

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

COMMONWEALTH OF PENNSYLVANIA

vs.

MORRIS SMITH

Defendant

Joseph D. Perilli, Esquire
Matthew J. Mottola, Esquire

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No. CR 899-2015

Counsel for Commonwealth
Assistant District Attorney
Counsel for Defendant
Morris Smith

COMMONWEALTH OF PENNSYLVANIA

vs.

ERIC SMITH

Defendant

Joseph D. Perilli, Esquire
Kim M. Gillen, Esquire

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No. CR 617-2015

Counsel for Commonwealth
Assistant District Attorney
Counsel for Defendant Eric
Smith

MEMORANDUM OPINION

Matika, J. - June , 2016

Before this Court are two Omnibus Pretrial Motions¹ filed by Defendants, Morris Smith (hereinafter "Morris") and Eric L. Smith

¹ Both Defendants were involved in the same traffic stop and filed identical motions, seeking to: 1) establish that the Commonwealth has failed to present a *prima facie* case; and 2) to suppress any evidence from the traffic stop due to "fruits of the poisonous tree." Thus, for judicial economy, this court will offer one opinion for both Defendants.

(hereinafter "Eric"). Defendants seek to suppress all evidence seized from what they claim is an illegal stop and subsequent unlawful search of the vehicle both Defendants were travelling in. Defendants also seek habeas corpus relief based upon the Commonwealth's failure to establish a *prima facie* case. For the reasons stated within this Opinion, upon consideration of Defendants' "OMNIBUS PRE-TRIAL MOTIONS", and after a hearing held thereon, and after reviewing Defendants' Briefs in Support and the Commonwealth's Brief in Opposition, Defendant Eric Smith's Motion is **GRANTED in part and DENIED in part** and Defendant Morris Smith's Motion is **DENIED**.

FACTUAL AND PROCEDURAL BACKGROUND

On March 17, 2015, Troopers Larry McDaniel and Jeffrey Kreidler of the Pennsylvania State Police were on patrol, parked at mile marker 275 on Interstate 80 in Carbon County, Pennsylvania, monitoring westbound traffic. At approximately 12:50 A.M., the troopers observed a black Chevrolet Malibu pass by their location. The troopers determined that they were unable to see into the interior of the vehicle because the tinting of the vehicle's windows was too dark, and therefore believed the vehicle was in violation of the Pennsylvania Vehicle Code.² After pulling out

² 75 Pa.C.S.A. § 4524 §§ E1-Improper Sun Screening.

and following for several minutes, the Troopers pulled the vehicle over for the perceived window tint violation.

Both Troopers approached the vehicle and requested the windows be lowered, with Trooper Kreidler approaching the driver's side and Trooper McDaniel on the passenger side. Trooper McDaniel, while shining his flashlight, looked into the vehicle and observed the passenger, later identified as Morris Smith, cupping a plastic bag that the Trooper perceived to contain a white, powdery residue. Trooper McDaniel asked Morris to step out of the vehicle and asked for his name. Morris provided the Trooper with a fake name, which Trooper McDaniel knew to be fake from a previous encounter with Morris. After being confronted with this information, Morris admitted to providing a fake name, and was detained and placed in the back of the patrol vehicle.

Simultaneously, Trooper Kreidler approached the driver of the vehicle, and requested his license and registration, which were provided, and identified the driver as Eric Smith. Trooper Kreidler ran Eric's name for outstanding warrants, and then asked him to step out of the vehicle, where the two began to converse about where the Defendants were travelling. After placing Morris in the back of the patrol car and speaking to him about why he was being detained, Trooper McDaniel joined this conversation with Eric. Trooper McDaniel stated that he smelled the odor of marijuana coming from Eric's person. Based on these observations—

the paraphernalia in Morris' hand, the false name, and the odor of marijuana – the Troopers made the decision to conduct a warrantless search of the vehicle.

