

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1120-2022  
vs. :  
ROCELLUS CARTER, : OMNIBUS MOTION  
Defendant :

**OPINION AND ORDER**

Rocellus Carter (Defendant) was charged with Firearms not to be Carried Without a License<sup>1</sup> and Marijuana – Small Amount Personal Use<sup>2</sup>. The charges arise from police conducting a traffic stop at which time the Defendant was a passenger and his girlfriend was driving. Defendant filed an Omnibus Pretrial Motion on October 19, 2022. In his Omnibus Motion, Defendant first argues that the police had no authority to stop the vehicle he was a passenger in because the arresting officer did not observe the alleged traffic violations. Secondly, Defendant argues that the search of said vehicle was unlawful because neither the driver nor Defendant gave consent to search the vehicle or, in the alternative, the search was a result of coercion and duress.

The Court held a hearing and argument on the motion on December 19, 2022. At the hearing, the Commonwealth presented testimony from Detective Tyson Havens of the Lycoming County Narcotics Unit, and Corporal Tyler Morse of the Pennsylvania State Police, as well as the recording from Trooper Nickolaus Marple’s police vehicle as Commonwealth Exhibit 1.

**Background and Testimony**

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<sup>1</sup> 18 Pa. C.S.A. §6106(a)(1).

<sup>2</sup> 35 P.S. §780-113(a)(31).

Detective Havens testified that on August 11, 2022, he was assisting Pennsylvania State Police conducting surveillance at the 6<sup>th</sup> and High Mini-Mart parking lot, an area with high drug-related crimes in Williamsport, PA. Havens testified that he observed a black Nissan Pathfinder entering the lot. Once the vehicle entered the lot, Havens lost sight of the vehicle for approximately four minutes. As a result of the lapse of time, Havens suspected that a drug transaction took place. The black Pathfinder then left the lot and traveled south on 6<sup>th</sup> avenue, and Havens followed in an unmarked police vehicle. While following the vehicle, Havens observed the driver fail to stop at the stop sign and instead stop  $\frac{3}{4}$  of a car length in front of the stop sign in the intersection of 6<sup>th</sup> Avenue and Park Avenue. The vehicle continued on 6<sup>th</sup> Avenue and turned West on Memorial Avenue without stopping at the stop sign before making the turn onto Memorial Avenue. After Havens observed these traffic violations, he communicated them over the radio to Corporal Morse.

Morse testified that after he was made aware of the traffic violations he entered the area in his marked patrol car. He made a traffic stop of the black Pathfinder on Memorial Avenue. Trooper Nickolaus Marple pulled in behind him. Morse testified that his MVR did not have audio, but Marple's did and recorded the interaction from behind Morse's vehicle. Morse and Marple approached the vehicle. Morse testified that he spoke with the driver and introduced himself and asked for license and registration. Lilah Marshall was the driver of the vehicle. Morse interviewed Ms. Marshall while Marple interviewed the passenger, who was identified as the Defendant. While Morse was interviewing Ms. Marshall, she admitted the traffic violations and indicated the vehicle had problems stopping. During this interview and while Marple was interviewing the Defendant, Marple recognized the smell

of raw marijuana. Morse asked if either party had a medical marijuana card. Both indicated they did not. Morse then asked the Defendant how much marijuana he had. Defendant then pulled a “dime” bag of marijuana out of the black satchel on his chest. Morse then put on gloves and asked if there were any weapons in the car. Both parties indicated there were not. At the same time, Morse asked both parties for consent to search the car. Morse testified that both nodded their heads and the driver said yes.

Morse then asked the two occupants to get out of the vehicle and specifically, that the Defendant leave the satchel in the car, which he did. Additionally, Trooper Morse told the Defendant that they were going to have to take the marijuana out of the satchel. Morse testified that there was no indication that either party did not want the search to take place and neither questioned why he was going to search the car. Ms. Marshall and the Defendant sat on the curb unrestrained while the search took place. During the search of the Defendant’s satchel, Morse found the bag of marijuana as well as rolling papers. He noticed that the satchel was heavy and asked again if there were any weapons in the car; both indicated no. Morse then found a handgun in the Defendant’s satchel.

## **Discussion**

Defendant challenges the legality of the traffic stop, as well as the warrantless search of the vehicle and his satchel.

### ***Traffic Stop***

Defendant contends that the traffic stop was unlawful and that Morse had no

authority to stop the vehicle. 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. *Commonwealth v. Harris*, 176 A.3d 1009, 1019 (Pa. Super. 2017) citing *Commonwealth v. Chase*, 960 A.2d 108 (Pa. 2008). The United States Supreme Court has held that any violation of the Motor Vehicle Code legitimizes a stop, even if the stop is merely a pretext for an investigation of some other crime. See *Whren v. U.S.*, 517 U.S. 806, 812–13, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (establishing a bright-line rule that any technical violation of a traffic code legitimizes a stop, even if the stop is merely a pretext for an investigation of some other crime); *Chase, supra* (indicating that if the police can articulate the necessary quantum of cause a constitutional inquiry into the officer's motive for stopping the vehicle is unnecessary); *Harris*, 176 A.3d at 1020. Here, the officer conducting the traffic stop was not the officer that observed the violation that led to the traffic stop. However, the Supreme Court of Pennsylvania has held that, “Pennsylvania adheres to the vertical approach of the collective knowledge doctrine, which instructs that an officer with the requisite level of suspicion may direct another officer to act in his or her stead.” *Commonwealth v. Yong*, 177 A.3d 876, 889 (Pa. 2018).

