

IN THE COURT OF COMMON PLEAS  
OF LEBANON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF  
PENNSYLVANIA

v.

MOHAMED G. BADAWEY

COMMONWEALTH OF  
PENNSYLVANIA

v.

OMER ABUDAWWAS

CP-38-CR-294-2024

CP-38-CR-295-2024

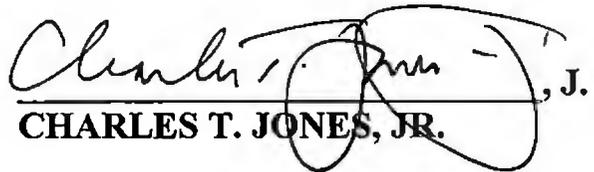
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ORDER OF COURT

AND NOW, this 28<sup>th</sup> day of March 2025, after a pretrial hearing held on January 2, 2025, and upon careful consideration of the record and the Briefs of all Parties, Defendants' Omnibus Pretrial Motions are hereby **GRANTED**.

Consistent with the Opinion accompanying this Order, all evidence resulting from the search of the Chrysler Pacifica is hereby suppressed.

BY THE COURT:

  
CHARLES T. JONES, JR.

cc: Kevin Feeney, Esquire // 500 Court Street, Reading, PA 19601 mail  
Timothy M. Barrouk, Esquire // 260 W. High Street, Suite 2, Gettysburg, PA 17325 mail  
Kevin M. Dugan, Esquire // Lebanon County District Attorney's Office 20

PURSUANT TO Pa.R.Crim. P. 114  
All parties are hereby notified  
this date: 4/15/25 m  
Clerk of Courts, Lebanon, PA

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OF LEBANON COUNTY, PENNSYLVANIA**

**CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
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v.	:	CP-38-CR-294-2024
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	:	
COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CP-38-CR-295-2024
	:	
OMER ABUDAWWAS	:	

**APPEARANCES:**

Kevin Feeney, Esquire	For Defendant, Mohamed G. Badawy
Timothy M. Barrouk, Esquire	For Defendant, Omer Abudawwas
Kevin M. Dugan, Esquire	For Commonwealth

**OPINION BY JONES, J.:**

Before the Court is Defendants’ Omnibus Pretrial Motions to Suppress Evidence. Mahamed Badawy and Omer Abudawwas (“Defendants”) request that this Court suppress all physical evidence that was obtained subsequent to a traffic stop in violation of the Defendants’ Fourth Amendment Rights. Defendants’ cases were consolidation by Court Order on May 13, 2024. Furthermore, the underlying facts and issues raised by the Defendants, and briefs by the Defendants are nearly

identical in both Motions. Accordingly, we will address these Suppression Motions in a single disposition for purposes of judicial economy.

### **PROCEDURAL HISTORY**

On February 17, 2024, a criminal complaint was filed charging each Defendant with two counts of Manufacturing, Delivery, or Possession with Intent to Manufacture or Deliver a Controlled Substance under 35 Pa. C.S. §780-113(A)(30), one count of Possession of a Controlled Substance (M) under 35 Pa. C.S. §780-113(A)(16), and one count of Possession of a Small Amount of Marijuana (M) under 35 Pa. C.S. §780-113(A)(31)(i). On March 15, 2024, Commonwealth filed a criminal information charging Defendants with the aforementioned charges. Defendant Abudawwas filed an Omnibus Pre-Trial Motion on May 3, 2024, and Defendant Badawy filed an Omnibus Pre-Trial Motion on May 6, 2024. Both Motions sought suppression of all physical evidence recovered as a result of a traffic stop. The Motions challenged the legality of the initial traffic stop, the extent of the subsequent investigative detention, and the eventual consent to search.

A hearing was held on the Motions on January 2, 2025. At the Pre-Trial Hearing, the Commonwealth called Trooper Isaiah Owens (hereinafter “Trooper Owens”) of the Pennsylvania State Police to testify about his investigation and said traffic stop. The parties stipulated to the accuracy of the Motor Vehicle Recording (“MVR”) of the stop from Trooper Owens’ patrol car, and the MVR was admitted as Exhibit 1. The Commonwealth also called Trooper Stephen Lehner (hereinafter “Trooper Lehner”) of the Pennsylvania State Police to briefly testify about his involvement with the traffic stop.

