

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	CR-971-2022
	:	CR-973-2022
vs.	:	
	:	CRIMINAL DIVISION
TYREA GOLDEN,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed on August 22, 2022. For the reasons set forth below, the Motion is granted in part and denied in part.

I. Factual and Procedural Background

Tyrea Golden (“Defendant”) was charged under docket #971-2022 with two counts of possession with intent to deliver a controlled substance¹, one count of possession of firearm prohibited², and one count of firearms not to be carried without a license³. Under docket #973-2022, the Defendant was charged with one count of resisting arrest⁴, one count of possession of a controlled substance⁵, and two summary traffic offenses. Both docket numbers stem from the same traffic stop and vehicle search which occurred on May 24, 2022. A preliminary hearing was held on July 25, 2022, at which time all charges were bound for trial. Defendant waived his arraignment which was scheduled for August 15,

1 35 P.S. §780-113(A)(30). Under Count 1, the Defendant was charged with possession with intent to deliver approximately 55 bundles of heroin and under Count 2 the Defendant was charged with possession with intent to deliver approximately 3.56 ounces of methamphetamine.

2 18 Pa.C.S. §6105 (A)(1)

3 18 Pa.C.S. §6106(A)(1)

4 18 Pa.C.S. §5104

5 35 P.S. §780-113(A)(16)

2022, and requested a pretrial date. Defendant, through counsel, filed a request for pretrial discovery on August 5, 2022, and alleges that the Commonwealth provided limited discovery to the defense. On August 22, 2022, the Defendant timely filed his Omnibus Pretrial Motion under both docket numbers, alleging that the Defendant was pulled over by Officer Hockman of the Montoursville Police Department for allegations of traffic violations, and that Officer Hockman made him exit his vehicle. While he was out of his vehicle, the officer conducted a criminal check and found that the Defendant had a prior possession with intent to deliver charge. Officer Hockman alleged he observed glassine bags in the vehicle which the Defendant advised were for jewelry. The Defendant did not consent to a search of his vehicle. Sergeant McGee of the Williamsport Bureau of Police responded with a K9, which conducted a sniff search around the vehicle and gave a positive alert. The Defendant was then taken into custody for possession of a heroin wrapper and was handcuffed and searched and glassine bags were seized from his pockets. Ten more bags were seized from his pockets at the police station. Subsequently, a search warrant was obtained for the Defendant's vehicle and materials were seized that resulted in a majority of the charges filed against the Defendant.

In his Omnibus Pretrial Motion, the Defendant the following issues:

1. Motion to Suppress;
2. Motion to Compel Discovery;
3. Motion to Preclude Prior Bad Acts;
4. Motion to Sever; and
5. Motion to Reserve Right.

An argument was held October 3, 2022, and November 28, 2022, at which time Matthew Welickovitch, Esquire, appeared on behalf of the Commonwealth and Defendant appeared and was represented by Jeana Longo, Esquire. On December 8, 2022, the Commonwealth filed a Motion to Consolidate which was granted by the Court on January 3, 2023, pursuant to a stipulation of counsel at the time set for a hearing on December 27, 2022.

II. Discussion

The Court will discuss each of the above Motions separately.

1. Motion to Suppress

a. Golden was Unlawfully Detained

The Defendant's Motion alleges that he was illegally detained and therefore any evidence obtained as a result thereof should be suppressed. Defendant alleges he was stopped and detained absent any reasonable suspicion that criminal activity was afoot. "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." *See Pennsylvania v. Mimms*, 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.*; *See* 75 Pa. C.S. § 6308(b).

Patrolman Kurt Hockman testified on behalf of the Commonwealth. He testified that

he has been employed by the Montoursville Borough Police Department for approximately 21 years and has been involved in several hundred illegal substance investigations. On the night of May 24, 2022, Officer Hockman was working the night shift and observed the Defendant's vehicle in the 800 block of Loyalsock Avenue. Officer Hockman observed the Defendant to not drive within the single lane of traffic, and followed him for a brief period. The Defendant made a sudden turn into the Turkey Hill parking lot on Broad Street in Montoursville, activating his turn signal almost simultaneously with the turn. At that time Officer Hockman initiated a traffic stop and the Defendant stopped his vehicle at a gas pump at the Turkey Hill. The stop was initiated at approximately 11:05 p.m. Based upon the testimony of Officer Hockman, as well as the MVR recording played at the Omnibus hearing, the Court finds that Officer Hockman had probable cause to make a constitutional vehicle stop. However, it does not appear that the Defendant is challenging the traffic stop, but rather contending that Officer Hockman should have issued the traffic citations and the detention of the Defendant should have ceased because there was no reasonable suspicion that criminal activity was afoot.

