

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1008-2022
	:
vs.	:
	: Motion to Suppress
KYLE JACKSON,	:
Defendant	:

**OPINION AND ORDER**

By way of background, Officer Gareck Esposito of the South Williamsport Police Department charged Defendant with carrying a firearm without a license and driving under suspension (DUS) as a result of an incident that occurred on June 9, 2022 at around 10:20 p.m. On October 28, 2022, Defendant filed a Motion to Suppress. The court held a hearing and argument on Defendant's Motion on December 20, 2022. At the hearing, the Commonwealth presented testimony from Officer Gareck Esposito and admitted as Commonwealth's Exhibit 1, the audio-video recording from his police vehicle.

Officer Esposito, of the South Williamsport Police Department, testified that he and Corporal William MacInnis were on duty the night of June 9, 2022. They were in full uniform and in separate, marked police vehicles. Officer Esposito conducted a traffic stop along Route 15 South of a silver sedan for window tint because he was unable to see through the windows. Corporal MacInnis responded to the stop as back up.

The driver of the vehicle was Kyle Jackson ("Defendant"), and the owner of the vehicle was Defendant's girlfriend, Monica Robles, who was seated in the front passenger seat.

Officer Esposito approached the vehicle from the passenger side due to the traffic dangers associated with a stop along Route 15. Officer Esposito asked Defendant for

insurance, registration and license. Defendant told Officer Esposito he did not have a license; his license was suspended. Ms. Robles provided the insurance and registration to Officer Esposito. Officer Esposito directed Defendant to his police vehicle so he could write him a warning card for the window tint. He patted down Defendant for weapons. Officer Esposito testified that he gave Defendant the option to sit in the front passenger seat or to stand next to the passenger side of his police vehicle. He claimed that Defendant was free to get out of the vehicle but he was not free to leave. He ran Defendant's name and had a conversation with him while he was writing the warning. Officer Esposito asked Defendant several questions about where he was coming from, who he was with, how long he was there, where he was headed and the like. He also asked Defendant about his criminal history, even though it was not his standard practice, because Defendant was "hesitant and nervous." He also indicated that he asks about an individual's criminal background if he thinks they are being deceitful.

Officer Esposito then went to Ms. Robles and asked her similar questions. According to Officer Esposito, Defendant and Ms. Robles gave "inconsistent answers" regarding the duration of the activity, who they were with, what they did and who left. Officer Esposito testified that 100% of the time that individuals give inconsistent answers they are engaged in criminal activity.

Officer Esposito asked Ms. Robles if he could search the vehicle. She initially denied consent. Despite not seeing or smelling anything to indicate drug activity, Officer Esposito then told Ms. Robles that he had enough reasonable suspicion to call for a canine. Ms. Robles became confused and frantic. Officer Esposito testified that he then "slowed it down"

for her and explained to her that she could consent or he would call for a canine. If the canine alerted on the vehicle, he would arrange rides for them, impound the vehicle and get a search warrant to search the vehicle. After this explanation, Ms. Robles consented to a search of her vehicle. Officer Esposito then had Ms. Robles exit her vehicle and go to his police vehicle with Officer MacInnis. Ms. Robles sat in the rear passenger seat of the police vehicle.

Officer Esposito admitted that when Ms. Robles was in his vehicle, she and Defendant engaged in “banter back and forth” about her giving consent.

Officer Esposito found a handgun in the center console of the vehicle, and he removed it. Defendant admitted that the firearm was his.

When asked what gave him reasonable suspicion, Officer Esposito testified more than one inconsistency with extreme nervousness after he explained to Defendant that he was only going to receive a warning for the window tint. Officer Esposito also admitted that he had all of the insurance and registration documents when he checked the VIN number, and he continued to question them after VIN number “checked out.” The questioning included his discussion with Ms. Robles about searching the vehicle.

