NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
AARON Q. HANDY, JR.,	:	
Appellant	:	No. 1389 MDA 2017

Appeal from the Judgment of Sentence May 1, 2017
in the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0005472-2014

BEFORE: OTT, J., MUSMANNO, J., and PLATT*, J.

MEMORANDUM BY MUSMANNO, J.: **FILED NOVEMBER 20, 2018**

Aaron Q. Handy, Jr. ("Handy"), appeals from the judgment of sentence imposed after a jury convicted him of persons not to possess firearms.[1] We affirm.

In its Opinion, the trial court thoroughly set forth the relevant factual and procedural history underlying this appeal, which we incorporate as though fully set forth herein. ***See*** Trial Court Opinion, 3/15/18, at 1-4.[2]

After the imposition of sentence, Handy filed a Post-trial Motion on May 11, 2017. He requested therein, *inter alia*, that the trial court grant him a new trial because the stop and search of the subject vehicle, and seizure of

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[1] ***See*** 18 Pa.C.S.A. § 6105(a)(1).

[2] As an addendum, we note that Handy did not have a license to possess the handgun that Lieutenant Christopher Laser ("Lt. Laser") seized from the vehicle's center console.

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* Retired Senior Judge assigned to the Superior Court.

evidence therefrom, was unlawful and in violation of his constitutional rights. The trial court denied Handy's Motion by an Opinion and Order entered on August 3, 2017. Handy then timely filed a Notice of Appeal. Following a procedural history not relevant to the instant appeal, Handy timely filed a court-ordered Pa.R.A.P. 1925(b) Concise Statement of errors complained of on appeal, *nunc pro tunc*, after which the trial court issued a Rule 1925(a) Opinion.

Handy now presents the following issue for our review: "Whether the trial court erred in denying [Handy's] pretrial Motion to suppress evidence where the stop and search of the subject vehicle violated [Handy's] constitutional rights to be free from unreasonable searches and seizures[?]" Brief for Appellant at 4 (capitalization omitted).

> [O]ur standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. We are bound by the suppression court's factual findings so long as they are supported by the record; our standard of review on questions of law is *de novo*. Where, as here, the defendant is appealing the ruling of the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted.

Commonwealth v. Yandamuri, 159 A.3d 503, 516 (Pa. 2017) (citations omitted). Additionally, "[i]t is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given to their testimony. The suppression court is free to believe all, some or none of

the evidence presented at the suppression hearing." ***Commonwealth v. Byrd***, 185 A.3d 1015, 1019 (Pa. Super. 2018) (citation omitted).

Handy argues that the trial court erred in denying his pretrial Motion to suppress because the initial stop of the vehicle in question was unlawful, as being unsupported by probable cause, and, therefore, any evidence obtained from the unlawful search of the vehicle is fruit of the poisonous tree and must be suppressed. ***See*** Brief for Appellant at 9-26. Handy asserts that Lt. Laser lacked probable cause to conclude that he had committed a violation of the Motor Vehicle Code because

> (1) "Lt. Laser only estimated [Handy's] speed and observed [Handy's] vehicle for only a matter of seconds[,]" and "[a]n estimation of speed is insufficient to support a charge under 75 Pa.C.S.A. § 3362 (maximum speed limits), since proof of exact speed is in issue. ***Commonwealth v. Martorano***, 563 A.2d 1229, 1232 ([Pa. Super.] 1989) [(*en banc*)]." Brief for Appellant at 18.
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> (2) "Lt. Laser's observations did not include any evidence of a 'careless disregard for the safety of others[,]' as his observations failed to specific [*sic*] how any of [Handy's] alleged driving violation[s] put any other person's safety in jeopardy. … At most, [Handy's] driving could be described as erratic[,] which is insufficient for a stop. ***Commonwealth v. Wilbert***, 858 A.2d 1247[, 1250] ([Pa. Super.] 2004)." Brief for Appellant at 18.
>
> (3) "[I]t is unreasonable to conclude that Lt. Laser could make a[n] [unlawful] window tint observation under these observations [*sic*] sufficient to justify a stop[,] when he only saw the vehicle for a matter of 'seconds' from thirty (30) feet away." Brief for Appellant at 19.

