

**IN THE COURT OF COMMON PLEAS LEBANON COUNTY
PENNSYLVANIA**

CRIMINAL DIVISION

**COMMONWEALTH OF
PENNSYLVANIA**

v.

GAVEN JACOB LOONEY

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NO. CP-38-CR-342-2025

APPEARANCES

DISTRICT ATTORNEY'S OFFICE

Joseph A. Crowe, Esquire

For Plaintiff

For Defendant

OPINION BY CHARLES, J., September 30, 2025

Before us is an Omnibus Pre-Trial Motion to Suppress Evidence. Defendant makes multiple arguments that the evidence to be presented against him at trial should be suppressed. Defendant has also submitted a Motion to Quash the Information and Dismiss Charges as it relates to Counts 1, 2, 3, 4, 5, and 9. We accept Defendant's claims to suppress the evidence against him. We write this Opinion in support of our decision to grant Defendant's Motion to Suppress. A decision regarding Defendant's Motion to Quash and/or Dismiss will be deferred.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual History

On March 24, 2025, Officer Erik Peiffer (hereafter "PEIFFER") of the Lebanon City Police Department was dispatched to conduct a wellness check at the intersection of South 9th Street and Cumberland Street in Lebanon, Pennsylvania. PEIFFER was accompanied by Officer Christina Day (hereafter "DAY"). The officers arrived at the scene and observed two males passed out in the front seats of a 2015 White Jeep Station Wagon. PEIFFER opened the driver-side door and shook the driver awake. The driver was identified as Devin Swisher (hereafter "SWISHER"). The passenger was identified as Gaven Looney (hereafter "DEFENDANT").

Upon being asked to exit the vehicle, PEIFFER asked for consent to search the vehicle. SWISHER responded by asking if PEIFFER had a warrant. PEIFFER then requested SWISHER complete multiple field sobriety tests to determine if it was safe for him to operate the vehicle. Following a litany of tests that included a lack of convergence test, horizontal gaze nystagmus test, modified Romberg balance test, finger to nose test, and a preliminary breath test, PEIFFER determined SWISHER was under the influence of a controlled substance and placed him under arrest.

PEIFFER conducted a search incident to arrest of SWISHER. He found a white rock-hard substance on SWISHER's person. SWISHER admitted this substance to be methamphetamine. SWISHER was placed in

the back of PEIFFER's patrol car. At the same time, DAY was interviewing DEFENDANT. DAY reported DEFENDANT repeatedly looked toward the back seat of the Jeep and asked several times if he could retrieve his book bag and go.

PEIFFER returned to DAY and DEFENDANT and began questioning him about drug use. DEFENDANT denied possessing any illegal substances or weapons on his person. DEFENDANT subsequently consented to a search of his person. While conducting the search, PEIFFER found a small blue glassine bag and a pill containing purple powder in DEFENDANT's front right pants pocket. DEFENDANT then admitted he possessed "dope" and is a personal user. At that time, PEIFFER attempted to place DEFENDANT under arrest. DEFENDANT pulled away and started to run. PEIFFER caught DEFENDANT, he was placed in handcuffs, and searched incident to arrest. No other items were found on his person.

PEIFFER approached SWISHER again and requested consent to search the vehicle. SWISHER consented to the search and admitted that the black Champion book bag in the back seat belonged to him. He also admitted there was marijuana and needle inside the bag. The officers searched the vehicle and ultimately found two (2) book bags: the black Champion book bag described by SWISHER and a red Air Jordan book bag found behind the passenger seat where DEFENDANT had been sitting.

Inside the black Champion book bag, the officers found marijuana, other suspected controlled substances, and various items of drug

paraphernalia. The officers searched the red Air Jordan book bag and found a rock-hard substance believed to be methamphetamine, a large amount of money, a white powdery substance believed to be methamphetamine, and cocaine.

PEIFFER told DAY to cease the search and wait for Sergeant Goumas to get off the phone with Detective Mong. At this time, DAY confirmed that DEFENDANT was the owner of the red Air Jordan book bag. DEFENDANT was transported to central booking where he was interviewed by PEIFFER. DEFENDANT admitted to owning the red Air Jordan book bag and admitted to selling drugs to support his own drug addiction. PEIFFER then resumed the search of the red Air Jordan book bag where he found controlled substances, drug paraphernalia, cash and coins, a black Smith and Wesson M&P 40 Shield 9mm, and two (2) iPhones.