Officer Hockman further testified that as he approached the Defendant's vehicle, the rear window was halfway down and he observed glassine bags sitting on a red duffel bag directly behind the driver. Officer Hockman indicated that there were two sets of bags and estimated that there were 200 of one kind and a couple hundred of the other kind. This caused Officer Hockman to be suspicious as these bags are known for packaging narcotics. Officer Hockman reached his hand through the open window and touched the bags while inquiring about them to the Defendant, who indicated that they were used for his jewelry.

Officer Hockman did not remove the bags or manipulate them in a way designed to uncover additional evidence. At that time, Officer Hockman requested a criminal history check for PWID or similar charges and it was relayed that he does have a history of narcotics offenses. Officer Hockman requested backup, and two Pennsylvania State Troopers arrived.

During a traffic stop, the officer “may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions. If there is a legitimate stop for a traffic violation. . . additional suspicion may arise before the initial stop’s purpose has been fulfilled; then, detention may be permissible to investigate the new suspicions.” Harris, 176 A.3d at 1020 (internal citation omitted). The Defendant was asked to step out of his vehicle and he taken to the front of Officer Hockman’s vehicle where he was patted down. The Defendant pulled some items from his pockets but denied consent to search his vehicle. Officer Hockman testified that he contacted the on-call Assistant District Attorney to make him aware of the glassine bags he observed and the previous narcotics history, and it was suggested to him that he utilize a K-9 to sniff search the call. Sgt. Brian McGee, the Williamsport Bureau of Police canine handler, arrived on the scene with his K-9 Niko at approximately 11:55 p.m.

A police officer may detain an individual in order to conduct an investigation if that officer reasonably suspects that the individual is engaging in criminal conduct. Commonwealth v. Cook, 735 A.2d 673, 676 (Pa. 1999). “This standard, less stringent than probable cause, is commonly known as reasonable suspicion.” Id. In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. In re D.M., 781 A.2d 1161, 1163 (Pa. 2001). In making

this determination, we must give “due weight ... to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.” Cook, 735 A.2d at 676 (quoting *Terry v. Ohio*, 392 U.S. 1, 27, (1968)). The officer must articulate specific observations which, in conjunction with reasonable inferences derived from these inferences, led him reasonably to conclude, in light of his experience, that criminal activity was afoot. Commonwealth v. Smith, 917 A.2d 848, 852 (Pa. Super. 2007).

Here, Officer Hockman articulated that he observed, during a lawful traffic stop, a large number of glassine bags through an open window of the Defendant’s vehicle, and that in his experience, such bags are commonly – if not exclusively – used for packaging narcotics. This, coupled with information that Officer Hockman received regarding the Defendant’s prior criminal history regarding narcotics, gave Officer Hockman reasonable suspicion to detain the Defendant beyond the initial traffic stop to conduct an investigation into whether criminal activity was afoot. Accordingly, this Court finds that the Defendant was not unlawfully detained and therefore Defendant’s request that any evidence obtained be suppressed is **DENIED**.

b. The Canine Sniff Search was Improper

Having concluded that Officer Hockman had probable cause to stop the Defendant’s vehicle based on a violation of the Motor Vehicle Code and, subsequently, detain the Defendant based on the reasonable suspicion that criminal activity was afoot, we will now address the Defendant’s claim that the canine sniff search was improper. The Defendant avers that the canine sniff was improperly based on a mere suspicion that drugs were in his vehicle, as law enforcement officers did not observe any controlled substances in the vehicle

prior to the sniff search.