Regarding Handy's challenge to the lawfulness of the search of the vehicle, he asserts that "[t]he proposed explanation for the search, 'officer

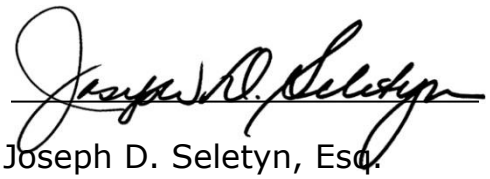
safety[,]' is not a recognized exception to the warrantless requirement for an automobile search. In this case[,] officer safety was used as a pretext to conduct an unlawful search of the vehicle." ***Id.*** at 20; ***see also id.*** at 23 (asserting that Lt. Laser "testified that he had everything he needed to write the traffic citations and did not need any additional information[,]" and thus, no search of the vehicle was necessary). Handy urges that "[o]ther than [Handy] exiting the subject vehicle, this was a routine traffic stop." ***Id.*** at 24.

In its thorough and well-reasoned Opinion, the trial court set forth the applicable law, addressed Handy's challenge to the denial of his Motion to suppress, and determined that suppression was unwarranted, where (1) the initial police stop of the vehicle was lawful and supported by probable cause; and (2) the search of the vehicle, and discovery of the handgun, was lawful. ***See*** Trial Court Opinion, 3/15/18, at 7-16. Because our review confirms that the trial court's cogent analysis is amply supported by the record and the law,

we affirm on this basis in rejecting Handy's sole issue on appeal. ***See id.***[3]

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/20/2018

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[3] Additionally, we acknowledge, and distinguish, this Court's prior decision in ***Commonwealth v. Cartagena***, 63 A.3d 294, 298, 305 (Pa. Super. 2013) (*en banc*) (where police conducted a nighttime traffic stop of defendant's vehicle for a suspected window tint Motor Vehicle Code violation, the defendant lowered his tinted driver's side window in response to repeated police prompts, the police noticed that he was "extremely nervous," and thereupon removed him from the vehicle to conduct a protective weapons search of the vehicle, holding that the trial court properly suppressed a handgun that the police discovered in the vehicle's center console because they lacked reasonable suspicion to conduct a protective search under the totality of the circumstances, and emphasizing that because the officers did not conduct the search until after the tinted windows had been put down, therefore, "the window tint had receded as a cause for a 'reasonably prudent' person to feel as though his or her safety was in jeopardy."). In the instant case, additional factors were present that would lead Lt. Laser to reasonably suspect that a limited search of the vehicle's interior was prudent to ensure officer and/or public safety. Namely, unlike in ***Cartagena***, Handy exited his vehicle at the time of the stop and ignored multiple commands from Lt. Laser to get back in the vehicle. Moreover, prior to conducting the protective search, Lt. Laser observed a large steel pipe positioned between the driver's side door and the door jam. Accordingly, contrary to Handy's claim, this was not a "routine traffic stop."

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IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :

vs. : No. 5472-2014

AARON Q. HANDY, JR.

OPINION

BY: WRIGHT, J. March 12, 2018

This Opinion is written pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure. In his timely Concise Statement of Errors Complained of on Appeal ("Concise Statement"),[1] Aaron Q. Handy, Jr. ("Defendant") appeals from the denial of his Post-Sentence Motion pursuant to Pa. R. Crim. P. 720 ("Post-Trial Motion") on August 3, 2017. (Notice of Appeal 9/5/17). In his appeal, Defendant challenges the legality of the stop and the search of a vehicle being driven by Defendant. (Concise Statement 1/31/18). A review of the record and applicable law demonstrates that this contention lacks merit and that Defendant's appeal on this issue should be dismissed.

BACKGROUND

The events that initiated this case began on Sunday, November 2, 2014, as Lieutenant Christopher Laser ("Lt. Laser") of the Lancaster City Bureau of Police was in his patrol car at the corner of South Queen Street and Vine Street in Lancaster City. (N.T. Suppression Hearing at 3-4, 7) Lt. Laser saw a Chrysler 300 ("the Vehicle") with window tint so dark that the interior of the Vehicle could not be observed, speeding east

[1] *See* FN. 12 *infra.*

on Vine Street. Id. at 5-6. At the time, the road was wet and leaf covered. Id. at 5, 15-16. As the Vehicle crossed Queen Street, it hit a bump and went airborne, causing the suspension to extend. When it landed the car abruptly stopped, causing the suspension to compress. At this point, Lt. Laser made the decision to initiate a traffic stop for the following Motor Vehicle Code violations: Driving Vehicle at Safe Speed,[2] Careless Driving,[3] and a window tint violation.[4] Id. at 6, 8-9. After Lt. Laser pulled out to initiate the stop, the Vehicle pulled into a parking space off the street. Lt. Laser parked his patrol car behind the Vehicle and turned on his overhead lights. Id. at 6.

