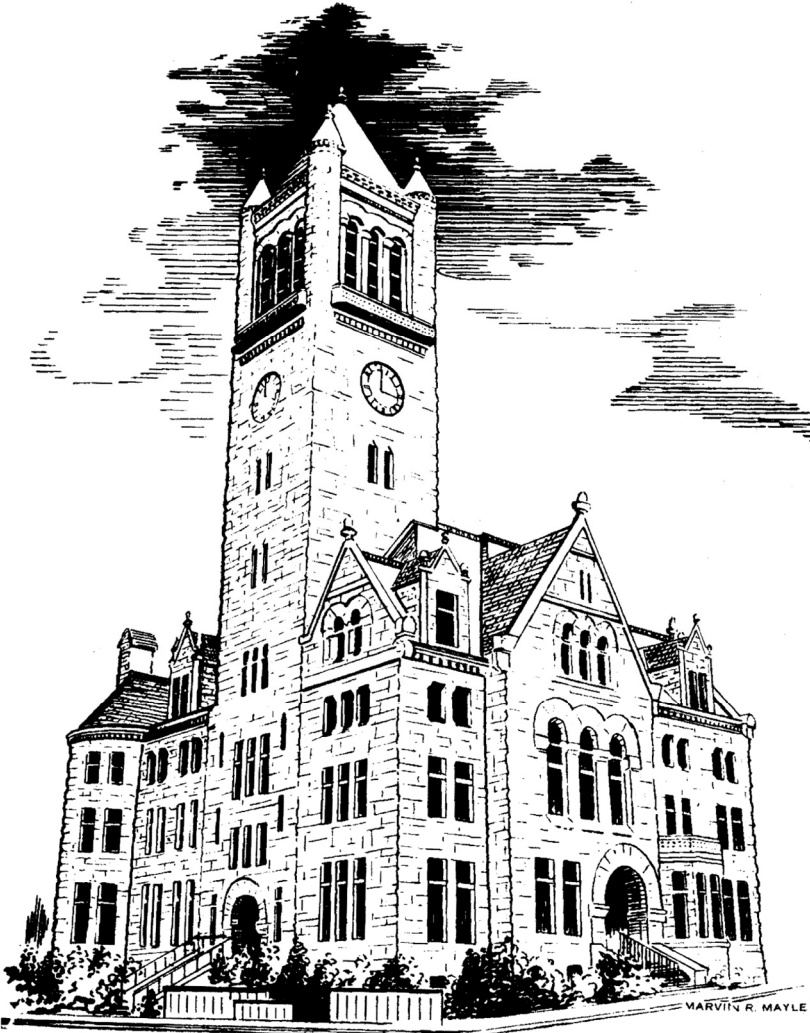


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Second Publication

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First Publication

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Attorney: James T. Davis

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF :
PENNSYLVANIA, :
v. :
 :
DOUGLAS WAYNE MORRISON, : No. 1391 of 2020
Defendant. : Honorable Linda R. Cordaro

OPINION AND ORDER

Leskinen, J.

August 29, 2022

SUMMARY

Currently before this Court is Defendant's Omnibus Pretrial Motion for suppression of evidence and/or dismissal of charges as a result of an illegal search. The Defendant has been charged with Possession with Intent to Deliver under 35 Pa.C.S.A. § 780-113 (A)(30); Intentional Possession of Controlled Substance under 35 Pa.C.S.A. § 780-113 (A)(16); and Use/Possession of Drug Paraphernalia under 35 Pa.C.S.A. § 780-113(A) (32).

BACKGROUND

On June 17, 2020, at approximately 12:33 PM, Trooper Tanner Barnhart and his partner were on patrol. While stopped in traffic in their patrol vehicle, Trooper Barnhart saw a green Ford 500 several cars ahead that had a non-functioning center brake light. The trooper activated his lights and siren and executed a traffic stop at the Sheetz station on Pleasant Valley Road. The trooper then approached the passenger side of the vehicle and ascertained the identities of the occupants: Waylon Shroyer (driver) and the Defendant, Douglas Morrison (passenger). The trooper also requested registration and insurance information, which the Defendant retrieved from the glove box and handed to him. Trooper Barnhart noticed the Defendant's hand shook as he handed over the documents and that he seemed nervous. The paperwork showed that neither Mr. Shroyer nor the Defendant was the registered owner of the vehicle, and Mr. Shroyer told the trooper the owner was a friend of his. The Defendant told the trooper that he and Mr. Shroyer had been shopping at Wal- Mart and were on their way home and going to Morgantown for more shopping. Trooper Barnhart asked the driver to exit the vehicle in order to show him the non-functioning brake light. When Mr. Shroyer exited the vehicle, trooper noticed that Mr. Shroyer had injection marks on his arms.

Trooper Barnhart asked Mr. Shroyer for permission to search the vehicle, and Mr. Shroyer replied that the trooper would have to contact the registered owner to obtain permission. The trooper then asked Mr. Shroyer where "the dope" was in the vehicle, and Mr. Shroyer responded that he had four (4) empty stamp bags in his wallet. The wallet was in plain view in the center console of the vehicle. Trooper Barnhart initiated

a search of the entire vehicle, including: the glove box, which resulted in recovery of drug paraphernalia; the main compartment, which resulted in recovery of an empty stamp bag from driver's side floor; and the trunk, which resulted in recovery of two (2) bricks of heroin and approximately seven hundred (700) empty stamp bags from a black bag inside a plain white plastic bag that was situated among Wal-Mart shopping bags. Four (4) empty stamp bags and seven (7) full stamp bags were found in Mr. Shroyer's wallet. As the trooper searched the vehicle, the Defendant informed the trooper that the Wal-Mart shopping bags in the trunk were his. No drugs or paraphernalia were found on the Defendant's person. After the search concluded, troopers took Mr. Shroyer and the Defendant into custody, and the vehicle was secured and left in a parking space in the Sheetz lot.

