

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>v.</b>	:	
	:	<b>CR-213-2024</b>
<b>JOHNATHON R. PEDRAZA,</b>	:	
<b>Defendant</b>	:	

**OPINION**

This matter was before the Court on November 19, 2024, on the Defendant’s Omnibus Pretrial Motion containing a Motion to Suppress and a Motion to Dismiss filed on May 2, 2024 by and through his counsel, Attorney Andrea Pulizzi, Esquire. Attorney Matthew Welickovitch, Esquire, appeared on behalf of the Commonwealth. The charges against the Defendant stem from an incident occurring on or about January 29, 2024. The Defendant is charged in the Criminal Information with Count 1, Possession of a Firearm– Prohibited, Felony 2, and Count 2, Firearm Not to be Possessed Without a License, Felony, 3. A preliminary hearing was held on February 5, 2024, and all charges were bound for court.

***Background***

At the hearing on November 19, 2024, the Commonwealth presented Matthew Jones with the Pennsylvania Department of Corrections, Fugitive Unit and United States Marshals task force unit to testify regarding the events surrounding the alleged charges. Officer Jones testified that on January 29, 2024, he was conducting surveillance on the Defendant because there was a warrant for the Defendant for absconding from parole. Detectives suspected the Defendant was residing at 1014 W. Southern Avenue in South Williamsport, Pennsylvania within Lycoming County. A unit of five detectives surveilled the residence to observe the Defendant’s movements. On January 29, 2024, detectives observed the Defendant exit the rear entrance of the residence and enter the passenger side of a vehicle driven by another

individual. As the vehicle entered the roadway, the detectives initiated a traffic stop and ordered the Defendant to exit the vehicle. Officer Jones testified that he remained in contact with the Defendant and conducted the search incident to arrest while other members of the unit spoke with the driver of the vehicle. Officer Jones further stated that the Defendant was compliant with demands, but he overheard the other officers state that there was a firearm visible in the vehicle. Officer Jones stated that the other officer's statement prompted the Defendant to claim the firearm. At that, Officer Jones instructed the Defendant to stop speaking and issued a *Miranda* warning. Officer Jones also stated that he could not recall whether the door to the passenger side of the vehicle remained open after removing the Defendant, and that he never personally observed the firearm. However, he did overhear the others in his unit speaking with the driver as the pair remained in close proximity to the stopped vehicle. On cross-examination, the witness testified that the individual driving was not a threat nor was he wanted on any warrants. Moreover, the Defendant did not speak up about the firearm until he overheard the other officers discussing its presence. On re-direct, Officer Jones stated that it is standard procedure to identify an individual who is with another individual wanted on a warrant, but that the driver did not have any warrants and he was not suspected of any misconduct.

Next, the Commonwealth called Robert Roland with the Pennsylvania Board of Probation, who is a supervisor of parole officers. Officer Roland testified that the Defendant was the target of an investigation. Officer Roland testified that he was a member of the task force unit charged with surveilling the Defendant. On the day of the alleged incident, Officer Roland was surveilling the Defendant in the parking lot of Southern Grill on West Southern Avenue in South Williamsport, Pennsylvania. Officer Roland's testimony contained the same details as Officer Jones, in that, the unit observed a vehicle approach the Defendant's

address, the Defendant entered the passenger side of the vehicle, and when the traffic stop was initiated he observed the other officers order the Defendant to exit the vehicle. Officer Roland testified that he did not participate in the apprehension of the Defendant, and as soon as the Defendant was out of the vehicle he approached and engaged with the driver. In accordance with standard procedures, Officer Roland requested that the driver turn off the vehicle, requested his name, and asked if he was under any form of supervision. Officer Roland stated that he spoke with the driver through the passenger-side window. Through conversation, the driver was identified as Naaif Lowe and he was under active supervision from Adult Probation. While speaking with Lowe, Officer Roland observed the butt plate of a handgun wedged between the passenger seat and the passenger door. Upon this observation, the other officers were directed to remove Lowe from the vehicle to visually confirm that the object was a handgun. Lowe consented to a search of the vehicle and the handgun was the only contraband discovered. The unit contacted the South Williamsport police to dispatch to the location of the stopped vehicle. Officer Roland further testified that he did not engage with the Defendant, but he did overhear him claim ownership of the firearm.