In the course of the search, the Troopers entered the vehicle multiple times. Trooper McDaniel informed Eric that they would be calling for a K9 Unit to conduct a sniff of the vehicle for contraband. At this point, Eric began to complain of chest pains and an ambulance was called. As Eric was being placed in the ambulance, Trooper McDaniel realized that the officers had not searched a coffee cup in the center console of the vehicle. Upon opening the coffee cup, Trooper McDaniel discovered two (2) wax paper bags. These wax paper bags were opened, and one was found to contain seventy-six (76) grams of cocaine, and the other was found to contain forty-eight (48) grams of heroin.

Defendants were charged with Possession of a Controlled Substance with Intent to Deliver³, Possession of a Controlled Substance⁴, and Possession of Drug Paraphernalia⁵. Eric Smith was also charged with a summary offense, Improper Sun Screening⁶. A Preliminary Hearing was held for both Defendants on June 10, 2015 in front of Magisterial District Judge Joseph D. Homanko, where the charges were bound over against Eric, but dismissed against

³ 35 Pa.C.S.A. § 780-113 §§ A30.

⁴ 35 Pa.C.S.A. § 780-113 §§ A16.

⁵ 35 Pa.C.S.A. § 780-113 §§ A32.

⁶ 75 Pa.C.S.A. § 4524 §§ E1.

Morris. The Commonwealth refiled the charges against Morris, and a second Preliminary Hearing was held on August 19, 2015 for Morris in front of Magisterial District Judge Casimir Kosciulek, who bound over all charges. Defendants subsequently filed these Omnibus Pretrial Motions.

DISCUSSION

Defendants, in their Omnibus Pretrial Motions, raise two (2) separate issues. First, Defendants request the Court suppress all evidence in this case uncovered during the vehicle search due to the search being unconstitutional. Second, Defendants have filed a writ of habeas corpus claiming the Commonwealth does not have sufficient evidence to establish a prima facie case. This opinion will address the suppression motion first.

A. Suppression Motion

In a motion to suppress evidence, the burden is placed upon the Commonwealth to establish that the allegedly suppressible evidence was not obtained in violation of a defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979).

"The Fourth Amendment of the United States Constitution and Article I, Section VIII of the Pennsylvania Constitution guarantee individuals freedom from unreasonable searches and seizures." *Commonwealth v. El*, 933 A.2d 657, 660 (Pa. Super. Ct. 2007). "Thus the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by

judge or magistrate are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions.’” *Coolidge v. New Hampshire*, 403 U.S. 202, 232 (1971), quoting *Katz v. United States*, 389 U.S. 347, 357 (1967).

In the Suppression portion of their Motions, Defendants raise three issues with the vehicle stop and search: 1) that the Troopers lacked reasonable suspicion to stop the vehicle for a window tint violation; 2) the odor of marijuana combined with the paraphernalia found on Morris’ person at the time of the stop failed to establish probable cause to search the vehicle; and 3) the Troopers exceeded the scope of their search by entering the vehicle multiple times before searching the coffee cup where the contraband was found.

1. Reasonable Suspicion for the Vehicle Stop

The Legislature of this Commonwealth has authorized a police officer to stop a vehicle for an investigatory purpose whenever the officer has reasonable suspicion to believe that a violation of the Motor Vehicle Code has occurred. 75 Pa.C.S.A. § 6308(b).⁷

⁷ 75 Pa.C.S.A. § 6308(b) reads in full:

(b) Authority of police officer – Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has 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.

The determination of whether a police officer has reasonable suspicion that criminality is afoot so as to justify an investigatory detention is an objective one that must be evaluated based upon the totality of the circumstances. *Commonwealth v. Chase*, 960 A.2d 108 (Pa. 2008) ("[r]easonable suspicion sufficient to stop a motorist must be viewed from the standpoint of an objectively reasonable police officer" (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996))).

