

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
Plaintiff	:	NO: CR 258-2009
	:	
vs.	:	
	:	
STEVEN RALL	:	CRIMINAL DIVISION
Defendant	:	

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

The Defendant was charged in a Criminal Information with Driving Under the Influence of Alcohol, Illegally Operating a Motor Vehicle Not Equipped with an Ignition Interlock System; Failing to Display Headlamps During the Required Time; and Careless Driving. On July 21, 2009, the Defendant filed a Motion to Suppress Evidence. On August 3, 2009 the Honorable Kenneth D. Brown denied the Defendant's Motion to Suppress as untimely. On August 11, 2009 the Defendant filed a Motion to Reconsider which was denied by Order dated August 14, 2009. The Order of August 14, 2009 stated that if the Defendant was convicted he could raise the suppression issue in the context of an ineffective assistance of counsel claim.

On January 20, 2010 the case was tried before the undersigned Judge and a jury. The Defendant was found not guilty of Driving Under the Influence of Alcohol by the jury. The Defendant was found not guilty of Careless Driving by Judge Gray. The Defendant was found guilty by Judge Gray of the remaining two (2) counts in the Information -- Illegally Operating a Motor Vehicle Not Equipped with an Ignition Interlock System and Failing to Use Headlamps. On February 23, 2010, Judge Gray

sentenced the Defendant to pay a fine in the amount of \$500.00 and to undergo incarceration for not less than 45 days nor more than 90 days for the charge of Illegally Operating a Motor Vehicle Not Equipped with an Ignition Interlock System. For the charge of Failing to Use Headlamps, the Defendant was sentenced to pay a fine of \$25.00.

On February 26, 2010 the Defendant filed a Post-Sentence motion which was denied on March 4, 2010. On April 6, 2010, the Defendant filed a Notice of Appeal, appealing this Court's judgment of sentence dated February 23, 2010. On April 21, 2010, the Defendant filed his Statement of Matters Complained of on Appeal. The Defendant's appeal relates to the trial court's order denying the Defendant's Motion to Suppress Evidence. The Defendant specifically contends that this Court abused its discretion by initially denying the Defendant's Motion to Suppress Evidence without a hearing.

Pa.R.Crim.P. 579(A) provides:

Except as otherwise provided in these rules, **the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment**, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.

Pa.R.Crim.P. 581(A) & (B) state:

The defendant's attorney, or the defendant if unrepresented, may make a motion to the court to suppress any evidence alleged to have been obtained in violation of the defendant's rights.

Unless the opportunity did not previously exist, or the interests of justice otherwise require, such motion shall be made only after a case has been returned to court and shall be contained in the omnibus pretrial motion set forth in Rule 578. **If timely motion is not made hereunder, the issue of suppression of such evidence shall be deemed to be waived.** (Emphasis added).

In the case at bar, counsel entered his appearance for the Defendant at the time of arraignment on March 25, 2009, and waived arraignment on the Defendant's behalf. As the Defendant's Motion to Suppress was not filed until July 21, 2009, it was clearly filed well beyond the applicable thirty (30) day period. "Whether 'the opportunity did not previously exist, or the interests of justice otherwise require...' is a matter for the discretion of the trial judge." Commonwealth v. Williams, 323 A.2d 862 (Pa.Super. 1974). Pursuant to Judge Brown's notation on his August 3, 2009 Order, a Pre-Trial was scheduled for August 20, 2009 and the "Motion could not be scheduled until October at earliest." Moreover, as indicated by the Honorable Judge Brown in his Order of August 14, 2009 the issue of whether the Court should have denied the motion for untimeliness was best addressed through an ineffective assistance of counsel claim.

Accordingly, this Court respectfully requests affirmance of this Court's judgment of sentence dated February 23, 2010.

BY THE COURT,

Date

cc: District Attorney (HM)

Peter T. Campana, Esquire

Gary Weber, Esquire

Richard A. Gray, J.