At this point, Defendant exited the Vehicle from the driver side front door and closed it. Id. at 7. Lt. Laser got out of his patrol cruiser, and directed Defendant to get back into his car; Defendant disregarded this command and began to walk around the back of the Vehicle towards the sidewalk. Id. Defendant was again instructed by Lt.

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[2] 75 Pa. C.S.A. § 3361 ("No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions").

[3] 75 Pa. C.S.A. § 3714 ("Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense."); see also Commonwealth v. Anderson, 889 A.2d 596, 602-03 (Pa. Super. 2005) ("The legislature included 'careless driving' on the continuum of offenses to cover driving behavior that is increasingly divorced from prudent driving behavior. The offense of careless driving has two elements: an *actus reus* – driving a vehicle; and a *mens rea* – careless disregard. There is no causation or particular result required by the statute").

[4] 75 Pa.C.S. § 4524(e)(1) ("no person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the Vehicle through the windshield, side wing or side window of the vehicle."); see also Commonwealth v. Cartagena, 63 A.3d 294, FN 26 (Pa. Super. 2013) (where the court held, "there is no measurable amount of tint that renders a vehicle with tinted windows illegal in Pennsylvania. Tint is illegal if, from the point of view of the officer, he or she is unable to see inside of a vehicle through the windshield, side wing, or side window...there is legislative history surrounding the passage of Section 4524 to elucidate the reason for this subjective standard").

Laser to get back into the Vehicle, but again, Defendant ignored Lt. Laser's directive. Id. A female, later identified as Defendant's girlfriend and the owner of the Vehicle, began to get out of the passenger side front door. Simultaneously Defendant continued walking further away from the car. Lt. Laser then instructed both individuals to get into the Vehicle. Id. at 7-8. Neither individual complied. Instead the female closed the passenger side door of the Vehicle and Defendant continued to walk away. Id. at 8.

After backup arrived at the scene, Defendant was stopped by Officer Crane Windlebeck ("Officer Windlebeck"), and Lt. Laser asked the female to open the passenger side door of the Vehicle to determine whether any other occupants were inside the Vehicle.[5] Id. at 8, 9, 12. After indicating that the Vehicle was locked, the female gave her keys to Lt. Laser, who then decided to open the driver side door instead because Defendant and the female were standing by the passenger side door. Id. at 8-10. Upon opening the door and determining that there were no other occupants in the Vehicle, Lt. Laser saw a steel pipe between the door jam and the driver side door. Id. at 10. This raised a concern with Lt. Laser as he intended to place both individuals back into the Vehicle. Therefore, he conducted a limited search of the Vehicle's compartment area, including under the front driver's seat and inside of the center console to make sure there were no other items which might present some danger. Id. at 10-11. When he saw a black semi-automatic handgun in the center console, Lt. Laser immediately stopped the search of the Vehicle and instructed Officer Windlebeck to place Defendant in handcuffs. Id. at 11.

[5] The interior of the Vehicle remained obstructed due to the Vehicle's heavy window tint.

Defendant was charged on Docket No. CP-36-CR-5472-2015 with the following offenses: Person Not to Possess Firearms ("PNP"),[6] Receiving Stolen Property,[7] Firearms Not to be Carried Without a License ("FNC"),[8] and Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver ("PWID") – Cocaine.[9]

On July 27, 2015, Defendant filed the Omnibus Pre-Trial Motion to Suppress ("Pre-Trial Motion"), and a suppression hearing was held on November 23, 2015, before the undersigned ("Suppression Court"). On January 15, 2016, Defendant filed his Brief in Support of Motion to Suppress Evidence ("Pre-Trial Brief"), and the Commonwealth's Memorandum of Law ("Pre-Trial Memo") followed on February 19, 2016. On March 16, 2016, the Suppression Court entered an Order Denying Defendant's Motion ("Pre-Trial Order").

Following Defendant's Motion to Sever Count 1, PNP,[10] two separate jury trials were held before the Honorable Margaret C. Miller ("Trial Court").[11] On July 11, 2016, Defendant was found guilty of FNC. On May 1, 2017, following a Pre-Sentence Investigation ("PSI") report, a sentencing hearing was held before the Trial Court and Defendant was sentenced to three and one-half (3 ½) to seven (7) years' incarceration.