The court carefully reviewed Commonwealth’s Exhibit 1. When the audio first begins (at approximately 35 seconds), you can hear the words “drug stop.” Officer Esposito states the registration plate number and color, make and model of the vehicle he is pulling over. Defendant did not have a license but he had identification. Officer Esposito tells Defendant that he is going to write him a warning card for the window tint. Defendant would not have to go to court and he would not receive a fine. Officer Esposito tells Defendant to

sit down in his car, but before he allows him to do that, Officer Esposito pats down Defendant. Officer Esposito asks Defendant what a small bulge in his pocket is. Defendant tells him it is fabric (of the pants pocket). Officer Esposito tells Defendant, “Go ahead and go in there” and then comments that there “is a lot of extra fabric in there.” Officer Esposito asks Defendant how much he has had to drink. Defendant says only a sip. Officer Esposito tells Defendant to throw his cigarette down and he doesn’t have to come all the way into the vehicle if he doesn’t want to. Officer Esposito asks Defendant why he was driving if he didn’t have a license. While Officer Esposito is asking this question, he is running Defendant’s license and typing a warning card. Defendant indicated that the passenger doesn’t like to drive when it’s dark. Officer Esposito then asks Defendant numerous questions about where he was coming from, where he was going, and who was present. Defendant indicated he was coming from down the street and he was not really familiar with the area. He was visiting at his female cousin’s house for a few hours. Officer Esposito receives information over his radio. Officer Esposito then says, “you’re suspended, man.” Defendant replies, “yeah, I told you that.” Officer Esposito scans the bar code on the back of Defendant’s identification card. Officer Esposito asks Defendant if his current address is in Easton and if he gets mail there. He also asks Defendant if the passenger is his girlfriend. Defendant admitted that the passenger was his girlfriend and his current address was in Easton, but they were headed back to his uncle’s in Sunbury. Defendant calmly asks if he is going to be arrested or cited for that (driving under suspension). Officer Esposito tells Defendant that he is giving him a warning card for tint – no court; no fine. Officer Esposito asks Defendant a bunch of questions about his activities, whereabouts, and companions.

during his activities. Defendant tells him that while he was at his cousin's house, present were Defendant, his girlfriend, his cousin and his cousin's friend. Defendant indicated that his girlfriend was there for a little bit then came back to pick him up. Officer Esposito scans the bar code on the back of the vehicle registration card. It appears that Officer Esposito has finished the warning card by this time.

Officer Esposito then began to ask Defendant about his arrest history. Defendant admitted that he had been arrested in the past, but he didn't want to talk about it because he was "past that" and Esposito could see it on his computer. Esposito asked Defendant how long ago he had been arrested. Defendant admitted that he had been arrested in February. Esposito asked if it was a domestic situation. Defendant indicated that was in 2018. With respect to the February arrest, Defendant told Esposito that "they tried to say I had drugs" but "I don't mess with drugs" and the case was dismissed.<sup>1</sup>

Officer Esposito told Defendant to sit there and "hang out" with Officer McInnes, who was standing next to the front passenger door of the police vehicle. Officer Esposito said he was just going to check the VIN on the vehicle and he would be right back. Defendant asked if he could get out of the vehicle and smoke. He was told "not yet, man."

Officer Esposito then went to the vehicle and talked to the passenger. He asked her all kinds of questions unrelated to the window-tint violation or the paperwork for the vehicle, such as where she had been, what she had been doing, who she was with, how long she was

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<sup>1</sup> Later in the hearing when addressing Defendant's request for modification of bail, the Commonwealth acknowledged that Defendant's prior record score was zero. He had a simple assault conviction in 2019 for which he was sentenced to probation, but his Northampton County firearm case was nolle prossed and his possession of a controlled substance case in Lehigh County was dismissed.

there. The passenger indicated they were coming from Williamsport and they were hanging out with a few friends. She was “in and out.” Officer Esposito asked if they were together the whole time. She replied, “Kinda, yeah. I didn’t leave by myself.” Officer Esposito then checked to verify the vehicle identification number (VIN).

Officer Esposito came back to the passenger and asked if there was anything illegal in the vehicle. She said no. He separately asked if there were any stolen guns, heroin, fentanyl, marijuana, methamphetamines, crack or cocaine. She said no to each question. Officer Esposito then asked for consent to search the vehicle. She became upset and confused. She didn’t understand why Officer Esposito pulled them over or why he wanted to search the vehicle. Officer Esposito told her that window tint was illegal in Pennsylvania. The passenger gives some not completely audible statement about a conversation she had with a “tint guy.” Officer Esposito told her the windows all the way around the vehicle were illegal, but it was no big deal because he already wrote Defendant a warning card for it. He explained that Defendant was getting the warning card because he was driving the vehicle; he couldn’t really write it for the passenger. He then says to her that there were some inconsistencies in their stories. He says they are telling two different stories so he has reason to believe that there’s something more going on, but he did not know exactly what. The passenger says something about nothing was going on. Officer Esposito says that he believes one of them is telling the truth; he just doesn’t know which one. The fact that one is not telling the truth leads him to believe that something illegal may be inside the car and that’s why he was asking for consent to search. Officer Esposito told her if she did not consent, he would call for the canine and if the dog alerted on the vehicle he would impound her car and

get a search warrant for the vehicle. He told her that he had enough reasonable suspicion that something more was going on because of their inconsistent stories. Her options were that she could consent and he would search the vehicle right there/right now and make sure nothing illegal was inside the vehicle or he would call the canine and if the canine alerted for the odor of narcotics then he was going to tow the car. It was entirely up to her. She then relented to a search of the vehicle. Officer Esposito told her to step out of the vehicle and go back to his vehicle.