Following the Pre-Trial Hearing, the Court took the matter under advisement and directed the parties to file briefs. Both Defendants filed Briefs in Support of Defendant’s Omnibus Pre-Trial Motion to Suppress Evidence on February 14, 2025.

Also on February 14, 2025, the Commonwealth filed a Brief in Opposition to Defendants' Motions to Suppress. This matter is now ripe for disposition.

### **FACTUAL HISTORY**

On February 16, 2024, Defendants were driving a rented Chrysler Pacifica minivan on Interstate 78 East, Bethel Township, Lebanon County. At some point, Trooper Owens of the Pennsylvania State Police came directly behind the Pacifica in the left lane. (MVR 00:00:35–00:02:31). Trooper Owens then followed behind the Pacifica for three-tenths of a mile. (Id.) The MVR shows that at the time both the patrol vehicle and the Pacifica were driving in the left lane, a tractor trailer was operating in the right lane shortly ahead of the Pacifica. (Id.) The MVR also shows that a line of cars was directly in front of the Pacifica. Once the Pacifica transitioned into the right lane, Trooper Owens activated his lights and initiated a traffic stop of the Defendants' vehicle. (MVR 00:02:58-00:03:15). Trooper Owens testified that the vehicle caught his attention because it had an out-of-state plate with two males driving and packages in the back. (Notes of Testimony (hereinafter "N.T."), January 2, 2025, at 7).

Upon approaching the vehicle, Trooper Owens observed cardboard boxes and brown paper shopping bags. (N.T. 11, 22). Trooper Owens made contact with two male occupants, the Defendants. (MVR 00:03:35-00:04:10). The driver was identified as Mohammed Badawy, and the passenger was identified as Omer Abudawwas. (N.T. 13). Trooper Owens informed the Defendants that he stopped them because they had traveled in the left lane for approximately three-tenths of a mile without passing another vehicle. (MVR 00:03:35-00:04:10; N.T. 8). The vehicle was a rental with Texas tags and Defendant Abudawwas was on the rental agreement. (N.T. 12-13). The Defendants produced the rental agreement, and both Defendants provided identification from California. (N.T. 13-14).

Trooper Owens had Badawy exit the vehicle and remain at the passenger side window of the patrol vehicle while he ran the information. (N.T. 14-16). While Trooper Owens was running the information, he began to question Badawy regarding the origin, destination, and purpose of the trip. (Id.) Badawy stated that he and Abudawwas had flown from California to Virginia to visit Abudawwas' cousin, who just had a baby. (MVR 00:06:55-00:08:30; N.T. 16). Badawy stated he was unsure of the baby's name but showed the Trooper Owens a picture of the baby on his phone. (Id.) Badawy further stated that he and Abudawwas were on their way to visit New York City because they have never been there before. (N.T. 16-17). Upon concluding that the paperwork was in order and neither Defendant had any warrants, instead of returning the documents to Defendants, Trooper Owens asked Badawy to remain at the patrol car while he went to speak with Abudawwas. (N.T. 19). Trooper Owens did not issue a ticket for the alleged traffic violation at this point. (N.T. 18-19, 35).

Trooper Owens asked Abudawwas similar questions as those posed to Badawy regarding the details and reason for the trip. Trooper Owens believed there were slight discrepancies in their stories. (MVR 00:13:00-00:15:20; N.T. 19-20). Trooper Owens also questioned Abudawwas whether there were large amounts of money, weapons, or drugs inside the vehicle. Abudawwas responded that there were not. (MVR 00:15:45-00:17:40; N.T. 37-38). Trooper Owens subsequently requested consent to search the Pacifica, which Abudawwas denied. (Id.) Trooper Owens then allowed the Defendants to sit in the Pacifica but instructed them to remain at the scene while he called for a canine unit. (MVR 00:22:35-01:04:30; N.T. 34). We infer that the canine unit arrived out of view of the patrol car camera over forty minutes after Trooper Owens' request because Trooper Owens can be seen talking to another Trooper, Trooper Lehner, beginning at 01:05:00 on the MVR.

