

COMMONWEALTH OF PENNSYLVANIA v. DAITROUS O. GHEE, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action — Law, No. 1871 of 2006

*Motion to suppress; Search and seizure; Vehicle search*

1. Before a defendant can benefit from the remedy of a suppression Order based on an unlawful search and seizure, he must overcome an initial burden of establishing that he had both standing to challenge the legality of the search and also that he had a legitimate expectation of privacy in the area searched or the items seized.

2. Although the defendant met his burden of establishing he had standing to challenge the legality of the search, he failed to meet his burden of showing he had a legitimate expectation of privacy in the trunk of the vehicle or sufficient possessory interest in the items seized or the vehicle.

Appearances:

Franklin County District Attorney's Office

Kevin A. Chernosky, Esq., *Assistant Public Defender*

OPINION

Herman, J., March 9, 2007

Introduction

The defendant in this case is charged with the Offenses of Firearms Not to be Carried Without a License, Possession of Instruments of Crime, Prohibitive Offensive Weapons, and Person Not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms. These charges arose out of the traffic stop by the Pennsylvania State Police of a vehicle in which the defendant was riding on October 1, 2006. Subsequent to the traffic stop Trooper Beynon of the Pennsylvania State Police conducted a search of the vehicle and found an AK-47 assault rifle, two fully loaded 10 round clips as well as approximately 30 rounds of ammunition. On January 19, 2007 the defendant filed an omnibus pretrial motion in which he claimed the Pennsylvania State Police lacked reasonable suspicion to conduct a search of the vehicle in which the defendant was riding and therefore the seizure of the rifle and ammunition were unlawful. The Court conducted a hearing on the defendant's motion on March 5, 2007 and the issues raised by the defendant are now before the Court for decision.

Initially we note that the defendant is seeking suppression of evidence based upon a claim of a violation of his rights under the 4th Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. As we discuss later there were two searches conducted by the Pennsylvania State Police at the time of the traffic stop. The first was a K9 search, which resulted in seizure of a small quantity of marijuana. Based on this positive result Trooper Beynon obtained a search warrant and searched the trunk of the automobile and found the assault rifle and ammunition.

From the evidence presented at the suppression hearing we conclude as matter of law that Trooper Beynon did not have reasonable suspicion so as to justify detention of the defendant at the time of the traffic stop for the purpose of conducting the K9 search. Commonwealth v. Rogers, 578 Pa. 127, 849 A.2d 1185 (2004). As a result any evidence found in the interior of the vehicle as well as evidence later found in the trunk of the vehicle would be suppressible. However, before the defendant can benefit from the remedy of a suppression Order based on an unlawful search and seizure he must overcome an initial burden of establishing standing as well as a legitimate expectation of privacy in the area searched or the items seized. Commonwealth v. Hawkins, 553 Pa. 76, 80-81, 718 A.2d 265, 267 (1998). We hold as a matter of law that the defendant has standing to bring a claim for relief by virtue of the fact that the offenses with which he is charged all include the essential element of possession. The specific issue before the Court is whether or not the defendant can meet his burden of demonstrating a subjective expectation of privacy in the items seized or the area of the trunk which was searched on October 1, 2006.

### Findings of Fact

#### *Unlawful Search and Seizure*

Trooper Beynon testified that on October 1, 2006, he and five other troopers were dispatched to an area in the Borough of Chambersburg known as Barclay Village based on information from an anonymous caller. The caller related there were 5 to 6 black males walking in the area of the housing project in Barclay Village who were acting suspiciously. This was significant because the caller reported the men were in the same area which was previously investigated on September 27, 2006 for a report of multiple gunshots. The investigation of that incident was ongoing at the time of the October 1st anonymous call. The Pennsylvania State Police responded in force with five or six troopers and as many cars. Officers from the Chambersburg Borough Police Department were notified and later appeared on the scene.

Trooper Beynon, upon entering Barclay Village, noticed a car which contained five black males exiting the area where the prior shooting had occurred. Soon thereafter he stopped the vehicle based on the driver's failure to signal upon turning. He approached the vehicle and identified the driver and the occupants. He observed that the driver David Jones appeared nervous, evasive, and unresponsive to questions and would not make eye contact with the trooper. These observations combined with Trooper Beynon's knowledge that this particular area had consistent and high incidents of criminal activity caused him to become suspicious. At this point he decided to request the assistance of Chambersburg Police Department to obtain a K9 search. The K9 officer arrived ten to fifteen minutes later and the occupants were then removed from the vehicle and individually searched. Nothing was found. The K9 searched the outside of the vehicle and alerted on the passenger side. At that point the driver and passengers were taken into custody but were advised they were not under arrest. They were told they were being detained until a search warrant was obtained to conduct a search of their vehicle. The K9 then searched the interior of the vehicle and remnants of marijuana were found. The vehicle was towed to an impound lot and a further search was conducted pursuant to a warrant. During this time the defendant was being detained at the police station.

