

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1488-2021**
 v. :
 :
 AARON YOUNG, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Aaron Young (Defendant) was charged with Possession with Intent to Deliver¹, Possession of a Controlled Substance², Possession of Drug Paraphernalia³, and a summary traffic offense⁴. The charges arise from police conducting a traffic stop of Defendant's car in the parking lot of an apartment complex. Defendant filed this Omnibus Pretrial Motion on February 25, 2022. This Court held a hearing on the motion on May 17, 2022.

In his Omnibus motion, Defendant first argues that the warrantless search of his vehicle was based on coerced consent and the evidence seized and statements made as a result must be suppressed. Secondly, Defendant argues that the traffic stop was extended into a drug investigation without reasonable suspicion and all evidence seized pursuant to the unlawful investigation should be suppressed. Thirdly, Defendant maintains the search warrant obtained to search his vehicle is fruit of the poisonous tree and all evidentiary items seized from the vehicle pursuant to the warrant must be suppressed. This Court ordered counsel to file briefs and Defendant filed his brief on July 12, 2022 and the Commonwealth responded on August 16, 2022.

Background and Testimony

¹ 35 Pa.C.S. § 780-113(a)(30).

² 35 Pa.C.S. § 780-113(a)(16).

³ 35 Pa.C.S. § 780-113(a)(32).

⁴ 75 Pa.C.S. § 3334(a).

Officer Gino Caschera (Caschera) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. On October 31, 2021, at approximately 11:00 p.m., Caschera was on duty patrolling the area of Memorial Avenue and First Avenue in the city of Williamsport in a marked patrol unit with his partner, Officer Bonnell (Bonnell). N.T. 5/17/2022, at 12, 13. Caschera observed a white Lincoln make a wide turn onto First Avenue from Park Place that caught his attention. Id. at 12. Caschera positioned his patrol unit behind the Lincoln and watched as it turned onto Park Lane without utilizing a turn signal. Id. The Lincoln immediately turned off of Park Lane into a parking lot, nearly striking a parked dump truck. Id. at 13. Following this observation, Caschera activated his emergency lights and initiated a traffic stop on the Lincoln. Id. At this point, Caschera had viewed three (3) separate traffic violations and was concerned the driver may have been intoxicated. Id.

The Lincoln pulled into a parking spot and Caschera made contact with the driver, later identified as Defendant, who had rolled his window down approximately a third of the way. Id. Defendant immediately questioned Caschera why he was being stopped and Caschera “informed him that he had a turn signal violation, but not to worry I wasn’t looking to give him a citation. Again, I just wanted to make sure he was not intoxicated.” Id. at 13-14. Caschera further testified that he could immediately smell the odor of marijuana coming out of the vehicle. Id. at 14. Caschera asked Defendant for his license and registration. Id. Defendant provided his license but said that he did not have any paperwork in his vehicle. Id. Caschera asked if Defendant had electronic paperwork on his cell phone and Defendant said yes and began searching on his phone for his insurance information. Id. While Defendant was looking on his phone, Caschera inquired where Defendant was coming from and Defendant simply

replied Sheetz. Id. When Caschera asked Defendant what he purchased from Sheetz Defendant did not respond. Id.

Caschera noted that Defendant appeared to be shaking and breathing heavily as if he were nervous. Id. Caschera repeated his question asking Defendant what he bought from Sheetz and Defendant said that he had changed his mind. Id. Eventually, Defendant found his insurance information on his phone and held it up to the window for Caschera to view it. Id. As Caschera leaned in closer to the car to see better, he stated the odor of raw marijuana became stronger. Id. at 14, 15. Caschera asked Defendant to step out of his vehicle and speak with him in between Defendant's car and the patrol unit. Id. Caschera testified to three (3) reasons he wished to speak with Defendant out of the vehicle: (1) he believed it makes people more comfortable during a traffic stop to speak face-to-face rather than have the officer speak down to them, (2) Caschera wanted to ensure Defendant was not impaired and watching him exit the vehicle would give Caschera a chance to observe his body language for impairment, and (3) Caschera wanted the entire interaction to be captured on the MVR footage and Defendant's position in his parked car would not have made that possible. Id. at 14-15. Caschera denied manipulating the MVR in any way and tampering with the settings. Id. at 16. Caschera stated that the footage from the night in question is missing audio due to a lack of out-of-car microphone in the unit. Id.

