

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-2024-54
 :
 vs. :
 :
 MICHAEL CHARLES DEVAN, :
 :
 Defendant. : Omnibus Pretrial Motion

OPINION AND ORDER

This matter came before the Court for an evidentiary hearing on January 9, 2025, on the Defendant’s Omnibus Pretrial Motion, filed October 15, 2024 (hereinafter the “Motion”). Defendant also filed an Amended Motion on January 8, 2025, which was heard at the January 9th hearing. The gravamen of that Motion are Defendant’s contentions that the Williamsport Bureau of Police officer who detained, and later searched, the Defendant lacked probable cause to do so.

The Commonwealth contends that the Motion should be dismissed as untimely, and that the Williamsport Bureau of Police officer who detained, and later searched, the Defendant, properly stopped the Defendant’s vehicle for expired registration, had probable cause to detain the Defendant due to his behavior, and searched the Defendant’s person with his consent.

At the hearing on the Motion, the Commonwealth presented the testimony of Officer Nicholas T. Carrita. Officer Carrita testified that, on January 2, 2024, he stopped a Kia Optima operated by Michael Charles Devan (hereinafter the “Defendant”) in the 100 block of Market Street in Williamsport, Lycoming County, Pennsylvania, based upon the fact that the vehicle had an expired vehicle registration. Officer Carrita described the Defendant as nervous, and, visibly, sweating profusely (despite the sub-freezing temperature). Officer Carrita requested that the Defendant produce the registration and insurance verification for the vehicle (which was not owned by the Defendant). The Defendant fumbled for some time in an effort to locate those documents. Officer Carrita had the Defendant exit the vehicle. Officer Carrita conducted a safety “pat down” search which did not reveal the presence of any weapon. After some period of time, Officer Carrita asked the Defendant to consent to a search of his person. The Defendant consented to the search, which revealed that the Defendant had a small bag of

marijuana in his pants pocket. Officer Carrita took the Defendant into custody. A strip search of the Defendant conducted at Williamsport Bureau of Police headquarters revealed that the Defendant had two baggies in his underwear, both of which contained crack cocaine.

The contact between the Defendant on Officer Carrita on January 2, 2024, was captured on a bodycam video, which was reviewed by the Court in the course of the hearing conducted on January 9, 2025.

Defendant's arraignment was scheduled for February 5, 2024. He waived formal arraignment. His defense counsel requested that the matter be scheduled for a guilty plea on April 5, 2024. On April 5, 2024, his defense counsel requested that his guilty plea be continued to May 3, 2024. On May 3, 2024, at the request of defense counsel, and over the objection of the attorney for the Commonwealth, the guilty plea was continued to July 19, 2024. On July 19, 2024, the Defendant's guilty plea was continued to October 4, 2024. On October 4, 2024, at the request of defense counsel, the guilty plea was continued to October 25, 2024. Defendant's Omnibus Pretrial Motion was filed October 15, 2024 (Amended motion filed January 8, 2025).

At the time of hearing on the Motion, defense counsel did not offer any explanation as to why the Motion was not filed within the time established by Pa .R. Crim. P. 579.

ISSUES PRESENTED:

1. WHETHER DEFENDANT'S OMNIBUS PRETRIAL MOTION WAS UNTIMELY.
2. WHETHER OFFICER CARRITA HAD A REASONABLE BASIS FOR STOPPING THE DEFENDANT'S VEHICLE.
3. WHETHER OFFICER CARRITA HAD A REASONABLE BASIS FOR DETAINING THE DEFENDANT.
4. WHETHER OFFICER CARRITA HAD A REASONABLE BASIS FOR CONDUCTING A CANINE SNIFF OF THE DEFENDANT'S VEHICLE.
5. WHETHER THE DEFENDANT VOLUNTARILY CONSENTED TO A SEARCH OF HIS PERSON BY OFFICER CARRITA.

