

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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|-----------------|---|---------------------------|
| COMMONWEALTH | : | No. CP-41-CR-0000637-2022 |
| Appellant | : | |
| vs. | : | |
| | : | |
| | : | |
| HASAN WILLIAMS, | : | |
| | : | 1925(a) Opinion |

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order entered on April 21, 2023, which granted the motion to suppress evidence contained in Hasan Williams' Omnibus Pretrial Motion.

By way of background, Hasan Williams ("Williams") was charged by the Williamsport Bureau of Police on April 3, 2022 with Fleeing or Attempting to Elude a Police Officer, Possession of Contraband, Possession of Firearms without a License and summary offenses arising from an attempted motor vehicle stop of vehicle with a suspended registration plate. Williams filed a timely Omnibus Pretrial Motion (OPM). In the OPM, Williams alleged that the Commonwealth did not have sufficient probable cause and exigent circumstances to search the contents of the vehicle's glove box where the firearms were located. The court held a hearing and argument on Williams' OPM. In an Opinion and Order entered on April 21, 2023, the court granted Williams' OPM. The Commonwealth filed a timely notice of appeal.

In its concise statement of errors complained of on appeal, the Commonwealth

asserted two issues: (1) there was insufficient evidence that Williams had an expectation of privacy; and (2) the court committed an error of law in its determination that the evidence seized pursuant to the warrantless search of Williams' vehicle must be suppressed.

DISCUSSION

The Commonwealth first asserts that there was insufficient evidence that Williams had an expectation of privacy in the vehicle; therefore, he was not entitled to suppression. In all candor, at the time of the hearing and argument, the court did not realize that the Commonwealth was making a separate privacy argument; instead, it appeared to the court that the Commonwealth's argument was intertwined with its discussion of abandonment, i.e., Williams lacked an expectation of privacy because he abandoned the vehicle. Since the court disagreed with the Commonwealth's assertion of abandonment, it implicitly rejected its privacy argument when it rejected its assertions of abandonment. That is why the opinion and order deciding Williams' OPM did not separately address Williams' expectation of privacy in the vehicle.

A defendant charged with a possessory offense has automatic standing to pursue a suppression motion but to prevail on the motion, the evidence presented at the suppression hearing must show that the defendant has a reasonable expectation of privacy in the place searched. *Commonwealth v. Enimpah*, 106 A.3d 695, 699 (Pa. 2014). The evidence showing a defendant's expectation of privacy, however, need not come from evidence presented by the defendant; it may come from the testimony or evidence presented by the Commonwealth. *See id.* at 702 n.6.

The law regarding privacy interests in a motor vehicle has expanded somewhat over

the years. At one time, owners, lessors, and individuals named in a rental agreement had a privacy interest in it but others generally did not. Those rules have relaxed somewhat over the years. For example, in 2018, the United States Supreme Court held that a driver in lawful possession of a rental vehicle had a reasonable expectation of privacy in it even if he or she was not listed as an authorized driver on the rental agreement. *Byrd v. United States*, 138 S. Ct. 1518 (2018).

Whether an operator in possession of a vehicle has a reasonable expectation of privacy therein is a fact specific inquiry. In *Commonwealth v. Newman*, the Commonwealth argued that the defendant did not have a reasonable expectation of privacy in the vehicle and asserted that mere operation of a vehicle can never sustain such a finding. The Superior Court held that the Commonwealth's assertion was meritless. 84 A.3d 1072, 1077 (Pa. Super. 2014). The Superior Court found that Newman had an expectation of privacy in the vehicle he was driving where he was alone in the vehicle, vigorously objected to being stopped by the police and made no attempt to flee when stopped in the absence of any other facts to negate a finding of an expectation of privacy. *Id.* The Superior Court also found that the Commonwealth misstated, or at least overstated, its decisions in *Burton*¹ and *Cruz*.²

In *Burton*, the defendant did not own the vehicle he was driving, he was not licensed, and there was no evidence to explain his connection to the vehicle or its registered owner. The Superior Court found that Burton lacked a reasonable expectation of privacy in a vehicle "that he did not own, that was not registered to him, and for which he has not shown authority to operate." 973 A.2d at 436.