Caschera brought Defendant to the front of his patrol car and explained that he could smell raw marijuana emitting from Defendant's vehicle. Id. Defendant admitted to smoking marijuana earlier that day. Id. at 17. Caschera testified he was familiar with the Medical Marijuana Act and knew that the Act prohibited those carrying a medical marijuana card to smoke medicinal marijuana. Id. For this reason, Caschera said he was concerned that illegal

marijuana was located in Defendant's car. Id. Caschera asked Defendant for consent to search the vehicle and Defendant "stated he was unsure, and he – he didn't feel there was a reason for me to search his vehicle." Id. Caschera indicated he repeated his reasoning to Defendant, namely the smell of marijuana, and explained to Defendant that "I can't just search his vehicle based on the odor of marijuana. New case law which states that I would have to get a search warrant, tow the vehicle, obtain a search warrant for the vehicle, and go that route." Id. Caschera also told Defendant that he was not concerned about a small amount of marijuana, but he wanted to make sure nothing else illegal was in the car. Id. at 18. While Caschera was explaining all of this to Defendant, Defendant told Caschera to go ahead and unlocked his vehicle. Id. at 17. Caschera told Defendant that he did not have to consent to his car being searched and if he denied consent to search he would not face additional consequences. Id. Defendant repeated, "go ahead" and unlocked the vehicle again with the key fob. Id.

Bonnell began searching the car while Caschera continued to speak with Defendant. Id. Defendant was pacing back-and-forth but Caschera did not think anything was out of the ordinary. Id. However, Caschera stated that Defendant had trouble answering normal questions, such as his place of employment, which made Caschera believe that he was very nervous. Id. at 18. Defendant was "fixated" on Bonnell while searching the vehicle, was not making eye contact with Caschera, and appeared to walk towards the door of an apartment building to the extent that Caschera had to reprimand him to come back towards the car or have a seat. Id. at 20. Caschera believed the interaction to be casual but thought Defendant was exhibiting signs of nervousness. Id. at 20-21. During his conversation with Defendant while waiting for Bonnell to conduct the search, Bonnell told Caschera to place Defendant in handcuffs. Id. at 21. Caschera did so and searched Defendant incident to the arrest and located a black container

containing raw marijuana in the pocket of his hoodie. Id. After Defendant had been placed in the patrol unit, Bonnell returned to Defendant's car and retrieved a brick of heroin and held it up for Caschera to see. Id. Defendant then said, "they placed that bag of heroin in the car." Id. Caschera further testified that neither he nor Bonnell had mentioned that there was heroin involved prior to Defendant's statement. Id.

At this point, Caschera asked his supervisor if they could tow Defendant's vehicle in order to get a search warrant. Id. Since Defendant was in custody and a suspected controlled substance had been found, Caschera thought Defendant's consent would have been coerced so he decided to proceed with caution. Id. at 22. At the direction of the attorney for the Commonwealth, Caschera had returned to the Schoolhouse Apartment complex where the incident had taken place in order to capture photographs of the scene prior to testifying at the hearing on this motion. Id. at 23. The Commonwealth introduced these photographs, marked as Commonwealth's Exhibits 1 through 3, which detailed the parking lot and entrances to the apartment building. Id. at 23-25. Defendant told Caschera that his girlfriend lived in this apartment complex. Id. at 26. Caschera denied towing a vehicle from this parking lot that belonged to a tenant or their guest unless the vehicle was stolen. Id. at 27.

Caschera believed he had probable cause to obtain a search warrant for Defendant's car because of the odor of marijuana, Defendant's confession to smoking marijuana earlier that day, displaying deceptive behaviors, "such as telling me he was coming from Sheetz but having no – no items from Sheetz in his vehicle. I asked him what he purchased at Sheetz, and he just said I changed my mind. He was dismissive and didn't want to answer questions, and was very apparently nervous. When I got him out of the car it was the same – same type of behavior, which to me usually leads to someone who's nervous about what's in the vehicle." Id. at 19.