Upon the arrival of the canine officer, Trooper Lehner, the Defendants were removed from the vehicle and patted down. (MVR 01:06:30-01:07:30). Trooper Lehner's canine partner is trained in detecting marijuana, cocaine, heroin, and methamphetamine. (N.T. 43). During the sniff of the Pacifica, the canine exhibited alert behaviors indicating the presence of illegal narcotics. (N.T. 45). At this time, the Defendants were made aware of the canine alerting to the vehicle, and they were asked again for consent to search the vehicle. Defendants then consented to the search. (MVR 01:11:45-01:13:00; N.T. 26-27, 46). The search of the Pacifica yielded marijuana and related paraphernalia. As a result, the Defendants were placed under arrest, read Miranda Warnings, and the instant charges were filed.

#### **LEGAL STANDARD**

The Rules of Criminal Procedure allow a defendant to make a motion to the court to suppress any evidence alleged to have been obtained in violation of the defendant's rights under the Constitution of the United States or the Constitution of Pennsylvania. **Pa.R.Crim.P. 581**. On a motion to suppress, the Commonwealth bears the burden to establish by a preponderance of the evidence that the challenged evidence was not obtained in violation of the defendant's rights and is therefore admissible. **Pa.R.Crim.P. 581(H)**; *Commonwealth v. Ruey*, 892 A.2d 802, 807 (Pa. Super. 2006). The suppression of evidence is only appropriate where a violation upon which the motion to suppress is based touches upon fundamental, constitutional concerns, was conducted in bad faith, or has substantially prejudiced the defendant. *Commonwealth v. Gentile*, 632 A.2d 573 (Pa. Super. 1993). Questions of credibility and the weight to be accorded to witness testimony are issues within the sound discretion of the trial court. *In re R.P.*, 918 A.2d 115 (Pa. Super. 2007).

## DISCUSSION

Defendants' Motions to Suppress asserts four distinct challenges. First, Defendants argue that there was not sufficient probable cause to initiate a traffic stop. Second, Defendants assert that even if the traffic stop was lawful, the subsequent investigative detention that occurred after the purpose of the traffic stop had concluded was not based on reasonable suspicion. Third, Defendants argue that the canine search was not supported by reasonable suspicion. Lastly, the Defendants argue that the consent to search was invalid because the investigative detention and canine sniff were unlawful. For all those reasons, Defendants contend that all evidence resulting from the search must be suppressed.

### I. Whether the traffic stop was lawful.

Defendants argue that all evidence resulting from the unlawful traffic stop must be suppressed as fruit of the poisonous tree. Defendants acknowledge that they were driving in the left lane for a period of more than a minute without passing another vehicle and without moving to the right-hand lane. However, Defendants contend they were attempting to pass a tractor trailer occupying the right lane but were prohibited from doing so because other vehicles were directly in front of the Defendants' vehicle, also in the left lane, not passing the truck. Therefore, Defendants argue that even if there was a technical violation, it was *de minimis* in nature and did not give rise to probable cause to support a traffic stop.

The Commonwealth argues Trooper Owens had sufficient probable cause to initiate a traffic stop for violation of Section 3301 of the Motor Vehicle Code. Pursuant to Section 3301(a) of the Motor Vehicle Code, a vehicle shall be driven upon the right half of the roadway. Section 3301(a)(1) provides an exception which allows for a vehicle in the left lane when overtaking and passing another vehicle proceeding in the same direction. The Commonwealth notes Trooper Owens' testimony that he trailed the Defendants' vehicle in the left lane for three-tenths of a

mile. During this time, the vehicle remained in the left-hand lane without passing other vehicles and had the opportunity to move to the right lane but failed to do so. (N.T. 7-8). Therefore, the Commonwealth contends that because the reason for the traffic stop was based on the Defendants' driving violation, Trooper Owens had sufficient probable cause to initiate a traffic stop.