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[6] Count 1: 18 Pa. C.S.A. § 6105(a)(1), a misdemeanor of the first degree.

[7] Count 2: 18 Pa. C.S.A. § 3925(a), a felony of the second degree.

[8] Count 3: 18 Pa. C.S.A. § 6106(a)(1), a felony of the third degree.

[9] Count 4: 35 PS § 780-113(a)(30), an ungraded felony.

[10] The charge of PNP is a well-established legal basis to grant a severance.

[11] Defendant's first jury trial occurred in July of 2016 on the FNC and PWID charges. The Commonwealth withdrew the Receiving Stolen Property charge. Defendant's second jury trial occurred in January of 2017 on the charge of PNP.

On May 11, 2017, Defendant filed the Post-Trial Motion presently at issue, and a brief in support thereof ("Post-Trial Brief"). On May 19, 2017, the Trial Court entered an Order directing the Commonwealth to file an answer to Defendant's Motion, and on June 20, 2017, the Commonwealth filed its Response. On August 3, 2017, the Trial Court denied Defendant's Motion by Opinion and Order.

On September 5, 2017, Defendant filed a Notice of Appeal to the Superior Court, which appeal was ultimately dismissed for Defendant's failure to file a Concise Statement of Matters Complained of on Appeal. On January 2, 2018, Defendant filed an Application for Relief pursuant to Pa.R.A.P. 123 in the Pennsylvania Superior Court.[12] On January 26, 2018, the Superior Court entered an Order granting Defendant's Application, and remanding the appeal for the filing of a concise statement pursuant to Pa.R.A.P. 1925(b) *nunc pro tunc*, noting that the court shall prepare and file an opinion pursuant to Pa.R.A.P. 1925(a) within forty-five (45) days of the Superior Court's Order. *See* Pa. R.A.P. 1925(c)(3). On January 31, 2018, Defendant filed a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a) ("Concise Statement"). On February 13, 2018, the Commonwealth filed its Answer to Defendant's Concise Statement.

DISCUSSION

The errors raised in Defendant's Concise Statement are that the Suppression Court committed errors of law by denying Defendant's Pre-Trial Motion. Specifically,

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[12] Therein, Defendant's counsel ("Counsel") indicated that, while preparing an appellate brief in this appeal, he realized that a concise statement had not been filed. Counsel contended that he did not receive the Trial Court's Concise Statement Order because the notice was received via "pac-file" under the name "Aaron Handy" while other notices were filed under "A. Handy." Counsel stated that he emailed the Trial Court inquiring about the concise statement on September 27, 2017, and that he was not aware that the Trial Court's Concise Statement Order was filed under "A. Handy," and Counsel was instead searching under "Aaron Handy." (Application for Relief, 1/2/18, at 1-2).

Defendant argues that the stop and the search of the Vehicle, as well as the subsequent detention of Defendant, were illegal and in violation of the United States and Pennsylvania Constitutions. Although my colleague Judge Miller presided over the subsequent trial and sentencing, because I presided over Defendant's suppression hearing, and ruled upon Defendant's Pre-Trial Motion, I will address these claims raised in the appeal.

The standard of review of a court's admissibility determinations is well-settled:

> It is firmly established, "[q]uestions concerning the admissibility of evidence lie within the sound discretion of the trial court, and [a reviewing court] will not reverse the trial court's decision on such a question absent a clear abuse of discretion." Commonwealth v. Chmiel, 738 A.2d 406, 414 (Pa. 1999), *cert. denied,* 528 U.S. 1131, 120 S.Ct. 970, 145 L.Ed.2d 841 (2000). An abuse of discretion requires "not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will." Commonwealth v. Widmer, 744 A.2d 745, 753 (Pa. 2000).

Commonwealth v. Charlton, 902 A.2d 554, 559 (Pa. Super. 2006); *see also* Commonwealth v. Allburn, 721 A.2d 363, 366 (Pa. Super. 1998), cited in Commonwealth v. Fink, 791 A.2d 1235, 1248 (Pa. Super. 2002) ("The evidentiary rulings of a trial court will be reversed only for a clear abuse of discretion").

No claim is instantly made that I exercised my judgment for reasons of partiality, prejudice, bias or ill will, or that I arrived at a manifestly unreasonable decision. Thus, the question before the court is whether I ignored or misapplied the law when denying Defendant's Pre-Trial Motion.