Caschera agreed that Defendant did not agree to the search of his car until Caschera mentioned towing it, but did not believe it was a direct correlation. Id. at 27. Caschera could not recall how long it was before he returned Defendant's license, but he did remember giving it back to him after a considerable amount of time. Id. at 29.

Officer Nikita Bonnell (Bonnell) of the Williamsport City Police also testified on behalf of the Commonwealth. Bonnell testified that she has been partners with Caschera for approximately three (3) years and they routinely operate vehicle 68. Id. at 30. This unit is one of the oldest vehicles in the department and is missing a recording device that allows for audio to be recorded outside the vehicle. Id. at 31. Bonnell stated that she has touched the MVR camera occasionally but only to rotate it. Id. Bonnell was not aware of the camera's zoom settings, if any existed. Id. On October 30, 2021, Bonnell came in contact with Defendant after watching a white Lincoln make a wide turn onto First Avenue. Id. at 32. The vehicle then turned onto Park Lane without using a turn signal. Id. The car entered a parking lot for an apartment complex and nearly struck a parked dump truck. Id. Caschera activated the emergency lights and conducted a traffic stop. Id. Bonnell approached the vehicle on the passenger side while Caschera made primary contact with Defendant. Id. at 33.

While Caschera spoke with Defendant, Bonnell used a flashlight to look into the car. Id. at 34. Bonnell said it is standard procedure for them to remove a driver from their vehicle during a traffic stop for safety in order to capture the stop on the MVR as well as make citizens more comfortable during the interaction. Id. at 35. Bonnell was able to observe Defendant when he was outside of his vehicle interacting with Caschera at the front of the patrol unit. Id. at 36. Bonnell stated that Defendant was pacing in circles and would stare at his car while speaking with Caschera. Id. Bonnell believed that Defendant's demeanor appeared to be very

nervous. Id. Following Defendant's consent to search the vehicle, Bonnell put gloves on and began searching the passenger side first. Id. at 37. Upon opening the front passenger door, Bonnell immediately noticed that the "center panel where the radio would be right under the center console panel was completely pulled off of the plastic part." Id. Bonnell looked in the panel but did not find anything there. Id. at 38.

However, upon looking in the passenger side panel door, Bonnell discovered a green vial containing flakes of marijuana. Id. While on the driver's side, Bonnell noticed the center console panel was also disconnected, similarly to the passenger side. Id. Bonnell pulled on this panel slightly and observed a clear baggie containing a brick of heroin. Id. Bonnell removed the heroin and placed it on the front seat. Id. Bonnell quickly walked over to Caschera and advised him that Defendant would need to be handcuffed. Id. Bonnell returned to the vehicle and took possession of the suspected heroin. Id. at 39. Bonnell could not remember if she showed the seized evidence to the MVR camera. Id. Bonnell indicated that once the brick was counted, seventy (70) bags of heroin were contained in the bundle. Id. Defendant's car was towed and a search warrant for the car was obtained. Id. at 40. When executing the search warrant, no additional evidence was located in the vehicle. Id. Bonnell later clarified that she misnamed the area of Defendant's car where the heroin was found by calling it the center console when in reality it was considered a "side panel", under the radio. Id. at 45, 46.

Defendant presented the MVR footage, marked as Defense Exhibit 1. The footage shows the following. Caschera and Bonnell's patrol unit is driving around the city of Williamsport in the evening hours after the sun has set. After approximately a minute and a half, a white car makes a very wide right turn into the incorrect lane of travel then turns left without utilizing a turn signal. The vehicle then turns into a parking lot, again without a turn

signal, and inches very close to a dump truck parked close to the entrance. The driver goes into reverse and then makes a second attempt to get around the truck and ultimately pulls into a parking spot. The patrol unit's emergency lights are activated and both officers exit the patrol unit, but only Caschera is visible on screen at the driver's door. No intelligible sounds are decipherable outside the patrol unit. Eventually, Defendant steps out of the vehicle and he and Caschera move in front of the patrol unit and continue conversing. Defendant has his car keys in his hand during his interaction with Caschera. Bonnell appears on video and watches Defendant and Caschera before ultimately joining in their conversation. A few minutes later, Bonnell hands Caschera what appears to be Defendant's license and everyone walks off screen, Bonnell going towards Defendant's vehicle and Caschera and Defendant exiting the other direction.

