

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : CRIMINAL DIVISION
: NO. CR-1063-2025
v. :
: **Motion to Suppress**
BRIAN KINNEY, :
Defendant :

FILED
LYCOMING COUNTY
2026 MAY 29 PM 4: 33
CLERK OF COURT

OPINION

This matter was before the Court on December 9, 2025, for a hearing on the Defendant's Motion to Suppress filed by Matthew Diemer, Esquire, on November 7, 2025, on behalf of his client. At the hearing on the Motion, Defendant appeared personally represented by Attorney Diemer. Assistant District Attorney Eric Birth was present on behalf of the Commonwealth.

Defendant is charged by way of the criminal information with Count 1—Manufacture, Sale or Delivery, Holding, Offering for Sale, Sale, or Possession of any controlled substance, other drug, device or cosmetic that is adulterated or misbranded pursuant to 35 Pa.C.S. Section 780-113 (a)(1), as well as various other summary offenses,¹ for incidents occurring on or around April 5, 2025.

Defendant filed the subject motion seeking suppression of all evidence seized from Defendant's vehicle on April 5, 2025, on the basis that the wingspan search conducted by Officer Fromm was in violation of the Defendant's rights under Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution.

¹ Defendant is charged with: Count 2 and Count 3—Control of Property Regulations, summary, under 34 Pa.C.S. §721 §§(A) and Count 4 and Count 5—Violations of Rules on Commonwealth Property, summary, under 18 Pa.C.S. §7506 §§(A).

At the hearing on the Motion, the Commonwealth presented Officer Benjamin Fromm, a state game warden with the Pennsylvania Game Commission. No additional witnesses were presented to provide testimony.

Background

By way of further background, Officer Fromm testified that on the evening of April 5, 2025, he was conducting routine night patrol in a marked car in the area of the city of Williamsport, Lycoming County, Pennsylvania. At approximately 12:10 a.m., Officer Fromm encountered a vehicle parked at the Hiawatha River boat launch. Officer Fromm observed that the vehicle was parked in an odd manner and at an odd time of the day, considering the boat launch is closed after sunset. Officer Fromm further explained that the vehicle was blocking the boat launch and the passenger tire was nearly in the water.

Officer Fromm located the two individuals approximately five (5) to (10) feet east of where the vehicle was parked, and identified the operator of the vehicle as Brian Kinney, the Defendant. The two individuals explained they were going fishing, which is allowed, but they were not permitted to park the vehicle on state park land from after sunset to sunrise. Additionally, when Officer Fromm requested to see their fishing license, the individuals did not have the licenses on their persons. Officer Fromm further testified that he conducted a routine field check—inspecting drivers' licenses, the vehicle's inspection, etc.

Officer Fromm observed that the vehicle had an expired inspection, and he observed a pistol resting on the front seat of the vehicle. Thereupon, Officer Fromm asked Defendant general questions about any weapons in the vehicle, and he testified that the Defendant indicated there were no weapons in the vehicle. Officer Fromm reported seeing the pistol to the Defendant who then refused to acknowledge the pistol on the driver's seat. During the course of that conversation, Defendant requested to retrieve his cigarettes from the vehicle

and began to make his way to the passenger side door to do so. Officer Fromm refused to permit Defendant to enter the vehicle, and Defendant complied with the directives to return to the outside of the driver's side of the vehicle. Defendant's cigarettes were next to the pistol on the driver's side seat. Officer Fromm initiated a wingspan search of the vehicle to secure the visible pistol and assess whether any other weapons were within reach in the cab of the truck. Officer Fromm entered the vehicle to secure the pistol out of concern for his safety while backup officers were on route to the scene. Officer Fromm observed a pellet gun in the back of the cab of the truck, with which he was not concerned, and he did not search the glove box or the center console. On cross-examination, Officer Fromm testified that he initially intended to permit the Defendant and second individual to sit in the car and wait for backup law enforcement to arrive because it was colder on the date and time in question. When asked why he did not put the Defendant and second individual in his marked vehicle, Officer Fromm answered that he would have had to place them in handcuffs. Moreover, Officer Fromm acknowledged this information was not in the report because the motive behind the wingspan search was to secure the weapon out of a concern for his safety and per his training.