The standard of review of a trial court's suppression ruling is also well established: "where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged

evidence is admissible." Commonwealth v. DeWitt, 530 Pa. 299, 608 A.2d 1030, 1031 (1992). Following a suppression court's denial of the motion, the reviewing court must determine "whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error," and in doing so, the court "may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole." Commonwealth v. Berkheimer, 57 A.3d 171, 177 (Pa. Super. 2012) (en banc) (citations and quotations omitted). "Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts." Id.

Here, there are two separate legal issues raised in this appeal: 1) whether the stop of the Vehicle was lawful and 2) whether the search of the Vehicle was lawful. I will address these separately.

1) Whether the stop of the Vehicle was lawful.

The initial issue raised on suppression was Defendant's challenge that Lt. Laser lacked sufficient legal basis to conduct a vehicle stop.

"An investigative stop is considered a 'seizure,' therefore it must comply with the constraints contained within the Fourth Amendment of the United States Constitution." Commonwealth v. Smith, 685 A.2d 1030, 1033 (Pa. Super 1996). "In order for a stop to be reasonable under the Fourth Amendment of the United States Constitution, the police must have articulable and reasonable grounds to suspect, or probable cause to believe, that criminal activity may be afoot." Commonwealth v. Lopez, 609 A.2d 177, 180 (Pa. Super. 1992) (citations omitted), *allocator denied*, 617 A.2d 1273 (1992). In

vehicle cases, the police must have either probable cause to stop a vehicle for a motor vehicle code violation, or reasonable suspicion to stop a vehicle to determine whether a vehicle code violation is being committed. Commonwealth v. Salter, 121 A.3d 987, 993 (Pa. Super. 2015). Probable cause exists when "the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." Commonwealth v. Dixon, 997 A.2d 368, FN 14 (Pa. Super. 2010).

In the instant matter, Defendant claims that Lt. Laser lacked cause to stop the car because he "only estimated [D]efendant's speed and observed [D]efendant's vehicle for only a matter of seconds," and noted that an estimation of speed is insufficient to support a charge under 75 Pa. C.S.A. § 3362 (maximum speed limits) because proof of exact speed is in issue. (Defendant's Pre-Trial Brief 1/15/16 at 6-7); *see also* Commonwealth v. Martorano, 563 A.2d 1229, 1332 (1989).

However, Defendant neglected to consider 75 Pa. C.S.A. § 3361 (Safe Speeds), as well as the conditions of the road at the time of the stop. While the Pennsylvania Superior Court has held that "speeding alone" is insufficient to prove a violation of the offense of Safe Speeds, it explained that "there must be proof of speed that is unreasonable or imprudent under the circumstances, which may include weather conditions," and noted that a "potential danger of causing an accident is sufficient to establish probable cause to initiate a traffic stop." Commonwealth v. Perry, 982 A.2d 1009, 1012 (Pa. Super. 2009).

Lt. Laser testified that he observed the Vehicle traveling at an approximate rate of 50 mph in a properly posted 25 mph zone, and that the Vehicle's suspension was completely extended due to its speed when crossing the intersection of Queen and Vine streets, that the conditions were not ideal as it had been raining off and on, and the roads were wet and covered with leaves. (N.T. Suppression Hearing at 3-7, 16). As such, the record is sufficient to establish that Lt. Laser had reasonably trustworthy information to determine that the Vehicle being driven by Defendant at a speed that was unreasonable or imprudent under the circumstances.

If that weren't enough, I am also convinced that Lt. Laser had probable cause to stop Defendant for both careless driving and a window tint violation. With respect to careless driving, Defendant claims that Lt. Laser only observed the Vehicle for a matter of seconds from a distance of thirty (30) feet before making the decision to initiate a traffic stop, and argued that his observations did not include any evidence of a "careless disregard for the safety of others." (Defendant Pre-Trial Brief 1/15/16 at 7). I disagree. Lt. Laser's description of the Vehicle's perceived speed, paired with its airborne suspension due to the excessive speed and sudden braking, on a wet, leaf covered road, was more than sufficient to establish such careless disregard.

With respect to the window tint violation, Defendant argued that "it is unreasonable to conclude that Lt. Laser could make a window tint observation under these observations sufficient to justify a stop when he only saw the Vehicle for a matter of 'seconds' from thirty (30) feet away." Id. at 7-8.

