

Lawrence Law Journal

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COMMONWEALTH
V.
BROTHERS

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THE LAWRENCE COUNTY BAR ASSOCIATION

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CIVIL/CRIMINAL MOTION COURT

Civil/Criminal Motion Court will be held on an emergency basis only the following dates:

Wednesday, December 28

Thursday, December 29

Friday, December 30

Please contact Court Administration.

The Courthouse will be closed:

Monday, December 26, Tuesday, December 27 and January 2

COURT OF REMEMBRANCE

The Court of Common Pleas of Lawrence County will sit in special session as a Court of Remembrance in recognition of recently deceased District Justice James A. Reed and Attorney Nick A. Frisk, Jr. on the 11th day of January, 2023 at 12:00 noon in Courtroom # 1.

A resolution in memory of the deceased will be presented and anyone wishing to make comments will be welcome to do so.

Dominick Motto, President Judge

INFORMATION UPDATES

The following member address changes are effective immediately:

Bradley G. Olson, Jr.

109 N. Mercer St.

New Castle, PA 16101

Jean Krkuc Perkins

109 N. Mercer St.

New Castle, PA 16101

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

FIRST PUBLICATION

Cashier, Cesira Paula

Late of Lawrence County, Pennsylvania
Executor: William J. Cashier, Jr.
Attorney: Brian F. Levine, Levine Law, LLC, 22 E. Grant St., New Castle, PA 16101-2279

Gumbish, Barbara S.

Non-resident, Lawrence County, Pennsylvania
Administrator: Daniel J. Gumbish, 4398 Kulmer Dr., Whitehall, OH 43213
Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St., Ellwood City, PA 16117

Hill, James H.

Late of the City of New Castle, Lawrence County, Pennsylvania
Executor: Wayne Allen
Attorney: Deborah A. Shaw, 1906 Wilmington Rd., New Castle, PA 16105, 724-856-9894

Kelly, Esther G.

Late of Wayne Township, Lawrence County, Pennsylvania
Administrator: Daniel J. Gumbish, 4398 Kulmer Dr., Whitehall, OH 43213
Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St., Ellwood City, PA 16117

Landsberger, James Dale

Late of Bessemer Borough, Lawrence County, Pennsylvania
Administratrix: 117 Kohlersburg Rd. New Bethlehem, PA 16242
Attorney: Anthony Piatek, 414 N. Jefferson St., New Castle, PA 16101

Yeagley, Michael Dennis

Late of Neshannock Township, Lawrence County, Pennsylvania
Executrix: Debra Ann Yeagley
Attorney: Amy D. Rees, Sechler Law Firm LLC, 20206 Route 19, Suite 300, Cranberry Twp., PA 16066

SECOND PUBLICATION

Beck, David A.

Late of Union Township, Lawrence County,

Pennsylvania

Administrator: Victoria Beck, 108 S. Lee Ave., New Castle, PA 16101
Attorney: John R. Seltzer, 713 Wilmington Ave., New Castle, PA 16101, 724-652-0821

Dess, William J.

Late of Union Township, Lawrence County, Pennsylvania
Executors: Judy D. Swiger and Douglas W. Dess
Attorney: Adrienne A. Langer, Cusick DeCaro & Langer, P.C., 100 Decker Dr., P.O. Box 5137, New Castle, PA 16105, 724-658-2525

Drake, Tyler M.

Late of New Castle, Lawrence County, Pennsylvania
Administratrix: Heidi Drake, 211 Gallaher Lane, New Castle, PA 16101
Attorney: Jason A. Medure, 713 Wilmington Ave., New Castle, PA 16101

Hilton, Elmer

Late of New Castle, Lawrence County, Pennsylvania
Executors: Nora Best, 3745 Hollow Rd., New Castle, PA 16101 and Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105
Attorney: Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105, 724-658-7759

Wallis, Doris M.

Late of Slippery Rock Township, Lawrence County, Pennsylvania
Executrix: Joanne M. Crowther, 594 Frew Rd., Ellwood City, PA 16117
Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St., Ellwood City, PA 16117

Weir, David Richey

Late of Union Township, Lawrence County, Pennsylvania
Executor: David James Weir
Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

Wilder, Connie L.

a/k/a Newton, Connie
a/k/a Newton, J. Norman, Jr.
Late of Lawrence County, Pennsylvania
Administrator: Brian Scott Newton
Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

THIRD PUBLICATION

Meyer, Mary Anne

Late of Ellwood City Borough, Lawrence County, Pennsylvania

Executor: John D. Meyer, 1136 Mt. Hope Rd., Ellwood City, PA 16117

Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St., Ellwood City, PA 16117

Scarnati, Lucille M.