B. Procedural History

On March 25, 2025, the Commonwealth charged DEFENDANT with nine (9) offenses:

- a. **Count 1** – Person Not To Possess, Use, Manufacture, Control, Sell or Transfer Firearms (F1) (18 § 6105(a)(1))
- b. **Count 2** – Firearms Not to be Carried Without a License (F3) (18 § 6106(a)(a))
- c. **Counts 3-4** – Violation of the Controlled Substance, Drug, Device & Cosmetic Act (F) (35 § 780-113(a)(30))

- d. **Count 5-6** – Violation of the Controlled Substance, Drug, Device & Cosmetic Act (M) (35 § 780-113(a)(16))
- e. **Count 7** – Evading Arrest or Detention on Foot (M2) (18 § 5104.2(A))
- f. **Count 8** – Violation of the Controlled Substance, Drug, Device & Cosmetic Act (M) (35 § 780-113(a)(32))
- g. **Count 9** – Violation of the Controlled Substance, Drug, Device & Cosmetic Act (M) (35 § 780-113(a)(31)(i)).

DEFENDANT filed this Omnibus Pre-Trial Motion on June 13, 2025. We held a pre-trial hearing and directed counsel to file briefs on July 16, 2025, regarding the following issues:

1. *Whether the initial search of DEFENDANT's red backpack by Officer Day was supported by valid consent?*
2. *Whether the Doctrine of Inevitable Discovery applies?*

We will address both issues. In addition, because the Commonwealth relies on the existence of probable cause, we will also include a section in this Opinion about that principle.

II. DISCUSSION

A. Consent to Search

Search and seizures by law enforcement is governed by the **Fourth Amendment of the U.S. Constitution** and **Article I, Section 8 of the Pennsylvania Constitution**. Each provides, as a general rule, that the

people shall not be subject to unreasonable searches and seizures unless a warrant is issued based upon probable cause. The Pennsylvania Constitution provides even more protection than the Fourth Amendment:

“The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.” **Pa. Const. art. I, § 8; *Commonwealth v. Alexander***, 243 A.3d 177, 181 (Pa. 2020).

The court in ***Commonwealth v. McMahon***, 280 A.3d 1069 (Pa. Super. 2022), citing ***Commonwealth v. Heidelberg***, 267 A.3d 492, 502 (Pa. Super. 2021), explained that “absent one of the “clearly [defined] exceptions”, a warrantless search or seizure is presumptively unreasonable”. The exceptions justifying a warrantless search or seizure include:

- The consent exception
- The plain view exception
- The inventory search exception
- The exigent circumstances exception
- The automobile exception
- The stop and frisk exception
- The search incident to arrest exception. ***Id.***

The general rule in Pennsylvania is that police should acquire a search warrant prior to searching a vehicle. ***Com. v. White***, 669 A.2d 896, 900 (Pa. 1995). The automobile exception to warrantless searches and seizures provides that law enforcement may not search and seize property

from within an automobile without probable cause and a qualifying exigency present, e.g., the inherent mobility of the vehicle plus a lack of sufficient time to obtain a warrant. **Alexander**, 243 A.3d 177.

Consent is a valid exception to the warrant requirement. See **Commonwealth v. Carmenates**, 266 A.3d 1117, 1124; see also **Commonwealth v. Strickler**, 757 A.2d 884, 888. In a suppression motion, the Commonwealth has the burden to establish “that the challenged evidence was not obtained in violation of the defendant’s rights.” **Com. v. Freeman**, 128 A.3d 1231, 1241 (Pa. Super. 2015) citing Pa.R.Crim.P. 581(D). To have a valid consent search, the Commonwealth must prove:

1. The consent was given during a legal police interaction; and
2. The consent was the product of an essentially free and unrestrained choice, meaning not the result of duress or coercion (express or implied), or a will overborne under the **totality of the circumstances**. **Carmenates** at 1124 (emphasis added).

