

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 04-10,073</b>
	:	
<b>DURAN ALMESTICA,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is the Defendant's Motion to Suppress, filed on April 5, 2004 and heard before the Court on June 7, 2004. The facts of the case follow:

On November 30, 2003, Defendant was a passenger in a motor vehicle driven by Curtis Mitchell. Officer Kristopher Moore of the Williamsport Bureau of Police was in the vicinity of the vehicle and recognized Mitchell as the operator and believed that his license was suspended. The officer ran the registration plate on the vehicle which came back registered to a different car. The officers then conducted a traffic stop was conducted. When Mitchell got out and began to approach the officer, a request was sent for back up. As the additional police units arrived, the Defendant, Duran Almestica, emerged from the vehicle and began to run away from the scene. Officers Maines and Aldinger chased him and eventually caught the Defendant approximately two blocks away from the vehicle stop. The Defendant was returned to the scene where he was searched incident to arrest. Thirty-three baggies of suspected cocaine, one

baggie of suspected marijuana, cash and a cell phone were seized. The Defendant was also found in possession of an empty gun holster. A loaded .357 handgun was found on the ground along the route the Defendant took away from the officers. The Defendant now asserts that his mere flight from the scene was insufficient to establish probable cause for the chase. Therefore, his subsequent arrest, the items seized as a result of his arrest as well as the handgun allegedly abandoned by him during the chase must be suppressed as a violation of both the United States and Pennsylvania Constitutions.

The United States Supreme Court has previously decided a case which raises the same issue as that raised by the Defendant in this case. See California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991). In that case, two police officers were patrolling a high crime area when they came upon a group of youths who ran when they realized that the officers were present. While running, and before he was tackled and handcuffed by the officers involved, the Defendant in Hodari threw away an object which proved to be crack cocaine. A majority of the Court held that even if the officers possessed no suspicion of criminal activity before the chase began (as was conceded by the State of California), the drugs thrown by the Defendant were not illegally seized under the IV Amendment of the United States Constitution because such a seizure requires either the use of physical force with lawful authority or submission to the assertion of authority. In Hodari, the Defendant had not been touched by the officers prior to

throwing the contraband and his person was not seized until he was caught by the officers. Therefore, under the IV Amendment, a seizure of the cocaine did not occur and could not be suppressed. In the case before this Court, no evidence was presented that the Defendant was touched by officers prior to the time that he discarded the handgun. Consequently, no violation of the United States Constitution occurred and the evidence cannot be suppressed under a federal constitutional theory.

Defendant also argues that the evidence should be suppressed under Article I, Section 8 of the Pennsylvania Constitution, which provides a strong right of privacy to the citizens of this Commonwealth. It is important to note that the Pennsylvania Courts

are not bound by the decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions. . . . Rather, it is both important and necessary that we undertake an independent analysis of the Pennsylvania Constitution, each time a provision of that fundamental document is implicated. Although we may accord weight to federal decisions where they "are found to be logically persuasive and well reasoned, paying due regard to precedent and the policies underlying specific constitutional guarantees,"we are free to reject the conclusions of the United States Supreme Court so long as we remain faithful to the minimum guarantees established by the United States Constitution."

Commonwealth v. Edmunds, 526 Pa. 374 at 389, 586 A.2d 887 at 894 – 895. (Pa. 1991).

The Pennsylvania courts have previously ruled on the issue raised by the Defendant in this case. The Supreme Court held in Commonwealth v. Matos, 543 Pa. 449, 456-457, 672 A.2d 769 (Pa. 1996), that each individual's right "to be free from intrusive conduct by the police is implicated when the

police pursue an individual, absent reasonable suspicion or probable cause, as it is when they execute a search warrant without probable cause.” See also Commonwealth v. Jeffries, 454 Pa. 320, 311 A.2d 914 (1973) (when the police had neither probable cause nor reasonable suspicion to justify a seizure, the action of the police in chasing an individual and subsequently arresting him was a constitutional violation.) Further, in Matos, the Pennsylvania Supreme Court held that where contraband is abandoned because of the “unlawful and coercive action of the police” in chasing a Defendant, then the contraband must be suppressed. Matos, supra. at \_\_\_\_, 458.

In this case, the Court finds that at the time the officers began to chase the Defendant, they were conducting a traffic stop so that they could investigate why a particular vehicle exhibited the wrong registration plate and whether the driver of the vehicle possessed a valid driver’s license. The Defendant was a passenger in the vehicle. At the suppression hearing on June 7 2004, the Commonwealth failed to present any evidence that the officers had probable cause to believe that the Defendant was involved in a crime, nor did they have reasonable suspicion that criminal activity might be afoot. The Defendant ran from the car as the back-up officers arrived, but under Pennsylvania law, flight by itself does not provide a legitimate basis to seize an individual by giving chase. The seizure of the Defendant and the abandonment of the gun coerced by that seizure was therefore a violation of Article I, Section 8 of the Pennsylvania Constitution. Accordingly, the

evidence of the firearm found along the path the Defendant took as he ran, as well as the alleged drugs and other items found during the search of the Defendant's person must be suppressed.

**ORDER**

AND NOW, this \_\_\_\_ day of August, 2004, for the reasons set forth above, the Defendant's Motion to Suppress filed April 5, 2004 is GRANTED and the handgun found along the route the Defendant had run as well as all items seized as a result of his arrest are SUPPRESSED.

By the Court,

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Nancy L. Butts, Judge J.

xc: DA  
PD (JP)  
Court Administrator  
Judges  
Hon. Nancy L. Butts  
Gary Weber, Esquire  
Diane L. Turner, Esquire