After several minutes, Bonnell returns on camera walking towards Caschera and Defendant's off-screen position and gestures at them. Bonnell appears on screen again and returns to the driver's side front door while Caschera puts Defendant in the backseat of the patrol unit. Bonnell approaches the patrol vehicle and holds up a brick of suspected heroin close to the camera. Caschera advises Defendant he is being audio and video recorded. Defendant asks why he was handcuffed and, assuming he noticed what Bonnell retrieved from his vehicle, Defendant questions what the substance is. Caschera responds, "a lot of heroin." Defendant blames the police for placing the heroin in his car and denies having anything in his vehicle. Defendant repeatedly denies possessing any heroin and continues to blame law enforcement while Bonnell writes up the incident. Defendant is eventually transported away from the scene.

Discussion

Defendant asserts several suppression issues for the Court’s consideration, namely that the warrantless search of Defendant’s vehicle was the result of coerced consent, the traffic stop was unreasonably extended into a drug investigation, and the search warrant for Defendant’s vehicle is fruit of the poisonous tree and evidence seized by police from all incidents must be suppressed.

Drug Investigation

The Court first addresses Defendant’s contention that the traffic stop was unreasonably extended into an investigation for drugs and police lacked reasonable suspicion to do so. The Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures. A routine traffic stop is more like a brief Terry⁵ stop than an arrest. *See Arizona v. Johnson*, 555 U.S. 323, 330 (2009). “Although there may be no question regarding the validity of the initial traffic stop, the crucial question is when the validity of that stop ceased.” *Commonwealth v. Strickler*, 757 A.2d 884, 891 (Pa. 2000). “Its tolerable duration is determined by the seizure’s ‘mission,’ which is to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. U.S.*, 575, U.S. 348 (2015) (internal citations omitted). “Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* at 349. A traffic stop becomes unlawful if it is “prolonged beyond the time reasonably required” to issue a ticket for the violation. *Id.* at 355. Aside from issuing a ticket, law enforcement’s mission during a traffic stop also includes “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Id.* On-scene investigation into other crimes, however, detours from that

⁵ Terry v. Ohio, 392 U.S. 1 (1968).

mission.” Id. at 357. “An unreasonable extension occurs when an officer, without reasonable suspicion, diverts from the stop’s traffic-based purpose to investigate other crimes.” United States v. Green, 897 F.3d 173, 179 (2018).

To establish reasonable suspicion, an officer “must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity.” Commonwealth v. Basinger, 982 A.2d 121, 125 (Pa. Super. 2009) (internal citations omitted). The court looks to the totality of the circumstances to determine whether the officer “who initiated the stop had a particularized and objective basis for suspecting the individual stopped.” Id. “Where the purpose on an initial traffic stop has ended and a reasonable person would not have believed that he was free to leave, the law characterizes a subsequent round of questioning by the police as an investigative detention or arrest.” Commonwealth v. By, 812 A.2d 1250, 1255 (Pa. Super. 2002). The fundamental inquiry of the court is to objectively determine “whether the facts available to the officer at the moment of the [intrusion] warrant a man of reasonable caution in the belief that the action taken was appropriate.” Commonwealth v. Zhahir, 751 A.2d 1153, 1156 (Pa. 2000). “This inquiry will not be satisfied by an officer’s hunch or unparticularized suspicion.” Commonwealth v. Reppert, 814 A.2d 1196, 1204 (Pa. Super. 2002).

Defendant contends that the officers did not have reasonable suspicion to abandon the traffic stop and commence a drug investigation. Defendant emphasizes that upon pulling Defendant over, Caschera almost immediately stated that he was not going to issue a citation for the turn signal violation. Following this statement, Caschera checked Defendant’s documentation and verified that Defendant had a valid license and current insurance. Defendant

believes that the interaction should have concluded there, but Caschera continued. Defendant also believes that his alleged nervousness does not amount to reasonable suspicion. In his brief, Defendant also asserts that the MVR footage does not show that he nearly struck a dump truck as the officers testified, but that he drove slowly and carefully in order to avoid hitting the vehicle that was parked in the entrance to the parking lot. Defendant argues that the totality of the circumstances did not provide Caschera with reasonable suspicion and therefore, the evidence seized during the search of the vehicle should be suppressed.