Late of the City of New Castle, Lawrence County, Pennsylvania

Executrix: Bernadette Scarnati

Attorney: Deborah A. Shaw, 1906 Wilmington Rd., New Castle, PA 16105, 724-856-9894

Wansitler, Donald L.

Late of Slippery Rock Township, New Castle, Lawrence County, Pennsylvania

Executrix: Gloria L. Wansitler

Attorney: Deborah A. Shaw, 1906 Wilmington Rd., New Castle, PA 16105, 724-856-9894

LEGAL NOTICE

Notice is hereby given, that a Certificate of Organization-Domestic Limited Liability Company has been filed with the Department of State in the Commonwealth of Pennsylvania, with respect to a Limited Liability Company, which is organized under the provisions of The Pennsylvania Uniform Limited Liability Company Act of 2016, 15 Pa.C.S. 8811 et seq., and any successor statute, as amended from time to time. The name of the Limited Liability Company is **EGA Benefits, LLC** and it is to be organized effective January 1, 2023.

Molloy Law, LLC

Amy Molloy, Esquire

15 Woodland Center Drive

Grove City, PA 16127

L.C.L.J. - December 26, 2022

NOTICE OF ADMINISTRATIVE SUSPENSION

Notice is hereby given that **Philip William Berezniak** of **Lawrence County** has been **Administratively Suspended** by Order of the Supreme Court of Pennsylvania dated November 16, 2022, pursuant to Rule 111(b), Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective December 16, 2022, for Compliance Group 1.

Suzanne E. Price, Attorney Registrar
The Disciplinary Board of the Supreme Court
of Pennsylvania

L.C.L.J. - December 26, 2022

Commonwealth v. Brothers**Traffic Stop – Vehicle Search – Exigent Circumstances – Search Warrant**

Where there is little to no possibility that a driver or occupant of a vehicle involved in a traffic stop could have either destroyed incriminating evidence or harmed officers or innocent bystanders, a warrant is necessary to search the vehicle.

Motion to Suppress Physical Evidence – Court of Common Pleas of Lawrence County, Pennsylvania, No. 570 of 2020, Criminal.

William J. Flannery, Assistant District Attorney for the Commonwealth

Damian J. Tofte, attorney for the Defendant

OPINION

Hodge, J.

July 6, 2022

Before the Court for disposition is the Motion to Suppress Physical Evidence, filed on behalf of the Defendant, Ronald Brothers. In the Motion to Suppress Physical Evidence, the Defendant contends that the police officer did not have exigent circumstances to conduct a warrantless search of the vehicle in which the Defendant was a passenger on July 25, 2020.

The Defendant alleges that during the traffic stop, exigent circumstances did not exist as there was no hot pursuit of either Defendant, no emergency need for aid, or need for immediate assistance.

The Defendant is requesting that all evidence seized during and after the warrantless search and detention be suppressed, as fruits of the unlawful search, in violation of Article I, Section 8 of the Pennsylvania Constitution, and the Pennsylvania Supreme Court case of Commonwealth vs. Alexander, 243 A.3d 177, 207 (Pa. 2020), which was decided on or about December 23, 2020, and holding that under the Pennsylvania Constitution, warrantless vehicle searches require both probable cause and exigent circumstances; that one without the other is insufficient.

In an information filed on October 1, 2020, the Commonwealth charges the Defendant with four counts of Manufacture, Delivery or Possession with Intent to Manufacture or Deliver, Illegal Drugs, in violation of 35 Pa. C.S.A. Section 780-113(a)(30) of the Controlled Substance, Drug, Device & Cosmetic Act; four counts of Possession of a Controlled Substance by a Person Not Registered, being unclassified misdemeanors in violation of 35 Pa. C.S.A. 780-113(a)(16) of the Controlled Substance, Drug, Device & Cosmetic Act; one count of Use or Possession of Drug Paraphernalia, an unclassified misdemeanor, in violation of 35 Pa. C.S.A. Section 780-113(a)(32) of the Controlled Substance, Device & Cosmetic Act; and one count of Tampering With or Fabricating Physical Evidence, a misdemeanor of the second degree, in violation of 18 Pa. C.S.A. Section 4910(1) of

the Pennsylvania Crimes Code.

At the hearing on the Motion to Suppress Physical Evidence, the Commonwealth offered the Affidavit of Probable Cause of Patrolman Mark A. Manos, Jr., as the Commonwealth's evidence in opposition to the Defendant's Motion to Suppress Physical Evidence. The Court was to take judicial notice of the Affidavit of Probable Cause and review that Affidavit as the basis for the Defendant's arrest and search of the motor vehicle.