She went back to the police vehicle and sat in the back seat. Defendant saw Officer Esposito start to search the car, and Defendant makes statements that he (Esposito) cannot do that without a warrant. Officer MacInnis told Defendant that the passenger consented and she also says that to Defendant. Defendant then makes statements to her that it is illegal and she should tell them that she doesn't want the car searched. Ms. Robles then says toward Officer MacInnis, "No, I don't want the car searched. Officer MacInnis does not respond. She asks, "Can I change my mind? Am I able to ask why the car was pulled over? I'm sorry, I'm confused." Officer MacInnis says, "I don't really know. I'm the back-up officer."

Shortly thereafter, Officer Esposito finds a firearm in the vehicle. He radios that he has a firearm to run, reads the serial number and indicates it is a Smith and Wesson M&P 40. Esposito then comes back to the police vehicle and asks the passenger if she had a license to carry a firearm. She says, "No. Why?" Defendant then says, "She's good. It's mine." The officers put Defendant in handcuffs, search his person incident to arrest and place him in the back of the police vehicle and she is told to sit in the front of the vehicle until Officer Esposito finishes the search. Defendant talks to the passenger about taking his phones and

asked her to give him her phone number so he can call her from the jail. He tells her he loves her, the police fooled her, and the search was “illegal as hell” but it wasn’t her fault.

Defense counsel argued that the passenger did not give valid consent; rather the consent was coerced and involuntary. The passenger denied consent; she only acquiesced to the officer’s show of authority after he threatened calling for a canine. The officer lacked reasonable suspicion to believe that there were controlled substances inside the vehicle to justify calling for a canine. The officer possessed the registration and insurance information at the time he asked for consent to search the vehicle and the officer did not obtain written consent. Defense counsel also argued that Defendant was unlawfully detained. She argued that Defendant was in custodial detention in the front seat of the car, but he was not read Miranda warnings before the officer questioned him. The officer lacked probable cause to conduct a custodial detention and lacked reasonable suspicion to detain the occupants to get a canine. Therefore, defense counsel asked the court to suppress not only the firearm but also Defendant’s statements.

The Commonwealth argued that there was a valid traffic stop for a window tint violation. The officers were permitted to ask the occupants a moderate number of questions, which they did without engaging in any force or threatening behavior. The passenger voluntarily consented to a search of the vehicle. The officers did not draw or show any weapons. There was no force or threat; only Officer Esposito explaining the steps that he’d take. Defendant’s statement that the firearm belonged to him was “an excited utterance or what not.” The Commonwealth also argued that Defendant was transported by Officer Esposito, read his Miranda warnings and Defendant admitted the gun was his. The



Commonwealth asked the court to deny Defendant's motion.

## **DISCUSSION**

### ***Was the traffic stop lawful?***

Whether the police must possess reasonable suspicion or probable cause to conduct a traffic stop depends on whether additional investigation of the alleged Vehicle Code violation is needed to establish the violation. *Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108, 115-116 (2008); *Commonwealth v. Feczko*, 10 A.3d 1285, 1290-1291 (Pa. Super. 2010). For offenses such as driving within a single lane and stop sign violations where no additional investigation is needed, a police officer must possess probable cause to conduct a traffic stop. *Feczko*, *id* (driving within single lane); *Commonwealth v. Thorne*, 191 A.3d 901, 904 (Pa. Super. 2018)(stop sign). For offenses such as driving under the influence (DUI) where additional investigation is needed, a police officer must possess reasonable suspicion to conduct a traffic stop. *Chase*, *supra*. For a window tint violation, the quantum of cause necessary may depend on the circumstances of the case but where the officer testifies that he cannot see the operator inside the vehicle, the standard is probable cause. *Commonwealth v. Prizzia*, 260 A.3d 263, 269 & n.2 (Pa. Super. 2021).