The Commonwealth asserted in their brief that it is perfectly reasonable for law enforcement to investigate further to confirm a potential DUI. This includes seeking consent to search the vehicle for controlled substances. The Commonwealth believes that Caschera had reasonable suspicion to continue the investigation in large part because Defendant likely smoked marijuana illegally. As such, the Commonwealth believes Defendant was lawfully detained when he was asked for consent to search the vehicle.

This Court is now presented with the task of determining if and when the traffic stop was unreasonably extended. Testimony indicated that Caschera noticed a few minor traffic infractions and believed that Defendant nearly hit a dump truck. For these reasons, Caschera was concerned Defendant was intoxicated at the wheel. Caschera further testified that he told Defendant he was not worried about citing Defendant's failure to utilize his turn signal. Caschera's main purpose was to determine if Defendant was impaired and he grew more concerned after smelling the odor of raw marijuana once Defendant partially opened the driver's window. Caschera verified Defendant's driver's license and insurance, then asked Defendant to exit the vehicle, which he is permitted to do pursuant to Pennsylvania v. Mimms, 434 U.S. 106 (1977).

Caschera testified part of the reason for asking Defendant to leave his vehicle was to observe Defendant's movements to assist Caschera in establishing if Defendant was impaired. Although Defendant admitted to smoking marijuana earlier that day, no further testimony or evidence was presented that indicated Caschera or Bonnell had continuing concern of Defendant's potential level of impairment. Up to this point, Caschera was well within law enforcement's mission during a traffic stop, namely to ascertain if Defendant was intoxicated while driving and verify he is a licensed driver. However, for the following reasons, the opinion of the Court is the moment Defendant exited his car and was asked for consent to search the vehicle is where the authority for the seizure ends. After Defendant was asked to exit the vehicle, neither officer had Defendant undergo field sobriety tests. Additionally, no testimony or evidence demonstrated that Defendant's appearance was consistent with an individual that had recently smoked marijuana, such as bloodshot eyes or cotton mouth. Caschera provided contradictory testimony stating he was concerned there was marijuana in Defendant's vehicle after Defendant admitted to smoking earlier in the day, but communicated to Defendant he was not worried about finding a small amount of marijuana and wanted to search the vehicle to "make sure there's nothing illegal in the car." 5/17/2022, at 18.

It is apparent that at this point the officers are no longer bothered with evaluating Defendant's ability to drive safely but have switched into attempting to search Defendant's car for evidence of a separate possessory offense. As previously discussed, an "unreasonable extension occurs when an officer, without reasonable suspicion, diverts from the stop's traffic-based purpose to investigate other crimes." United States v. Green, 897 F.3d 173, 179 (2018). The Supreme Court held that a dog sniff "is a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing.'" Rodriguez v. U.S., 575 U.S. 348 (2015) (citing Indianapolis v.

Edmond, 531 U.S. 32, 40-41 (2000). If a dog sniff is considered a measure meant to find evidence of criminal behavior, a physical search of the vehicle would certainly fall under the same category. As a result, the Court believes that the mission of the traffic stop was abandoned when the officers stopped attempting to ascertain Defendant's level of impairment and turned to investigating other crimes when they asked to search his car.

The next question that the Court must answer is whether the officers had reasonable suspicion to support this unreasonable extension. Based on the testimony presented, the Court believes this question must be answered negatively. The law requires reasonable suspicion to be more than an officer's mere hunch or unparticularized suspicion. In the case *sub judice*, the record reflects that Caschera and Bonnell suspected Defendant had contraband in his vehicle, but the Court fails to find support in the record to verify this suspicion. Neither Caschera's nor Bonnell's testimony indicate specific or particular facts that led them to believe criminal activity was afoot. The Superior Court held that nervousness in someone subjected to a traffic stop does not rise to the level of reasonable suspicion. Commonwealth v. Cartagena, 63 A.3d 294, 306 (Pa. Super. 2013). Moreover, following the enactment of the Medical Marijuana Act, it is no longer *per se* illegal to possess marijuana and the smell of marijuana alone does not amount to sufficient probable cause to permit the warrantless search of a vehicle.

