

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CP-41-CR-637-2022</b>
<b>v.</b>	:	
	:	
<b>HASAN WILLIAMS,</b>	:	<b>OMNIBUS PRETRIAL</b>
<b>Defendant</b>	:	<b>MOTION</b>

**OPINION AND ORDER**

Hasan Williams (Defendant) was charged by the Williamsport Bureau of Police on April 3, 2022 with Fleeing or Attempting to Elude a Police Officer and related summary offenses arising from an attempted motor vehicle stop of vehicle with a suspended registration plate. Defendant filed this timely Omnibus Pretrial Motion on June 22, 2022. The motion alleges the Commonwealth did not have sufficient probable cause and exigent circumstances to search the contents of the vehicle's glove box. A hearing on the Motion was originally scheduled for September 12, 2022. Defense Counsel was unavailable on this date and the hearing was rescheduled for November 21, 2022.

***Background***

At the hearing on the suppression motion Officer Porter Kling (Kling) of the Pennsylvania College of Technology Police Department was first to be called to testify. Kling stated that he was working the evening shift on April 3, 2022. Kling had been working the Penn College PD for about a year but had worked in law enforcement for approximately three (3) years. He testified that between 4:30-5:00 PM he attempted a motor vehicle stop on a light in color small sedan travelling near the hospital. Kling ran the registration plate, and the vehicle came back suspended so he activated his lights and sirens. At some point when he saw the way the vehicle was operating, he notified the 911 dispatchers at County that he was discontinuing

the pursuit. He thought that the vehicle during this time was travelling more than 20 miles per hour above the speed limit in a residential neighborhood. The vehicle came to a stop on the front lawn of a home at the northwest corner of Elmira and Rural Streets wedged onto a retaining wall. Kling estimated that the crash occurred about 30-60 seconds after he lost sight of the vehicle. As he approached, he saw the driver outside of the car whom he identified in court as the Defendant. Kling yelled for him to get back in the car. When the Defendant did not get back into the car, he ordered him to the ground; Kling's weapon was drawn. As Kling was placing handcuffs on the driver multiple Williamsport Bureau of Police (WBP) units arrived on scene. Kling entered the vehicle after the driver was placed into his cruiser. When he opened the glove box, he found two handguns. WBP took control of the vehicle and had it towed. Kling participated in the preparation of a search warrant for the vehicle which included the two firearms. Kling testified that the firearms were registered to the driver's cousin who was the owner of the vehicle.

The Court also had the opportunity to watch Kling's body cam video which was entered into the record as Commonwealth's exhibit #1. The body cam captured Kling's conversation with County as he approached the scene and then with various members of the WBP. In fact, throughout the conversation with Kling there were as many as seven (7) WBP officers on the scene including one who appeared to be a supervisor. Sgt Jody Miller (Miller) appeared to be assisting Kling by delegating to him the responsibility of processing the Defendant. In exchange the WBP would handle the processing of the motor vehicle crash. Through Kling's body cam, it was clear that the vehicle was impaled/ disabled on the side of a rough retaining wall on the east side of a residential property which could only be removed by towing it from the scene. Kling entered the vehicle to turn the ignition off but also opened the glove box to

discover the two handguns. There also was a conversation between all of the officers as to the reason Kling entered the glove box when he did.

Defendant alleges that pursuant to *Commonwealth v Alexander*, 243 A.3d 177 (Pa. 2020) Kling needed not only probable cause but a warrant to search the vehicle's glove box. The Commonwealth advanced several theories to justify Kling's search of the glove box. First, Kling had a "community caretaking" responsibility as the vehicle was disabled and caused damage to the front lawn and retaining wall of the property where it stopped and could not be removed on its own power. In addition, Kling entered the glove box to gather insurance information for the property owner to begin the damage claim process. Therefore, for the vehicle to remain in its location until it was removed, the police had to make sure that it was safe. Second, since the vehicle was going to be impounded, Kling had permission to perform an inventory search which revealed the guns in the glove box. Third, the guns would have inevitably been found once the police took custody of the disabled vehicle. Finally, Kling was justified in searching the glovebox as Defendant had no expectation of privacy in that the vehicle had been abandoned.

### ***Discussion***

In his motion, the Defendant challenges the legality of the search of the vehicle. The Commonwealth bears the burden "of establishing that the challenged evidence was not obtained in violation of the defendant's rights." Pa. R. Crim. P. 581(H).