While disagreeing with this statement in its entirety, I am also struck by the contradictory nature of this argument when considered with Defendant's arguments

regarding the speed at which the Vehicle was travelling. On the one hand, in respect to Lt. Laser's testimony about Defendant's high speed, Defendant claims that he was traveling at or about the posted speed limit of 25 mph, so he could not have violated the safe speed or careless driving laws. On the other hand, he claims that Lt. Laser had only "a few seconds" which was not enough time to observe a vehicle's windows from ten yards away. Logic would dictate that had Defendant's vehicle actually been traveling at the posted speed limit of 25 mph, Lt. Laser would have more than a "few seconds" to observe and to stop Defendant for a windshield obstruction. Conversely, Lt. Laser would have far less time to observe the windshield obstruction had Defendant indeed been speeding. The reality is that Defendant was either traveling so fast that Lt. Laser was unable to clearly see the Vehicle, or Defendant was traveling so slow that Lt. Laser could easily recognize the window tint violation. These two arguments, as proffered by Defendant, simply cannot co-exist. Giving Defendant the benefit of every doubt, at best either one or the other occurred, which means there was legal cause to stop the vehicle.[13]

Therefore, in the instant matter, probable cause existed to stop the Vehicle.

2) Whether the search of the Vehicle was lawful.

Having concluded that probable cause existed to stop the Vehicle and Defendant had standing, the issue remaining is whether the search of the Vehicle was legal.

As a general rule, the Fourth Amendment of the United States Constitution requires that searches be conducted pursuant to a warrant issued by a neutral and

[13] Parenthetically, I found Lt. Laser to be entirely credible and fully able to recognize an illegal window tint in a matter of seconds from the relatively short distance of thirty (30) feet even at a speed far in excess of 25 mph.

detached magistrate. Commonwealth v. Rispo, 487 A.2d 937, 939 (1989). Warrantless searches and seizures are unreasonable *per se* unless conducted pursuant to specifically established and well-delineated exceptions to the warrant requirement. Katz v. U.S., 389 U.S. 347, 357 (1967).

It is undisputed that, in this case, Lt. Laser lacked a search warrant for the initial search of the Vehicle. Accordingly, I was left to determine whether Lt. Laser was otherwise justified in his search of the Vehicle.

Defendant argued that "[t]he proposed explanation for the search, 'officer safety', is not a recognized exception to the warrantless requirement for an automobile search," and that "[a]n automobile search, given our circumstances, must be supported by probable cause." Defendant Brief at 8. Additionally, Defendant argued that "[t]he record before this Court is void of any evidence whatsoever of probable cause justifying the warrantless search of the subject automobile," and "[b]ecause officer safety does not constitute an exception to the warrant requirement regarding a search of an automobile...," suppression should have been granted. Id. at 9, 11.

However, Defendant misperceives the nature of the search at issue. Lt. Laser did not conduct a warrantless search of the Vehicle; he performed a protective weapons search of the passenger compartment. Although probable cause is typically required for a vehicle search,[14] a weapons search may be performed where an officer has reasonable suspicion that a weapon may be secreted in a vehicle.

[14] "The prerequisite for a warrantless search of a motor Vehicle is probable cause to search [and] no exigency beyond the inherent mobility of a motor Vehicle is required." Commonwealth v. Gary, 91 A.3d 102, 138 (Pa. 2014).

In Michigan v. Long, 463 U.S. 1032, 1049-50 (1983), the United States Supreme Court stated:

> the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons. The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety and that of others was in danger.

Long at 1049-50. Additionally, the Court noted that "detentions involving suspects in vehicles are especially fraught with danger to police officers." Id. "The sole justification of the search is the protection of police officers and others nearby." Id. at 1050 n.14 (citation and quotation omitted).

In Commonwealth v. Morris, 644 A.2d 721 (Pa. 1994), the Supreme Court of Pennsylvania determined that the Long standard complied with the Pennsylvania Constitution, and stated that an officer who permits a subject to access an area which he reasonably believes to contain a weapon "would be taking a grave risk that [a defendant] would remove a weapon...and use it." Id. at 724. "Constitutional safeguards do not require an officer to gamble with his life." Id. at 724. Pennsylvania courts have recognized that roadside encounters between police and suspects present a heightened risk of danger to the police which "should be contrasted with the lessened expectation of privacy that a citizen possesses with respect to a vehicle." In re O.J., 958 A.2d 561, 565 (Pa. Super. 2008). Ultimately, when examining whether an officer possessed reasonable suspicion to search for a weapon, the court must consider the totality of the circumstances. Commonwealth v. Tuggles, 58 A.3d 840, 843 (Pa. Super. 2012).