Here, Havens was working in conjunction with the Pennsylvania State Police, specifically Morse and Marple. Havens witnessed the Pathfinder stop in the middle of the intersection at 6<sup>th</sup> and Park and fail to stop at the intersection at 6<sup>th</sup> and Memorial prior to turning onto Memorial. These observations gave Havens probable cause to believe the

driver of the vehicle violated 75 Pa. C.S.A. §3323(b)(regarding duties at stop signs).<sup>3</sup> As a result of the coordinated operation and because Havens was in an unmarked vehicle, Havens informed Morse of those violations and Morse ultimately acted as his “stead” and conducted a lawful stop of the black Pathfinder in which the Defendant was a passenger.

### ***Vehicle Search***

The Defendant also argues that neither he nor Ms. Marshall gave valid consent to search the black Pathfinder and, in the alternative, the consent was a result of coercion or duress. The Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures. Generally, a warrantless search is deemed unreasonable unless the search meets a recognized exception to the warrant requirement. Here, the consent exception is at issue. “The Fourth Amendment inquiries in consent cases entail a two-prong assessment: first, the constitutional validity of the citizen/police encounter giving rise to the consent and, second, the voluntariness of said consent.” *Commonwealth v. By*, 812 A.2d 1250 (Pa. 2002). Consent must be established as “the product of an essentially free and unconstrained choice.” *Commonwealth v. Strickler*, 757 A.2d 884, 901 (Pa. 2000). What it cannot be is a result of duress or coercion. *Id.* Further, in determining whether consent was freely given the court must look at the totality of the circumstances. When considering the totality of the circumstances as to whether a consent is free and voluntary, the court considers the following factors:

(1) the presence or absence of police excesses; (2) whether there was

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<sup>3</sup> Section 3323(b) states in relevant part: “every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or, if no stop line is present, before entering a crosswalk on the near side of the intersection or, if no crosswalk is present, then at the point nearest the intersecting roadway where the driver has a clear view of the approaching traffic on the intersecting roadway before entering.”

physical contact; (3) whether police directed the citizen's movements; (4) police demeanor and manner of expression; (5) the location of the interdiction; (6) the content of the questions and statements; (7) the existence and character of the initial investigative detention, including its degree of coerciveness; (8) whether the person has been told that he is free to leave; and (9) whether the citizen has been informed that he is not required to consent to the search.

*Commonwealth v. Kemp*, 961 A.2d 1247, 1261 (Pa. Super. 2008), citing *Strickler*, 757 A.2d at 898-99.

Here, Morse asked the Defendant how much marijuana was in the car. The Defendant then freely opened the satchel around his chest and removed the “dime” bag. The Defendant was not handcuffed and no weapons were drawn. Defendant acted freely and voluntary when he showed the troopers what he had. After, Morse asked if he may search the vehicle. Morse credibly testified that the driver gave verbal consent to search and that both the driver and the Defendant nodded in the affirmative. At no time did either the driver or the Defendant limit the scope of the search or ask Morse to stop searching. There were no police excesses. There was no physical contact. The police only directed the occupants to exit the vehicle so that they could conduct the search after the occupants gave consent. They did not put them into a police vehicle; rather, they sat unrestrained on the curb. The demeanor and manner of expression was calm and polite. The police were not yelling at them. Although they were not told that they were free to leave or that they were not required to consent to the search, the location was a residential street, the initial investigation was a traffic violation that grew into a drug investigation based on the odor of raw marijuana emanating from the passenger side of the vehicle, and evolved into probable cause of criminal activity when the Defendant pulled out the “dime” bag of suspected

marijuana and showed it to Morse. Here, as in *Kemp*, the consent was not the product of coercion or duress but was voluntarily given even though the occupants were not told that they could refuse to consent to the search.<sup>4</sup>

Accordingly, the Court finds that the Defendant consented to the search of his bag and, as a result, the firearm found within it should not be suppressed.

**ORDER**

AND NOW, this 25<sup>th</sup> day of May 2023, the Court DENIES Defendant's motion to suppress contained in his omnibus pretrial motion.

By The Court,

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Nancy L. Butts, President Judge

NLB/kbc

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<sup>4</sup>In the alternative, at the time the Defendant removed the bag of marijuana and showed it to Morse, the satchel was strapped to his body. In these circumstances, Morse arguably could have arrested the Defendant and searched him and the bag strapped to his body incident to arrest. *See Commonwealth v. Trengse*, 451 A.2d 701 (Pa. Super. 1982).