To challenge a consent to search based on a third party’s consent, a defendant must prove he had a “personal privacy interest in the area searched or in the effects seized, and demonstrate that his interest was actual, societally sanctioned as reasonable and justifiable.” **Com. v. Hawkins**, 718 A.2d 265, 267 (Pa. 1998). Following the assumption of a privacy interest, the Commonwealth must show the third party had either “common” or “apparent” authority to consent. See **Com. v. Basking**, 970

A.2d 1181 (Pa. Super. 2009). “Common authority” occurs when the parties have:

“[J]oint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.” *Id.* at 1188 citing *U.S. v. Matlock*, 415 U.S. 164, n. 7 (1974).

“Apparent authority” “allows a third party to consent to a search, even if the third-party does not have common authority over a premises, where an officer reasonably believes, based upon the facts then available, that the consenting third-party had the authority to consent.” *Id.* at 1184, n. 1 citing *Illinois v. Rodriguez*, 497 U.S. 177, 188-89 (1990).

In *Commonwealth v. Rivera*, 273 A.3d 1032, 2022 WL 368273 (Pa. Super. 2022) (non-precedential decision)¹, a traffic stop resulted in the Appellant being charged with multiple drug possession offenses. The Appellant was a passenger seated in the rear of the vehicle. *Id.* at 1. Once the traffic stop occurred, the driver of the vehicle eventually consented to a search of the vehicle. *Id.* This led to the Appellant being removed from the vehicle. *Id.* at 2. The occupants were handcuffed and sat on a curb near the vehicle. *Id.* The other passengers requested personal items to be removed prior to the search. *Id.* Officers searched the vehicle and found a black backpack. *Id.* The officers did not ask anyone, not even the driver,

¹ We cite *Rivera* as persuasive, and not binding, precedent. We also cite it because the facts of *Rivera* are very similar to the case at bar.

who owned the backpack. *Id.* The police subsequently searched the backpack and found contraband that led to the Appellant's charges. *Id.*

The Superior Court found the traffic stop was lawful, however the search of the backpack was not. *Id.* at 3. The Court found passengers do not have an expectation of privacy in the main passenger compartment of a vehicle because "it would be unreasonable to maintain a subjective expectation of privacy in locations of common access to all occupants." *Id.* at 5, quoting ***Commonwealth v. Viall***, 890 A.2d 419, 423 (Pa. Super. 2005). A passenger does maintain a reasonable expectation of privacy "in luggage, such as a backpack, that he or she places inside a vehicle." *Id.* at 5. The passenger must show, through their conduct, an "actual or subjective expectation of privacy in the backpack." *Id.* A passenger must also take "normal precautions to maintain [their] privacy." *Id.*, citing ***Commonwealth v. Perel***, 107 A.3d 185, 189-90 (Pa. Super. 2014) (finding that, use of an opaque, zippered backpack to store personal items demonstrates intent to maintain an expectation of privacy and keep the contents of the backpack private).

Pennsylvania has long recognized that "searches of closed containers (i.e., personal luggage) intrude upon protected privacy interests as a matter of law" and the "Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view." *Id.*; ***Perel***, 107

A.3d 185 at 189; see also *Viall*, 890 A.2d 419 at 423². Therefore, unless a person with actual or apparent authority consents to the search of the backpack, the police must obtain a warrant to search it. *Id.*

Here, as in *Rivera*, the driver of the vehicle, SWISHER, consented to a search of the Jeep. PEIFFER and DAY found both backpacks inside the main passenger compartment in the back seat in plain view. The police knew SWISHER was the owner of the black backpack because he admitted his ownership prior to consenting to the search. They did not confidently know who owned the red Air Jordan backpack, nor did they ask. The officers incorrectly assumed that SWISHER had authority to consent to the search of both backpacks but “[j]oint access and control of another person’s backpack, i.e., being able to pick the backpack up or move the backpack, is not akin to having mutual use of the backpack.” *Basking*, 970 A.2d 1181 at 1188; see also *Commonwealth v. Silo*, 389 A.2d 62, 66 (Pa. Super. 2009)³.

