



curves to the right. At this location Moore was able to see to the point where Steppe was located and some distance beyond.

The Jeep's back-up lights were on when Moore first observed the vehicle. Officer Moore then observed the Jeep back up the "middle" of Market Street. While the Jeep was backing, Officer Moore testified he noticed that it came into close proximity to the vehicle parked in front of it. The Jeep was backing toward Moore and passing by cars which were parked bumper to bumper in the east side parking lane. Moore saw the Jeep back up until it came to another parallel parking space where Steppe parked his Jeep, again coming into close proximity to another parked vehicle. Both Moore and Steppe agreed that while backing, a southbound car drove past Steppe without incident, with Steppe stating he had stopped backing to allow the car to pass by. Steppe also stated at the suppression hearing that he did not want to park in his first attempted parking space because Market Street is narrow and cars frequently get "clipped" when parked in that particular space. Steppe lives at 956 Market Street and has observed parked cars being damaged passing traffic. Not wanting to subject his car to possible damage, Steppe backed his car about four to five car lengths into the other empty space he observed. Steppe in doing so backed up a distance not greater than 50 yards, from an empty parking space near Glenwood Avenue to the next empty parking space south of Glenwood, that was not reserved for handicapped parking. The backing maneuver lasted 10 to 15 seconds. The court finds Steppe's testimony as to the description of his backing maneuver to be accurate.

Steppe later measured this distance with a rifle scope and found it to be a distance of 20 to 25 yards. Moore testified he believed Steppe had backed up 100 to 150 yards. Moore believed that backing the Jeep this distance constituted unsafe backing on a city street, particularly this area of Market Street.

Based upon his initial observations, Officer Moore decided drive up to Steppe's vehicle and initiate a stop. Moore pulled up behind Steppe as Steppe was backing into his chosen parking space. At the stop Officer Moore identified himself to Steppe as a police officer. Subsequent to this stop, evidence regarding Steppe's DUI, terroristic threats and disorderly conduct charges were obtained through Moore's observations and questioning of Steppe. Steppe was not charged for a violation under the Motor Vehicle Code (hereafter "MVC"), 75 Pa. C.S. § 3702(a), for the Limitation on Backing violation.

The court finds Steppe's backing maneuver was done safely, did not interfere with traffic, and did not constitute a violation of section 3702(a) of the MVC.

## **II. ISSUE**

Whether Officer Moore had reasonable suspicion to justify his stop of Steppe for possibly violating the limitations on backing provision of § 3702(a) of the MVC?

## **III. DISCUSSION**

Steppe contends as he backed up a distance of 20 to 25 yards on a road with no traffic and in a manner that was safely accomplished Officer Moore's traffic stop was not justified because Officer Moore did not have reasonable suspicion to suspect that Steppe was in violation of the MVC, 75 Pa.C.S. § 3702(a), Limitations on Backing. Therefore he asserts his actions do not establish reasonable suspicion to believe that a violation of the MVC has occurred and the evidence obtained after Officer Moore stopped him must be suppressed. This court agrees.

Preliminarily, when a motion to suppress evidence has been filed, the Commonwealth bears both the burden of production and persuasion to prove that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 581(H); *Commonwealth v. West*, 2003 PA. Super. 380, 834 A.2d 625, 629 (2003), *app. denied*, 2005 Pa. LEXIS 2545 (Nov.

22, 2005). The Commonwealth bears the burden of establishing by a preponderance of the evidence that the challenged evidence is admissible. *Commonwealth v. Lindblom*, 2004 PA. Super. 270, 854 A.2d 604, 605 (2005), *app. denied*, 868 A.2d 1198 (Pa. 2005); *Commonwealth v. Smith*, 2001 PA Super. 284, 784 A.2d 182, 186 (2001).