Commonwealth v. Barr, 266 A.3d 25, 41, 44 (Pa. 2021). As such, the smell of marijuana may only be considered as a factor when examining the totality of the circumstances. Id. at 44.

In considering the totality of the circumstances as required, the Court believes the officers were determined to search Defendant's vehicle regardless. The only factors identified to support a finding of reasonable suspicion at the time the traffic stop was extended were Defendant's alleged nervousness and reluctance to answer officer's questions, the smell of raw

marijuana, and Defendant's confession to smoking marijuana earlier that day. Nevertheless, the Court is of the opinion that these factors are not sufficient to establish reasonable suspicion to support the unreasonable extension of the traffic stop. "It is the rare person who is not agitated to some extent when stopped by police, even if the driver is a law-abiding citizen... Whether described as nervousness, apprehension, concern or otherwise, forced interaction with a police officer is not an everyday occurrence for the average citizen." Cartagena, 63 A.3d at 306.

Although the Court acknowledges the smell of marijuana is a small factor, the remainder of the record demonstrates the officers' unparticularized suspicion that Defendant possessed contraband. As previously stated, Caschera testified that he was concerned Defendant possessed marijuana after smelling it upon approaching his vehicle, but told Defendant he was not worried about finding a small amount of marijuana, just that he wanted to see if Defendant had anything illegal in the vehicle. If Caschera was not concerned with finding a small amount of marijuana as he indicated himself during testimony, this Court struggles to determine what he was looking for in Defendant's vehicle. Aside from Defendant's purported nervousness, no other evidence suggests that Defendant may have possessed other controlled substances. It is apparent from these facts that Caschera had a mere hunch that Defendant hid other narcotics in his car and wanted to go looking for them. For these reasons, this Court finds that the unreasonable extension of the traffic stop into a drug investigation was not supported by reasonable suspicion.

Consent to Search

Defendant also asserts that the warrantless search was based on Defendant's coerced consent. 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; PA 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 most applicable exception to the warrant requirement in this case is when a warrantless search is conducted pursuant to actual, voluntary consent.

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.”

Commonwealth v. Strickler, 757 A.2d 884, 888 (Pa. 2000). “Where the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus.” Id. at 888-89. However, when “a consensual search has been preceded by an unlawful seizure, the exclusionary rule requires suppression of the evidence obtained absent a demonstration by the government both of a sufficient break in the causal chain between the illegality and the seizure of evidence, thus assuring that the search is not an exploitation of the prior illegality, and of voluntariness.” Id. at 889.

Defendant contends that the consent he gave for the search of his vehicle was the result of coercion and was therefore not knowing, intelligent, or voluntary. Under Fourth Amendment jurisprudence, evidence obtained as the result of an unlawful search or seizure must be suppressed regardless of the voluntariness of an individual’s consent. Commonwealth v. Strickler, 757 A.2d 884, 888-89 (Pa. 2000). This Court has already determined that the traffic stop, though lawful at its inception, became unreasonably extended into an investigative detention without reasonable suspicion when law enforcement abandoned their evaluation of Defendant’s impairment. Defendant’s consent to the search of his car is moot due to the unlawful investigative detention and we are obligated to suppress the evidence obtained on

those grounds unless the Commonwealth can demonstrate the search was not “an exploitation of the prior illegality.” Strickler, 757 A.2d at 889. It is the opinion of this Court that the Commonwealth has not demonstrated that this search was not an exploitation of the unlawful investigative detention and therefore, Defendant’s consent is immaterial and the evidence seized pursuant to the warrantless search of Defendant’s vehicle must be suppressed.

If, alternatively, the extension of the traffic stop was supported by reasonable suspicion, the Court still finds that Defendant’s consent was not voluntary. “The burden of proving a valid consent to search, since it represents a waiver of a substantial constitutional right, rests with the Commonwealth.” Commonwealth v. Griffin, 336 A.2d 419, 421 (Pa. Super. 1975). To establish a voluntary consensual search, the Commonwealth must prove 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.” Commonwealth v. Randolph, 151 A.3d 170, 179 (Pa. Super. 2016) (citation and internal quotation marks omitted). “[D]espite the fact that the voluntariness of a custodial consent is suspect, no one fact has talismanic significance, and voluntariness may be established by the Commonwealth if all the facts and circumstances indicate that the consent was voluntarily given.” Commonwealth v. Dressner, 336 A.2d 414, 415 (Pa. Super. 1974).