¹*Commonwealth v. Burton*, 973 A.2d 428 (Pa. Super. 2009).

²*Commonwealth v. Cruz*, 21 A.3d 1247 (Pa. Super. 2011).

In *Cruz*, there was no evidence that the defendant owned the vehicle, it was registered in his name or that he was using it with the permission of the registered owner. 21 A.3d at 1251. Therefore, he did not establish a reasonable expectation of privacy in the vehicle.

In the court's opinion, Williams' situation lies somewhere between *Newman*, *Burton*, and *Cruz*. The critical evidence in this case was not the live testimony presented at the suppression hearing, but rather the disc containing the audio-video recording from Officer Porter Kling's body cam.

Officer Porter Kling, of the Penn College Police, observed the vehicle and ran its registration. The owner of the vehicle was Libby Williams and the registration came back suspended. Hasan Williams was the driver and sole occupant of the vehicle. Although he attempted to flee from the police, he was not successful. His flight path was on Campbell Street and Rural Avenue, which are streets adjacent to the UMPC-Williamsport Hospital. He crashed the vehicle at the corner of Rural and Elmira and was apprehended. He told the police that his cousin was at the hospital and he had permission to drive it around the hospital. He apologized to the officer and said he was just so scared because he (his cousin) told him not to drive it off the hospital. Williams also said that there were guns in the glove box of the vehicle that were registered to them (his cousin and/or his aunt). Kling allegedly did not hear these statements in the heat of the moment. When Officer Cole was asking Hasan Williams his date of birth and his cousin's name, he gave his date of birth and indicated that the vehicle was his aunt's. Sergeant Jody Miller asked who the owner was. Officer Cole said he (Hasan Williams) won't say. Officer Kling said he ran the vehicle. He went to his police vehicle, looked at his computer and read off the name Libby Lee Williams.

Information came across the radio in his police vehicle indicating that the registration was suspended due to an insurance cancellation and confirmed Libby Williams' address to Officer Kling, who initially did not hear it correctly (even though at the beginning of the video you can see the name and address of the owner on his computer screen). Sgt. Miller then says that somebody needs to speak to Libby Williams and see if she knows who has her vehicle. About five or six minutes later (approximately 12:48 on the video run time), Libby Williams arrived at the scene of the crash while Hasan Williams was in custody in the back of a police vehicle and numerous police officers were on the scene. She had some conversations with Officer Gino Caschera and someone on her cellular telephone. The recording is from Officer Kling's body cam and he is several feet away from Libby Williams and Officer Caschera, so most of the time it is difficult to hear Libby Williams' statements. One can, however, discern her saying the following statements: (1) Oh yes, the fu** he is; and (2) he's supposed to be at the hospital. It is not entirely clear whether she is talking about her son or Hasan Williams, but the reasonable inference is that the vehicle was supposed to be at or near the hospital, which lends some credence to Hasan Williams' statements. Furthermore, the police were convinced prior to even running the firearms that they belonged to Libby Williams. Prior to Libby Williams' arrival Officer Caschera states, "They're gonna be Libby's guaranteed. She has a license to carry." This also lends credence to Hasan Williams' statements that the firearms belonged to his relatives and they had licenses for them. Nevertheless, the Commonwealth charged Hasan Williams with possession of those firearms without a license. Under the facts and circumstances of this case, where there is evidence which explains Hasan Williams' connection to the vehicle and

where, despite the police being confident that the firearms belong to Libby Williams, the police charged Hasan Williams with actual or constructive possession of the them, a reasonable person would expect that a person in Hasan Williams' position would be able to challenge the search by the police as a violation of his constitutional rights and obtain suppression if those rights were violated.