Section 4524(e)(1) of the Vehicle Code states: "No person shall drive any motor vehicle with any sunscreening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle.: 75 Pa. C.S.A. §4524(e)(1).

Officer Esposito testified that he was stationary in his police vehicle on the north side of Route 15 near Little League Headquarters when he observed a silver sedan travelling

south on Route 15 with window tint such that he was unable to see through the windows.

Based on this testimony, the court finds that Officer Esposito had probable cause to stop the vehicle for the window tint violation.

***Did Officer Esposito unlawfully prolong the detention?***

[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.

[A] traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a warning ticket.... An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But ... he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." Typically, such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.

*Commonwealth v. Malloy*, 257 A.3d 142, 149 (Pa. Super. 2021), quoting *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 191 L.Ed.2d 492 (2015) (citations omitted).

Therefore, within the context of a lawful traffic stop, police are permitted to ask "mission-related" inquiries related to the traffic violation which prompted the detention, incidental inquiries aimed at ensuring the safe and responsible operation of vehicles, and inquiries about the presence of weapons out of concern for officer safety. *Malloy*, *id.* The police, however, are not permitted to prolong the detention to make inquiries beyond this, including inquiries

to investigate a passenger's firearm licensure status. *Malloy*, 257 A.3d at 155-156, relying on *Commonwealth v. Hicks*, 652 Pa. 353, 208 A.3d 916, 927-928 (2019)(mere possession of a firearm does not establish reasonable suspicion to believe an individual is unlicensed).

With respect to the use of a canine to conduct a drug sniff of property, the Pennsylvania Supreme Court has held that the police may deploy a narcotics detection dog to test for the presence of narcotics where the police are able to articulate reasonable grounds for believing that drugs may be present in the place they seek to test and the police are lawfully present in the place where the canine search is conducted. *Commonwealth v. Johnston*, 515 Pa. 454, 465-466, 530 A.2d 74, 79 (1987).

The court finds that Officer Esposito did not have reasonable suspicion to believe that the occupants of the vehicle were engaged in drug activity or that drugs would be present in the vehicle. Rather, he only had an unparticularized suspicion or hunch. In fact, Officer Esposito admitted on the recording in his conversation with the passenger that he thought there was something more going on but "he did not know what." The court notes that there is nothing in the record to indicate that: the officers saw or smelled any controlled substances in the vehicle; they observed any drug paraphernalia such as empty zip-top baggies or rubber bands to bundle baggies or packets of drugs in the vehicle; they saw or smelled any air fresheners or other masking agents in the vehicle; or they had any information, whether from a confidential informant or otherwise, that the vehicle or its occupants were engaged in drug activity prior to or during the traffic stop. Contrary to Officer Esposito's testimony, the video does not depict Defendant being evasive or extremely nervous during the questioning about his activities prior to the stop. The only time that

Defendant became extremely nervous was when he realized that Officer Esposito was searching the vehicle. The court finds that this case is similar to *Malloy* and *Commonwealth v. Dales*, 820 A.2d 807 (Pa. Super. 2003)(police noticing an intense smell of Bactine and the use of air fresheners did not rise to the level of reasonable suspicion but only amounted to a hunch; any inconsistencies regarding activities in New York were developed after the purpose for the initial stop had ended).

The Commonwealth relied on *Commonwealth v. Harris*, 176 A.3d 1009 (Pa. Super. 2017). The court finds that the Commonwealth's reliance on *Harris* is misplaced. In *Harris*, the police had much more information to believe that the individual was involved in drug activity. A confidential informant (CI) who had assisted a trooper five times in the past reported that a woman named "Juanita" was planning to purchase cocaine from a certain residence on Euclid Avenue from a black male who would be driving a white sedan. Although the CI did not know the dealer's name, he knew the dealer would be coming from the gym and then traveling to Jeanette. The trooper and the CI agreed to a pre-arranged signal, which would alert the trooper that the sale was completed and the dealer was leaving the area. The trooper received the signal and 30 seconds later he observed a black male driving a white sedan leaving Euclid Avenue. The trooper followed the vehicle, observed a window tint violation, and conducted a traffic stop on that basis. During the traffic stop, consistent with the CI's information, the driver told the trooper that he was coming from the gym and he was going back to Jeanette. The driver also denied being on Euclid Avenue, despite the trooper advising him that he had followed him from Euclid Avenue. When the trooper asked the driver to exit the vehicle, as he was permitted to do, the driver refused

twice, resulting in the trooper grabbing the driver by the arm and removing him from the vehicle.