On cross-examination, Officer Roland stated that the passenger-side window was rolled down about halfway, the window did not have tint, and he could not have fit his head through the window. Officer Roland further stated that he approached the driver to determine his identity, and that Lowe was cooperative and did not have any active warrants. Officer Roland stated that he did not observe the Defendant holding any objects as he entered the vehicle, and only a few minutes elapsed from the time the Defendant entered the vehicle to when the traffic stop was initiated.

Then, the Commonwealth called Seth Stropp with the South Williamsport Police Department to testify about his presence at the scene. Officer Stropp was dispatched to the scene on West Southern Avenue after a report came in about a possible firearm in a vehicle. When he arrived, Officer Stropp observed several U.S. Marshal vehicles, the passenger door of the car open, and he was directed to the location of the firearm within the vehicle. Officer Stropp observed the firearm wedged between the front passenger seat and front passenger door, and that the firearm was readily observable with the door open. Then, Officer Stropp removed, cleared, and processed the firearm. Officer Stropp spoke briefly with the Defendant while he was in the back of a U.S. Marshal vehicle. Officer Stropp was advised that the Defendant was already Mirandized, and when asked who the firearm belong to the Defendant requested to speak with counsel. Officer Stropp could not recall the type of firearm, but knew that the Defendant was previously convicted with a disqualifying charge that prohibits him from owning or possessing firearms or a license to carry thereof.

On cross-examination, Officer Stropp stated that he was dispatched to the scene due to the nature of the incident and the jurisdictional requirement that the South Williamsport Police file the charges related to the firearm against the Defendant as the U.S Marshals and Probation Officers were present to address the Defendant's warrant for absconding from parole.

### ***Argument***

In his Omnibus Pretrial Motion, the Defendant submitted that the preliminary search of the vehicle by the U.S. Marshals was unlawful as it was conducted without probable cause and without authority. Specifically, the Defendant argued that as soon as he was apprehended and his person was searched incident to arrest there was no lawful reason for the officers to approach the driver and engage in conversation. Moreover, the Defendant argued that an

unlawful search of the vehicle occurred immediately upon Officer Roland looking through the window into the vehicle. The Defendant avers that once he was apprehended and restrained with handcuffs, the officers needed a search warrant to search the vehicle. Thus, the Defendant asserted that an unconstitutional search occurred and requests that all evidence obtained thereof be suppressed. The Defendant also argued that the consent to search was invalid because the driver was not the subject of the investigation. Therefore, once standard procedure for identifying the driver, investigating his status under supervision, and because the Defendant was already detained by then, the interaction should have ceased.

As such, the Defendant requested that any and all evidence seized from the vehicle and any fruits thereof be suppressed. Additionally, the Defendant asserted that he was not in actual possession or control of the handgun, no other contraband was found on his person, and the firearm was found in a vehicle that does not belong to the Defendant. Thus, The Defendant asserted that the Commonwealth has failed to establish a *prima facie* case against the Defendant in this matter and requests the charges against him be dismissed.

The Commonwealth argued that Officer Roland interacted with the driver pursuant to standard procedures, and that his view into the car while engaging with the driver is a constitutionally permissible space to observe. The Commonwealth argued that the Defendant bears the burden of establishing that he possessed a privacy interest in Lowe's vehicle, and the Commonwealth's presentation of testimony did not elicit the Defendant's privacy interest in the vehicle. While the Commonwealth avers that the Defendant's lack of a privacy expectation in the vehicle is sufficient to bar success of the Motion to Suppress, the Commonwealth further argued that the Defendant's motion will fail under an analysis of the plain view doctrine as well.

Regarding the Defendant's Motion to Dismiss, the Commonwealth averred that it has established a *prima facie* case against the Defendant. Specifically, the Defendant's statement claiming ownership of the firearm, the location of the firearm on the passenger side of the car where the Defendant was seated, the Defendant's prior conviction precluding him from possessing or owning a firearm or license thereof, and the testimony from the officers establishes a *prima facie* case against the Defendant in this matter. Accordingly, the Commonwealth opposes the Motion to Dismiss and requests the Court deny Defendant any relief thereof.