Argument

At the hearing, Attorney Diemer argued that, under *Terry* and its progeny, officer safety is an exception to warrantless searches of a suspect and the area around the suspect when the officer possesses a reasonable belief that the stopped individual poses a credible threat. Defense argued that the scope of *Terry* is to areas where weapons may be hidden, and a wingspan search pursuant to officer safety is permissible when the danger to the officer is immediately accessible by the suspect.

Defendant argued that in the context of this scenario, the Defendant's vehicle was parked with all doors shut and locked, and the Defendant was outside of the vehicle, and per Officer Fromm's report, the initial interaction occurred five to ten feet away from the vehicle. Defendant further argued that when he was denied access to the vehicle he complied with Officer Fromm's order, and Officer Fromm could have waited for the backup units to respond to the scene. Defendant also argued that Officer Fromm took no mitigating steps, such as, moving the Defendant farther away from the vehicle or placing the Defendant in the secure marked vehicle. Defendant raised questions about Officer Fromm's conduct in pursuit of securing his safety because Officer Fromm did not conduct a pat down nor did he search the glovebox and center console. Additionally, Officer Fromm did not remove the air rifle, which raised questions by Defendant that he was truly concerned for his safety. Defendant asserted that the standard for a protective search is to conduct a pat down and secure any weapons or threats to the officer's safety when the suspect can immediately access the threat. Thus, it is Defendant's position that there was no immediate threat to Officer Fromm's safety to justify the wingspan search that occurred, and for the aforementioned arguments, the wingspan search was illegal in violation of the Defendant's constitutional rights and the evidence seized from the vehicle as a result should be suppressed.

At the hearing, the Commonwealth argued that the basic facts—Officer Fromm observed a suspicious vehicle, made contact with the individuals, discussed their activities, observed a firearm in plain sight in the Defendant's vehicle, and inquired about the weapon which the Defendant denied—support Officer Fromm's wingspan search under the legal precedent. The Defendant omitting knowledge of the firearm, or denying the firearm, created the reasonable suspicion Officer Fromm required to conduct the wingspan search. Officer Fromm also testified that he did intend to permit the Defendant to return to his vehicle to

wait for the backup units and for that purpose, he needed to conduct a protective search and secure the visible firearm for his safety. Regarding the air rifle, the Commonwealth argued that Officer Fromm possesses the experience to discern that the air rifle was not a threat to his safety. For those reasons, the Commonwealth asserted the Officer Fromm was justified in conducting the search pursuant to an exception of the Defendant's constitutional rights protecting him against unlawful searches and seizures.

Analysis

Instantly, there it is not contested that the vehicle was parked on state park land blocking the boat launch in violation of 18 Pa.C.S. Section 7506(a) and that Officer Fromm properly stopped to investigate the summary violations. At issue here is whether Officer Fromm was authorized to enter the vehicle and seize the firearm, which seizure led to the discovery of marijuana in the center console area of the vehicle. Defendant argues that Officer Fromm lacked reasonable suspicion he was dangerous and able to gain control of the weapon from outside of the vehicle. Defendant's position is that the wingspan search violated the Defendant's rights under Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution, and that all evidence seized and any fruits thereof should be suppressed.

"A warrantless search or seizure is presumptively unreasonable under the Fourth Amendment and Article I, Section 8, subject to a few specifically established, well-delineated exceptions." *Commonwealth v. McCree*, 924 A.2d 621, 627 (Pa. 2007). Included in the exceptions are: the consent exception, the plain view exception, the inventory search exception, the automobile exception, the stop and frisk exception, and the search incident to arrest exception." Additionally, in *Michigan v. Long*, 463 U.S. 1032 (1983), the United States Supreme Court established the "standard under which the police may conduct a search of the

passenger compartment of a vehicle for weapons.” *Commonwealth v. Morris*, 537 Pa. 417, 420 (1994)(citing *Michigan v. Long*, *supra*).