RESPONSE TO ISSUES PRESENTED:

1. DEFENDANT’S OMNIBUS PRETRIAL MOTION WAS UNTIMELY.
2. OFFICER CARRITA HAD A REASONABLE BASIS FOR STOPPING THE DEFENDANT’S VEHICLE.
3. OFFICER CARRITA HAD A REASONABLE BASIS TO DETAIN THE DEFENDANT.
4. OFFICER CARRITA HAD A REASONABLE BASIS FOR CONDUCTING A CANINE SNIFF OF THE DEFENDANT’S VEHICLE.
5. THE DEFENDANT VOLUNTARILY CONSENTED TO A SEARCH OF HIS PERSON BY OFFICER CARRITA.

DISCUSSION:

1. DEFENDANT’S OMNIBUS PRETRIAL MOTION WAS UNTIMELY.

Rule 579 of the Pennsylvania Rules of Criminal Procedure requires that an omnibus pretrial motion by a defendant seeking pretrial relief be filed within thirty (30) days after arraignment. *See* PA. R. CRIM. P. 579 (“Except as otherwise provided in these rules, the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment...”). Since counsel for the Defendant waived formal arraignment on February 5, 2024, the deadline would have been March 6, 2024. Thus, Defendant’s Motion was filed two hundred and twenty-three (223) days late. Further, counsel for the Defendant requested that the matter be scheduled for a guilty plea on April 5, 2024. On April 5, 2024, his defense counsel requested that his guilty plea be continued to May 3, 2024. On May 3, 2024, at the request of defense counsel, and over the objection of the attorney for the Commonwealth, the guilty plea was continued to July 19, 2024. On July 19, 2024, the Defendant’s guilty plea was continued to October 4, 2024. On October 4, 2024, at the request of defense counsel, the guilty plea was continued to October 25, 2024.

Nothing in the Court file indicates any extension of the deadline imposed by Rule 579, nor did defense counsel offer any explanation as to why the Motion was not timely filed. Further, Defense counsel never alleged that any discovery information provided by the

Commonwealth was the cause of the tardy filings. The Commonwealth timely objected to the late filing, and briefed the issue in full. Thus, the Court finds that Defendant’s Omnibus Pretrial Motion was untimely filed.

2. OFFICER CARRITA HAD A REASONABLE BASIS FOR STOPPING THE DEFENDANT’S VEHICLE.

Section 6308(b) of the Pennsylvania Vehicle Code provides as follows:

Whenever a police officer . . . has a reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle’s registration, proof of financial responsibility, vehicle identification number or engine number or the driver’s license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

75 PA. CONS. STAT. § 6308.

75 Pa. C.S. § 1301—Registration and certificate of title required—mandates vehicle registrations within the Commonwealth, and operating a vehicle with an expired registration violates that mandate. *See* 75 PA. CONS. STAT. § 1301 (“No person shall drive or move and no owner or motor carrier shall knowingly permit to be driven or moved upon any highway any vehicle which is not registered in this Commonwealth...[a]ny person violating the provisions of [1301] (a) is guilty of a summary offense....”). As opined by our Superior Court in *Commonwealth v. Garcia*, “[a]n officer may always stop a vehicle if the officer has probable cause to believe that the vehicle or its driver was violating the Vehicle Code.” *Commonwealth v. Garcia*, 311 A.3d 1138, 1144-45 (Pa. Super. Ct. 2024) (internal citation omitted).

It is undisputed that the registration on the Kia Optima operated by the Defendant on January 2, 2024, was expired. For that reason, Officer Carrita was justified in stopping the vehicle for the purposes outlined in 75 Pa.C.S. § 6308(b).

3. OFFICER CARRITA HAD A REASONABLE BASIS TO DETAIN THE DEFENDANT.

It is the settled law of this Commonwealth that “[a] police officer may detain an individual to conduct an investigation if that officer *reasonably suspects* that the individual is engaging in criminal conduct.” *Commonwealth v. Rogers*, 849 A.2d 1185 (Pa. 2004) (emphasis added) (citing *Commonwealth v. Cook*, 735 A.2d 673, 676 (Pa. 1999)); cf. *Commonwealth v. Mack*, 953 A.2d 587, 591 (Pa. Super. Ct. 2008) (noting that the totality of the circumstance—including the defendant’s nervousness—permitted the police officer to order the defendant to exit the vehicle and conduct a *Terry* frisk of the defendant).