Our Supreme Court has held that “considering the relatively minor privacy interest in the exterior of the vehicle and the minimal intrusion occasioned by a canine sniff . . . mere reasonable suspicion, rather than probable cause, [is] required prior to [a dog] sniffing the exterior of [a] vehicle.” Commonwealth v. Rogers, 849 A.2d 1185, 1190 (Pa. 2004). As discussed above, Officer Hockman’s observations regarding the large number of glassine bags and his experience with their use for packaging narcotics, coupled with the information about the Defendant’s prior criminal history involving narcotics was sufficient to form the reasonable suspicion necessary to conduct a canine sniff of the Defendant’s vehicle.

Sgt. McGee testified that, upon arrival he did a sweep around the Defendant’s vehicle to ensure the K-9 could safely do his work, and ensured that the Defendant was a safe distance away so as not to interfere with the K-9’s work.⁶ Sgt. McGee spoke with the Defendant and told him what Niko was trained to alert to, and the Defendant indicated to Sgt. McGee that he is a drug user. Sgt. McGee testified that he deployed Niko on a leash from the front of the vehicle, gave him the command to search for drugs, and he immediately spun his head to the left towards the vehicle, lifted his head at the open window and gave a final alert. Sgt. McGee further testified that Niko completed a sniff around the entire vehicle and on the passenger side, where the window was rolled down approximately 1 inch, Niko again lifted his head and gave a 2nd and final alert. Based on the what Sgt.

⁶ Sgt. McGee also testified that looking downward from the open driver’s side window he observed a baggie of heroin and/or a fentanyl envelope, which the Commonwealth argues would have been probable cause to obtain a warrant to search the vehicle. While this Court agrees, it will only address the matters raised in the Defendant’s Omnibus Pretrial Motion, which is that there was no reasonable suspicion to conduct a canine sniff.

McGee related to him about Niko's alerts, Officer Hockman applied for a search warrant. When executed on May 26, 2022, various narcotics, drug packaging equipment and supplies, drug paraphernalia, firearms and ammunition were seized.

The canine sniff search was justified and proper, as Officer Hockman lawfully stopped the Defendant's vehicle for traffic violations. Based on Officer Hockman's experience and observations, he had reasonable suspicion to detain the Defendant beyond the initial traffic stop and direct a K-9 sniff of the exterior of the Defendant's vehicle. The K-9 alerted two times during the sniff of the Defendant's vehicle, and based on that information, a search warrant was applied for and subsequently granted. As the Court finds that there were no violations of Defendant's Fourth Amendment rights under the United States Constitution, nor under Article 1 § 8 of the Pennsylvania Constitution, the Defendant's request that all items seized be suppressed is **DENIED**.

2. Motion to Compel Discovery

a. Discovery Related to Co-Defendant(s) and Witnesses

The Defendant alleges that he has received some discovery to date but has not received a significant amount of material that should have been disclosed. In order to allow the Defendant to adequately prepare his defense, the Motion to Compel Discovery Related to Co-Defendant(s) and Witnesses is **GRANTED**. Within fourteen (14) days of the date of this Order, the Commonwealth shall provide to Defendant's counsel any discovery that is required under Brady v. Maryland, 373 U.S. 83 (1963) and Pennsylvania Rule of Criminal Procedure 573(B)(1)(a) that is in its possession and has not been provided. The Commonwealth remains under a continuing obligation to provide Defendant's counsel with

discovery that would be required pursuant to Brady and Pa.R.Crim.P. 573 within fourteen (14) days of receipt.

b. Undisclosed Discovery

Defendant's Motion indicates that the Commonwealth has not disclosed certain additional information in violation of the Pennsylvania Rules of Criminal Procedure. The Defendant's Motion is **GRANTED** to the following extent:

1. *Lab Reports/Chain of Custody Documents related to the suspected controlled substance/Quality Assurance and Quality Control Documents.* The District Attorney's Office shall promptly provide to Defendant's counsel any of the above-mentioned information currently in its possession. Any information not currently in the possession of the Commonwealth shall be provided to Defendant's counsel within ten (10) days of receipt by the Commonwealth.

2. *Canine Discovery.* The Defendant avers that the Commonwealth has not disclosed any information related to the use of a Narcotics Detention Police Service Dog ("PSD") or his handler ("Sgt. McGee"). The Defendant avers that the information is required so he may adequately challenge the reliability of the alert exhibited by the canine. The Defendant specifically requests that the Commonwealth disclose (1) certifications and training background for the canine; (2) documents that reflect what illegal substances the canine is trained to detect; (3) certification and training background for the canine handler; and (4) documents that reflect the training and experience that the canine and the handler had together as a team.