**A. Reasonable Suspicion is Required to Justify a Vehicle Stop for a Suspected Violation of the Limitations on Backing Provision of the MVC**

Effective February 1, 2004, the amended Pennsylvania Motor Vehicle Code provides that:

Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has **reasonable suspicion** that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

75 Pa.C.S.A. § 6308(b) (emphasis added).

The Pennsylvania Superior Court addressed amended Section 6308(b) in *Commonwealth v. Sands*, 2005 PA. Super 372, 887 A.2d 261 (2005). There, the court held the “reasonable suspicion” standard in the amended Section 6803(b) to be constitutionally sound and applicable to cases where the violation involved driving under the influence of alcohol. *Id.* at 270-272. The court reasoned that in DUI cases, the lower standard of proof sufficed as public safety concerns outweighed an individual's right to be left alone. *Id.* In regards to reasonable suspicion serving as the standard for non-DUI violations of the MVC, the court in *Sands* specifically declined to address “whether the statute comports with federal and state constitutional protections...where the suspected violation was not DUI.” *Id.* at 270.

Subsequently, the Pennsylvania Superior Court, recognizing the *Sands* court's refusal to address the applicability of the "reasonable suspicion" standard to suspected non-DUI violations of the MVC, has held "reasonable suspicion" as the appropriate standard in non-DUI violations. See *Commonwealth v. Ulman*, 2006 PA. Super. 142, 902 A.2d 514 (2006); *Commonwealth v. Little*, 2006 PA. Super. 186, 903 A.2d 1269, 1273 (2006) In *Ulman* reasonable suspicion was held to be the appropriate standard for justifying a police officer's stop of appellant for suspected speeding proceeding through an emergency response area with caution violations. In *Little* reasonable suspicion was held to be the appropriate standard in justifying police officer's stop of appellant for suspected speed limit violation. The precedent of both *Ulman* and *Little* applying "reasonable suspicion" to stops for non-DUI related violations of the MVC, mandates the same statutory standard be applied in this case because limitations on backing is a non-DUI violation of the MVC, equivalent in nature to the violations in *Ulman* and *Little*.

#### **B. Reasonable Suspicion**

Under the reasonable suspicion standard, "before an officer conducts an investigative detention, he or she must reasonably suspect that the individual is engaging in criminal conduct." *Ulman*, supra. at 518, citing, *Commonwealth v. Rogers*, 578 Pa.127, 849 A.2d 1185 (Pa. 2004) (emphasis added). "Reasonable suspicion does not require, however, that the activity be unquestionably criminal before an officer may investigate further. *Id.* at 1189. Courts are to give due weight to the specific reasonable inferences the police officer is entitled to draw from the facts in light of his or her experience. *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673, 676 (Pa. 1999)." *Ibid.* Therefore under the reasonable suspicion standard in order to establish grounds for a vehicle stop, the officer must articulate specific observations which, in conjunction

with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his own experience, that the vehicle code was being violated. See *Little*, supra. at 1272.

The factors the Superior Court has considered in deciding whether the officer had reasonable suspicion to conduct the stop in *Ulman* and *Little* were the officer's experience, the observations of the officer, the reliability of these observations and the police officer's credibility. See *Ulman*, supra. at 518; *Little* supra. At 272. In both cases the officers had observed vehicles operated in a manner which met the statutory criteria of the violations for which they were stopped. These types of violations were noted by the court in *Sands* to be of the type that the officer would not be able to gain further evidence that could be obtained from a subsequent stop. See, *Sands* supra at 270 (referring specifically to unsafe speed, running a red light, driving the wrong way on a one-way street). Either the officer had observed a violation or he hadn't. Although where there may be some situations in which the driving conduct leading to the stop must not unquestioningly constitute a violation to meet the reasonable suspicion standard, where the credible observations of the officer, can not support a finding that the violation of the MVC for which the officer initiated the stop has occurred, it is axiomatic the reasonable suspicion to make the stop is not present.

### **C. Officer Moore Lacked Reasonable Suspicion Justifying the Vehicle Stop**

The observations Officer Moore made on February 10, 2007 do not reasonably allow one to conclude that the driver of the Jeep violated the limitations on backing statute. Therefore, Officer Moore lacked justification to stop Steppe because Officer Moore did not possess reasonable suspicion to believe that Steppe was in violation of the limitations on backing provision of the MVC.