When considering whether reasonable suspicion or probable cause is required constitutionally to make a traffic stop, the nature of the Vehicle Code violation must be considered. *Commonwealth v. Salter*, 121 A.3d 987, 992 (Pa. Super. 2015). Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. *Commonwealth v. Feczko*, 10 A.3d 1285 (Pa. Super. 2010). In such an instance, it is incumbent upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Motor Vehicle Code. *Id.* Moreover, the Pennsylvania Superior Court has held that a *de minimis* violation of the Motor Vehicle Code does not give rise for probable cause to support a traffic stop. *Commonwealth v. Slattery*, 139 A.3d 221, n8 (Pa. Super. 2016).

Trooper Owens testified that the reason for the traffic stop was due to a violation of Section 3301 of the Motor Vehicle Code. Because no further investigation was needed, this Court finds probable cause was required to initiate the traffic stop. While Defendants are not disputing that they were in fact driving in the left-hand lane, from review of the MVR, this Court would interpret Defendants' actions as reasonable under section 3301(a)(1). From review of the MVR, it is clear that a tractor trailer occupied the right-hand lane a short distance ahead of the Defendants' vehicle. It is also clear from reviewing the MVR that other vehicles were present in the left lane directly in the Defendants' path of travel and Defendants appear to be driving with the flow of traffic. Therefore, this Court finds it reasonable

to believe that Defendants were utilizing the left lane in an attempt to pass the tractor trailer but were prohibited from doing so by the other vehicles directly in front of their vehicle. If anyone should have been stopped for a violation of the motor vehicle code, this Court contends that it should have been the vehicles in front of Defendants' vehicle that were slowing traffic and preventing others from passing. Furthermore, to the extent that Defendants did violate Section 3313, the Court finds that, at most, Defendants' actions may be interpreted as a *de minimis* infraction. For those reasons, this Court reaches the conclusion that Trooper Owens lacked probable cause to initiate a traffic stop. Therefore, all evidence acquired subsequent to the unlawful stop must be suppressed as fruit of the poisonous tree.

II. Whether the Officer had sufficient reasonable suspicion for a subsequent investigative detention.

Defendants assert that all evidence recovered as a result of the stop of the Pacifica should be suppressed because the stop violated the protection against warrantless seizure under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. Specifically, Defendants argue that Trooper Owens lacked reasonable suspicion to conduct a subsequent investigative detention after the purpose of the traffic stop had concluded.

Citing to *Commonwealth v. Lopez*, 609 A.2d 177 (Pa. Super. 1992), appeal denied, 533 Pa. 598, 617 A.2d 1273 (1992), Defendants argue that because Trooper Owens had no reasonable grounds to suspect the Defendants were involved in any criminal activity or drug related activity, the continued detention and questioning about the destination and purpose of the trip was unreasonable. In *Commonwealth v. Lopez*, the Superior Court of Pennsylvania found a traffic stop constituted an unreasonable seizure in violation of the Fourth Amendment where police detained occupants of a vehicle after a traffic stop with no objective circumstances present to

suggest they were involved in any crime more serious than the initial traffic violation. *Lopez* at 182.

The Commonwealth argues that as a result of the totality of the circumstances and information he received, Trooper Owens had more than sufficient reasonable suspicion to further detain Defendants. In supporting its argument, the Commonwealth points to Trooper Owens' testimony regarding his training and experience in drug interdiction. Specifically, Trooper Owens testified that I-78, the highway the Defendants were traveling on at the time of the traffic stop, is a known drug corridor and that it is common for drug traffickers to utilize rental vans to conceal their identities and blend in with normal traffic. (N.T. 17). Trooper Owens also testified that based on that knowledge and experience and the fact that both Defendants had licenses from California, flew to Virginia, and then drove to New York City, which is also a known location for drug trafficking, were "red flags". (N.T. 17, 23). Trooper Owens further testified that the Defendants' stories were inconsistent. He also testified to seeing multiple boxes and paper bags in the back of the van. Based on those facts, the Commonwealth asserts that Trooper Owens had the requisite reasonable suspicion to suspect Defendants were involved in further criminal activity and detain them for further investigation.

