

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**MICHAEL SMITH,  
Defendant**

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**No. CR-313-2008  
CRIMINAL**

**OPINION AND ORDER**

On April 25, 2008, Defendant filed an Omnibus Pre-Trial Motion. A hearing on the Motion was held on January 13, 2009. Defendant raised four issues in his Motion, however, at the time of the hearing, the Bill of Particulars issue was resolved and another issue was orally withdrawn by Defense Counsel. The two remaining issues before the Court are: (1) that the vehicle stop was illegal and therefore all evidence seized as a result of the vehicle stop should be suppressed; and (2) that the detention of the Defendant was illegal.

***Background***

The following is a summary of the facts presented at the Preliminary Hearing. On February 8, 2008, Sergeant Timothy S. Miller (Miller) was riding in an unmarked Crown Victoria in the area of Walnut and Memorial Ave. On Memorial Ave, Miller observed a silver vehicle in front of some row houses, parked at an angle, with the rear of the vehicle approximately three feet from the curb. Miller noticed that inside the vehicle were two white individuals and at the outside of the front passenger door was a black male, later identified as

Michael Smith (Defendant), who was in a neck immobilizer<sup>1</sup>. Miller related the Defendant intently watched as Miller drove by. Miller watched the vehicle in his rear view mirror and noticed the Defendant had gotten into the vehicle. Miller drove approximately five miles per hour in order to give the passenger time to get into the vehicle. Miller made a u-turn at the intersection of Cherry Street and Memorial Ave. He then drove back to where the vehicle was parked. Miller related that it took him approximately one to two minutes to return to the location of the vehicle. He noticed the vehicle never pulled out from the stopped position, was still more than twelve inches from the curb, and was also less than thirty feet from the stop sign. Miller pulled up about two car lengths behind the vehicle to give the driver, later identified as David Rogers (Rogers), the opportunity to pull out. Rogers flashed his high beams to signal Miller to go around. Miller flashed the high beams back and then Rogers put his hand out the window and motioned for Miller to go around. When Miller did not go around, Rogers pumped his breaks and then put on his four way flashers. At this time, Miller activated his emergency lights and conducted a traffic stop.

When Miller approached the vehicle he noticed a bottle of Jacquin's Rum, a clear white cup with clear orangish liquid in it, and a half gallon of orange juice on the floor in the back of the car. Miller also observed a white male, later identified as Stephen Morse (Morse), in the back seat. Miller related that Morse began to move furtively and then Miller noticed the liquor bottle was gone. Then, the Defendant began to argue with the back seat passenger and told him to stop tripping. Miller raised his voice to keep control of the situation, which caused Rogers to argue

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<sup>1</sup> Miller testified that the neck immobilizer was a metallic device that had a halo around the head that hooked down to the waist. Miller related that the neck immobilizer requires one to move the whole body and does not allow the head to move independently from the body.

with Miller about raising his tone. Due to the situation and the fact that he was solo, Miller called for back up.

Officers Kristopher Moore and Justin Snyder (Snyder) arrived at the scene and told the occupants they were to exit the vehicle. Snyder immediately recognized the Defendant, who very strongly attempted to disassociate himself from those in the vehicle. The Defendant explained he was merely getting a ride from the occupants of the vehicle. The Defendant never related whether he had just gotten in the vehicle or if he had been in the vehicle. Additionally, the Defendant asked if he could leave.

Immediately upon the Defendant's exit from the vehicle, Miller and Snyder observed in the open right pocket of the bottom of the Defendant's coat three cell phones, a cell phone charger, and three sandwich bag corners tied in knots containing what appeared to be cocaine. Snyder related he then conducted the search of the Defendant, in which he discovered three cell phones and a charger, three sandwich bags tied in the corners each containing an eight ball of cocaine, totaling 11.3grams, \$1555 in denominations of \$5, \$10, \$20, \$50, and \$100's, a silver digital scale with what they believed to be cocaine residue<sup>2</sup>, two partially smoked blunts, and a small amount of marijuana.

Morse testified he pled guilty to charges relating to this incident in April of 2008. He related that he made no deal to testify and in fact was subpoenaed to testify. Morse testified that he sat in the back of the vehicle behind the Defendant. Morse related that he and Rogers picked up the Defendant to give one of the Defendant's friends a ride. Morse explained they went to the mall to pick her up and then dropped her off at her residence. Morse related that as the

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<sup>2</sup> The residue turned out to be non-narcotic.

Defendant's friend was getting out of the car they noticed Miller's unmarked car. Morse also testified that the Defendant never got out of the vehicle.