The limitations on backing provision provides as follows: “No driver shall back a vehicle unless the movement can be made with safety and without interfering with other traffic and then only after yielding the right-of-way to moving traffic and pedestrians.” 75 Pa. C.S.A. § 3702(a). The evidence presented by the Commonwealth at the suppression hearing fails to prove that Steppe’s backing violated the limitations on backing statute. The evidence first fails to establish that Steppe’s backing interfered with traffic or that Steppe did not yield to pedestrians or other traffic. Officer Moore testified at the suppression hearing that it was 2:15am when he first observed Steppe’s Jeep with its back up lights on. Officer Moore stated that during that time of night there is customarily little to no traffic on Market Street. He also testified, and Steppe confirmed, that only one car passed by Steppe’s Jeep as he was backing up Market Street, and the passing car was yielded to by Steppe and passed without incident. Steppe testified that after the one car passed and directly prior to backing, he looked both in front of him and behind and saw no traffic in either direction.

The Commonwealth failed to present evidence to prove that Steppe’s backing movements were not made safely. Officer Moore observed no collision. There was no front or rear end damage on Steppe’s Jeep nor any damage on the vehicle parked in front or behind that would lead Moore to believe Steppe had struck the vehicles in his attempt to park. Although Officer Moore testified that he saw Steppe come into close proximity to the cars in front and behind him, Moore stated Steppe did not strike or contact the parked cars in his attempts to park. When Steppe proceeded to back his car out of the first intended parking space, he may have “nearly struck” the car that had been parked in front of him and also “nearly struck” the second car when he completed changing his parking place. It is commonly known that due to the nature of parallel parking, it is customary to come very close to the bumper of another car in attempting to

back in and out of a space. Coming within such close proximity while attempting to parallel park could be seen as “nearly striking” the vehicle to the front or back of the attempted space. Without more evidence, it cannot be said that such parallel parking maneuvers posed a safety hazard.

There was no evidence presented by the Commonwealth to support a finding that the speed in which Steppe backed his car was excessive under the circumstances.

Officer Moore’s testimony regarding the distance Steppe backed does not demonstrate Steppe backed his car unsafely. The court finds Moore’s initial estimations of distance somewhat unreliable. Officer Moore stated in his report and on direct examination that Steppe backed his car about 100 to 150 yards up Market Street. Steppe testified that the distance was substantially shorter and constituted four to five car lengths, or 20 to 25 yards. Steppe also testified that he measured the distance he backed after the incident using a rifle scope and tape measure. After seeing diagrams and measurements of Market Street by Steppe on cross examination, Officer Moore equivocated on the stand and stipulated that the distance Steppe backed was shorter than his original estimation of 100 yards. Finally Officer Moore did not offer any evidence, other than his own estimations from his initial observations of Steppe which were made from 300 yards away to refute Steppe’s measurements. After hearing all the testimony, the court has found that Steppe backed up a distance of not more than 50 yards. The court concludes that backing a distance of 50 yards or less, at 2:00 a.m. in the morning on an empty street, with no evidence of excessive speed, nor causing any accident is not an unsafe backing movement.



#### **IV. CONCLUSION**

Officer Moore's observations of Steppe's backing movements and the reasonable inferences drawn there from, do not raise a reasonable suspicion that Steppe violated the MVC for limitations on backing. Therefore as the Officer's stop of Steppe was unjustified, all evidence obtained subsequent to the stop must be suppressed under the Fruit of the Poisonous Tree Doctrine.

Steppe's motion to suppress evidence must be granted.

#### **ORDER**

It is hereby ORDERED that the Motion to Suppress Evidence of Defendant Eric Steppe filed June 28, 2007 is GRANTED. All evidence seized and all observations made by Officer Moore after the vehicle stop are suppressed and may not be used by the Commonwealth in its case in chief.

BY THE COURT,

William S. Kieser, Judge

cc: Kyle W. Rude, Esquire  
District Attorney  
Rebecca Penn, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)  
Judges