It is settled law that a traffic stop is generally considered an investigative detention. *Commonwealth v. Spence*, 290 A.3d 301, 314 (Pa. Super. 2023) (citations omitted). An investigative detention constitutes a seizure of a person and requires the officer to have at least reasonable suspicion of criminal activity. *Id.* at 312. The permissible duration of a traffic stop is determined by the seizure's mission, *i.e.*, to address the traffic violation that warranted the stop and attend to related safety concerns. *Commonwealth v. Ross*, 297 A.3d 787, 792 (Pa. Super. 2023) (quoting *Rodriguez*, 575 U.S. 348, 355 (2015)). An officer's mission on a traffic stop includes ordinary inquiries incident to the traffic stop, such as checking driver's

license, determining whether there are outstanding warrants against driver, and inspecting automobile's registration and proof of insurance. *Id.* While the officer is completing the mission of the stop, he may direct the driver to exit the vehicle and ask “a moderate number of questions” about the driver's identity and the officer's suspicions. *Id.* at 793 (citations omitted).

When a stop lasts longer than necessary to complete its mission, it becomes unlawful. *Id.* However, an officer may prolong a legitimate traffic stop if, before completing the purpose of the stop, the officer develops further reasonable suspicion. *Commonwealth v. Garcia*, 311 A.3d 1138, 1146 (Pa. Super. 2024); *see also Commonwealth v. Harris*, 176 A.3d 1009, 1021 (Pa. Super. 2017) (citations omitted). Moreover, when an officer abandons the investigation of the underlying violation and begins questioning the driver about unrelated criminal activity, he effectively ends the traffic stop and initiates an independent investigative detention. *Commonwealth v. Mattis*, 252 A.3d 650, 656 (Pa. Super. 2021). To do so lawfully requires independent reasonable suspicion. *Id.* Reasonable suspicion exists only where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that the person he stopped was involved in criminal activity. *Commonwealth v. Brinson*, 328 A.3d 1096, 1104 (Pa. Super. 2024). Although the police officer’s knowledge and experience weigh heavily in determining whether reasonable suspicion existed, the court must remain mindful that the officer’s judgment is necessarily colored by his primary involvement in ‘the often competitive enterprise of ferreting out crime.’ *Commonwealth v. Beasley*, 761 A.2d 621, 626 (Pa. Super. 2000) (citations omitted). Reasonable suspicion cannot be based on an officer’s hunch or unparticularized suspicion. *Id.* Therefore, the fundamental inquiry of a reviewing court is an objective one: whether, examining the totality of the circumstances, there was a particularized and objective basis for

suspecting the individual of criminal activity. *Brinson* at 1104 (citations omitted). The totality of the circumstances test does not limit the inquiry to an examination of only those facts which indicate criminal conduct. *Harris* at 1021. Instead, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer. *Id.*

In the present case, upon pulling the Defendants over for an alleged traffic violation, Trooper Owens observed boxes and brown paper bags, like ones you would get at an outlet store, in the back of the vehicle. (N.T. 11). Upon contact with the occupants, Trooper Owens received all of the Defendants' documentation. Trooper Owens asked Badawy to accompany him to his vehicle while he ran the Defendants' information. During this time, Trooper Owens began questioning Badawy about the nature of his trip. Badawy stated that he and Abudawwas had flown from California to Virginia to visit Abudawwas' cousin, who was in the hospital and just had a baby. (MVR 00:06:55-00:08:30; N.T. 16). Badawy stated he was unsure of the baby's name but showed Trooper Owens a picture of the baby that he had on his phone. (*Id.*) Badawy further stated that he and Abudawwas were going to visit New York City because they have never been there before. (N.T. 16-17). Trooper Owens also testified that Badawy's responses raised suspicion because they were short answers. (N.T. 17).

Trooper Owens asked Abudawwas similar questions as those posed to Badawy regarding the details and reason for the trip. (MVR 00:13:00-00:15:20; N.T. 19-20). Abudawwas stated that they were heading to New York to meet a friend who was going to show them around. (N.T. 20). Trooper Owens indicated that when he asked Abudawwas about the boxes in the vehicle, he did not respond. (N.T. 21). Trooper Owens also questioned Abudawwas if there was large amounts of money, weapons, or drugs inside the vehicle. Abudawwas responded that there were not. (MVR 00:15:45-00:17:40; N.T. 37-38). At this time, Trooper Owens still had not

issued a written ticket for the alleged traffic violation. (N.T. 35). Additionally, Trooper Owens testified he did not smell an odor of marijuana coming from the vehicle. (N.T. 38).

