

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

**COMMONWEALTH**

**v.**

**JAMAL THOMAS,  
Defendant**

:  
:  
:  
:  
:  
:  
:

**No. 1600-2008  
CRIMINAL**

**OPINION AND ORDER**

Defendant, Jamal Thomas filed a Motion to Suppress on June 12, 2009. A hearing on the Motion was held on August 31, 2009. The Defendant raises three issues in his Motion: (1) the officers lacked probable cause to stop the vehicle; (2) the arrest of the Defendant was not supported by probable cause; (3) and the search warrant was based upon the illegal stop and illegal arrest of the Defendant, thus requiring suppression of all fruits of the stop and arrest.

***Background***

The following is a summary of the facts presented at the Suppression hearing. On August 17, 2008, around midnight, Officers Jason Gill (Gill) and Brian Naylor (Naylor) of the Hughesville Borough Police returned to Hughesville Borough after following a vehicle which they originally suspected was being operated under the influence, when they observed a gold Chevy Blazer traveling past the gas station with its right turn signal on that did not turn right. The officers observed the vehicle continue on and then cross the double yellow line by approximately one-fourth of the vehicle as it turned right onto Route 220 at the Borough line. The officers followed the vehicle about one-half mile to the borough line during which time they observed the vehicle cross the double yellow line once more and the fog line twice.

The officers activated the emergency lights as they crossed the borough line. Gill testified that at the point they activated the lights there was no place safe for the vehicle to pull over as it was near an embankment. The officers continued to follow the vehicle one-half to three-quarters of a mile outside the borough as it continued on past Wolf Run Road, where it could have turned off, to where it pulled off, on the Wolf Run Bridge. Gill testified that when the vehicle pulled off it was one hundred percent blocking the South bend lane of Route 220.

Gill explained that he approached the driver's side of the vehicle and Naylor approached the passenger side. As the driver was attempting to provide identification, Gill observed an odor of marijuana and burnt ashes on the lap of the driver, later identified as the Defendant, Jamal Thomas. Naylor testified at this time he had his flashlight shining in the vehicle and observed inside the open glove box in plain view what he believed to be marijuana. Naylor informed Gill of the marijuana and Gill ordered the Defendant out of the vehicle.

Gill explained that as the Defendant exited the vehicle he was holding his pants at the buckle. Gill testified that when asked to let go of his pants, a bag of white powdery substance fell out of the bottom of the Defendant's pants. The Defendant then attempted to kick the substance in the direction that would place it under the vehicle. Gill also testified that the Defendant's speech was slow, he stared off, and did not want to make eye contact with the officer. Gill also explained that the in-car camera video tape was full prior to beginning this incident so there was no recording made of the vehicle's maneuvers or the Defendant's actions that evening.<sup>1</sup>

---

<sup>1</sup> The Commonwealth explained since the videotape ran out of tape and therefore did not capture anything. The tape has since been recorded over and thus cannot be provided.

The Defendant testified that he was driving his silver Chevy Blazer when he pulled into a parking lot to turn around as he had missed the turn for Route 220. The Defendant explained that as he was driving down the road, he observed the police do a u-turn to see what he and his brother were up to as they were two African Americans. The Defendant testified that he was aware the police were following him as he drove and his vehicle never crossed any lines. He explained there was no place to pull over so he pulled over on the bridge as he thought it was the best location because cars could pass him.

### ***Discussion***

#### ***The Officer lacked probable cause to make a vehicle stop***

The Defendant alleges the officer lacked probable cause to stop his vehicle and was outside of his jurisdiction when he made the stop. In opposition, the Commonwealth asserts the officer had reasonable suspicion to stop the Defendant's vehicle as his vehicle crossed the double yellow line and the fog line and the officer was authorized to pull the Defendant's vehicle over based upon a jurisdictional agreement allowing them to continue in pursuit of someone suspected of criminal activity.

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).

The Pennsylvania Superior Court in Commonwealth v. Lindblom, upheld a traffic stop where the vehicle crossed the double yellow line and the berm four or five times. 854 A.2d 604, 606 (Pa. Super. Ct. 2004). Also, in Commonwealth v. Klopp, the Pennsylvania Superior Court found the troopers had reasonable suspicion to stop the Defendant's vehicle when around 2:00 a.m., it was observed crossing the white fog line and yellow line four times for the distance of 1.6 miles. 860 A.2d 1211, 1212 (Pa. Super. Ct. 2004).