After argument, the Defendant requested to submit case law supporting his position regarding third party involvement in and the consent to search a vehicle. The Court granted the parties this request and provided the Commonwealth the same time to submit case law in rebuttal. The Court received responses from both parties by the day following the hearing.

The Defendant submitted *Brendlin v. California*, 551 U.S. 249 (2007), stating that the Supreme Court ruled that a passenger in a vehicle is seized for Fourth Amendment purposes when the vehicle is stopped by law enforcement. The Defendant further argued that the case establishes that passengers have a reasonable expectation of privacy which may afford them protection against unlawful searches and seizures.

The Commonwealth argued that the Defendant's application of *Brendlin*, is inapposite to this matter. Specifically, the *Brendlin* holding involved standing of a passenger to challenge the stop of a vehicle which was found to be unlawful, and that the case does not discuss a passenger's reasonable expectation of privacy related to items found in that vehicle. The Commonwealth further argued that the seizure of the vehicle in this matter was lawful as law enforcement observed a wanted individual enter Lowe's vehicle moments before conducting the traffic stop and apprehension of the Defendant. Rather, the Commonwealth

submitted *Commonwealth v. Millner*, 585 Pa. 237 (2005) asserting that the Pennsylvania Supreme Court clearly explains the law of standing and a reasonable expectation of privacy in Pennsylvania. The *Millner* court applied the law of standing to a passenger who was charged, inter alia, for a firearm located in a vehicle. The *Millner* court ruled that a passenger challenging the legality of a police search of a vehicle, the individual must demonstrate that he possessed a reasonable expectation of privacy. The Commonwealth argued that the case at bar contains facts and legal findings that are duplicative of the *Millner* matter, and for that reason the Commonwealth asserted that the Defendant should not be found entitled to the requested relief.

The Court agrees with the Commonwealth that the Defendant's application of *Brendlin* in this matter is inapt. Accordingly, the Court's analysis follows.

### ***Analysis***

#### ***a. Defendant's Motion to Suppress on the grounds that the search was unlawful***

##### ***i. Commonwealth's assertion that the Defendant lacks standing***

Both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution provide protection to citizens against unreasonable searches and seizures from law enforcement. *Commonwealth v. Sands*, 887 A.2d 261, 268 (Pa. Super. 2005). However, it is well settled in this Commonwealth that "before a defendant can challenge the seizure of physical evidence, he must demonstrate that he had both a possessory interest in the evidence and a legally cognizable expectation of privacy in the area from which the evidence was seized." *Commonwealth v. Byrd*, 987 A.2d 786, 790 (Pa. Super. 2009). In *Commonwealth v. Sell*, 504 Pa. 46, 470 A.2d 457 (1983), the Pennsylvania Supreme Court held that:

under Article I, Section 8 of the Pennsylvania Constitution, a criminal defendant charged with a possessory offense has 'automatic standing' to pursue a motion to

suppress evidence where that evidence...forms the very basis for the possessory crime, and the claim is that the evidence was the fruit of an unlawful seizure.”

*Commonwealth v. Millner*, 585 Pa. 237 (2005)(explaining that the *Sell* Court’s holding is significantly more protective of privacy rights than current Fourth Amendment jurisprudence from the Supreme Court which deviated from automatic standing claims and instead focused on whether the challenged search or seizure compromised a reasonable and legitimate privacy expectation personal to a defendant). Generally, under Pennsylvania law, a defendant has automatic standing to challenge a search where a possessory offense is charged.

*Commonwealth v. Powell*, 984 A.2d 1096, 1104 (Pa. Super. 2010). Automatic standing requires a defendant to demonstrate one of the following:

- (1) his presence on the premises at the time of the search and seizure;
- (2) a possessory interest in the evidence improperly seized;
- (3) that the offense charged includes as an essential element the element of possession; or
- (4) a proprietary or possessory interest in the searched premises.

*Id* at 1104.

