of which are signs of marijuana consumption. Nevertheless, the Commonwealth did not establish that Defendant was unable to safely operate his vehicle. No testimony or evidence was presented that showed Defendant was driving erratically, speeding, or violating any provision of the Motor Vehicle Code. Therefore, since the Commonwealth failed to demonstrate a *prima facie* case on all elements of the contested offense, Count 1 must be dismissed.

### ***Suppression Motions***

Defendant argues that the traffic stop of Defendant had no identifiable traffic violation or sufficient probable cause to support law enforcement effectuating the stop of Defendant. The

Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend IV.

“Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure...within the meaning of this provision.” Whren v. U.S., 517 U.S. 806, 809 (1996) (internal quotations omitted). The stop of an automobile “is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” Id. at 810. “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” Id.; *See* Pennsylvania v. Mims, 434 U.S. 106, 109 (1977). “For a stop based on the observed violation of the Vehicle Code or otherwise non-investigable offense, an officer must have probable cause to make a constitutional vehicle stop.” Commonwealth v. Harris, 176 A.3d 1009, 1019 (Pa. Super. 2017). “Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense.” Id.

Since there was no discernable traffic violation, Defendant believes that the vehicle stop was unlawful. The Commonwealth argues that the smell of burnt pot emitting from Defendant’s car while he was operating it provided law enforcement with probable cause to conduct the traffic stop. As previously stated, the MMA has prohibited the ingestion of marijuana by smoking it even if the individual possesses a medical marijuana card. As a result, smoking marijuana is still a crime in Pennsylvania. The testimony from both officers on scene on the day in question was unequivocal in that the smell of burnt marijuana was incredibly strong and came from Defendant’s car. Therefore, this Court must hold that the officers had

probable cause to conduct a traffic stop of Defendant's vehicle and no evidence resulting from the stop shall be suppressed on these grounds.

In the alternative, Defendant argues that, if the Court finds there was probable cause for the vehicle stop, Defendant challenges the search warrant issued for his vehicle as defective. 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).



The search warrant for Defendant's vehicle, marked as Exhibit A within Defendant's motion, was obtained by Stevens on October 1, 2021. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On September 30, 2021 at approximately 1725 hours, I was operating an unmarked patrol vehicle, traveling east bound on Memorial Avenue within the 1200 block. A gold Chevrolet Malibu turned onto Memorial Avenue, east bound from 10th Avenue and began traveling directly in front of my patrol vehicle. As the Malibu traveled in front of me, I immediately began smelling a strong odor of burnt cannabis. As we followed the Malibu into the 1100 block of Memorial Avenue, we continued to smell the odor of burnt cannabis...Once the vehicle entered into the 1100 block of Memorial Avenue, it parked on the south side of the roadway where we conducted a traffic stop. I approached the vehicle and made contact with the driver and sole occupant of the vehicle who identified himself as Brian DUVALL...DUVALL was found to have suspended driving privilege. DUVALL denied any marijuana use, or possession of marijuana within the vehicle. The interior of the vehicle smelled very strong of burnt cannabis. (2) pen packages of "Backwoods" cigars were observed to be laying on the front passenger seat. Said cigars are commonly used to roll cannabis and then smoke in form of a blunt.

Exhibit A, at 2.

Defendant believes that the search warrant application does not demonstrate sufficient probable cause to believe that marijuana or drug paraphernalia would be located inside Defendant's car. This Court disagrees with Defendant's position on this particular issue. Based on the information provided in the search warrant application, this Court finds that there was a fair probability that relevant evidence would be located in Defendant's vehicle. The application included information about the prominent scent of burnt marijuana and Stevens identification of cigars typically used to smoke marijuana. Therefore, this Court finds that the totality of the circumstances included in the search warrant application provided sufficient information for the magistrate to conclude that it was likely that marijuana or drug paraphernalia would be

found inside Defendant's car. As a result, no evidence seized pursuant to this search warrant shall be suppressed.

### **Conclusion**

The Court finds that the Commonwealth failed to meet their *prima facie* burden on all elements of Count 1, Driving under the Influence of Controlled Substances. Therefore, Count 1 shall be dismissed. The Court also finds that the requisite probable cause to substantiate a traffic stop of Defendant was present in this case. Therefore, the evidence obtained as a result shall not be suppressed. Lastly, the Court finds that the affidavit of probable cause in the search warrant for Defendant's vehicle provided sufficient evidence to establish probable cause for law enforcement to search. As such, Defendant's Motion to Suppress the evidence seized pursuant to the search warrant is denied.

### **ORDER**

**AND NOW**, this 13th day of July, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motion is hereby **GRANTED** and Count 1: Driving under the Influence of Controlled Substances is hereby **DISMISSED**. The Defendant's Motions to Suppress Evidence are **DENIED**.

By the Court,

Nancy L. Butts, President Judge

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