### Conclusions of Law

#### *Initial Illegality*

The Supreme Court of Pennsylvania held that K9 searches constitute a search under Article 1, Section 8 of the Pennsylvania Constitution and must be supported by reasonable suspicion. Commonwealth v. Johnston, 515 Pa. 454, 465-66, 530 A.2d 74, 79 (1987). In this case Trooper Beynon's decision to conduct a K9 search was based solely on his observations of the driver's unusual behavior and his knowledge of the high crime rate in the area of Barclay Village. The driver's behavior was equally consistent with criminal activity as it was with the tension created by the strong police presence. All these facts taken together are insufficient to support the "reasonable suspicion requirement" for a K9 search. Therefore the evidence found as a result of K9 search of the interior of the vehicle as well as the subsequent seizure of the assault rifle and ammunition were unlawful and subject to the exclusionary rule.

We now turn to whether or not the defendant has demonstrated a sufficient privacy interests in either the objects that were seized or the area that was searched.

### Findings of Fact

#### *Defendant's Expectation of Privacy*

The defendant testified at the suppression hearing held on March 5, 2007 that David Jones had picked him up along with several others and they traveled to Barclay Village. The defendant was in the back seat with two other occupants. They were in the vehicle about 10-15 minutes prior to being stopped by the police upon leaving the area of Barclay Village. The defendant observed a number of police cars behind the vehicle in which he was riding. Without much detail, he described the search of his person and the K9 search of the inside and outside of the vehicle. He testified that he had nothing on his person other than his wallet and did not have any personal possessions in the trunk of the vehicle that was stopped. The defendant had known David Jones since 2004 and was familiar with the green Honda he was driving that day. Upon cross-examination by the Assistant District Attorney, the defendant emphatically stated that he did not know the rifle was in the trunk of the vehicle; he did not put anything in the trunk of the vehicle; no one had told him that the rifle or anything else was in the trunk of the vehicle; nor was he aware that the trunk was accessible from the back seat of the interior of the vehicle. He did acknowledge that some time in December 2006 he had put clothing in the trunk on one occasion but otherwise had no interest in the trunk of the vehicle nor any idea of what was in there.

We previously noted the defendant's automatic standing to challenge the unlawful search and seizure because he is charged with a possessory offense. Commonwealth v. Perea, 791 A.2d 427, 429 (Pa. Super. 2002). However, before the defendant may benefit from a remedy for the improperly seized evidence he must demonstrate by his conduct an actual expectation of privacy and that this expectation is one that society is prepared to recognize as reasonable. Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). It has been said by the Pennsylvania Supreme Court that this expectation of privacy is not dependent on the subjective state of mind of the person claiming the right but depends on whether the expectation is reasonable in light of all the surrounding circumstances. Commonwealth v. Brundidge, 533 Pa. 167, 620 A.2d 1115 (1993). While case authority in Pennsylvania has dealt with privacy expectations regarding stolen automobiles, Commonwealth v. Strickland, 707 A.2d 531 (Pa. Super. 1998) appeal denied 556 Pa. 675, 727 A.2d 130 (1998) and abandoned automobiles, Perea, *supra* at 429, this Court could not find any specific situations which dealt with the privacy rights of a casual passenger in an automobile. The United States Supreme Court in the case of Rakas v. Illinois, *supra*, made it clear that a mere passenger who could not assert or establish either a property interest in the items seized or a possessory interest in the vehicle did not have a legitimate expectation of privacy.

We understand that under the 4th Amendment of the United States Constitution standing depends on an expectation of privacy and that there is a lower threshold for standing under Article 1, Section 8 of the Pennsylvania Constitution. Nonetheless, Rakas is helpful in analyzing the issue of a legitimate expectation of privacy which is necessary before the defendant can obtain the remedy of suppression. In Rakas as well as Jones, *supra*, and Strickland, *supra*, the court emphasized the need for evidence supporting a proprietary interest in the property seized or a legitimate privacy interest in the area searched. The evidence from the suppression hearing shows Mr. Ghee was merely a casual passenger. While there was one instance in which he had placed some clothing in the trunk of his friend's car this was temporally distant from the incident on October 1, 2006. Other than that he established no interest relationship to the automobile or its owner. Indeed he did not even assert a privacy interest in any area of the vehicle much less the trunk. In his testimony he specifically disavowed any property interest in the items seized. We find from this evidence that the defendant had no reasonable expectation of privacy in the vehicle, its trunk and its contents. Therefore the defendant does not have standing to challenge the lawfulness of the vehicle searched.

### Conclusions of Law

Based on the foregoing findings, we conclude as a matter of law that the K9 search and the subsequent search pursuant to a warrant of the vehicle and its trunk were not supported by the requisite reasonable suspicion and therefore were unlawful. The rifle and ammunition which were seized by the Pennsylvania State Police on October 1, 2006 would be subject to the remedy of preclusion depending on the defendant's standing to object to the unlawful seizure. Based on the evidence presented by the defendant at the suppression hearing we hold that:

1. The defendant has automatic standing to bring this claim for suppression to the Court.
2. The defendant has failed to meet his burden of demonstrating a legitimate expectation of privacy. Commonwealth v. Boulware, 876 A.2d 440, 2005 (Pa. Super. 96).
3. The defendant failed to assert a privacy claim.
4. However, assuming arguendo, the defendant's privacy claim is based on his status as a mere passenger in the vehicle this without more does not establish sufficient privacy interest in the trunk

of the vehicle or sufficient possessory interest in the items seized or the vehicle. Therefore defendant's claim for suppression of evidence will be denied.

ORDER OF COURT

Now this 9th day of March 2007, for the reasons stated in the attached opinion, the Court hereby denies the defendant's Motion to Suppress.