In *Long*, police conducted a warrantless search for weapons in the passenger compartment of the defendant’s vehicle—revealing marijuana in an open bag on the front seat of the car—after the officers patted down the defendant when they observed a large hunting knife on the floor board of the defendant’s vehicle. *Id.* Prior to the search, the defendant was unresponsive to the officer’s requests for license and registration and appeared to be under the influence of a substance. *Id.* The search was subsequently upheld with the Court reaching the conclusion that under the rationale of *Terry v. Ohio*, 392 U.S. 1 (1968), “an officer could conduct a warrantless search of those portions of the passenger compartment of a vehicle in which a weapon could be hidden when the circumstances were such that a ‘reasonably prudent man in the circumstances would be warranted in the belief that his safety or the safety of others was in danger,’ so long as this belief was based on specific articulable facts.” *Id.*

The *Long* analysis was adopted by the Pennsylvania Supreme Court in *Morris*, *supra*, wherein a police officer observed a car parked in an unusual, but not illegal, location late in the evening. *Commonwealth v. Morris*, 537 Pa. 417 (1994). Upon noticing the officer, the driver drove away and made a turn without signaling, which resulted in a traffic stop. *Id.* As the officer approached, he observed the driver lean to his right toward the floor of the car. *Id.* Although the officer directed the driver to return his hands to the center of the wheel, he reached quickly between his legs toward the floor of the car. *Id.* The driver was ordered out of the car, and upon his exit, the officers noticed a 24-inch metal pipe wedged between the driver’s seat and the door. *Id.* The officer removed the defendant to the trunk of his car and conducted a pat down search of the defendant that revealed no weapons. *Id.* The officer

returned to the passenger compartment, using his flashlight, observed a black plastic bag on the front seat. *Id.* The officer retrieved the bag, which was large enough to contain a weapon, and the officer discovered cocaine, marijuana, and related drug paraphernalia. *Id.* The defendant was arrested, his suppression motion was denied, he was convicted of drug possession and possession with intent to deliver. *Id.* On appeal, the Pennsylvania Superior Court and the Pennsylvania Supreme Court affirmed, ultimately holding that the officer was justified in his search and reasonably feared for his safety because: (1) defendant leaned briefly to his right and towards the floor near the center of the car when the officer stopped him; (2) defendant reached quickly between his legs when he was ordered to place his hands on the steering wheel; (3) the officer's discovery of the metal pipe between the driver's seat and door tend to indicate that defendant might have access to other weapons within the passenger's compartment. *Id. See also: Commonwealth v. Rosa*, 734 A.2d 412 (Pa. Super. 1999)(holding the officer was justified in his search because the traffic stop occurred late at night, the officer observed in plain view two knives and several cross bows, the driver could not produce his license, proof of insurance or vehicle registration, and an occupant in the back seat was extremely active); *Commonwealth v. Simmons*, 17 A.3d 399, 401 (Pa. Super. 2011)(reasonable suspicion existed where the traffic stop occurred at night in a high-drug and high-crime area and the defendant was observed making furtive movement consistent with concealing a weapon).

The United States Supreme Court held in *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), "that police may require the driver of a lawfully stopped vehicle to exit the vehicle without any additional probable cause or reasonable suspicion without violating an individual's Fourth Amendment rights." *Commonwealth v. Pratt*, 930 A.2d 561, 564 (Pa. Super. 2007). The Court in *Mimms* "balanced the need to protect police officers from the

serious and substantial dangers inherent in traffic stops, and the relatively minor intrusion upon the privacy rights of the driver..." *Id.* In *Maryland v. Wilson*, 519 U.S. 408 (1997), the United States Supreme Court expressly extended the holding in *Mimms* stating:

In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.

