

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :

v. :

No. CR-737-2019

MARISSA NICOLE FETHIERE, :

Defendant :

Brian B. Gazo, Esquire  
Assistant District Attorney

Counsel for the Commonwealth

Joseph V. Sebelin, Jr., Esquire

Counsel for the Defendant

**MEMORANDUM OPINION**

Serfass, J. - December 23, 2020

Marissa Nicole Fethiere (hereinafter "Defendant") is charged with DUI Controlled Substance- Impaired Ability- 2<sup>nd</sup> Offense (75 Pa. C.S.A. § 3802(d)(2)); DUI Controlled Substance- Schedule I- 2<sup>nd</sup> Offense (75 Pa. C.S.A. § 3802(d)(1)(i)); DUI Controlled Substance- Schedule 2 or 3- 2<sup>nd</sup> Offense (75 Pa. C.S.A. § 3802(d)(1)(ii)); Intentional Possession of a Controlled Substance by a Person Not Registered (35 P.S. § 780-113(a)(16)); Use/Possession of Drug Paraphernalia (35 P.S. § 780-113(a)(32)); and Have Improper Muffler (75 Pa. C.S.A. § 4523). Defendant has filed an "Omnibus Pre-Trial Motion" consisting of a motion to suppress and a petition for writ of habeas corpus. In her motion, Defendant asks this Court to suppress any and all evidence derived from the stop of her vehicle and subsequent search thereof. Based upon our review of the evidence received during the hearing on

FS-28-2020

Defendant's motion and our consideration of the post-hearing briefs of counsel, Defendant's "Omnibus Pre-Trial Motion" will be denied for the reasons set forth hereinafter.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On March 20, 2019, at approximately 11:30 p.m., Officer Bruce Broyles of the Lehighton Police Department was travelling directly behind a light-colored sedan which was heading southbound on North Second Street in the Borough of Lehighton. Officer Broyles noticed that the vehicle had no registration light illuminating the license plate, that it had a malfunctioning passenger-side brake light, and a noticeably louder exhaust system than that of a properly operating vehicle, all of which would constitute violations of the Pennsylvania Vehicle Code, 75 Pa.C.S.A. §101, et seq.

The vehicle made a right turn from North Second Street onto Coal Street. Based upon his observations of the aforementioned traffic violations, Officer Broyles conducted a traffic stop of the vehicle near North Fourth Street.

Officer Broyles made contact with the operator of the vehicle, who was identified as Defendant, Marissa Nicole Fethiere. Defendant admitted that the vehicle's exhaust system was loud. Officer Broyles testified that he had observed a small, black rubber band on Defendant's thigh and several of the same kind of rubber bands on the floor of the vehicle. However, the MVR footage of the incident that was introduced during the hearing reflects

Officer Broyles stating that he observed one rubber band on Defendant's thigh and one additional rubber band on the floor of the vehicle. Defendant stated that she had these rubber bands in the vehicle because she had been playing with her niece's hair. However, Officer Broyles testified that he believed, based upon his training and experience, that these rubber bands were consistent with drug packaging. Officer Broyles further testified as to his observation that Defendant had glassy, bloodshot eyes and constricted pupils. Based upon his suspicions, he asked her to step out of the vehicle.

Immediately after Defendant exited the vehicle, Officer Broyles asked for her consent to search the vehicle. Defendant consented to the search. The MVR footage depicts Officer Broyles asking Defendant for consent for a pat-down of her person which she refused. Officer Broyles then asked Defendant to pull down her eyelids and stick out her tongue. Defendant complied with these requests. Officer Broyles observed marked reddening of Defendant's conjunctiva and raised taste buds on her tongue. Officer Broyles testified based on his training and experience, that these observations constituted signs of possible impairment.

Defendant then submitted to further field sobriety testing with the limitation of not performing any divided attention tests that could cause her to become dizzy due to a medical condition. However, Defendant performed the Romberg Balance Test, in which

she estimated twenty (20) seconds to be thirty (30) seconds, during which Officer Broyles observed eyelid tremors and Defendant leaning forward. Defendant next performed the Lack of Convergence Test, in which one of her eyes converged while the other did not. Lastly, Defendant performed the Horizontal Gaze Nystagmus test during which no clues of impairment were observed by Officer Broyles.

After completing the final field sobriety test, Officer Broyles placed Defendant under arrest for suspicion of driving under the influence. He performed a search incident to arrest of Defendant's person and recovered four (4) bundles of white waxine bags which were bound together with the same type of rubber bands found in the vehicle and on Defendant's thigh. The waxine bags possessed a light in color powder which later tested positive for fentanyl.

