

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 562 - 2006  
:   
vs. : CRIMINAL DIVISION  
:   
NOOR M. FORD, :   
Defendant : Motion to Suppress

**OPINION AND ORDER**

Before the Court is Defendant’s Motion to Suppress, filed June 30, 2006. A hearing on the motion was held August 25, 2006.

Defendant was charged with possession of a firearm without a license, several drug offenses and two Vehicle Code violations after a traffic stop on March 11, 2006. While Defendant does not challenge the traffic stop or the discovery of a baggie of marijuana and a handgun, he does object to the subsequent search of the vehicle which revealed two plastic baggies, each of which contained suspected cocaine.

It appears that after Defendant was stopped for a Vehicle Code violation, it was discovered that there was an outstanding bench warrant for his arrest. As Defendant was being taken into custody the marijuana and handgun were seen in plain view in the vehicle. An attempt was then made by officers to contact the vehicle’s owner, but such was not successful. The officers asked Defendant for his consent to search the vehicle and such consent was given. Defendant now claims that his consent to search was involuntarily obtained and the evidence discovered as a result of the search must be suppressed as having violated his Fourth Amendment right to be free from unreasonable searches and seizures.

In support of his argument, Defendant cites Commonwealth v. Smith, 368 A.2d 272 (Pa. 1977). There the Court held that the consent to search involved in that case had not been voluntarily given, based on “the fact of custody, the length of time [the person giving consent] was in custody, the questioning during that time, and the obtaining of consent from her only after her husband had provided a confession which we today hold was involuntarily obtained”.

Id. at 277. The circumstances of the instant case are quite removed from those in Smith, however, and the Court therefore believes Smith does not control.

In Smith, the defendant's wife had been in custody for twelve hours, locked in a room at the police administration building while her husband was handcuffed to a chair in another room. She was questioned by police numerous times and the consent to a search of their residence was provided after she learned her husband had confessed to a murder (which confession was also held to be coerced). In the instant case, according to the testimony of the arresting officers, Defendant was asked for his consent to search the vehicle within minutes of his arrest, and even Defendant alleges only one-half hour of custody preceded the request. While Defendant makes much of the fact that he overheard police trying to contact the vehicle's owner to obtain her consent, the Court fails to see how that would have a coercive effect. The officers testified that Defendant responded to their request immediately, without hesitation. The Court sees no evidence of a coercive atmosphere, nor any other factors which would render the consent involuntary.

Accordingly, it appearing Defendant's consent to search the vehicle was indeed given voluntarily, the evidence obtained as a result of the search need not be suppressed.

**ORDER**

AND NOW, this 31<sup>st</sup> day of August 2006, for the foregoing reasons, Defendant's Motion to Suppress is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber, Esq.  
Hon. Dudley Anderson

