

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

**COMMONWEALTH**

**v.**

**DAMONTRAY TAYLOR,  
Defendant**

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**No. 1260-2009  
CRIMINAL DIVISION**

**OPINION AND ORDER**

Defendant filed an Omnibus Pre-Trial Motion on August 27, 2009. A hearing on the Motion was held on October 29, 2009.

***Background***

The following is a summary of the facts presented at the Suppression Hearing. Around 10:00 p.m., on July 24, 2009, Officer Jeremy Brown (Brown) of the Williamsport Bureau of Police conducted a traffic stop in the 600 block of Campbell Street on a four door silver Mercury Sable for failure to use its turn signal. Brown approached the driver, Heather Aikey (Aikey) and Sergeant Timothy Miller (Miller) approached the passenger side where in the front seat was the Defendant, Damontray Taylor and in the back seat, a white male. Brown heard both passengers tell Miller they did not have identification. Aikey was asked to exit the vehicle and while standing out of range was asked by Brown to confirm the identities of the occupants of the vehicle. Brown also ran the information on the vehicle as well as the passengers' information through County Control to see if there were any warrants for the occupants. In the meantime, Officer Thomas Bortz (Bortz) arrived as back up.

Brown and Bortz were standing at the rear of the vehicle when they observed through the window what appeared to be the Defendant checking, accessing, or concealing something in his

back pockets by lifting his hips. Brown also observed the Defendant lean forward and dump his right shoulder as if putting something under the seat. Brown explained that both he and Bortz witnessed the Defendant's movements and became concerned that he had a weapon. Brown approached the front passenger door immediately and asked the Defendant to exit the vehicle. Brown conducted a pat down for weapons and then did a security sweep of the vehicle in the area where he saw the Defendant making the questionable movements. Under the Defendant's seat, Brown observed a clear plastic bag containing smaller bags of suspected marijuana.

Bortz testified that he arrived at the scene as back up. He explained that the scene was well lit with street lights in the area and the headlights of both his and Brown's cruiser shining into the vehicle during the stop. Bortz explained that he and Brown were looking right at the passenger side of the vehicle and could view the front passenger well enough to see that his shoulders were off the seat. Bortz further explained that he observed the Defendant sit up straight, sit back hard, and then his right shoulder came up high like reaching for a pistol before finally dropping his shoulder and leaning forward. Bortz testified that he and Brown engaged in conversation like "hey, did you see that" – "sure did." Bortz related that he and Brown could not see what was in the Defendant's hands so they moved quickly to get him out of the vehicle and conduct a pat down. Bortz explained that Brown merely shone his flashlight in the vehicle in the area immediately surrounding where the Defendant was sitting when he observed the marijuana under the seat.

## *Discussion*

### *Motion to Suppress Evidence*

Defendant alleges that the search of the front passenger seat was unconstitutional under both the Pennsylvania Constitution and the United States Constitution.

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)).

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). Also, according to the Pennsylvania Superior Court, “the Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.” Bryant, 866 A.2d at 1146 (citing Commonwealth v. Dennis, 433 A.2d 79, 82 (Pa. Super. 1981)). “On the contrary, Terry and its progeny recognize that the essence of good police work is for the police to adopt an intermediate response where they observe a suspect engaging in ‘unusual and suspicious behavior.’” Bryant, 866 A.2d at 1146 (citing Dennis, 433 A.2d at 81 n.6, 82). The analysis used in determining whether reasonable suspicion exists for an investigatory stop, is the same under both Article I, § 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution. See Commonwealth v. Lynch, 773 A.2d 1240, 1244 (Pa. Super. Ct. 2001). The standard is whether the officers “observed unusual and suspicious conduct by such person which may reasonably

lead [them] to believe that criminal activity is afoot.’” Dennis, 433 A.2d at 81 n.5, (quoting Commonwealth v. Galaydna, 375 A.2d 69, 71 (Pa. Super. Ct. 1977)); See also Lynch, 773 A.2d at 1245.

In Commonwealth v. Morris, the officer observed the passenger stuffing a brown paper bag under the seat. The officer asked the passenger to exit the vehicle and then located the bag which contained vials of crack cocaine. The Superior Court determined that the officer’s actions were justified because his observations “supported a genuine belief that his safety was in jeopardy and, at the very least, articulable suspicion that the bag contained contraband or a dangerous weapon.” 619 A.2d 709, 712-13 (1992).

The Court finds that the officers viewed unusual and suspicious conduct which provided them the level of suspicion necessary to conduct a pat down. Both Brown and Bortz testified that they observed the passenger attempting to access or conceal something from his back pocket, dump his shoulder and lean forward as he reached under the seat. Defendant’s actions gave the officers at least articulable suspicion that Defendant was either reaching for or concealing a weapon or contraband under the seat. Therefore, as the officers neither violated the Pennsylvania Constitution nor the United States Constitution by conducting the pat down, the Defendant’s motion shall be denied.

### ***Petition for Writ of Habeas Corpus***

In Defendant’s Petition he alleges that since the search of the vehicle was unconstitutional, the Commonwealth is unable to present a prima facie case as it pertains to the charges against him. As the Court has already found the searches to be constitutional, there is prima facie evidence and therefore, this motion shall be denied.

**ORDER**

AND NOW, this \_\_\_\_day of December 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Suppression Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA  
PD (RC)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)