In *Commonwealth v. Alexander*, the Pennsylvania Supreme Court held that "the Pennsylvania Constitution requires both a showing of probable cause and exigent circumstances to justify a warrantless search of an automobile." *Commonwealth v. Alexander*, 243 A.3d 177, 181 (Pa. 2020). *Alexander* overruled *Commonwealth v. Gary*, 625 Pa. 183, 91

A.3d 102 finding that Article 1 Section 8 of the Pennsylvania Constitution affords more protections to Pennsylvania citizens than the Fourth Amendment of the U.S. Constitution. *Id.* at 181. “A finding in a case that an officer's warrantless search was not justified by an exigency does not reflect hostility to his or her actions. It means only that our constitution places greater emphasis on the violations of privacy occasioned by an unreasonable search.” *Id.* at 204. If an officer then proceeds to conduct a warrantless search of a vehicle, a reviewing court will be required to determine whether exigent circumstances existed to justify the officer's judgment that obtaining a warrant was not reasonably practicable. *Id.* at 208. “Essentially, the exigent circumstances exception involves balancing the needs of law enforcement against individual liberties and/or rights. Some factors will outweigh others in a given case.” *Commonwealth v. Williams*, 602 A.2d 350, 354 (Pa. Super. 1992). By its ruling, the Pennsylvania Supreme Court no longer supports the mobility of the vehicle as the only justification for a warrantless search of the vehicle. See *Commonwealth v. Luv*, 735 A.2d 87, 93 (Pa. 1999).

It is clear that due to the high rate of speed that the Defendant was travelling, Kling had probable cause to stop the vehicle. As he arrived on scene, the Defendant was outside of the vehicle and quickly taken into custody by Kling and placed inside his cruiser. The Defendant's vehicle appeared to be stuck on the side of the wall and not able to be driven from the scene. In the review of the recording of the events there appeared to be sufficient WBP officers to secure the vehicle until a warrant could be obtained to search the vehicle. Although Kling had probable cause to enable him to stop the vehicle, he did not have probable cause to justify a search of the vehicle. He was not aware at that time of any offense the Defendant may have committed other than a motor vehicle violation. Kling neither testified about asking nor was heard asking for Defendant's consent to search the vehicle. Kling did have the extemporaneous

statements of the Defendant while laying down on the ground outside of the vehicle about the presence of a gun inside the vehicle which was owned by a family member. Since Kling did not have probable cause to believe that a crime was being committed, he could not have obtained a warrant to search the glove box. Kling also did not testify to any exigent circumstances and the Commonwealth did not argue that exigent circumstances were present. Therefore, Kling's entry into the glove box while the Defendant was in custody was unlawful.

The court rejects the Commonwealth's argument that this was a lawful inventory search. The Commonwealth did not present sufficient evidence to establish that the search of the glove box was an inventory search. "An inventory search of an automobile is permissible when (1) the police have lawfully impounded the vehicle; and (2) the police have acted in accordance with a reasonable, standard policy of routinely securing and inventorying the contents of the impounded vehicle." *Commonwealth v. Lagenella*, 83 A.3d 94, 102 (Pa. 2013). Kling did not testify that he was inventorying the contents of the vehicle, and the Commonwealth did not present any evidence regarding any standard police policy or how Kling's actions were in accordance with any such policy. In fact, it does not appear that Kling impounded the vehicle. Rather, it appears that the WBP might have as part of the processing of the crash scene after Kling searched the glove box.<sup>1</sup> Accordingly, the Commonwealth failed to establish that this was a lawful inventory search.

The Commonwealth's community care-taking and inevitable discovery arguments seem to be intertwined with its inventory search argument.<sup>2</sup> It seemed that the Commonwealth was

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<sup>1</sup> However, no testimony or evidence was introduced regarding what occurred with the vehicle or what the WBP policies were, if any, regarding inventory searches.

<sup>2</sup> The Commonwealth's arguments were cursory and undeveloped. It did not appear that the Commonwealth had researched the doctrines it was invoking but rather was taking an approach of throwing out any theory it could think of and seeing what stuck.

asserting that the vehicle was undrivable; it would have had to be towed from the scene; and the firearms would have been discovered and seized during that process. The problem with this argument is that the Commonwealth did not present any evidence from the WBP officers regarding this process. Furthermore, it appears that the firearms might have remained in the vehicle until Kling obtained a search warrant. To the extent the Commonwealth was trying to argue inevitable discovery based on the search warrant, the Commonwealth never introduced the search warrant into evidence. Therefore, the court does not know whether the warrant included any information that was unlawfully obtained.

The court rejects the Commonwealth's argument that the Defendant abandoned the vehicle.

Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered. The issue is not abandonment in the strict property-right sense, *but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.*

*Commonwealth v. Clark*, 746 A.2d 1128, 1133-34 (Pa. Super. 2000)(emphasis original), citing *Commonwealth v. Shoatz*, 469 Pa. 545, 553, 366 A.2d 1216, 1220 (1976). Defendant did not abandon the vehicle. Although the Defendant may have fled from Kling, he did not flee on foot after he crashed the vehicle. He was standing next to the vehicle when he was ordered to the ground and taken into custody.

### ***Conclusion***

Kling was not taking inventory, searching for ownership information or engaged in community caretaking. No one was around the vehicle but the Defendant and Kling until the

WBP arrived. It was clear from the images at the scene that the city police had control of the scene and there would have been sufficient time for Kling to have applied for a search warrant.

**ORDER**

**AND NOW**, this 21st day of April, 2023, for the reasons set forth in the foregoing Opinion, the Defendant's Motion to Suppress the evidence found in the vehicle is hereby GRANTED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MWe)  
Howard Gold, Esquire  
Jerri Rook  
Gary Weber, Esq

NLB/