

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

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Case No.: 21-F-266

JUAN RODRIGUEZ MCMUTARY,
Defendant.

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CLERK CIRCUIT COURT

ORDER

On November 4, 2021, came the State of West Virginia by its Assistant Prosecuting Attorney, Russ Skogstad, and the Defendant, Juan McMutory, in person, in custody, and with his attorney and counsel, Joseph McFarland, for hearing on Defendant's Motion to Suppress Fruits of Search and Motion for Relief from Prejudicial Joinder.

Whereupon, the State of West Virginia on the record notified the Court that it had no objection to Defendant's motion for relief from prejudicial joinder and it is therefore **ORDERED** that Count One (possession of a firearm by a prohibited person), Count Two (possession of controlled substance with intent to deliver and Count Three (misdemeanor possession of methamphetamine) of the subject Indictment are hereby **SEVERED** from the charges contained in Count Four (possession with intent to deliver) and Count Five (possession of heroin with intent to deliver) and Counts One, Two and Three shall be tried in a unitary trial apart from

Counts Four and Five which shall be tried together in a separate trial to a separate jury chosen from a separate jury pool.

The State notified the Defendant and the Court on the record that it will first conduct trial of the charges contained in Counts One, Two and Three.

Whereupon, testimony and other evidence was presented in connection with Defendant's motion to suppress, including an audio/video recording from the arresting officer's body camera and upon review of said evidence, the argument of respective counsel and the entire record the Court DENIES the motion upon the following findings of fact and conclusions of law:

1. On December 31, 2020, Deputy T.K. Phillips of the Wood County Sheriff Office ("the Deputy") was observing a house in Parkersburg, Wood County, West Virginia having been informed by the Parkersburg Narcotics Task Force ("PNTF") that it was "a known drug house" although no search warrant had been issued authorizing any search of the residence.
2. The Deputy saw an individual leave from the residence and get into a Toyota Camry parked in the driveway and drive away.

3. While following the Camry the Deputy saw its driver's side tires cross the double yellow center line and activated her emergency lights.
4. The Camry pulled over and stopped then accelerated and drove away.
5. The Deputy again followed the Camry and when behind it she activated her cruiser's siren but the vehicle failed to stop until it turned off to a "side street" where it stopped at which time the driver and sole occupant lowered the driver's window and put both his hands out the window.
6. The Deputy approached the vehicle and asked the driver to exit which he did.
7. The Deputy detained the driver for safety purposes, handcuffed him and informed him that she had stopped the vehicle after she saw his driver's side tires cross a double yellow center line.
8. The Deputy further informed the driver that after stopping he took off from and that he had been at a known drug house whose female occupant had several prior drug related arrests.
9. The Deputy then asks the driver if he "wouldn't care if I searched the car" to which he replied: "That's something that I would like to know what I'm doing" and explains that he knows the woman who occupies the house with her children and that it is her and her people's place.

10. The Deputy again explains that as the driver tried to run from her she needs to know more about what she is encountering.
11. An additional police unit arrives at the scene and an officer exits his vehicle and approaches the deputy and driver as the deputy is getting information over her scanner regarding the driver and the vehicle.
12. The Deputy is informed that the driver, Juan McMutary, has criminal convictions for driving suspended, that his operator's license was then under suspension, that he has been convicted of domestic battery and is a registered sex offender due to another prior conviction.
13. The Deputy then asks the driver: "So you don't care if I search the car or you don't want me to search", and the driver responds: "You can search the car" then adds that there is a weapon in the vehicle.
14. The Deputy searches where the driver indicated the weapon was located and finds a Ruger 9mm pistol under the driver's seat with a bullet in its chamber.
15. Further search reveals a plastic baggie in a storage compartment near the steering wheel with a small amount of white powder suspected to be heroin or fentanyl and a plastic baggie under the passenger seat floor mat containing a grey in color, gravel-like substance suspected to be heroin.

16. The driver's person is then searched and another plastic baggie is found with two individual baggies inside it containing a grey in color gravel-like substance also suspected to be heroin.
17. The driver, Juan McMutary, the defendant, is then placed under arrest for possession with intent to deliver a controlled substance and possession of a firearm by a prohibited person.
18. The Court concludes that the Deputy's initial stop of defendant's vehicle was a traffic stop; that she lawfully stopped defendant's vehicle subsequently in order to investigate her reasonable, articulable suspicion that the vehicle was subject to seizure or that the sole occupant/driver had committed or was committing a crime.
19. The Court concludes that the driver/defendant voluntarily consented to a search of his vehicle upon his second stop and the arrival of an additional police unit.
20. The Court concludes that the actions of the deputy and other officer, including the search of the subject vehicle and then the defendant's person, were reasonable and therefor lawful.
21. The United States Constitution and the Constitution of the State of West Virginia mandate that a police search and seizure be reasonable; neither perfection nor the least intrusive, most cautious conduct is required.

It is therefore **ORDERED** that Defendant's Motion to Suppress Fruits of Search be and is hereby **DENIED**.

The Clerk of this Court shall mail true copies of this order to:

Joseph W. McFarlan, Jr., Esq.
Public Defender Corporation
320 Juliana Street, Suite 101
Parkersburg, WV 26101

Russell Skogstad, Esq.
Prosecuting Attorney's Office
317 Market Street
Parkersburg, WV 26101

ENTER: 11-12-21



J.D. BEANE, Judge