DISCUSSION

The Pennsylvania Supreme Court has held that a warrantless vehicle search requires both probable cause and exigent circumstances. *Commonwealth v. Alexander*, 243 A.3d 177, 208 (Pa. 2020). "Obtaining a warrant is the default rule," and it is for the courts to decide whether exigency existed under the circumstances, "with a focus on the particular facts." *Id.* The inherent mobility of a vehicle may increase the risk that evidence may be lost, but the fact that a vehicle is involved is not necessarily enough, in itself, for exigency. *Commonwealth v. White*, 669 A.2d 896, 900 (Pa. 1995); *Commonwealth v. Cockfield*, 246 A.2d 381, 384 (Pa. 1968). A warrantless search is deemed to be unreasonable unless there exists an established exception, such as voluntary consent to a search. *Commonwealth v. Strickler*, 757 A.2d 884,888 (Pa. 2000).

"[A] defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests." *Commonwealth v. Millner*, 888 A.2d 680, 692 (Pa. 2005). "While the Pennsylvania Constitution may be employed to guard individual privacy rights against unreasonable searches and seizures more zealously than the federal law, an individual's expectation of privacy in the place searched [still] must be established to invoke constitutional protection." *Commonwealth v. Viall*, 890 A.2d 419, 422 (Pa. Super. Ct. 2005) (internal citations omitted). Accordingly, "[a]n expectation of privacy will be found to exist when the individual exhibits an actual or subjective expectation of privacy and that expectation is one that society is prepared to recognize as reasonable." *Id.* The analysis of whether such expectation exists "will ultimately rest upon a balancing of the societal interests involved. The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances." *Id.*

Here, Trooper Barnhart already knew that neither Mr. Shroyer nor the Defendant was the registered owner of the vehicle. No consent to a search was ever given, either by the registered owner or by the individuals on the scene. In fact, the driver, Mr. Shroyer, clearly did not believe he even had the authority to consent, since he told Trooper Barnhart to contact the owner to obtain permission. Nevertheless, Trooper Barnhart disregarded all of this and proceeded to search the entire vehicle, including the glove box, the passenger compartment, and the trunk. Even if Mr. Shroyer's admission that his wallet contained contraband were sufficient to establish probable cause for a vehicle search, there were no exigent circumstances. The traffic stop occurred at mid-

day, in a lot open to the public, with two troopers present at the scene. The driver already was outside the vehicle when Trooper Barnhart asked him where "the dope" was, and troopers easily could have ordered the Defendant to exit the vehicle as well. There are no facts showing the troopers' safety was threatened, nor that there was some other urgency so great that they could not have obtained a warrant or contacted the registered owner. Furthermore, however limited a passenger's privacy interests are when traveling in a vehicle, it is entirely reasonable that the Defendant had some expectation of privacy for the contents of his shopping bags transported in the trunk of the vehicle, away from public view. These bags were included in the vehicle search, and therefore the Defendant's privacy rights were violated when that search was conducted without a warrant, without exigent circumstances, and without valid consent that could serve as an exception to the warrant requirement.

Because the search of the vehicle was unlawful, any evidence procured from that search shall be suppressed with respect to the Defendant. The Defendant's Motion is granted, and the charges are dismissed.

ORDER

AND NOW, this 5th day of July, 2022, inconsideration of Defendant's Omnibus Pretrial Motion and after a hearing on the matter, it is ORDERED and DIRECTED that the motion is GRANTED. All evidence obtained from the illegal search of the vehicle shall be suppressed, and the charges filed against the Defendant in this case are DISMISSED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

COURT ANNOUNCEMENT**MOTIONS COURT ASSIGNMENTS
AS OF
JANUARY 1, 2023**

In accordance with the Fayette County Motions Court Procedure Rules, the assigned judge for daily Motions Court, is as follows:

Monday	Judge Nancy D. Vernon	Courtroom No. 4	9:00 AM
Tuesday	Judge Joseph M. George, Jr.	Courtroom No. 5	9:00 AM
Wednesday	Judge Linda R. Cordaro	Courtroom No. 3	9:00 AM
Wednesday	Judge John F. Wagner, Jr.	Courtroom No. 2	9:30 AM
Thursday	Judge Steve P. Leskinen	Courtroom No. 1	9:00 AM
Friday	Emergency Motions Only	Courtroom No. 1	9:00 AM

Priority motions are to be presented to the assigned judge in accordance with F.C.R. 208.3 and F.C.R. Crim. P. 575(k).

The Administrative Office of Fayette County Courts will not, after 8:30 AM, accept any motions, emergency or otherwise, personally delivered or faxed for that day's Motions Court. You may, if you wish, proceed directly to Motions Court and attempt to personally present the Motions to the Motions Court Judge. He or she may or may not accept the same.

Judge Steve P. Leskinen

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