DEFENDANT, prior to his arrest and prior to the search of the vehicle, requested to retrieve his backpack and leave. N.T. 47. Prior to the search of the vehicle, PEIFFER was aware that SWISHER was the only owner of the black backpack. However, PEIFFER never investigated who owned the red backpack. N.T. 16, 31. PEIFFER and DAY even communicated that they

² Stating, “it would be unreasonable for [a vehicle passenger] to have expected to maintain a privacy interest in objects which were placed inside the [vehicle] and not shielded from the view of the many others occupying the same small space.”

³ Holding that, a nurse may have joint access and control of a patient’s clothing but, by virtue of the relationship of the parties, there is no clear right to mutual use of the clothing by the nurse.

thought the red backpack was DEFENDANT's. N.T. 51-52. There was no indication that SWISHER possessed common authority over the red backpack. We cannot find that SWISHER had common or apparent authority to consent to the search of the red Air Jordan backpack because the officers had reason to believe the red backpack belonged to DEFENDANT and because no evidence existed that the red backpack was a possession of SWISHER.

B. Probable Cause and Exigent Circumstances

The Commonwealth argues that, independent of consent, police had authority to search the red backpack because probable cause existed to do so. We acknowledge that DAY likely possessed enough probable cause to obtain a search warrant. However, not enough evidence exists to justify a *warrantless* search of the red backpack.

In ***Commonwealth v. Murphy***, 916 A.2d 679 (Pa. Super. 2007) the court discussed the question of whether probable cause exists for the issuance of a search warrant. ***Id.*** at 681. The court found the totality of the circumstances test appropriate to determine the matter. ***Id.*** at 682; see ***Commonwealth v. Fudge***, 213 A.3d 321, 327 (Pa. Super. 2019) citing ***Commonwealth v. Runyan***, 160 A.3d 831 (Pa. Super. 2017) ("Probable cause exists where the [totality of the] circumstances within the officer's knowledge are sufficient to warrant a reasonably cautious person to believe that a defendant has committed or is committing a crime"). Under the totality

of the circumstances test, a court must “make a practical, common-sense assessment whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place”. *Id.* A search warrant is defective if the issuing authority is not given the necessary information to approve or deny the totality of the circumstances. *Id.* It must include a chronology that is practical but, more importantly, “common sense”. *Id.*, quoting ***Commonwealth v. Baker***, 518 A.2d 802 (Pa. 1986). Hearsay may be sufficient to determine probable cause if the issuing authority has sufficient information to make a “neutral and detached” decision as to the probability of evidence to be found at the location of the warrant. ***Commonwealth v. Huntington***, 924 A.2d 1252, 1255 (Pa. Super. 2007), quoting ***Commonwealth v. Woosnam***, 819 A.2d 1198, 1208 (Pa. Super. 2003).

Here, the officers conducted a valid traffic stop. When they arrived, the vehicle was blocking the left lane of traffic and did not move when the light turned green. Once police engaged with SWISHER, he admitted that there was contraband inside his black backpack in the vehicle. Both SWISHER and DEFENDANT were found to have illegal substances on their persons. In addition, DEFENDANT attempted to flee the scene, evidencing a consciousness of guilt. Clearly, enough evidence existed to support an investigative detention and an effort to obtain a search warrant. However, no warrant was sought. Instead, the red backpack was searched without a warrant. Under such circumstances, we must analyze whether there were

exigent circumstances in addition to probable cause that existed to provide PEIFFER and DAY with the proper grounds to conduct a warrantless search of DEFENDANT's backpack.

Alexander, *supra*, is the seminal case that held Pennsylvania's Constitution provides its citizens with a heightened privacy protection over and above the Fourth Amendment of the United States Constitution. A warrantless search may not be conducted legally unless there is (1) probable cause, and (2) exigent circumstances that make the procurement of a warrant unreasonable. See **Alexander**, 243 A.3d 177 at 195. Exigent circumstances occur where "real immediate and serious consequences will certainly occur if a police officer postpones action to obtain a warrant." **U.S. v. Williams**, 354 F.3d 497, 503 (6th Cir. 2003) quoting **Ewolski v. City of Brunswick**, 287 F.3d 492, 501 (6th Cir. 2002) (citations omitted) (internal quotation marks omitted). Exigent circumstances can include:

1. Hot pursuit of a fleeing felon;
2. Imminent destruction of evidence;
3. The need to prevent a suspect's escape; or
4. A risk of danger to the police or others. **U.S. v. McClain**, 444 F.3d 556 (6th Cir. 2005), citing **United States v. Williams**, 354 F.3d 497, 504 (6th Cir. 2003) (citation omitted).