In order to establish reasonable suspicion and effectuate a traffic stop, the police officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts in light of the officer's experience. See *Commonwealth v. Anthony*, 1 A.3d 914, 919-920 (Pa. Super. Ct. 2010). The Superior Court has also held that "[t]he reasonable suspicion necessary to justify a vehicular stop is less stringent than probable cause, but the officer must have more than a hunch as the basis of a stop." *Commonwealth v. Wright*, 672 A.2d 826, 830 (Pa. Super. Ct. 1996). Additionally, the Superior Court has ruled that "while the Commonwealth has an interest in enforcing rules designed to maintain safety on our roads, an individual does not lose all reasonable expectation of privacy when he takes to the highway in a vehicle. A police officer must have specific facts justifying the intrusion." *Commonwealth v. Slonaker*, 795 A.2d 397, 400 (Pa. Super. Ct. 2002).

Accordingly, in the case *sub judice*, this Court must first determine whether Troopers McDaniel and Kreidler had reasonable suspicion that a violation of the Motor Vehicle Code had occurred.⁸ All parties agree that both Troopers previously testified that they were unable to see inside of the vehicle, and that they attributed that to the vehicle having an illegal window tint. Defendants, instead, challenge the basis on which the stop was made, primarily on the basis that the Troopers' observations were made at 12:50 A.M., the area where the observations were made was "poorly lit", and the fact that the vehicle had recently had its tinting reduced.⁹

The Troopers had parked their vehicle in a paved "crossover" lane between the eastbound and westbound lanes of Interstate 80, facing the westbound traffic. The vehicle had its headlights on as it was parked so the Troopers could observe oncoming cars. Both Trooper McDaniel¹⁰ and Trooper Kreidler¹¹ testified that as the Defendants' vehicle passed them, the tinting on the windows was "so dark that we were not able to view inside the vehicle." Both

⁸With regards to the vehicle stop, Defendants admit that this is not a legal issue. As stated in Defendant Morris Smith's brief, "[t]he first issue in this motion does not raise a legal question. Rather, it raises a question of fact."

⁹The owner of the vehicle, Demetrius Devon Smith, who was not in the vehicle at the time of the stop, but had given permission for Defendants to use the vehicle, testified at the Omnibus Hearing on March 17, 2016, that he had previously been pulled over in that same vehicle for a window tint violation, and had been ordered to reduce the tint. He had done so, and provided documentation from the Pennsylvania State Police that the window tinting was in compliance with 75 Pa.C.S.A. § 4524 §§ E1. See Defendant Eric Smith's Exhibits 1 & 2.

¹⁰N.T. Prel. Hearing, P. 31-32.

¹¹N.T. Prel. Hearing, P. 118.

troopers testified that the headlights from their patrol vehicle provided sufficient lighting for them to determine that a potential violation of the motor vehicle code had occurred, and it was at this point the troopers pulled out of the "crossover" lane and began to follow Defendants, eventually pulling them over near the on-ramp at Exit 273.¹²

This Court finds the testimony of the Troopers credible. As stated above, the officer must have specific articulable facts to justify pulling over a vehicle. Here, both Troopers testified that the suspected tinting on the windows, being so dark that the Troopers could not see the interior of the vehicle, constituted a possible violation of the Pennsylvania Motor Vehicle Code. At no point did either Defendant offer any testimony to refute the existence of the window tinting, and in fact, offered testimony of the existence of window tinting that had previously been in violation of 75 Pa.C.S.A. § 4524 §§ E1. Further, Trooper McDaniel has extensive experience with window tint violations that this Court believes lends credence to his testimony on this matter.¹³ The statutory language requires only that the officers have a reasonable belief of a violation, not that an actual violation has

¹² Both Troopers testified that the reason they did not immediately pull Defendants over was because they prefer to utilize on-ramps or other wider areas of the highway for officer and driver safety. See N.T. Prel. Hearing, P. 64-67.

¹³ See *Commonwealth v. Postie*, 110 A.3d 1034 (Pa. Super. Ct. 2015).

occurred. Based on the underlying facts and the testimony of the Troopers, this Court finds that reasonable suspicion to pull Defendants over existed, and the Troopers acted properly in doing so.