Trooper Owens testified he believed he had adequate reasonable suspicion to further detain the Defendants and call for a canine unit. Trooper Owens testified that his reasonable suspicion was based on his belief that there were slight discrepancies in the Defendants' stories, the fact that the Defendants were from California, had traveled to Virginia, and were now traveling to New York, and that there were boxes in the back of the vehicle.

The Court finds the purpose of the traffic stop was to issue a citation or warning based on the Defendants' alleged improper use of the left lane in violation of the Motor Vehicle Code. To this end, Trooper Owens verified all Defendants' paperwork and everything was in order. However, instead of providing the paperwork back to the Defendants and issuing a citation or warning, Trooper Owens kept the Defendants' documents, separated the Defendants, and spoke to them individually about matters not relevant to the traffic violation. As such, this Court finds that the investigative detention and purpose of the traffic stop concluded. Subsequently, a new investigation into drug activity began at the time Trooper Owens verified all of the necessary paperwork and had Defendant Badawy remain at the patrol vehicle so that he could interview Abudawwas for the sole purpose of his investigation into drug activity.

Additionally, this Court is not persuaded that Trooper Owens had the requisite reasonable suspicion to detain the Defendants and prolong the traffic stop. First, we do not find the minor discrepancies in the Defendants' stories to be significant. Second, after careful review of the MVR, we do not find that the Defendants' answers were short or non-responsive in a way that would raise suspicions or indicate the presence of any further criminal activity. Furthermore, Trooper Owens

did not smell the odor of marijuana, observe any controlled substances or residue of such, observe anything in the car consistent with drug trafficking, such as large amounts of currency, packaging material, or drug paraphernalia.

It appears clear Trooper Owens was acting upon a mere hunch of drug activity due to his testimony that the vehicle first caught his attention due to its out-of-state plates, the two male occupants, and packages in the back. It was only upon prompting that Trooper Owens indicated any observation of a motor vehicle violation. (N.T. 7). Further, upon making contact with the Defendants, Trooper Owens' questions were not directed towards the purpose of the traffic stop but were instead targeted towards confirming his preconceived suspicion of illegal drug activity.

Absent reasonable grounds to suspect the Defendants were involved in illegal drug activity or other serious crimes, Trooper Owens had no legitimate reason for detaining the Defendants or pursuing any further investigation and thus, the detention ceased to be lawful. Therefore, Trooper Owens continued detention and investigation of Defendants after concluding that their licenses, registration, and rental agreement were in order, was an unreasonable seizure in violation of the Fourth Amendment.

### III. Whether the canine sniff was supported by reasonable suspicion.

While incorporating all facts set forth previously, Defendants contend that Trooper Owens did not have reasonable suspicion that criminal activity was afoot. Defendants argue that at the time of the canine sniff, the only facts Trooper Owens had to rely on was his belief there had been minor discrepancies in the Defendants' stories and that he (Trooper Owens) observed cardboard boxes with brown shopping bags in the vehicle. Defendants therefore argue there was insufficient information to believe criminal activity was afoot in order to detain them for over an hour to conduct a canine sniff. Conversely, the Commonwealth asserts that based on the totality of

the circumstances gained during the traffic stop and after speaking with the Defendants, Trooper Owens had the requisite reasonable suspicion to detain the Defendants and conduct a canine sniff of their vehicle.

Pursuant to the Pennsylvania Constitution, a canine sniff is a search. **Pa. Const. art. I, § 8**, *see also Commonwealth v. Rogers*, 849 A2d 1185, 1190 (Pa. 2004). However, ‘this type of search is inherently less intrusive upon an individual's privacy than other searches.’ Where the subject of the search is a place, rather than a person, the police merely need reasonable suspicion for believing that narcotics would be found in the place subjected to the canine search. *Id.* at 1190; *see also Commonwealth v. Johnston*, 530 A.2d 74, 79 (Pa. 1987) (holding that in order for police to conduct a canine search of a place, they must be able to articulate reasonable grounds for believing that drugs may be present in the place they seek to test; and they must be lawfully present in the place where the canine sniff is conducted).