In this case, the first prong of the **Alexander** test, i.e., the existence of probable cause, is clearly present. However, probable cause alone is not

enough to justify a warrantless search. **Alexander** established a test that contains a second prong, i.e., the existence of exigent circumstances.

Although DEFENDANT attempted to flee, he was caught rather quickly by one of the officers. Since the red backpack was in possession of the police at the scene, there was no imminent destruction of evidence possible. We also do not view the search of the red backpack as necessary to prevent DEFENDANT's escape because he was already arrested and handcuffed. Finally, there was zero risk of danger to the officers on site as no weapons were found or witnessed in possession of DEFENDANT or SWISHER until the Smith and Wesson firearm referenced above was found inside the red backpack at central booking.

Under the law as it existed prior to **Alexander**, we might have affirmed DAY's search of the red backpack. However, we cannot discern any viable "exigent circumstances" that would have prevented DAY from obtaining a search warrant. Given the clear preference of our Appellate Courts for search warrants in cases such as this, we are constrained to conclude that police acted improperly when they conducted a warrantless search of DEFENDANT's red backpack.

C. Inevitable Discovery

The inevitable discovery doctrine allows evidence that would have been discovered through lawful means to be admitted despite initially being illegally obtained. **Commonwealth v. Brinson**, 328 A.3d 1096, 1107 (Pa.

Super. 2024) citing ***Commonwealth v. King***, 259 A.3d 511, 522 (Pa. Super. 2021) (quoting ***Commonwealth v. Bailey***, 986 A.2d 860, 862 (Pa. Super. 2009), appeal denied, 995 A.2d 350 (2010)). However, the inevitable discovery doctrine is not a substitute for the warrant requirement. ***Id.*** The police must show they *would have* discovered the evidence lawfully rather than they *could have* found it lawfully. See ***Id.*** The Commonwealth is tasked with establishing, by a preponderance of evidence, that the evidence would have eventually been obtained by lawful means. ***Id.***

The Commonwealth argues the evidence sought to be suppressed would have been found through an inventory search following DEFENDANT's arrest. We find this argument unconvincing. There is nothing in the record indicating that PEIFFER or DAY conducted *any* inventory search of the vehicle or that they attempted to impound it.

Adopting the Commonwealth's argument would obviate the necessity for obtaining a warrant in every situation where a defendant is arrested. If the Commonwealth can state: "We would have inevitably discovered the evidence as a result of an inventory search following arrest", the door would be open for police to conduct a search of anything anywhere so long as a decision to arrest has been rendered. This is not the law of Pennsylvania. As our Superior Court has stated,

“[T]he idea that law enforcement officers may obviate the need to secure a search warrant based upon their own determination that sufficient probable cause exists is antithetical to the Fourth Amendment...Stated simply, the inevitable discovery doctrine is not a substitute for the warrant requirement. Police must demonstrate that the evidence would have been discovered absent the police misconduct, not simply that they somehow could have lawfully discovered it...Under the dissent’s view, police only need to seize the item or search the premises and then invoke the inevitable discovery doctrine with the assertion that they ‘could have obtained a warrant.’ The inevitable discovery doctrine does not operate in such a constitutionally impoverished manner.”

Commonwealth v. Perel, 107 A.3d 185, 196 (Pa. Super. 2014)
(emphasis in original)

In our view, the doctrine of inevitable discovery does not apply in this case.

III. CONCLUSION

A potential violation of the Constitutional right to be protected against illegal searches and seizures is something this Court does not take lightly. We carefully analyzed DEFENDANT’s and the Commonwealth’s arguments to reach our conclusion. With our decision today, we are not condoning DEFENDANT’s actions pertaining to flight and possession of contraband. However, officers PEIFFER and DAY acted improperly by conducting a warrantless search of DEFENDANT’s backpack without consent and without any exigent circumstances being present. Therefore, we find the evidence found in the backpack that DEFENDANT now seeks to suppress shall be prohibited from the record. DEFENDANT’s Motion to Suppress Evidence is GRANTED.