

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 318 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
DAVID M. SMITH,	:	
Defendant	:	Motion to Suppress Evidence

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Suppress Evidence, filed April 25, 2006. A hearing on the motion was held June 7, 2006.

Defendant has been charged with two counts of DUI and a violation of the Open Container Law following a vehicle stop made by police on December 10, 2005. In the instant motion, Defendant contends the stop was not supported by probable cause.

According to the testimony of the Montoursville Borough police officer who made the stop, an employee of a shop on Broad Street in Montoursville called to report an individual sitting in the driver's seat of a vehicle in the parking lot of the shop and drinking from a container in a brown paper bag. When he responded to the location of the shop, the officer observed the vehicle, which had been identified by the employee by registration number, and waited there until the vehicle pulled out onto Broad Street. The officer then followed the vehicle into another parking lot just down the street and at that point made the stop.

Defendant does not contest the officer's reliance on the report of the shop employee, but, rather, contends that her observations, as reported to the officer, were insufficient to support a finding of probable cause to believe that Defendant was violating the Open Container Law. The Court does not agree. As defense counsel argued, many people do drink beverages in their vehicles, and the mere fact of drinking is not enough to support a stop. The Court believes, however, that concealing the beverage in a paper bag adds a layer of suspicion which does justify a finding of probable cause to believe the beverage being concealed contains alcohol.

Accordingly, inasmuch as the stop was supported by probable cause, the evidence obtained as a result of that stop need not be suppressed.

**ORDER**

AND NOW, this 8<sup>th</sup> day of June 2006, for the foregoing reasons, Defendant's Motion to Suppress Evidence is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

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