Officer Carrita testified that, almost immediately upon his contact with the Defendant on January 2, 2024, he noticed that the Defendant was nervous, and, visibly, sweating profusely (despite the sub-freezing temperature). Officer Carrita requested that the Defendant produce the registration and insurance verification for the vehicle (which was not owned by the Defendant). The Defendant fumbled for some time in an effort to locate those documents.

Officer Carrita testified that he was familiar with the Defendant from an earlier contact. On the bodycam video, the Defendant first consented to a search of the vehicle, then stated that he would not consent. Under the totality of the circumstances, it was reasonable for Officer Carrita to suspect that the Defendant was in possession of contraband.

Officer Carrita testified that his only basis for stopping the vehicle was the expired registration. Had the registration of the Kia Optima been current, no stop would have occurred. That “alternate set of facts” in which the stop never occurred, however, was not the set of facts presented to the Court. Rather, Officer Carrita was justified in stopping Defendant’s vehicle for an expired registration. Officer Carrita was justified in observing Defendant’s physical condition and conduct, even though he stopped the Defendant for a completely unrelated reason. Finally, Officer Carrita reasonably concluded that the Defendant was in possession of contraband, based upon the Defendant’s physical condition, and behavior.

4. OFFICER CARRITA HAD A REASONABLE BASIS FOR CONDUCTING A CANINE SEARCH OF THE DEFENDANT’S VEHICLE.

Although a canine “sniff” is a search, it need not be supported by probable cause. *See* 849 A.2d at 1190 (“[W]e held that there need not be probable cause to conduct a canine search of a place; rather, the police need merely have reasonable suspicion for believing that narcotics would be found in the place subject to the canine sniff.”) (internal citation omitted). Since a search of that nature “[i]s inherently less intrusive upon an individual’s privacy than other searches[,]” it need only be supported by a reasonable suspicion that controlled substances will be found in the place subject to the canine sniff. *Id.*

For the reasons discussed above, the Court finds that Officer Carrita had a reasonable suspicion that controlled substances were located in the vehicle operated by the Defendant, and, therefore, had a reasonable basis for conducting a canine search of the Defendant’s vehicle.

5. THE DEFENDANT VOLUNTARILY CONSENTED TO A SEARCH OF HIS PERSON BY OFFICER CARRITA.

Our Supreme Court, in *Commonwealth v. Strickler*, opined the following regarding searches by consent:

The Fourth Amendment protects against unreasonable searches and seizures, including those entailing only a brief detention. *See United States v. Mendenhall*, 446 U.S. 544, 551, 100 S.Ct. 1870, 1875, 64 L.Ed.2d 497 (1980)(opinion announcing the judgment of the Court). A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043, 36 L.Ed.2d 854 (1973). **One such exception is consent, voluntarily given.** *See id.* at 219, 93 S.Ct. at 2043–44. The central Fourth Amendment inquiries in consent cases entail assessment of the constitutional validity of the citizen/police encounter giving rise to the consent; and, ultimately, the voluntariness of consent. *See id.*; *see also Commonwealth v. Cleckley*, 558 Pa. 517, 528, 738 A.2d 427, 433 (1999). **Where the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus.** Where, however, a consensual search has been preceded by an unlawful seizure, the exclusionary rule requires suppression of

the evidence obtained absent a demonstration by the government both of a sufficient break in the causal chain between the illegality and the seizure of evidence, thus assuring that the search is not an exploitation of the prior illegality, and of voluntariness. *See Royer*, 460 U.S. at 497, 501, 103 S.Ct. at 1323, 1326.

Commonwealth v. Strickler, 757 A.2d 884, 888-89 (Pa. 2000) (emphasis added) (footnotes omitted); *see, e.g., Commonwealth v. Cleckley*, 738 A.2d 427, 433 (Pa. 1999) (“[R]egarding the test for determining whether consent was freely and voluntarily given, those privacy rights are sufficiently protected where the federal standard of ‘voluntariness’ has been met.”).