Since the MVR footage is largely without audio, this Court must rely on the testimony provided at the hearing on this motion to determine the events of the interaction between Defendant and the officers. Upon review of this testimony, it is clear that Caschera’s “explanation” of the process he was going to utilize to search Defendant’s car if he did not consent to the search was coercive. *See* Commonwealth v. Williams, Lyc. Cty No. CR-1325-2020 (Butts, P.J., 07/16/2021) (holding officer’s explanation of process to obtain a search

warrant for defendant's phone was implied coercion). Essentially, Caschera informed Defendant that law enforcement would need to obtain a search warrant in order to tow Defendant's vehicle and then apply for a second search warrant to conduct an actual search of the car. Although Caschera may have been attempting to inform Defendant of the law as it currently stands, this clarification is coercion. This Court understands that what Caschera articulated to Defendant about the process for searching the vehicle if he did not consent may be the typical procedure, but we cannot ignore the implied compulsion on Defendant to consent to the search based on the ramifications denying consent would bring. Testimony was clear that, when initially asked for consent to search his vehicle, Defendant denied consent and did not understand the need for the search. Only after Caschera "explained" that the officer would attempt to tow and then search the car did Defendant unlock his vehicle and tell them to go ahead. It is the Court's opinion that Defendant did not feel that he could decline to oblige Caschera's request to search and the underlying implication during the explanation of this process was to manipulate Defendant into consenting so as not to vastly prolong the officers' interactions with Defendant. Therefore, the Court finds that Defendant's consent was the unlawful result of implied coercion and the evidence seized from the vehicle as a result of this consent shall be suppressed.

Fruit of the Poisonous Tree

Lastly, Defendant contends that the search warrant obtained for the vehicle stems from the fruit of the poisonous tree. The United States Supreme Court held that "evidence constitutes poisonous fruit, and, thus, must be suppressed, if, '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.” Commonwealth v. Shabazz, 166 A.3d 278, 289 (Pa. 2017) (quoting Wong Sun v. United States, 371 U.S. 471, 488 (1963). “The fruit of the poisonous tree doctrine excludes evidence obtained from, or acquired as a consequence of, lawless official acts; it does not exclude evidence obtained from an independent source.” Commonwealth v. Brown, 700 A.2d 1310, 1318 (Pa. Super. 1997) (internal quotations omitted); *See* Commonwealth v. Ariondo, 580 A.2d 341, 347 (Pa. Super. 1990). “The burden rests on the Commonwealth to demonstrate that the secondary evidence was gathered by means sufficiently distinguishable from any illegality so as to be ‘purged of its primary taint’ rather than deriving from exploitation of the illegality.” *Id.* at 1319; *See* Wong Sun, 371 U.S. at 488.

This Court has determined that Defendant was subjected to an unlawful investigative detention and that his consent to search his vehicle was improperly coerced. The Commonwealth is not able to purge the primary taint of the evidence used to obtain a search warrant. Therefore, this Court must find that the search warrant is the result of fruit of the poisonous tree that cannot be established through an independent source and any evidence seized pursuant to the search warrant must be suppressed.

Conclusion

The Court finds that the police did not have reasonable suspicion to continue the traffic stop into a drug investigation. The Court also finds that the Defendant’s consent to search his vehicle was unlawfully coerced by law enforcement’s conduct and was therefore not a voluntary, knowing, or intelligent waiver of his rights. Therefore, the evidence obtained from the search of Defendant’s car shall be suppressed. Lastly, the Court finds that the search warrant for Defendant’s vehicle was fruit of the poisonous tree and all evidence seized pursuant to the warrant must be suppressed.

ORDER

AND NOW, this 3rd day of October, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motions to Suppress Evidence are **GRANTED**. It is **ORDERED** and **DIRECTED** that the evidence seized from the Defendant's vehicle and any evidence discovered therefrom shall be **SUPPRESSED**. Furthermore, it is **ORDERED** and **DIRECTED** that any evidence obtained pursuant to the search warrant for Defendant's vehicle shall also be **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (TB)
David Lampman, Esq.
Law Clerk (JMH)