*Harris* is clearly distinguishable from this case, where the police had no information regarding drug activity prior to stopping the vehicle and did not observe any signs of drug activity during the portion of the stop related to the window tint violations.

Accordingly, the court finds that the police unlawfully prolonged the stop to investigate their hunch of criminal activity without the required reasonable suspicion.

***Did the passenger validly consent to the search of the vehicle?***

To establish a valid consensual search, the Commonwealth must first prove that consent was given during a lawful police interaction. *Commonwealth v. Strickler*, 563 Pa. 47, 57, 757 A.2d 884, 887 (2000). The Commonwealth must also prove that the consent was voluntary. *Id.*

The court finds that the consent was not voluntary because it was given during an unlawful detention. The traffic stop was unlawfully extended to investigate Officer Esposito's hunch. The purpose for the stop was completed before Officer Esposito received consent to search from the passenger and even before he questioned the passenger. In fact, Officer Esposito can be heard on the recording telling the passenger while he is having a conversation with her about consenting to a search that he already wrote Defendant a warning card for the window tint violation.

Additionally, the court finds that the passenger's consent was coerced by Officer Esposito's statements that she could consent or he would call in a canine when he did not have reasonable suspicion to call for a canine to conduct a drug sniff. Officer Esposito said

on the recording that he thought something more was going on **but he did not know what.** Since Officer Esposito could not articulate any facts to point specifically to drugs being in the vehicle, he did not have reasonable suspicion to call a canine. *Johnston*, supra. The passenger stated on the video that she consented to the search because the officer said he was going to call a canine and impound the vehicle. Therefore, the passenger's consent was unlawfully induced by the officer's statements that he would call in a canine and impound her vehicle if she did not consent.

***Did the passenger withdraw her consent prior to the discovery of the firearm?***

Even assuming *arguendo* that the passenger consented to the search of the vehicle, she revoked her consent prior to Officer Esposito's discovery of the firearm.

One who consents to a search retains the right to control the scope of the consent given or to revoke consent altogether. See *Commonwealth v. Valdivia*, 195 A.3d 855, 868 (Pa. 2018); *Commonwealth v. Gallagher*, 263 A.3d 1207, 1212 (Pa. Super. 2021). "[T]his is intrinsic in the nature of consent and the consent exception to the warrant requirement." *Gallagher*, *id.*

Officer Esposito testified that he heard the discussion back and forth between Defendant and the passenger regarding her consent to search. Officer Esposito was at the passenger's vehicle when this discussion occurred. Officer MacInnis was standing right next to Defendant and the passenger when this discussion occurred. After Defendant tells the passenger that the search is illegal without a warrant and the passenger says that she consented because Officer Esposito said it was either that or a canine, Defendant tells her that's illegal and tells her to say no. She says she doesn't know anything and they are going

to impound my car. Defendant again tells her to say no. The passenger then says, “No, I don’t want my car searched.” The police ignore her. The passenger says, “Can I change my mind?” Again, the police ignore her, and Defendant says, “yeah, you can.” She then asks Officer MacInnis if she can even ask why they were being pulled over. At this point in the recording you can hear Officer Esposito saying in the background (presumably into his radio), “either have a license to carry?” The passenger then apologizes and says she is just confused. Officer MacInnis finally responds and says “it’s his [Esposito’s] stop. I don’t really know why... I’m just the back-up guy.” Officer Esposito then can be heard in the background saying, “Alright. Thank you. I have a firearm for you to run. Hotel, bravo, foxtrot 6754 -- HBF 6754 Smith and Wesson M& P 40.”

Therefore, the court finds that the passenger revoked her consent prior to Officer Esposito finding the firearm in the console of the vehicle.

### ***Conclusion***

Although the officers had probable cause to conduct a traffic stop for a window tint violation, the officers extended the stop without reasonable suspicion to do so, making the continued detention of Defendant and the passenger unlawful and the passenger’s consent invalid. Even if the passenger had given valid consent, she revoked it prior to Officer Esposito finding the firearm. Accordingly, the court finds that the firearm and any of Defendant’s statements made after he was told to hang out with Officer MacInnis and his request to smoke was denied are subject to suppression.

**ORDER**

**AND NOW**, this 29<sup>th</sup> day of June 2023, the court GRANTS Defendant's Motion to Suppress. The firearm and any of Defendant's statements made after Officer Esposito told Defendant to hang out with Officer MacInnis and denied his request to smoke a cigarette are suppressed.

By The Court,

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Nancy L. Butts, President Judge