The Commonwealth next asserts that the court committed an error of law in its determination that the evidence seized pursuant to the warrantless search of Williams' vehicle must be suppressed. The Commonwealth does not specify how or why the court erred; it just makes a boilerplate assertion. When a defendant makes a boilerplate assertion that the evidence was insufficient or against the weight of the evidence, the claim is waived due to a lack of specificity. *See Commonwealth v. Arnold*, 284 A.3d 1262, 1279 (Pa. Super. 2022)(sufficiency claim waived due to lack of specificity); *Commonwealth v. LeClair*, 236 A.3d 71, 76 (Pa. Super. 2020)(weight of evidence claims were waived where Appellant did not indicate which verdict or verdicts were against the weight of the evidence and did not offer a specific reason to support his generalized claim). The same rules should apply to the Commonwealth.

Even if the issue is not waived, the court believes that the firearms were subject to suppression. Given the body cam video in this case, the court was somewhat surprised that the Commonwealth appealed the court's ruling. In light of what is depicted on the video, the court could not find that Officer Kling was looking for insurance and registration information when he opened the glovebox and removed the guns. Instead, he was searching the vehicle without a warrant and without an exception to the warrant requirement.

After Officer Kling handcuffed Williams and placed him in the back of Kling's police vehicle, Officer Kling went back to the blue Hyundai Accent that Williams had been driving. He looked in the window of the rear passenger seat and then he opened the front passenger door. He looks at the inside of the front passenger door and down at the passenger side floor board. The glove box was closed. He shuts the passenger side door. He reopens the door and looks at the inside of the passenger door and then down toward the pocket of the door. As he looked at the front passenger seat, he opens the glove box with his right hand. One cannot see him opening the glove box or his right hand because the camera is pointed toward the seat, but the glove box can be heard opening. His right hand holding the firearm comes into the view of the camera and he unloads the firearm and places it on the passenger seat. Then he looked into the glove box and said, "Holy shit, there's two of them" and he pulled a second firearm from the glove box. Another officer off camera asked him, "What are you looking for?" Kling then responded, "I was just going to get the—he told you there was guns in there, right?" He unloaded the second gun, left both guns and their magazines on the seat and closed the door. He never looked for the registration and insurance cards.

The other officers on the scene from the Williamsport Bureau of Police (WBP) then told Kling what he should do and say to justify Kling getting into the glove box and removing the firearms. At or near 06:54 run time, Officer Damon Cole told Kling, "Make sure you slow it down a little bit rather than just going in and grabbing the guns and stuff. I'd hate for it to be suppressed for whatever reason." At or near 08:35 run time, Officer Cole told Kling, "That helps you if you were getting the registration and insurance anyway." Kling replied, "Yeah, that was my original goal." Then Officer Brandon Wheeler told Kling,

“What you want to do now though—you got the registration or insurance or you were looking for them and then you got out, okay. Find the registration and find the insurance, okay. We need that stuff so we can get an accident receipt done. You need to run the guns now. You didn’t search for them. You just found them when you were looking for registration and insurance. So, run both guns and grab the registration and insurance.” At or near 9:00 run time, Sgt. Miller asked Kling, “At this point, what is your justification for taking them out of the car?” Kling replied, “Uh, safety.” Sgt. Miller then said, “There you go. That’s what you write. In an attempt to look for vehicle information or guns. This car has to be towed. It can’t go with the car. You secured them for safety purposes. If you find that they’re stolen—now that’s another story. You secured them because obviously this car has to be towed because it was involved in a crash. So Garbrick³ will help you out with the crash. Kling said, “I just unloaded them.” Miller said, “Well, I would photograph them.” Kling, however, didn’t have his camera because it was charging, but he had his cell phone camera. Sgt. Miller then changed his mind and told Kling that Williamsport police would handle the crash so “let the guns as is.”

Officer William Badger then said, “I feel like we shouldn’t seize those guns. Why don’t we ‘triple I’ him?” He explained that WBP did not need the guns for the accident investigation. Sgt. Miller said, “We’re taking them for safekeeping no matter what.” Officer Badger said, “If he (Williams) has criminal charges and he is a person not to possess, he (Kling) should take them (the firearms) because we’re not handling the criminal portion.” Sgt. Miller replied, “Well, I think we are trying to avoid-or justify- him getting in the glove box.” Kling then said, “I was trying to make sure who the owner was.”