Finally, according to the Statewide Municipal Police Jurisdiction Act,

[a]ny duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his primary jurisdiction, shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases:

...

(2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

42 Pa.C.S. § 8953(a).

The Court finds that the officer had reasonable suspicion that a violation of the Motor Vehicle Code was occurring or had occurred. Gill testified that he observed the vehicle with its right turn signal on and then not turn right. Gill related that he began following the vehicle and observed it cross the double yellow line twice, once by approximately one-fourth of the vehicle, and the fog line twice in distance of one half mile. Further, although Gill testified he was outside of the jurisdictional boundary, he was lawfully allowed to stop the Defendant's vehicle because he was in pursuit of the Defendant and observed the violations while in his jurisdiction.<sup>2</sup> Since

---

<sup>2</sup> 42 Pa.C.S. § 8953(a)(2).

the Defendant's vehicle crossed the yellow line and the fog line twice each, the officer had reasonable suspicion to justify a stop.

***The officer ordered the Defendant out of the vehicle without probable cause***

The Defendant asserts that he was ordered out of his vehicle without probable cause, thus resulting in an illegal arrest. The Commonwealth relies on Pennsylvania v. Mimms, asserting that following a lawful traffic stop, officers may order the driver and passenger out of the vehicle. 434 U.S. 106, 111 (U.S. 1977).

The Court finds Mimms applicable. In Mimms, the United States Supreme Court reasoned that the intrusion into a driver's liberty when ordered to exit his vehicle during a lawful traffic stop is *de minimis* when balanced with officer safety. Mimms, 434 U.S. 106, 111 (U.S. 1977). In reliance on Mimms, the Pennsylvania Superior Court in Commonwealth v. Brown, held that "an officer, when making a lawful stop of a motor vehicle, may order the occupants out of the car despite the lack of a reasonable suspicion that the passengers are engaged in criminal activity." 654 A.2d 1096, 1097 (Pa. Super. Ct. 1995).

As the traffic stop lawful, the Court finds the Defendant's removal from the vehicle was justified. The Court also finds the subsequent arrest of the Defendant upon removal of the vehicle is supported by probable cause. Gill testified that upon removal from the vehicle the Defendant was asked to stop holding his pants at his buckle. When the Defendant let go of his pants, a small bag of white powdery substance fell to the ground. Furthermore, Naylor testified that he observed marijuana in plain view in the open glove box of the Defendant's vehicle. Therefore, the Court finds the arrest of the Defendant supported by probable cause and thus lawful.

***The search of the Defendant's vehicle should be suppressed***

Defendant asserts the search warrant issued for the search of his vehicle was based on observations made after the illegal stop of his vehicle and illegal arrest of his person and therefore, anything searched and seized pursuant to the warrant are fruit of the poisonous tree and should be suppressed. In opposition, the Commonwealth asserts that both the stop of the vehicle and the arrest of the Defendant were lawful.

As the Court has already found the stop of the vehicle and arrest of the Defendant valid, the search warrant was not based on an illegal stop and illegal arrest. Therefore, the Court finds that the Commonwealth has met its burden, as such the Defendant's Motion to Suppress is denied.

***Missing Evidence Instruction***

At the time of the hearing, Defense Counsel informed this Court they would be requesting a missing evidence instruction at the time of trial because the videotape from the in-car camera was taped over. No testimony regarding the videotape was taken and the Commonwealth has not had an opportunity to respond. This Court believes that the Trial Judge after hearing all of the evidence would be best suited to decide whether a missing evidence instruction is warranted. Therefore, this Court will defer this decision to the Trial Judge.

**ORDER**

AND NOW, this 1<sup>st</sup> day of October 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Suppression Motion is hereby DENIED. Any decision on a missing evidence instruction shall be made by the Judge presiding over the Trial.

By the Court,

Nancy L. Butts, Judge

xc: DA (MK)  
George E. Lepley, Jr., Esq.  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)