2. Probable Cause for the Vehicle Search

In light of the 'automobile exception' to the usual search warrant requirement, it is difficult to pick a worse place to conceal evidence of a crime than an automobile. The Supreme Court has interpreted—and reinterpreted—the automobile exception so expansively that the Court has essentially obviated the requirement that the government obtain a warrant to search a vehicle provided it has probable cause to believe that the vehicle contains evidence of a crime.

United States v. Donahue, 764 F.3d 293, 295 (3d. Cir 2014). Pennsylvania courts "have adopted a limited automobile exception under Article 1, § 8." *Commonwealth v. McCree*, 924 A.2d 621, 630 (Pa. 2007). "Specifically, a warrantless search of an automobile may be conducted 'where there exists probable cause to search and exigent circumstances necessitating a search'." *Commonwealth v. Copeland*, 955 A.2d 396, 400 (Pa. Super. Ct. 2008), quoting *Commonwealth v. Casanova*, 748 A.2d 207, 211 (Pa. Super. Ct. 2000). "Probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the defendant has committed it." *Commonwealth v. Stewart*, 740 A.2d 712, 715 (Pa. Super. Ct. 1999). In making the determination as to whether probable cause exists, a court must consider the totality

of the circumstances as they appeared to the arresting officer. *Id.* Further, "the evidence required to establish probable cause for a warrantless search must be more than a mere suspicion or a good faith belief on the part of the police officer." *Commonwealth v. Lechner*, 685 A.2d 1014, 1016 (Pa. Super. Ct. 1996).

There are a number of cases relating to whether the odor of marijuana, in and of itself, constitutes probable cause for a vehicle search. In one of the seminal cases on this issue, the Superior Court held that:

[t]he Supreme Court of the United States has held that an odor may be sufficient to establish probable cause for the issuance of a search warrant. . . . While these cases have been concerned with securing warrants for the search of a house, the rationale used to establish probable cause applies equally well when determining the validity of a search of a movable vehicle.

Commonwealth v. Stoner, 344 A.2d 633, 635 (Pa. Super. Ct. 1975) (internal citations omitted). That case also created the "plain smell" doctrine and analogized it to the plain view doctrine, holding that when an officer is justified in his actions, his detection of the odor of marijuana is enough to establish probable case. *Id.*

Following *Stoner*, Pennsylvania courts have made similar rulings. In *Commonwealth v. Copeland*, the arresting officer pulled over the defendant after the defendant ran a stop sign. 955 A.2d 396, 402 (Pa. Super. Ct. 2008). The officer approached the vehicle and asked the defendant to roll down the window, at which point,

he recognized the odor of burnt marijuana. *Id.* While speaking to the defendant, the officer noticed that the defendant appeared nervous and avoided answering the officer's questions. *Id.* Additionally, the officer learned that the defendant was wanted on a warrant in Philadelphia, and placed the defendant in the back of his patrol car before searching the vehicle, where he found a firearm and a small amount of marijuana. *Id.* On appeal, the Superior Court found that under the "totality of the circumstances, the officers had more than a 'mere suspicion or good faith belief' that Appellee was engaged in illegal activity." *Id.*

In another case, the Superior Court upheld a search that began with a traffic stop where the officer observed the defendant "stuffing something under his seat." *Commonwealth v. Stainbrook*, 471 A.2d 1223, 1225 (Pa. Super. Ct. 1984). The officer also detected the odor of marijuana and testified as to his training in being able to identify marijuana by, among other things, smell. *Id.* Citing to *Stoner*, the Superior Court ruled "that it would have been a dereliction of duty for [the officer] 'to ignore the obvious aroma of an illegal drug which he was trained to identify.'" *Id.*, quoting *Stoner*, *supra* at 635.

Turning to the instant matter, Trooper McDaniel testified extensively regarding his training and experience with regard to

police work, including drug interdiction programs.¹⁴ Trooper McDaniel stated that is certified as a "Drug Recognition Expert" by the International Association of Chiefs of Police.¹⁵ He also testified as to what it is that he looks for when it is investigating for a drug violation, including "the odor of drugs" and "contraband in plain view."¹⁶ Trooper McDaniel estimated that he has made approximately 300 drug-related arrests in his ten years as a state trooper.