³ Officer Brett Garbrick.

The court did not accept Kling's explanation. The court believes Kling was inexperienced and a bit overwhelmed. The court does **not** believe that Kling is an untruthful person. However, he knew who the owner of the vehicle was from the moment he activated his lights and siren because he was stopping the vehicle for an expired registration and the registered owner's name and address was in front of him on the computer screen in his vehicle. He also never looked for the registration and insurance.

There were at least seven police officers on the scene – Officer Kling, Sgt. Miller, Officer Cole, Officer Wheeler, Officer Caschera, Officer Badger and Officer Garbrick. Williams was handcuffed and placed in the back of Officer Kling's police vehicle before Kling entered the vehicle. With seven officers on scene and Williams in custody, there was no danger that anyone was going to be able to enter the vehicle and take the firearms. At the very beginning of Kling's appearance at the crash scene, he shut off the vehicle and took the keys. While Kling had Williams on the ground and was handcuffing him, the Williamsport officers arrived to assist him. There was absolutely no reason that the vehicle could not have been locked and a couple of officers left on scene with it while Officer Kling or one of the Williamsport officers drafted and applied for a search warrant for the vehicle if they believed they had probable cause to search the vehicle.⁴

The Commonwealth has not specified how or why the court erred in suppressing the firearms in this case. To the extent the Commonwealth would rely on abandonment, an inventory search, community care-taking, or inevitable discovery, the court would rely on its Opinion and Order entered on April 21, 2023. As an aide to the appellate courts and the

⁴ Later in the video the officers talk about smelling "weed" and impounding the car to await a warrant to search the vehicle for guns and drugs.

parties, the court will reprint the majority of its discussion below with a few changes for consistency and a few additions.

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 has 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 Williams was travelling, Kling had probable cause to stop the vehicle. As he arrived on scene, Williams was outside of the

vehicle and quickly taken into custody by Kling and placed inside his cruiser. The 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 that Williams may have committed other than motor vehicle violations. Kling neither testified about asking nor was heard asking for Williams' consent to search the vehicle. Kling did have the extemporaneous statements of Williams 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, but Kling testified that in the heat of the moment he did not even hear Williams say that. The court questioned that testimony as it appeared to be contradicted by some of Kling's statements on the video. Even if Kling heard the statements, he did not have probable cause for any criminal violation other than fleeing and eluding and summary vehicle offenses at the time he entered the vehicle. *See Commonwealth v. Hicks*, 208 A.3d 916, 937 (Pa. 2019) ("Unless a police officer has prior knowledge that a specific individual is not permitted to carry a concealed firearm, and absent articulable facts supporting reasonable suspicion that a firearm is being used or intended to be used in a criminal manner, there is simply no justification for the conclusion that mere possession of a firearm, where it may lawfully be carried, is alone suggestive of criminal activity."). Kling did not run Williams' name to determine whether he could lawfully possess a firearm or whether he had a concealed carry permit before he entered the vehicle, opened the glove box, and removed the firearms from the glove box.

Since Kling did not have probable cause to believe that a crime was being committed, he could not have opened the glove box to retrieve the guns at the time that he did so, even if exigent circumstances were present. 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 Williams was in custody was unlawful.

The court rejected 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 and left the scene with Williams in custody in Kling's police vehicle. 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. It seemed that the Commonwealth was 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 is not certain whether the warrant included any information that was unlawfully obtained. However, the attorney for the Commonwealth conceded that the search warrant was based on what Officer Kling observed as opposed to any statements by Williams; therefore, if the observation of the firearms in the glove box were removed from the warrant, there would not be any probable cause left in that search warrant. Transcript, 11/21/2022, at 35. Thus, the court rejects the Commonwealth's arguments regarding community-caretaking and inevitable discovery.

The Commonwealth also asserted that Williams 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).

Williams did not abandon the vehicle. Although Williams 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 Williams 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.

DATE: September 15, 2023

By The Court,

Nancy L. Butts, President Judge