

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

**COMMONWEALTH**

**v.**

**WILLIE WILLIAMS,  
Defendant**

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**No.: 03-11,122**

**OPINION AND ORDER**

Before the Court is the Defendant's Motion to Suppress Evidence, filed November 17, 2003. A hearing was held on this matter on January 5, 2004, at which time the Commonwealth offered the testimony of the prosecuting officer, Damon Hagan of the Williamsport Bureau of Police. The facts elicited during the hearing are as follows.

On July 13, 2003, Officer Damon Hagan was on duty and traveling in an unmarked police unit eastbound on High Street near Hepburn Street in the city of Williamsport. Behind him was a Ford Expedition, which he observed in his rear view mirror as he drove. The Expedition pulled to the side of the road and parked. It was approximately 4:00 a.m. and the neighborhood was a high crime, high drug area. The officer, who had worked on numerous narcotics investigations in the past, went around a corner, briefly losing sight of the Expedition, then did a U-turn and returned to the parked vehicle. There was no one in the vehicle and no one anywhere around it except for the Defendant, who was seen a few feet from the driver's side door walking across the street. The officer testified that he recognized the Defendant as one whose driver's license had been suspended and he

also testified that he believed that the Defendant's license was still in a suspended status. He did not verify this information. Instead, the officer called to the Defendant through the open passenger window of his vehicle, telling him to stop. Officer Hagan testified that the Defendant made eye contact with him, continued moving two or three more steps and then stopped. The Officer emerged from his vehicle and went around the rear of his vehicle to where the Defendant was waiting. He briefly lost his view of the Defendant while he exited his vehicle. Hagan testified that at the time he made contact with the Defendant, the Defendant was holding a cell phone in one hand and a set of keys in the other. He also testified that laying on the grass at approximately the location where the Defendant had been when first told to stop, was a small caliber handgun. The officer indicated that he noticed the gun immediately as he approached the Defendant. The Defendant denied that the weapon was his. The officer then did a pat down of the Defendant, finding no weapons on his person. The officer, aware that the Defendant had recently been released from state prison, then contacted the State Parole authorities, who advised him that he should place the Defendant under arrest and remand him to the Lycoming County Prison on a forty-eight hour detainer. The officer arrested the Defendant and, upon searching him incident to arrest, discovered multiple baggies of suspected cocaine, which were also seized.

The purpose of both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution "is to

protect citizens from unreasonable searches and seizures." In the Interest of D.M., 566 Pa. 445, 781 A.2d 1161, 1163 (Pa. 2001).<sup>1</sup> However, "(n)ot every encounter between citizens and the police is so intrusive as to amount to a "seizure" triggering constitutional concerns." Commonwealth v. Smith, 2003 Pa. LEXIS 2153, argued November 15, 2001, decided November 19, 2003. See also Commonwealth v. Boswell, 554 Pa. 275, 721 A.2d 336, 340 (Pa. 1998) (opinion in support of affirmance) (citing Terry v. Ohio, 392 U.S. 1, 20 n.16, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)). There are three basic categories of interactions between citizens and the police: the first category is the mere encounter. An officer need not possess any level of suspicion to initiate a mere encounter with a citizen and the citizen is not required to stop or respond to the officer in any way. The second category is an investigative detention. In this category, the police briefly detain a citizen. In order to investigatorily detain someone, the police must have reasonable suspicion that criminal activity is afoot and be investigating that suspicion. The third category is the arrest, or custodial detention, which must be supported by probable cause. The Pennsylvania Supreme Court has acknowledged this three-level approach to analysis of the stop of an individual under both the United States Constitution and the Pennsylvania Constitution. See, eg.

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<sup>1</sup> The Fourth Amendment of the United States Constitution protects "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." Article I, Section 8 of the Pennsylvania Constitution states that, "the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures." See eg., Commonwealth v. Smith, 2003 Pa. LEXIS 2153, 9-10 (Pa., 2003)

Commonwealth v. Polo, 563 Pa. 218, 224 (Pa. 2000) and Commonwealth v. Mendenhall, 552 Pa. 484, 715 A.2d 1117 (Pa. 1998).

In this case, the Defendant has argued that he was subjected to an investigative detention at the time that the officer turned around his vehicle and returned to where the Defendant had parked his Expedition. The Court rejects Defendant's assessment of this action and finds that at the time the officer turned around his vehicle, no contact had occurred which would fall into any of the three categories enumerated above. However, when the officer called out to the Defendant and told him to stop, the Court finds that a mere encounter was initiated by the officer which quickly became an investigatory detention as the officer recognized the Defendant. The testimony shows that immediately upon recognizing the Defendant, the officer knew him to be a recent state parolee and believed that he had no valid driver's license. Additionally, the circumstances clearly showed that the Defendant was the person who had just driven the Expedition to its location. The officer therefore had a reasonable suspicion that the Defendant was engaged in activity that should be investigated. The officer then left his vehicle to investigate. As he approached the Defendant, the officer observed the handgun on the ground. At that time, the Defendant was not free to leave. Given the totality of these circumstances, the Court finds the brief detention of the Defendant and the patdown of his person was legally permissible. Further, the Court finds that reasonable suspicion existed to detain the Defendant until his parole authority could be contacted. The

Defendant's arrest then occurred once the parole agent had directed the officer to place the Defendant under a forty-eight hour detainer. The Court does not need to review the constitutionality of his search incident to arrest as it was not raised by the defense.

The Defendant next asserts that, assuming *arguendo* the handgun was in his possession prior to his contact with the officers, its location on the ground is evidence of forced abandonment and that the handgun itself should therefore be suppressed under Commonwealth v. Matos, 543 Pa. 449, 672 A.2d 769 (Pa. 1996). Again, the Court disagrees, and distinguishes this case from the decision in Matos, supra. The Defendants in Matos, supra, were all involved in a police chase, during which the seized evidence was dropped or thrown away. Here, there was no chase; the Defendant stopped as requested by the officer. At the time that the Defendant stopped, it would have been clear to the Defendant that he was not under arrest but that the officers merely wished to talk with him. Any decision that he may have made concerning the handgun, if in fact it was his, was not coerced, and therefore its abandonment was not forced.

**ORDER**

AND NOW, this \_\_\_\_\_ day of February, 2004, for the reasons set forth above, the Defendant's Motion to Suppress is DENIED.

By the Court,

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Nancy L. Butts, Judge J.

xc: PD (Poplaski)  
DA (RF)  
Hon. Nancy L. Butts  
Diane L. Turner, Esquire  
Gary Weber, Esquire