Here, the Defendant possessed automatic standing to validly bring his Motion to Suppress evidence obtained from an alleged unreasonable search under Article I, Section 8 of the Pennsylvania Constitution because he is charged with a possessory crime. However, in *Commonwealth v. Peterson*, the Pennsylvania Supreme Court explicitly clarified that the preservation of automatic standing under Article I, Section 8 of the Pennsylvania Constitution in *Sell* did not absolve the defendant of his obligation to demonstrate that the challenged law enforcement conduct “implicated a reasonable expectation of privacy that he personally possessed.” *Commonwealth v. Millner*, 585 Pa. 237, 254 (2005).

Under the Pennsylvania Supreme Court’s precedent, a defendant bears the initial burden of showing that he possessed a reasonable expectation of privacy that was infringed by the police entering a constitutionally protected area. *Id*. An individual exhibits an



expectation of privacy by his actions when he demonstrates that he possessed an actual privacy interest in the place invaded. This area is one that is understood by society to be reasonable and one where the warrantless entry of the police is not justifiable under Article I, Section 8, and the Fourth Amendment. *Id* at 256 citing *Commonwealth v. Sell*. “An expectation of privacy is constitutionally legitimate if the expectation is reasonable in light of all the surrounding circumstances and does not depend on the subjective intent of the individual claiming the right.” *Commonwealth v. Powell*, 994 A.2d 1096, 1104 (2010) citing *Commonwealth v. Burton*, 973 A.2d 428, 435 (Pa.Super.2009).

Additionally, the right to be free from unreasonable searches and seizures is personal in nature, a defendant cannot obtain relief via suppression by asserting that law enforcement officials violated another’s rights. *Commonwealth v. Millner*, 585 Pa. 237, 248 (2005). While the *Sell* Court provides a higher standard of protection to defendants seeking to suppress evidence obtained through unreasonable searches and seizures, the court noted that under *Rakas v. Illinois*, 439 U.S. 128 (1978), *U.S. v. Salvucci*, 448 U.S. 83 (1980), and *Rawlings v. Kentucky*, 448 U.S. 98 (1980), the “sole determinant of the scope of protection afforded’ under the Fourth Amendment was the defendant’s ‘ability to prove a legitimate expectation of privacy’ by the ‘totality of the circumstances.’” *Id* at 253 citing *Commonwealth v. Sell*, 504 Pa. 46, 470 A.2d 457, 466 (1983). In *Rakas*, 439 U.S. 128 (1978), the Court held that the Fourth Amendment protects property, and specifically, that a passenger in a vehicle may not invoke the exclusionary rule and challenge a search of that vehicle unless he happens to own or have a possessory interest in the vehicle. *Supra*, dissenting opinion,

Here, the Defendant’s presentation at the hearing on his Motion to Suppress did not exhibit any evidence that the Defendant possessed a reasonable expectation of privacy. Thus, the Defendant is unable to prevail on his Motion to Suppress. Under the totality of the

circumstances, the Defendant entered Lowe's vehicle mere moments before the driver was stopped by law enforcement. Accordingly, there is no evidence implying that the Defendant owned or possesses a reasonable expectation of privacy in Lowe's vehicle.

*ii. Defendant's assertion that the search should have ceased as soon as he was apprehended*

Notwithstanding that a defendant need establish a reasonable expectation of privacy as a passenger in a vehicle, in *Brendlin v. California*, the Supreme Court held that a passenger is seized at the time a traffic stop is conducted vis a vis, a driver is also seized at the time a traffic stop is conducted within the meaning of the Fourth Amendment. *Id.* A search conducted without a warrant is unreasonable under the Fourth Amendment and Article I, Section 8. However, consent that is freely given to officers to conduct a search is an exception for a warrantless search to be permissible. *Commonwealth v. Strickler*, 563 Pa. 47, 56 (2000).