As stated above, Trooper Kreidler approached the Defendants' vehicle on the driver side and began conversing with Eric Smith. While this was occurring, Trooper McDaniel approached the vehicle from the passenger side, where he observed Morris Smith "cupping a clear plastic baggie in his left hand", which contained "white powder residue."¹⁷ On cross-examination, Trooper McDaniel testified that it appeared that Morris Smith was "attempting to hide [the plastic bag] from Trooper Kreidler who was on the driver's side of the vehicle."¹⁸

Next, Trooper McDaniel testified that he asked Morris for his name, which the trooper was already aware of due to prior dealings, and Morris provided him with a fake name. At this point, Trooper

¹⁴ N.T. Prel. Hearing, P. 7-10.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 21.

¹⁸ *Id.* at 89.

McDaniel informed Morris he did not believe that was his real name and asked him to step out of the vehicle. After conversing with Morris for several minutes, Morris provided Trooper McDaniel with his real name. Trooper McDaniel then "detained" Morris and placed him in the rear of the patrol vehicle.¹⁹

While Trooper McDaniel was detaining Morris, Trooper Kreidler had asked Eric to step out of the vehicle as well, and was speaking with him in between Defendants' vehicle and the patrol vehicle. After he was finished placing Morris in the patrol vehicle, Trooper McDaniel approached Eric and joined in that conversation. Trooper McDaniel testified that "while in close proximity to the operator, I detected the odor of marijuana emanating from his person."²⁰ It was at this point that the Troopers carried out their search of the vehicle and eventually discovered the cocaine and the heroin.

In considering the totality of the circumstances, this Court finds that probable cause did exist to conduct the search of Defendants' vehicle. Trooper McDaniel articulated a number of facts and circumstances that, combined with his training and experience, could reasonably lead he and Trooper Kreidler to believe that drug-related offenses were committed and Defendants had been the ones to commit them.²¹ Those facts and circumstances

¹⁹N.T. Prel. Hearing, P. 13-16.

²⁰*Id.* at 17.

²¹Defendants seek to discount the testimony of the Troopers as not credible with relation to several of the facts and circumstances testified to. However, for

include Morris Smith attempting to conceal the bag with the powder residue from Trooper Kreidler, Morris Smith providing Trooper McDaniel with a false name, Trooper McDaniel's prior dealings with Morris Smith, and his detection of the odor of marijuana on Eric Smith. When reviewing all of these incidents, under the totality of the circumstances test, probable cause to search did exist to perform a warrantless search of the vehicle in this instance.

3. The Scope of the Search

Finally, Defendants' contend that if probable cause did exist, the Troopers exceeded the scope of their search by entering the vehicle multiple times during the course of their search before investigating the coffee cup located in the center console. However, neither Defendant cites to any binding precedent that limits a search of a passenger vehicle to one sweep by the officers while maintaining continuous control of the vehicle.²²

A search of closed containers found inside of a vehicle when probable cause to search the vehicle exists is permitted. See *United States v. Ross*, 456 U.S. 798 (1982). In *California v.*

the reasons stated within this Opinion, this Court finds the testimony of the Troopers to be credible.

²²Defendant Morris Smith cites to a case from the Ninth Circuit, *U.S. v. Nielsen*, as prospective persuasive precedent. 9 F.3d 1487 (9th Cir. 1993). However, a review of that case shows that *Nielsen* stands for the principle that an arresting officer cannot search the trunk of a vehicle after consent is given to search the passenger compartment only, but permission to search the truck is refused. In the instant matter, the Troopers smelled marijuana and, under a probable cause search, examined the passenger compartment, which is where the coffee cup was located.