Thus, the issue is not whether Lt. Laser had probable cause to conduct a warrantless search of the vehicle, but whether the protective search was fueled by reasonable suspicion that Defendant may have been armed and dangerous.

Analyzing this issue, I weighed the totality of the instant circumstances as outlined in the Long and Morris decisions, and the cases which interpret them. While doing so, I fully appreciated the difference between Defendant's case and those with the reasonable suspicion generated by the officer's observation of a furtive movement inside the vehicle.

However, here, the question that I continuously returned to was whether Lt. Laser should have been expected to put officer safety at risk because the dark window tint made it impossible for him to determine whether Defendant made any movements inside the Vehicle consistent with an attempt to conceal a weapon. Although many of the cases that upheld a protective weapon search involved some sort of movement inside the vehicle, no case held it to be a requirement. Ultimately, such a bright line rule would reward a traffic code violation that, while making an already especially hazardous encounter even more dangerous.[15]

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[15] The danger of approaching a vehicle with tinted windows has been explained by the United States Court of Appeals for the Fourth Circuit as follows:

> When, during already dangerous traffic stops, officers must approach vehicles whose occupants and interiors are blocked from view by tinted windows, the potential harm to which the officers are exposed increases exponentially, to the point, we believe, of unconscionability. *Indeed, we can conceive of almost nothing more dangerous to a law enforcement officer in the context of a traffic stop than approaching an automobile whose passenger compartment is entirely hidden from the officer's view by darkly tinted windows.* As the officer exits his cruiser and proceeds toward the tinted-windowed vehicle, he has no way of knowing whether the vehicle's driver is fumbling for his driver's license or reaching for a gun; he does not know whether he is about to encounter a single law-abiding citizen or to be ambushed by a car-full of armed assailants. He literally does not even know whether a weapon has been trained on him from the moment the stop was initiated.

When considering the totality of the circumstances in the instant appeal, the evidence which factored into Lt. Laser's decision to perform a weapons search meets the requisite degree of reasonable suspicion. Lt. Laser testified that after pulling behind the Vehicle and activating his overhead lights, but prior to exiting his patrol cruiser, Defendant exited the Vehicle and closed the driver's side door of the Vehicle. (N.T. Suppression Hearing at 7). While exiting his patrol cruiser, Lt. Laser directed Defendant to get back into the Vehicle; however, Defendant disregarded this command and "immediately began to walk around the back of the [Vehicle] and towards the sidewalk." Id. at 7. Lt. Laser testified that Defendant was walking briskly, and that he believed that it was likely possible that Defendant was going to run. Id. at 19-21, 23-24. Defendant was again instructed by Lt. Laser to get back into the Vehicle, and again, Defendant ignored this command. Id. at 7. At that time, a female got out of the Vehicle's passenger side door, and Defendant moved towards the back of the patrol cruiser and the sidewalk. Again, Lt. Laser instructed both individuals to get back into the Vehicle. Id. at 7-8. Rather than comply, the female closed the passenger side door of, and Defendant continued to walk away from, the Vehicle. Id. at 8.

After back up arrived and Defendant was stopped, and the situation somewhat stabilized, Lt. Laser began to take the steps necessary to get the Vehicle's occupants back into the Vehicle, as at that point the situation only involved traffic citations. Because the interior of the Vehicle remained obstructed due to the heavy window tint, Lt. Laser needed to open a door so he could see whether there were any other occupants in the Vehicle. Id. at 8, 9, 12. Since the Vehicle was locked, Lt. Laser asked

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United States v. Stanfield, 109 F.3d 976, 981 (4th Cir.1997), cert. denied, 522 U.S. 857, 118 S.Ct. 156, 139 L.Ed.2d 101 (1997) (emphasis in original).

for and the female gave Lt. Laser her keys. Lt. Laser opted to open the driver's side door as Defendant and the female were standing on the passenger side. Id. at 8-10. Upon opening the door, Lt. Laser immediately saw a "two to three foot metal steel pipe" sitting between the door jam and the driver's side door, an item he considered to be a potential weapon. Id. at 10. Concerned by this, and because both individuals were about to be placed back into the Vehicle, Lt. Laser conducted a limited search of any unlatched and unsecured areas of the front portion of the Vehicle's compartment. Id. at 10-11. Upon lifting the center console, Lt. Laser saw a "black semi-automatic handgun sitting on top of everything...," at which point, any further search of the Vehicle was stopped. Id. at 11.