In this matter, Lowe was the driver of the vehicle, thus, he was detained as a result of the traffic stop according to the findings in *Brendlin* and its predecessors within the meaning of the Fourth Amendment. Accordingly, the Defendant's argument that the officers should have ceased their investigation as soon as he exited the vehicle and was detained also fails. Lowe was not "free to leave" the scene after the Defendant was apprehended, or if he was he did not have that understanding. Moreover, while engaging with Lowe, the officers observed the butt plate of a firearm between the passenger door and passenger seat from a lawful vantage point outside of the vehicle. From there, the officers requested to conduct a search of the vehicle to which Lowe consented. Accordingly, even if the Defendant's argument that the officers should have ceased their investigation after he was removed from the vehicle, had his person searched, and was detained, the officers' conduct is lawful for these purposes

because Lowe was also a subject of the detention as the driver. As a subject of the lawful traffic stop, Lowe was well within his rights to consent to the search of his vehicle after the officers lawfully viewed contraband. The officers testified that it is standard procedure to make contact with the driver of a vehicle during any traffic stop. Under this argument, each party was within his rights to engage with the other and comply with law enforcement directives.

Accordingly, the Defendant is unable to prevail on his Motion to Suppress because he has not provided evidence to satisfy the second part of the standing analysis as he has not established that he possessed a reasonable expectation of privacy in the area that was searched. Additionally, the Defendant's attempt to assert that the driver's rights were violated also fails because even if the Lowe's detention as the driver ended after the Defendant was removed and detained, Lowe validly consented to the search.

In finding that the Defendant did not establish the requisite standing to prevail on his motion, the Court need not evaluate additional arguments from the Defendant or the Commonwealth regarding the Motion to Suppress. Although, the Court also agrees that the Defendant's motion would fail under a plain view analysis.

***b. Defendant's Motion to Dismiss alleging the Commonwealth has failed to establish its burden that a prima facie case exists***

The Commonwealth meets its burden that a *prima facie* case exists when the evidence produced meets every material element of the charged offenses and the defendant's complicity therein. *Id.* This burden may be met by utilizing the evidence available at a preliminary hearing and also may produce additional proof. *Id.*

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Commonwealth*

*v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). In its consideration, a court does not factor in the weight and credibility of the evidence. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “Inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth’s case.” *Commonwealth v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

Here, the Defendant is charged under 18 Pa.C.S.A. Section 6105 subsection (a)(1) with possession of firearm prohibited and under 18 Pa.C.S.A. Section 6106 subsection (a)(1) with Firearms not to be carried without License.

First, under 18 Pa.C.S.A. 6105 (a)(1), a person whose “...conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.” Subsection (c)(2) of 18 Pa.C.S.A. Section 6105 provides that an individual who has been convicted of an offense under the Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years cannot “possess, use, control, sell, transfer or manufacture a firearm” in Pennsylvania.

Additionally, under 18 Pa.C.S.A. Section 6106 (a)(1), “[e]xcept as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of

business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.”

The evidence and testimony provided at the preliminary hearing and the hearing on the Defendant’s Motion, is indicative of the Commonwealth having met its burden of establishing a *prima facie* case. First, the Defendant had a warrant for his arrest for parole violation under a previous conviction under the Controlled Substance, Drug, Device and Cosmetic Act. Next, the Defendant was apprehended pursuant to the warrant after law enforcement lawfully conducted a traffic stop on the vehicle that the Defendant entered moments before it was stopped. Also, the officers observed a firearm wedged between the passenger seat and the passenger door, the location of the Defendant mere moments prior. Finally, there is a statement from the Defendant before he was mirandized that he was the owner of the firearm. In sum, the status of the Defendant as a fugitive from the law, the statement he made at the discovery of the handgun in the vehicle, the location of the handgun on the passenger side, and his status as an individual not to possess firearms establish the material elements for both of the charges against the Defendant. Thus, the Court finds that the Commonwealth has met its burden of establishing a *prima facie* case against the Defendant.

Accordingly, the Court enters the following Order:

**ORDER**

**AND NOW, this 10<sup>th</sup> day of March, 2025**, upon consideration of the evidence, testimony, argument by counsel, and for the above-named reasons, the Court **DENIES** the Defendant’s Motion to Suppress on the basis that the Defendant did not possess the requisite expectation of privacy in Lowe’s vehicle to prevail on this motion. Additionally, the Court

**DENIES** the Defendant's Motion to Dismiss having found that the Commonwealth has established a *prima facie* case against the Defendant to charge him in this matter.

By the Court,

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Ryan M. Tira, Judge

RMT/asw

CC: DA

Andrea Pulizzi, Esquire

Gary Weber, Esquire-Lycoming Reporter