Acevedo, the Supreme Court ruled that when probable cause to search a vehicle exists, "we now hold that the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle." 500 U.S. 565, 576 (1991). Finally, the Third Circuit Court of Appeals, when ruling on a case with a similar type of search held:

the Court has based its reasoning allowing warrantless searches of vehicles in part on the diminished expectation of privacy in a vehicle, and thus the Court's reasoning supports the conclusion that *so long as the government maintains continuous control over the vehicle* it need probable cause only for its initial search and seizure and that subsequent searches should be viewed as part of an ongoing process.

U.S. v. Donahue, 764 F.3d 293, 301 (3d. Cir 2014) (emphasis added).

Reviewing the facts of the case *sub judice*, this Court does not see how the scope of the search was exceeded. The Troopers were perpetually in control of the vehicle, and according to their testimony, were continuously searching the vehicle until Trooper McDaniel noticed and searched the coffee cup in the center console.²³ Trooper McDaniel, when being cross-examined, stated that he felt that he and Trooper Kreidler had conducted "one" search of the vehicle.²⁴ In reviewing the facts, and absent any case law to show how the Troopers exceeded their authority, this Court finds that the coffee cup was discovered as part of the

²³ N.T. Prel. Hearing, P. 79-82.

²⁴ *Id.* at 79.

probable cause search, and as it was located in the passenger compartment of the vehicle, the scope of that search was not exceeded.

Therefore, in accordance with the above reasoning, Defendants' Motions to Suppress are hereby **DENIED** and **DISMISSED**.

B. Habeas Corpus Motions

Having dealt with the Defendants' Suppression Motions, this Court now turns to their Habeas Corpus Motions. Defendants claim the Commonwealth's evidence is legally insufficient to establish a prima facie case on each of the counts charged against them.

A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of the crime and that the accused is the probable perpetrator of that crime. *Commonwealth v. Fountain*, 811 A.2d 24, 25-6 (Pa. Super. Ct. 2002). The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt; rather, the Commonwealth must show sufficient probable cause that the defendant committed that offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury. *Commonwealth v. Keller*, 823 A.2d 1004, 1010-11 (Pa. Super. Ct. 2003). "In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion

and conjecture are not evidence and are unacceptable as such." *Commonwealth v. Packard*, 767 A.2d 1068, 1071 (Pa. Super. Ct. 2001).

The intent to deliver may be inferred from an examination of the facts and circumstances surrounding the case. See *Commonwealth v. Harper*, 611 A.2d 1211, 1217 (Pa. Super. Ct. 1992). "Factors which may be relevant in establishing that drugs were possessed with the intent to deliver include the particular method of packaging, the form of the drug, and behavior of the defendant." *Commonwealth v. Aguado*, 760 A.2d 1181, 1185 (Pa. Super. Ct. 2000), citing *Commonwealth v. Sherrell*, 607 A.2d 767 (Pa. Super. Ct. 1992). In Pennsylvania, the intent to deliver may be inferred from possession of a large quantity of controlled substances. See *Commonwealth v. Smagala*, 557 A.2d 347, 351 (Pa. Super. Ct. 1989). Other factors to consider when determining whether a defendant intended to deliver a controlled substance include the manner in which the controlled substance was packaged. See *Commonwealth v. Taylor*, 33 A.3d 1283, 1288 (Pa. Super. Ct. 2011).

In cases involving Possession offenses, the Commonwealth must show that the defendant had either the intent or knowledge that the controlled substances were in his possession. This can be established through either actual or constructive possession. Presence alone in conjunction with such access will not prove conscious dominion over contraband. See *Commonwealth v. Keblitis*, 456 A.2d 149 (Pa. 1983). However, "the Commonwealth may

demonstrate constructive or joint constructive possession, from the totality of the circumstances, even though others may have had access to the drugs." *Commonwealth v. Davis*, 480 A.2d 1035, 1045 (Pa. Super. Ct. 1984), citing *Commonwealth v. Macolino*, 469 A.2d 132 (Pa. 1983) (emphasis in original).