The Affidavit of Probable Cause of Patrolman Mark A. Manos, Jr., is summarized as follows:

On July 25, 2020, Patrolman Manos was stationary watching traffic in a marked patrol vehicle from a known high drug activity area on the North Hill, near Highland Avenue and East Wallace Avenue, while fully uniformed. Officer Manos did view a black in color Jeep bearing a license plate that he could not legibly make out due to an obstruction and with sun screening (tint) on the front driver's side and passenger side windows. The sun screening on the windows made it unable for Officer Manos to view inside the vehicle to identify any occupants in the vehicle. The vehicle made a left hand turn from a back alleyway off of Highland Avenue and started to travel southbound into the city. Officer Manos initiated a traffic stop with emergency lights and sirens activated near the intersection of South Mill Street and East North Street.

Officer Manos made contact with the driver, who was identified as Courtney Probst, and passenger, Ronald Brothers. Upon making contact with the occupants of the vehicle, they both appeared to be extremely nervous . . . the passenger, Brothers, immediately lit up a cigarette so I approached the vehicle and displayed trembling and shaking hands while he was speaking to Probst. Brothers was attempting to avoid all eye contact with Officer Manos as well, while Officer Manos was speaking to him.

Officer Manos advised LEOC to run both occupants for a valid license/warrant check. LEOC advised that Brothers had an active NCIC warrant out of Ohio but was not wanted for extradition.

Officer Manos asked Brothers to exit the vehicle, he complied. At this time, both Brothers and Probst were separated and myself and Sgt. Conti spoke with them both. After speaking to both occupants separately, they both provided discreetly conflicting stories. While speaking to Brothers, he continued to touch his face and distanced myself from him, which are both signs of nervous and deceptive behaviors.

Officer Manos then asked Probst to exit the vehicle, she complied. While exiting the vehicle, she did make a spontaneous admission to Officer Manos that she had drug paraphernalia inside the vehicle. At this time, Officer Linton did employ K-9 Draco on the vehicle for an exterior/interior sniff for narcotics. K-9 Draco indicated positive for the presence of narcotics

on the front driver's side window of the vehicle, which was slightly open at the time of indication.

Officer Manos and Sgt. Conti then performed a hand search of the vehicle and located several items of illegal contraband. Sgt. Conti located a large baggie containing suspended fentanyl inside the brown purse that had several items of indicia inside pertaining to Probst. Officer Manos located a brown wallet which was left on the driver's seat than contained a silver digital weight scale with white powder (residue) on it, several lottery ticket folds containing suspended heroin and a larger "Kool-Aid" ripped baggie containing a dark red/brown in color, suspected heroin and inside the wallet Officer Manos also located several used syringes, a suspect crack pipe with residue and spoon with a baggie tied to it and a large amount of unused blank lottery tickets.

At this time, both occupants were placed into custody and seated in the back of the patrol vehicle on the scene. The vehicle was later transported to the West Grant Street impound lot and stored by Sgt. Conti.

Once at the station, Brothers was further searched and placed into Holding Cell No. 1. Officer Manos seized a black I-Phone and assorted U.S. currency off of him.

. . . Officer Covert did further search the back of his patrol vehicle, after transporting Brothers, and located illegal contraband that was not there upon performing a vehicle inspection prior to the beginning of the shift. Officer Covert located a black pouch with a keychain attached that was jammed in between the seats. The pouch contained three paper folds with suspected narcotics inside and a small baggie containing suspected crack cocaine. Attached to the black pouch was a keychain that was associated to Brothers' apartment on East Washington Street. The key was confirmed to be the right one for the address on East Washington Street associated to Brothers.

The Defendant's Motion to Suppress Physical Evidence does not challenge the legality of the traffic stop implemented by Officer Manos in this case. As a result, the Court will not address that issue.

The crux of the Defendant's request for relief in this matter is the suppression of the physical evidence as a result of the search of the automobile by Officer Manos.

Defendant bases his analysis on the Pennsylvania Supreme Court as of Commonwealth vs. Alexander, decided December 22, 2020, 243 A.3d 177, wherein the Pennsylvania Supreme Court once again considered a complex relationship between Article I, Section 8 of the Pennsylvania Constitution, and warrantless vehicle searches. In a 4-3 decision authored by Justice Donahue and joined by Justices Baer, Todd & Wecht, the Supreme Court of Pennsylvania explicitly overruled the prior case of Commonwealth

vs. Gary, 91 A.3d 102 (Pa. 2014), and held that Article I, Section 8 of the Pennsylvania Constitution in its privacy protections, unwaveringly require that a warrant be obtained prior to an automobile search, unless police can articulate the existence of probable cause and exigent circumstances.