After considering the totality of the circumstances, and in light of the holdings discussed *supra*, which clearly illustrate the belief that the heightened risk of danger to police during roadside encounters should be contrasted with the lessened expectation of privacy that citizens possess with respect to a vehicle,[16] I concluded that the requisite degree of reasonable suspicion existed to permit the limited search at issue. I found that the following facts supported this conclusion: Defendant was stopped at approximately 2:45 a.m.;[17] Defendant drove the Vehicle at an unsafe speed, and in a careless manner,

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[16] "According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. We are aware that not all these assaults occur when issuing traffic summons, but we have before expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations. Indeed, it appears that a significant percentage of murders of police officers occurs when the officers are making traffic stops" Pennsylvania v. Mimms, 434 U.S. 106 (1977) (internal citations and quotations omitted).

[17] See In re O.J., 958 A.2d at 566 ("The vehicular stop occurred at night, which creates a heightened danger that an officer will not be able to view a suspect reaching for a weapon").

in dangerous conditions;[18] the Vehicle had a dark window tint;[19] Defendant disregarded Lt. Laser's orders to get back into the Vehicle, and made multiple efforts to distance himself from it;[20][21] a steel pipe was found between the driver's side seat and the door of the Vehicle;[22] Lt. Laser was going to permit Defendant to reenter the Vehicle;[23] and the center console was unlatched and unsecured.[24] Given the totality of the facts at his disposal, I concluded that Lt. Laser possessed a reasonable belief, based on specific and articulable facts which, when taken together with the rational inferences from those facts, that Defendant was dangerous and may have gained immediate control of weapons if permitted to re-enter the Vehicle without it first being searched. A reasonably prudent man facing Lt. Laser's circumstances would have been warranted in the belief that both his safety, and the safety of others, was in danger.

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[18] See In re O.J., 958 A.2d at 566 ("Appellee had been driving dangerously and initially refused to heed police efforts to stop his car").

[19] See Commonwealth v. Murray, 936 A.2d 76 (Pa. Super. 2007).

[20] See In re O.J., 958 A.2d at 566 ("evasive behavior supported Officer Tucker's fear that Appellee may have been engaged in criminal behavior and in possession of a weapon").

[21] See Commonwealth v. Micking, 17 A.3d 924 (Pa. Super. 2011) ("Appellant was extremely nervous, shaking and trembling, and his voice was quivering. There was no apparent reason for Appellant's extreme level of concern given the minor nature of the traffic infraction. As we noted supra, this type of conduct displays consciousness of guilt").

[22] See Morris, 644 A.2d at 723 ("the officer's discovery of a metal pipe wedged between the driver's seat and the door would tend to indicate that appellant might have access to other weapons in the passenger compartment.").

[23] See In re O.J., 958 A.2d at 566 (citing Rosa, 734 A.2d 412) ("[the officer] clearly explained, he was not going to arrest either occupant of the car for the traffic violations that had occurred but planned to allow them to return to the car. Since, upon his return, Appellee easily could have accessed a weapon in the console to use against [the officer], the police officer was permitted to engage in a search of that compartment for his own protection").

[24] See In re O.J., 958 A.2d at 566 ("This conclusion [that Appellee may have been hiding a weapon in that location] also was supported by the fact that the console had been left partially opened").

The search of the Vehicle was limited to those areas in which a weapon may have been placed or hidden, and entirely appropriate and warranted. Reasonable suspicion existed to permit the limited warrantless protective search conducted, and therefore, Defendant's Motion to Suppress was properly denied.[25]

CONCLUSION

For the foregoing reasons, it is respectfully suggested that Defendant's appeal be denied.

[25] Because the stop and the search of the Vehicle were legally permitted, and in light of the contraband which the search yielded, the detention of Defendant was not unlawful.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. 5472-2014
	:	
AARON Q. HANDY, JR.	:	

ORDER

AND NOW, this 12th day of March, 2018, the Clerk of Courts of Lancaster County is hereby directed to promptly transmit the record in the above-captioned case to the Superior Court of Pennsylvania, pursuant to the requirements of Pa. R.A.P. 1931.

ATTEST:

BY THE SUPPRESSION COURT:

JEFFERY D. WRIGHT
JUDGE

COPIES TO:

Deborah L. Greathouse - Office of the District Attorney
Stephen W. Grosh, Esquire