Subsequently, the Third Circuit Court of Appeals, pursuant to *Wilson*, held in *United States v. Moorefield*, 111 F.3d 10 (3d Cir.1977), that the officers lawfully ordered the defendant to remain in the vehicle with their hands in the air while the traffic stop occurred, finding that the imposition was equally as minimal as that in *Wilson*. In *Commonwealth v. Pratt*, 930 A.2d 561, 567, (Pa. Super. 2007), the Pennsylvania Superior Court concluded that "pursuant to *Mimms* and *Maryland v. Wilson*, a police officer may lawfully order a passenger who has exited and/or attempted to walk away from a lawfully stopped vehicle to re-enter and remain in the vehicle until the traffic stop is completed, without offending the passenger's rights under the Fourth Amendment." In *Pratt*, the Court further explained that "allowing police officers to control all movement in a traffic encounter, and, in particular to eliminate the possibility of a passenger, who has an obvious connection to the vehicle's driver, from distracting or otherwise interfering with an officer engaged in a traffic stop whether by exiting the car and remaining at the scene, or attempting to leave the scene for unknown reasons, is a reasonable and justifiable step toward protecting their safety." *Id.* at 567-68.

With respect to the contraband that was recovered as a result of the protective search, "[i]f, while conducting a legitimate *Terry* search of the interior of the automobile, the officer

should ... discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression....” *Michigan v. Long*, 463 U.S. at 1050, 103 S.Ct. at 3481, 77 L.Ed.2d at 1220. Finally, courts have held that “an officer has the right to conduct a weapons search of an automobile if there is a reasonable belief that the suspect is dangerous and that the suspect might gain immediate control of weapons.” *Commonwealth v. Austin*, 428 Pa.Super. 466, 631 A.2d 625, 627 (1993).

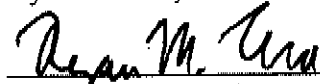
Here, the testimony provides that Officer Fromm was acting alone when he observed the illegally parked vehicle belonging to Defendant. Officer Fromm conducted his stop of Defendant in the early morning hours—just past midnight—in a secluded location. Additionally, Defendant was not alone as he had an occupant accompanying him that evening at the boat launch. Officer Fromm observed from a lawful vantage point a handgun on the driver’s seat of the vehicle. Despite backup being on the way to assist Officer Fromm, Officer Fromm testified that he was intending to permit Defendant and his companion to reenter the vehicle while they wait for backup. When asked why he did not offer for Defendant and his companion to sit in his patrol vehicle, Officer Fromm stated that the pair would need to be handcuffed in that circumstance. Officer Fromm was justified in his consideration of permitting Defendant and the passenger back in the vehicle while waiting for back up law enforcement units. Officer Fromm had the authority to control the movement of the driver and passenger in consideration of his safety. The nature of the circumstances of the stop, Officer Fromm operating solo, the weapon in plain view, the presence of a passenger, and the time of the stop all support the conclusion that Officer Fromm was justified in conducting the protective search of Defendant’s vehicle. While it may have been more prudent for Officer Fromm to take other mitigating steps, he was not required to do so. Additionally, the firearm was readily accessible. Regarding the air rifle, Officer Fromm has

the experience necessary to determine that the air rifle was not a risk to his safety should he permit the stopped individuals to re-enter the vehicle. Accordingly, the Court enters the following Order:

ORDER

AND NOW, this ___ day of May, 2026, in consideration of the aforementioned, the Court concludes that the evidence and the testimony provided support the protective search conducted by Officer Fromm, and the Defendant's Motion to Suppress is **DENIED**.

By the Court,



Ryan M. Tira, Judge

RMT/asw

CC: DA; CA;
Matthew Diemer, Esq.
Gary Weber, Esq.—Lycoming Reporter