At the hearing on November 28, 2022, Sgt. McGee testified that his canine Niko is

certified in the detection of methamphetamine, heroin, and cocaine. Sgt. McGee also testified that the certifications are through the North American Police Working Dog Association and the Muddy River K-9 Academy, and indicated that he could produce documentation in support of the certifications to the District Attorney's Office. Additionally, Sgt. McGee testified that he could provide logs indicating the number of hours the K-9 has spent in training and in the field.

The Commonwealth indicated that it has previously provide Defendant's counsel with information regarding the K-9, including the number of hours of training he has received and what drugs he is able to detect. The Commonwealth shall promptly obtain copies of certifications and any other materials relevant to the K-9's training and experience from Sgt. McGee and shall provide them to Defendant's counsel within ten (10) days of receipt by the Commonwealth.

3. *Other Non-Disclosed Discovery.* The Defendant avers that the Commonwealth has failed to disclose the following: Motor Vehicle Recordings ("MVR"), audio and video recordings, and police reports from law enforcement, including but not limited to, Sergeant McGee and any other law enforcement officer that was involved in the incident.

At the time of the hearing on October 3, 2022, Attorney Longo indicated that she had received the MVRs for these cases and would withdraw her request for those. Defendant is entitled to any reports written by Sgt. McGee and any other law enforcement officer involved in the incident. If it has not already disclosed them, the Commonwealth shall promptly provide any police reports from any law enforcement officers involved in the

matter to the Defendant's counsel.

3. Motion to Preclude Prior Bad Acts

The Defendant's Motion avers that the Defendant anticipates that the Commonwealth will seek the admission of alleged prior bad acts evidence which include, but are not limited to, prior drug activity. Specifically, the Defendant believes that the Commonwealth may seek to admit evidence that Officer Hockman discovered that the Defendant had a prior drug related offense. The Defendant argues that these prior bad acts are overly prejudicial and have no probative value other than to wrongfully demonstrate propensity evidence which is expressly prohibited by the rules of evidence. The Defendant seeks an Order directing that any evidence of prior investigations, arrests, and bad acts inadmissible and precluding the Commonwealth from introducing such evidence.

At this time, the Defendant's Motion is **DENIED** as premature. If the Commonwealth intends to introduce the prior bad acts of the Defendant, they must file a notice pursuant to Pa.R.E. §404(b)(3), at which time the Defendant may file a Motion in Limine to preclude the introduction of such evidence. If the Commonwealth fails to file a proper notice of its intent, it will be precluded from attempting to introduce evidence of the Defendant's prior bad acts at trial.

4. Motion to Sever

The Defendant has a prior felony conviction and argues that the persons not to possess charge must be severed pursuant to Pa.R.Crim.P. 583 due to the nature of the evidence which is necessary to prove the offense that would not be admissible in trial on the possession with intent to deliver and related offenses. The Commonwealth indicated that it

is not opposed to severing this charge and therefore this motion is **GRANTED**.

5. Motion to Reserve Right

Defendant moves to reserve the right to make any additional pre-trial motions pursuant to Pennsylvania Rule of Criminal Procedure 579. This motion is **GRANTED**, but only to the extent that any motion is based on information or discovery provided by the Commonwealth after August 9, 2022, the date of the argument on Defendant's Omnibus Pre-Trial Motion.

Accordingly, the Court will enter the following Order.

ORDER

AND NOW, this 22nd day of **February, 2023**, upon consideration of Defendant's Omnibus PreTrial Motions, the argument of counsel on October 3, 2022, and November 28, 2022, and for the reasons set forth above, the Court hereby enters the following Order:

1. The following Motions are **DENIED**: Motion to Suppress and Motion to Preclude Prior Bad Acts.
2. The following Motions are **GRANTED**: Motion to Compel Discovery as outlined in subsection 2 above; Motion to Sever; and Motion to Reserve Right.

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA – Kirsten Gardner, Esq.
PD - Jeana Longo, Esq.
Gary Weber, Esq.
Jennifer E. Linn, Esquire