Consistent with the caselaw, once Trooper Owens completed the initial purpose required to address the traffic violation, he needed to have further reasonable suspicion that narcotics would be found in Defendants’ vehicle or that the Defendants were involved in criminal activity. The facts that Trooper Owens relied on to determine that reasonable suspicion existed are as follows. Trooper Owens testified that the highway the Defendants were traveling on is a known drug corridor. He also testified to the fact that the Defendants were traveling in a rental van with Texas plates and from his experience it is common for drug smugglers to use rental vehicles to conceal their identity. (N.T. 17.) Trooper Owens further testified that the Defendants had California drivers licenses, and they were traveling to New York, and in his training and experience, California and New York City serve the purpose of receiving and disbursing drugs throughout the United States. (N.T. 23.) Trooper Owens also testified to seeing multiple boxes and paper bags in the back of the van

while speaking with the Defendants. Further, Trooper Owens testified that the stories both Defendants individually shared with him were inconsistent.

When considering the totality of the circumstances, the Court does not find that these facts equate to the level of reasonable suspicion required to detain the Defendants for longer than was necessary to issue a traffic citation and have them remain at the scene for further investigation and a canine sniff. While Trooper Owens testified that California and New York are known drug trafficking sites, he failed to make a connection to Virginia which is where Defendants were said to be traveling from. He solely based his suspicions on the Defendants' California identification. As previously stated, based on Trooper Owens' testimony, he first noticed the vehicle because of the out of state plate and boxes in the back. It is clear that even prior to the initial traffic stop, Trooper Owens suspected drug activity and used the traffic stop as a pretext to investigate his suspicions. Furthermore, since we find that the prolonged investigation detention was unlawful, we must also conclude that the prolonged detention of the Defendants for over an hour in order to conduct a canine sniff was also unlawful.

#### IV. Whether the consent to search was valid.

Defendants argue that the eventual consent to search the vehicle was invalid because it was given after a canine sniff which was not supported by reasonable suspicion. Therefore, Defendants argue that because the consent was the fruit of an illegal search, all evidence seized as a result of the search must be suppressed.

The Commonwealth contends that everything up to the point that Trooper Owens requested consent to search was constitutionally valid. The Commonwealth argues that Trooper Owens had valid probable cause to initiate a traffic stop after observing a violation of the Motor Vehicle Code. Moreover, the Commonwealth argues it is through this traffic stop and subsequent conversation with the Defendants that Trooper Owens gained the requisite reasonable suspicion to detain the

Defendants and request a canine sniff. Commonwealth asserts it was after the canine arrived and alerted to consent was sought and granted.

The Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protects against unreasonable searches and seizures, including those entailing only a brief detention. *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000). A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies. *Id.* One such exception is voluntarily given consent. *Id.* The Fourth Amendment analysis in consent cases entails a two-prong assessment: first, the constitutional validity of the citizen/police encounter giving rise to the consent and, second, the voluntariness of consent. *Id.* at 888; *see also Commonwealth v. Cleckley*, 738 A.2d 427, 433 (Pa. 1999). Where the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus. *Id.* at 899. Where, however, a consensual search has been preceded by an unlawful seizure, the exclusionary rule requires suppression of the evidence obtained absent a demonstration by the government both of a sufficient break in the causal chain between the illegality and the seizure of evidence, thus assuring that the search is not an exploitation of the prior illegality, and of voluntariness. *Id.*; *see also Florida v. Royer*, 460 U.S. 491 (1983).

Because we have concluded previously that probable cause to initiate a traffic stop did not exist, Defendants were unlawfully detained, and that the canine sniff was not supported by reasonable suspicion at the time Defendants consented to the search of the vehicle, we find that the consent was tainted by the illegality and was ineffective to justify the search. Accordingly, the evidence recovered from the search of the vehicle must be suppressed.

## **CONCLUSION**

For the foregoing reasons, we conclude that the evidence, which was seized as a result of a violation of the Fourth Amendment, was the fruit of illegality and therefore must be excluded. An order granting Defendants' Omnibus Pretrial Motions to Suppress will be entered consistent with the foregoing conclusions.