

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

**COMMONWEALTH**

**v.**

**SKYLER ANDREWS,  
Defendant**

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**CR-1262-2010  
CRIMINAL DIVISION**

**OPINION AND ORDER**

Defendant filed a Motion to Suppress on November 9, 2010. A hearing on the Motion was held on January 7, 2011.

***Background***

Testimony taken at the hearing on the Motion to Suppress established that on August 2, 2010, Eric Fortin (Fortin) of the Lycoming County Adult Probation Office was in the 700 block of Hepburn Street checking an address when he saw Skyler Andrews (Defendant) and six (6) other people walking on Hepburn Street. Fortin knew the Defendant as he has served as the Defendant's Adult Probation Officer for the past year. Fortin called the Defendant over and the Defendant came. The Defendant seemed nervous and agitated and kept looking away while Fortin was talking to him. Fortin noticed bulges in the Defendant's pockets and asked him what he had in his pockets. The Defendant pulled out two cell phones and \$60.00 from one front pocket and a wallet from his other front pocket. However, the Defendant still had a sizable bulge in his front pocket. The Defendant did not respond when asked what the additional bulge was and Fortin could tell by the way the Defendant was acting that he was hiding something. Since Fortin did not know what the additional bulge was and because the Defendant was acting like he

was hiding something, Fortin felt a concern for safety. Fortin reached in the Defendant's pocket and pulled out drugs.

### *Discussion*

The Defendant is charged with Count 1 Possession With Intent to Deliver; Count 2 Possession of a Controlled Substance; and Count 3 Possession of Drug Paraphernalia. The Defendant contends that the initial stop, subsequent interrogation of the Defendant and the search of his person were conducted in violation of the Defendant's rights under Article 1, Section 8 of the Pennsylvania Constitution and the Fourth Amendment to the United States Constitution because; 1) the stop of the Defendant was done without reasonable suspicion to believe that criminal activity was afoot and that the Defendant was involved in said criminal activity; 2) the subsequent pat-down of the Defendant was done without reasonable suspicion to believe that criminal activity was afoot and that the Defendant was involved in said criminal activity; and 3) the subsequent search of the Defendant was done without a warrant, exigent circumstances or proper consent. The Defendant asserts that as the initial stop, subsequent pat down and search of the Defendant were illegal, the evidence obtained as a result must be suppressed.

The Defendant's assertions are incorrect. "[A] parolee has limited privacy rights under both the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution." Commonwealth v. Aquila, 2006 Pa.D.&Cnty.Dec.LEXIS 193 (Pa.D.&Cnty. 2006). (Citing Commonwealth v. Williams, 692 A.2d 1031, 1035 (1997)). Probation officers have authority to search a parolee if they have "a reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision." 42 Pa.C.S. §9912 (d)(1)(i). Reasonable suspicion exists when "the facts available to the officer at the moment of the [intrusion] warrant a man of reasonable caution in the belief that the action taken was

appropriate.” Aquila at 7. (Citing Commonwealth v. Moore, 805 A.2d 616, 619 (Pa.Super.2002)). To determine whether reasonable suspicion exists to search a parolee, an officer may consider the following factors:

- (i) The observations of officers.
- (ii) Information provided by others.
- (iii) The activities of the offender.
- (iv) Information provided by the offender.
- (v) The experience of the officers with the offender.
- (vi) The experience of officers in similar circumstances.
- (vii) The prior criminal and supervisory history of the offender.
- (viii) The need to verify compliance with the conditions of supervision.

42 Pa.C.S. §9912(d)(6)(i-viii).

In this case, Fortin has reasonable suspicion to believe that the Defendant violated the conditions of his parole. The Defendant seemed nervous and agitated to Fortin and kept looking away while Fortin was talking to him. Fortin noticed a bulge in the Defendant’s pockets and asked the Defendant to show him what he had in his pockets. The Defendant only removed some of the items in his pockets and would not respond when Fortin asked him what else he had in his pockets. Fortin did not know what the Defendant had in his pockets and so he reached in the pocket and took out the object. The object removed from the pocket was stipulated to by the parties to be 32.8 grams of cocaine.

**ORDER**

AND NOW, this \_\_\_\_day of January, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Michael C. Morrone, Esq.