In *Cleckley*, our Supreme Court elaborated on the test of “voluntariness”:

In *Schneckloth*, the [United States Supreme Court] held that where the subject of the search is not in custody and the state purports that the search was consensual, the Fourth and Fourteenth Amendments dictate that, to be valid, the consent be voluntarily given and not the product of coercion or duress. Significantly, the Court held that a consent search is valid if it meets the test of “voluntariness.” That test involves consideration of whether the confession was the product of an essentially free and unconstrained choice. 412 U.S. at 225, 93 S.Ct. 2041. According to the Court, **“voluntariness” is a question of fact to be determined from the totality of the circumstances** and while knowledge of the right to refuse consent is a factor to consider in determining whether consent to search was voluntarily and knowingly given, it is not dispositive. In so holding, the Court reasoned that such a requirement would not only be impractical but it would also hamper legitimate police investigation. Two competing concerns—the legitimate need for consent searches and the assurance that the subject of the search not be coerced—dictated the Court's decision. *Id.* at 227–28, 93 S.Ct. 2041.

....

Indeed, consideration of all the *Edmunds* factors leads us to conclude that the federal voluntariness standard as enunciated in *Schneckloth* adequately protects the privacy rights obtained under Article I, Section 8 of our state constitution.

738 A.2d at 430, 433 (emphasis added) (footnotes omitted).

Our Supreme Court further noted the following factors to consider in evaluating the

“voluntariness” of a defendant’s consent:

Evaluation of the voluntariness of a defendant's consent necessarily entails consideration of a variety of factors, factors which, of course, may vary depending on the circumstances. Accordingly, no hard and fast rule can be gleaned that would dictate what factors must be considered in each instance. We find instructive, however, the following factors considered by the Supreme Court of Appeals of West Virginia when evaluating the voluntariness of a defendant's consent: 1) the defendant's custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant's knowledge of his right to refuse to consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel. *Buzzard*, 461 S.E.2d at 57.

Id. at 433 n. 7.

At the hearing on the Motion, the Commonwealth presented the testimony of Officer Nicholas T. Carrita. Officer Carrita testified that, on January 2, 2024, he stopped a Kia Optima operated the Defendant in the 100 block of Market Street in Williamsport, Lycoming County, Pennsylvania, based upon the fact that the vehicle had an expired vehicle registration. Officer Carrita described the Defendant as nervous, and, visibly, sweating profusely (despite the sub-freezing temperature). Officer Carrita requested that the Defendant produce the registration and insurance verification for the vehicle (which was not owned by the Defendant). The Defendant fumbled for some time in an effort to locate those documents. Officer Carrita had the Defendant exit the vehicle. Officer Carrita conducted a safety “pat down” search which did not reveal the presence of any weapon. As analyzed previously, the underlying encounter was lawful, because the officer had a reasonable basis to stop the Defendant’s vehicle and to detain the Defendant. Further, Officer Carrita explained—among other things—to the Defendant, prior to the search of his person, the reasons why the Defendant’s vehicle was stopped, and why a canine unit was requested. Officer Carrita subsequently asked the Defendant to consent to a search of his person. The Defendant consented to the search, which revealed that the Defendant had a small bag of marijuana in his pants pocket. The Defendant was then placed in

handcuffs. Evaluating the interaction between Officer Carrita and the Defendant in light of the factors noted in *Cleckley*, it appears to this Court that a) while the Defendant was detained when he consented to the search of his person, he has not yet been placed under custodial arrest; b) Officer Carrita used typical law enforcement tactics in communicating with the Defendant; c) the Defendant refused to consent to a search of his vehicle, illustrating that the Defendant knows his right to refuse consent; d) there is no indication that the Defendant is not a person of typical education and intelligence; and e) while the Defendant was sweating profusely and argumentative with law enforcement, the Defendant and the officers were generally communicative throughout the exchange. *Id.* Based on the reasons above, the Court concludes that the Defendant voluntarily consented to a search of his person.

ORDER

AND NOW, this 14th day of February, 2025, for the reasons more fully set forth above, Defendant's Omnibus Pretrial Motion, filed October 15, 2024 (Amended Motion filed January 8, 2025), is DENIED.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Lycoming County District Attorney's Office (LS)
Michael Morrone, Esquire