Turning to the matter *sub judice*, the contraband and paraphernalia was found in a vehicle that Defendants were travelling in. Defendants have offered no testimony to refute the testimony of the Troopers regarding the quantity, packaging, location, or control of the contraband. Trooper McDaniel testified that based on his knowledge and experience, that quantity of cocaine and heroin, packaged in that manner, would be an appropriate case for possession with intent to deliver.²⁵ Again, Defendants did not present any testimony, either at the preliminary hearing or the Omnibus Hearing to controvert that of the Commonwealth.

The Commonwealth's burden, as stated above, is lower than it will be for trial. The Commonwealth need not prove their case beyond a reasonable doubt, but rather, must show evidence, that if presented at trial and accepted as true, would allow the case to go to the jury. Based on the totality of the circumstances and the evidence and exhibits presented at the Omnibus Hearing held

²⁵ N.T. Prel. Hearing, P. 22-27.

before this court on March 17, 2016, this Court finds that the Commonwealth has met that burden with regards to the three drug related charges against both Defendants: Possession of a Controlled Substance with Intent to Deliver²⁶, Possession of a Controlled Substance²⁷, and Possession of Drug Paraphernalia²⁸.

However, the Commonwealth has *not* met that burden with regards to the charge of Improper Sunscreening against Defendant Eric Smith. While the existence of a window tint did give the Troopers reasonable suspicion that a potential violation of the Motor Vehicle Code had occurred, Defendants did present testimony to contradict that suspicion at the Omnibus Hearing. Demetrius Smith, the owner of the vehicle, who was not in the vehicle at the time of the stop, testified that he had recently reduced the tinting in the vehicle after a warning from another Pennsylvania State Trooper. Demetrius Smith further provided documentation²⁹ that the reduced tinting was within the legal requirements of 75 Pa.C.S.A. § 4524 §§ E1. Therefore, the Commonwealth has failed to meet their burden of establishing a *prima facie* case, and thus, on the charge that Defendant Eric Smith was operating a Motor Vehicle with Improper Sun Screening only, Defendant's writ of habeas corpus is granted.

²⁶ 35 Pa.C.S.A. § 780-113 §§ A30.

²⁷ 35 Pa.C.S.A. § 780-113 §§ A16.

²⁸ 35 Pa.C.S.A. § 780-113 §§ A32.

²⁹ See Defendant Eric Smith's Exhibits 1 & 2.

Accordingly the Court enters the following orders:

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

COMMONWEALTH OF PENNSYLVANIA

vs.

ERIC L. SMITH

Defendant

Joseph D. Perilli, Esquire

Kim M. Gillen, Esquire

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No. CR 617-2015

Counsel for Commonwealth
Assistant District Attorney
Counsel for Defendant Eric
L. Smith

ORDER OF COURT

AND NOW, this ____ day of June, 2016, upon consideration of Defendant's Omnibus Pretrial Motion and accompanying brief in support thereof, the Commonwealth's brief in opposition to, and after a hearing held on this matter, is it hereby **ORDERED** and **DECREED** that Defendant's Motion to Suppress is **DENIED**.

It is **FURTHER ORDERED and DECREED** that Defendant's Motion for Writ of Habeas Corpus is **GRANTED** as to the Improper Sun Screening charge and **DENIED** as to all other charges. Accordingly, that charge of Improper Sun Screening is **DISMISSED**.

BY THE COURT:

Joseph J. Matika, J.

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Counsel for Commonwealth
Assistant District Attorney
Counsel for Defendant
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ORDER OF COURT

AND NOW, this ____ day of June, 2016, upon consideration of Defendant's Omnibus Pretrial Motion and accompanying brief in support thereof, the Commonwealth's brief in opposition to, and after a hearing held on this matter, is it hereby **ORDERED** and **DECREED** that Defendant's Motion to Suppress is **DENIED**.

It is **FURTHER ORDERED and DECREED** that Defendant's Motion for Writ of Habeas Corpus is **DENIED** as to all charges.

BY THE COURT:

Joseph J. Matika, J.