Morse explained that when Miller approached, he pushed the rum bottle under the seat and took three bags of cocaine and some marijuana out of his pocket and placed two of the bags of cocaine in the Defendant's left coat pocket. While he was removing the drugs from his person he dropped one bag of cocaine and some marijuana in the pocket on the back of the seat. Morse related he was trying to get everything off of him because he did not want to get caught as he got off probation the night before. Morse further testified he believed the Defendant would not be searched due to the neck immobilizer.

Morse related that he did not sell the drugs to the Defendant, did not get drugs from the Defendant, but also did not acknowledge the drugs were his until the time of the hearing. Morse explained that he did not want the Defendant to go down for something he did as he (Defendant) is like a cousin to him. Cross examination revealed Morse had been adjudicated delinquent for Theft in 2002, pled guilty to Receiving Stolen Property in 2003, and pled guilty to Theft from a Motor Vehicle in 2005. Morse also related he did not recall anything being in the cup. Finally, Morse was surprised to hear the Defendant had told the Officers he did not know the occupants of the vehicle.

Finally, the Defendant testified he told Snyder he was getting a ride to go pick Carrie Aderhold up from work. The Defendant alleged he never said he did not know the occupants of the vehicle. He also asserted he never got out of the vehicle until he was told to by the Officer.

## *Discussion*

### *The vehicle stop was illegal*

Defendant alleges that the vehicle stop was illegal. Specially, the Defendant asserts that waiting one to two minutes for the vehicle to move was not reasonable, Miller did not measure the distance between the car and stop sign, and that it was a pre-textual stop. In opposition, the Commonwealth alleges that Miller had reasonable suspicion that violations of the Motor Vehicle Code had occurred and was in a neighborhood known for drugs and shootings.

According to the Pennsylvania Supreme Court, ““where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.”” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)). Police officers are authorized to stop a vehicle whenever they have “reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred.” Commonwealth v. Hall, 929 A.2d 1202, 1206 (Pa. Super. Ct. 2007) (citing 75 P.S. § 6308(b)). According to the Pennsylvania Motor Vehicle Code, “no person shall: (1) Stop, stand or park a vehicle: . . . (iv) Within 30 feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the site of a roadway.” 75 Pa.C.S. § 3353(a). The Motor Vehicle Code also provides “every vehicle standing or parked upon a one-way highway shall be positioned parallel to the curb or edge of the highway in the direction of authorized traffic movement with its . . . wheels within 12 inches of the . . . curb or, in the absence of a curb, as close as practicable to the . . . edge of the . . . shoulder.” 75 Pa.C.S. § 3354(b).

The Court finds Miller had reasonable suspicion to believe that violations of the Motor Vehicle Code had occurred. He observed the vehicle in which the Defendant was a passenger,

parked at an angle, with the rear of the vehicle approximately three feet from the curb. Miller drove past the vehicle to give it an opportunity to move, however, it failed to do so. When he returned about one to two minutes later, the vehicle still had not moved and in addition to being too far from the curb, Miller noticed it was less than thirty feet from the stop sign. Furthermore, upon Miller's return, Rogers made numerous attempts to get Miller to go around the vehicle, which indicated his lack of intention to move the vehicle. Therefore, as the vehicle was parked more than twelve inches from the curb, was parked closer than thirty feet from the stop sign, and was not making an attempt to move from the location, Miller had reasonable suspicion to stop the vehicle. As such, the traffic stop was lawful.

***The detention of the Defendant was illegal***

The Defendant also contends that Miller had no reason to request the passengers to exit the vehicle and to detain them as there was no reasonable suspicion of criminal activity. In opposition, the Commonwealth asserts the occupants of the vehicle were lawfully removed.

According to the United States Supreme Court,

danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.

Maryland v. Wilson, 519 U.S. 408, 415 (1997). Further, the Pennsylvania Superior Court has held that “following a lawful traffic stop, an officer may order both the driver and passengers of a vehicle to exit the vehicle until the traffic stop is completed, even absent a reasonable suspicion that criminal activity is afoot.” Commonwealth v. Pratt, 930 A.2d 561, 564 (Pa. Super. Ct. 2007).

The Court finds Miller acted reasonably in ordering the occupants out of the vehicle. As

the Court has already determined the traffic stop was lawful and in reliance on the above cited cases, Miller was justified in ordering the occupants out of the vehicle. Further, Miller's actions in detaining the Defendant upon his exit from the vehicle was reasonable, as Miller immediately noticed drugs in the Defendant's coat pocket. Therefore, the suppression motion shall be denied.

**ORDER**

AND NOW, this \_\_\_\_day of February 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

- I. Defendant's Motion to Suppress evidence is DENIED.
- II. The Court does not need to address the Defendant's Motion for a Bill of Particulars, as the Commonwealth communicated that the substance was cocaine.

By the Court,

Nancy L. Butts, Judge

cc. DA (HM)  
PD (NS)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)