Although Alexander did not include any instructions on retroactivity, the Court notes that generally, unless a new rule of law is explicitly limited by the Appellate Court to prospective application, any change in the law is applied to all open and pending cases in the system at the time the change is announced. Commonwealth vs. Ardestani, 736 A.2d 552, 555 (Pa. 1999); McHugh vs. Litvin, 574 A.2d 1050 (Pa. 1990). Accordingly, the Court will apply the Alexander rule to the search of the vehicle in which the Defendant was a passenger because he properly preserved his suppression claim based on Article I, Section 8 of the Pennsylvania Constitution, the Constitutional provision interrupted by Alexander.

The Pennsylvania Supreme court has tasked trial courts with knowing and recognizing any exigent circumstances supporting warrantless vehicle searches when we see them. Thus, the Court must decide whether we have seen exigent circumstances amid the particular facts of the traffic stop by Officer Manos on July 25, 2020.

Exigent circumstances “are those which arise where the need for prompt police action is imperative, either because evidence is likely to be destroyed . . . or because there exists a threat of physical harm to police officers or other innocent individuals. Commonwealth vs. Copeland, 955 A.2d 396, 400 (Pa. Super 2008). For further guidance, the Superior Court has advised trial courts, in considering whether exigent circumstances were present, to find a balance between “the individual’s right to be free from unreasonable intrusions against the interest of society and quickly adequately investigating a crime and preventing the destruction of evidence”. Commonwealth vs. Stewart, 740 A.2d 712, 717 (Pa. Super 1999).

In situations where police effected a traffic stop, directed the occupants of the stopped vehicle to exit (usually based upon suspicious smell emanating from the vehicle), placed the occupants under arrest, restraint or guard, and then searched the vehicle’s interior, those searches were later disqualified by the courts for lacking exigent circumstances. See Commonwealth vs. Haskins, 677 A.2d 328 (Pa. Super 1996); Commonwealth vs. Gelineau, 696 A.2d 188 (Pa. Super 1997); Commonwealth vs. Sosa, 2000 W.L. 35577495 (Pa. Common Pleas, Lehigh, November 21, 2000). In each of these cases, the fact that the suspects had been subdued in some fashion and moved away from the vehicle prior to the search, eliminated the destruction of evidence, officer safety, or public safety as an exigent circumstance, justifying the warrantless vehicle search. Instead, the courts all held that under Article I, Section 8 of the Pennsylvania Constitution, the police could have and should have obtained warrants.

Returning to the case at bar, the Court must determine whether the New Castle Police Department possessed both probable cause and exigent circumstances at the time they searched the vehicle in which the Defendant was a passenger on July 25, 2020. Based on the totality of the circumstances, we hold that the first factor was present, but not the second. With respect to probable cause, the driver, Courtney Probst, gave the police her voluntary statement that there was drug and/or drug paraphernalia present in the vehicle.

With respect to exigent circumstances, however, the Court is not satisfied that Officer Manos' search of the vehicle in which the Defendant was a passenger took place in a situation where evidence was likely to be destroyed or a threat to public safety existed. Copeland, supra. Officer Manos had backup with him at the scene in the form of Officer Covert, and both vehicle occupants were located some distance away from the vehicle. Thus, there was little to no possibility that the Defendant or Probst could have either destroyed the incriminating evidence or harmed the officers or innocent bystanders. There was no pressing reason why, given that Officer Manos presumably had Defendant and Probst under control, that Officer Covert could not have requested a search warrant for the vehicle's interior. The Court simply does not see any recognizable exigent circumstances justifying the warrantless vehicle search.

For the foregoing reasons, the Court holds the exigent circumstances necessary to support a warrantless vehicle search under Article I, Section 8 of the Pennsylvania Constitution did not exist at the time Officer Manos performed his search of the Probst vehicle on July 25, 2020. Accordingly, the incriminating evidence seized because of this search and all evidence following therefrom, will be suppressed.

ORDER OF COURT

AND NOW, this 6th day of July, 2022, this case having been before the Court for argument on Defendant's Motion to Suppress Physical Evidence on July 5, 2022, it is hereby ORDERED, ADJUDGED and DECREED as follows:

Defendant's Motion to Suppress Physical Evidence is granted, and all evidence derived from this vehicle search shall be inadmissible.

The Clerk of Courts shall serve notice of this Order of Court and attached Opinion upon all counsel of record and Lawrence County Court Administration.

BY THE COURT:
John W. Hodge, Judge