During the evidentiary hearing on Defendant's "Omnibus Pre-Trial Motion", it was noted that a further inspection of the vehicle by Officer Broyles revealed no violation of the Vehicle Code concerning either the registration lamp or the brake light. Both Officer Broyles' testimony and the MVR footage of the incident provided conclusive evidence that his initial belief concerning these violations was mistaken.

## DISCUSSION

Through her motion to suppress, the Defendant argues that the stop and seizure of her vehicle was unconstitutional and that her subsequent arrest was invalid. The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. Commonwealth v. Strickler, 757 A.2d 884, 888 (Pa. 2000); Commonwealth v. Shiflet, 670 A.2d 128, 129-130 (Pa. 1996). A search conducted without a warrant is deemed unreasonable, and therefore constitutionally impermissible unless an established exception applies. Id.

Both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution prohibit searches and seizures that are unsupported by objective justification, including all seizures of the person, even during a brief detention. Commonwealth v. Parker, 619 A.2d 735 (1993).

**A. Officer Broyles had reasonable suspicion that Defendant had violated § 4523 of the Pennsylvania Vehicle Code when he conducted a traffic stop based on her vehicle's unusually loud exhaust system.**

In the context of detentions arising from traffic stops, "if an officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop- if the

officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion." Commonwealth v. Chase, 960 A.2d 108, 114 (Pa. 2008). Additionally, where the stop was not made for an investigatory purpose, probable cause is required for a vehicle stop. Id. at 115. However, vehicle stops are valid even if the officer made an honest mistake, as long as the stop was reasonable in light of the facts known to the officer at the time. Commonwealth v. Stewart, 390 A.2d 1264 (1978).

As provided for by statute, anytime a police officer has "reasonable suspicion" to believe a violation of the Motor Vehicle Code is occurring or has occurred, the officer may initiate an investigatory vehicle stop. 75 Pa.C.S. §6308. Reasonable suspicion exists when an officer is able to articulate specific observations which, when considered with reasonable inferences derived therefrom, lead to a reasonable conclusion, in light of the officer's experience, that criminal activity is afoot and the person was engaged in the criminal activity. Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa.Super. 2007).

As to a traffic stop based on a loud exhaust system, Defendant argues that Officer Broyles lacked probable cause or reasonable suspicion because he failed to quantify the loudness of the vehicle's exhaust system. However, in Commonwealth v. Bailey, the

Pennsylvania Superior Court held that while training and instrumentation to establish that the sounds emitted from a vehicle exceeded the prescribed levels is required to establish guilt of such a violation beyond a reasonable doubt, "it is certainly not a necessary pre-cursor to a traffic stop and the concomitant investigative detention. To hold otherwise would be the equivalent of requiring law enforcement officers of our Commonwealth to be certified as lab technicians before they stop a suspected perpetrator for a drug or DUI violation." Commonwealth v. Bailey, 947 A.2d 808, 814 (Pa. Super. 2008). Additionally, "if an officer hears an unusually loud exhaust, the officer may reasonably infer that there is a problem with the muffler and initiate a stop based upon a reasonable suspicion that the muffler is not 'in good working order.'" Id. at 814-815.

Though the reasonable inference derived from an unusually loud exhaust is not sufficient to prove a violation of 75 Pa.C.S.A. §4523(a) (Compliance with Established Sound Levels) or 75 Pa. C.S.A. § 4523(c) (Mufflers and Related Equipment), "the fact that the defendant may have a defense to the traffic violation has no bearing on the validity of the stop." Commonwealth v. Vincett, 806 A.2d 31 (Pa. Super 2002).

In this case, Officer Broyles stated three reasons for conducting a traffic stop of Defendant's vehicle. First, Defendant's vehicle had a non-illuminated registration light.

Second, Officer Broyles observed Defendant's vehicle having a non-functioning break light. Lastly, Defendant's vehicle had a louder than normal exhaust system. Officer Broyles later discovered that the registration light and the brake light were, in fact, functioning properly.

However, because Officer Broyles' observation of the vehicle's unusually loud exhaust system was sufficient to establish a reasonable suspicion that Defendant's vehicle was in violation of sections 4523(a) and 4523(c) and to conduct a traffic stop under Commonwealth v. Bailey, this Court need not conduct a credibility analysis to determine if the other grounds for the traffic stop amounted to an "honest mistake" on the part of the officer. In addition to Officer Broyles' observation of the loud exhaust system, Defendant herself had admitted during the traffic stop that the exhaust was loud. Though Officer Broyles' testimony concerning a suspected faulty exhaust system was insufficient to establish guilt of a violation of either 75 Pa. C.S.A. §4523(a) or §4523(c), it was sufficient to support an investigative detention. Therefore, we find that the traffic stop was lawful.

**B. Officer Broyles possessed reasonable suspicion to detain Defendant based on suspicion of DUI because the evidence observed by Officer Broyles was sufficient based on the totality of the circumstances.**



As set forth hereinabove, Officer Broyles suspected a violation of Vehicle Code Sections 4523(a) and 4523(c) and when he stopped Defendant, he found that she had committed offenses of much greater gravity. Officer Broyles testified that he had observed rubber bands in the Defendant's vehicle which, based upon his training and experience, were consistent with drug packaging. Additionally, Officer Broyles observed Defendant to have bloodshot and glassy eyes. Defendant argues that these factors alone are insufficient to establish probable cause or reasonable suspicion that she was engaged in criminal activity.

"Probable cause is made out 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. Thompson, 985 A.2d 928, 935 (Pa. 2009) (citing Commonwealth v. Rodriguez, 585 A.2d 988, 990 (1991)). "The question we ask is not whether the officer's belief was 'correct or more likely true than false.'" Id. at 931 (citing Texas v. Brown, 460 U.S. 730, 742 (1983)). "Rather, we require only a 'probability, and not a prima facie showing, of criminal activity.'" Id. (citing Illinois v. Gates, 462 U.S. 213, (1983)). "In determining whether probable cause exists, we apply a totality

of the circumstances test." Id. (citing Commonwealth v. Clark, 735 A.2d 1248, 1252 (1999) (relying on Gates, *supra*))."

As to the weight of evidence observed in light of an officer's training and experience in relation to probable cause, the Pennsylvania Superior Court, in Commonwealth v. Thompson, held that "a police officer's experience may fairly be regarded as a relevant factor in determining probable cause." Thompson, 985 A.2d at 935 (citing Justice Saylor's concurrence in Commonwealth v. Dunlap, 941 A.2d 674, 679 (Pa. Super. 2004)). However, "a court cannot simply conclude that probable cause existed based upon nothing more than the number of years an officer has spent on the force. Rather, the officer must demonstrate a nexus between his experience and the search, arrest, or seizure of evidence." Dunlap, 941 A.2d at 676. Indeed, a factor becomes relevant only because it has some connection to the issue at hand. The very foundation of the Gates totality test is the recognition that all relevant factors go into the probable cause mix." Thompson, 985 A.2d at 935.

Reasonable suspicion is a less stringent test than probable cause. "In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered." Commonwealth v. Rogers, 849 A.2d 1185, 1189 (Pa. 2004) (citing In re D.M., 781 A.2d 1161, 1163 (2001)). "In making this determination, we must give 'due weight ... to the specific

reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.'" Id. (citing Commonwealth v. Cook, 735 A.2d 673, 676 (1999) (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968))). "Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, '[e]ven a combination of innocent facts, when taken together, may warrant further investigation by the police officer.'" Id. (citing Cook, 735 A.2d at 676).

Having determined that the initial stop was lawful based upon Officer Broyles' observations of the suspected Vehicle Code violations, we turn to the remainder of the stop. We conclude that once Officer Broyles was lawfully next to Defendant's vehicle and observed rubber bands on Defendant's thigh and on the floor of her vehicle, and that she displayed glassed over and bloodshot eyes as well as constricted pupils, he had reasonable suspicion to believe that additional criminal activity was afoot. Thus, Office Broyles' detention of Defendant was supported by reasonable suspicion and his subsequent actions, including the administration of field sobriety tests and the seizure of the bundles of waxine bags containing fentanyl, were lawful.

#### CONCLUSION

Based upon the foregoing, Defendant's motion to suppress will be denied. In addition, Defendant's petition for writ of habeas

corpus will be denied as it was predicated upon her motion to suppress being granted by this Court. We will, therefore, enter the following

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :

v. :

No. CR-737-2019

MARISSA NICOLE FETHIERE, :

Defendant :

Brian B. Gazo, Esquire  
Assistant District Attorney

Counsel for the Commonwealth

Joseph V. Sebelin, Jr., Esquire      Counsel for the Defendant

**ORDER OF COURT**

AND NOW, to wit, this 23<sup>rd</sup> day of December, 2020, upon consideration of Defendant's "Omnibus Pre-Trial Motion" and hearing held thereon, and following our review of the post-hearing briefs of counsel, and for the reasons set forth in our Memorandum Opinion bearing even date herewith, it is hereby

**ORDERED and DECREED** that Defendant's "Omnibus Pre-Trial Motion" is **DENIED** and that the parties shall appear for a pretrial conference at 11:00 a.m. on January 8, 2021 in the Office of the District Attorney on the second floor of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:



Steven R. Serfass, J.