

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

**COMMONWEALTH**

v.

**KEVIN HOWARD,  
Defendant**

:  
:  
:  
:  
:  
:

**CR-93-2011  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Suppress on April 12, 2011. A hearing on the Motion was held May 6, 2011.

***Background***

On September 15, 2010, at approximately 11:50 a.m., Trooper Kenneth Samuel Fishel (Fishel) and Corporal Michael Simpler (Simpler) of the Pennsylvania State Police (PSP) were on patrol in the City of Williamsport when they observed a vehicle turn into the parking lot of Donna's Restaurant without using a turn signal. Fishel and Simpler pulled into the alley beside the parking lot where the vehicle parked in the handicapped parking area, and observed three individuals in the vehicle. As the troopers then got out of their patrol unit to talk to the occupants of the vehicle, the front seat passenger of the vehicle later identified as Kevin Howard (Defendant) quickly exited the vehicle. Simultaneously, the driver of the vehicle, Aquilla Laury (Laury), also exited the vehicle. The rear seat passenger was identified as Viva Bolden. As Simpler attempted to explain to Laury why he was being stopped, the Defendant walked directly into Donna's. Both the Defendant and Laury were asked by Simpler to get back into the vehicle as the traffic stop was not concluded. The Defendant did not stop when requested and continued

into the restaurant. Fishel walked inside the restaurant and observed the Defendant seated at the bar with a newspaper in front of him. From the entrance of the restaurant, Fishel motioned for the Defendant to come back outside. The Defendant complied with Fishel's request. Once he was back outside, the Defendant was patted down for weapons. An employee of Donna's, a Mr. Neece, then came outside and asked Fishel if he could speak with him inside. Inside the restaurant, Fishel was directed to the newspaper that was on the bar where the Defendant had been previously seated. Inside the newspaper were two plastic baggies, one of which contained marijuana and the other contained ten (10) rocks of crack cocaine. The employee of Donna's relayed that there was nothing inside of the paper before the Defendant touched it, and that no one had approached or touched the paper after the Defendant. Both Simpler and Fishel testified that the Defendant was taken into custody and was transported to the Montoursville barracks of the Pennsylvania State Police. Simpler and Fishel also testified that the Defendant was read his Miranda rights and acknowledged them. After Miranda warnings were given, Simpler interviewed the Defendant who at first denied that he sold drugs and indicated that he only had the drugs for personal use as he is on dialysis. However, later in the interview, the Defendant admitted that he "gives the drugs to girls in return for 'favors'." The Defendant agreed to a drug swipe of his hands which was positive for the presence of cocaine and marijuana. The suspected marijuana and crack cocaine found in the paper also field tested positive for marijuana and crack cocaine respectively.

### ***Discussion***

The Defendant contends that the physical evidence the PSP retrieved from inside Donna's Restaurant, as well as the incriminating statements the Defendant made to them,

constitute evidence seized in violation of the Defendant's rights under Article I Sections 8 and 9 of the Pennsylvania Constitution and under the Fourth, Fifth, and Sixth Amendments to the United States Constitution. The Defendant believes that the troopers had no reasonable suspicion or probable cause to subject him to an investigative detention by ordering him to stay in the vehicle or to come out of Donna's Restaurant. The Defendant asserts that as a result of Fishel ordering him out of the restaurant, he was forced to abandon the controlled substances he had in his possession. Without this forced abandonment, the Defendant believes that the PSP would not have had the ability to conduct a search of his person, and would thus not have legally discovered the controlled substances. The Defendant further contends that any incriminating statements he made to Simpler were the product of the unlawful arrest based upon the evidence obtained through the illegal detention. The Defendant also submits that he did not knowingly, intelligently or voluntarily waive his right to counsel, or his right to remain silent, prior to making any alleged incriminating statements, as he was not given his Miranda warning prior to his interrogation by Simpler.

Contrary to the Defendant's assertion otherwise, the Court finds it lawful for the troopers to order the Defendant to remain in the vehicle and to order the Defendant out of the restaurant. The Superior Court in Commonwealth v. Pratt, 930 A.2d 561 (Pa. Super. 2007) held that "[a] police officer may lawfully order a passenger who has exited and/or attempted to walk away from a lawfully stopped vehicle to re-enter and remain in the vehicle until the traffic stop is completed, without offending the passenger's rights under the *Fourth Amendment*." The Pratt Court further reasoned that since the analysis to determine the legality of a search under the Fourth Amendment of the United States Constitution is the same as the analysis under Article I, Section 8 of the Pennsylvania Constitution, the police officer's instructions also did not violate

the individual's rights under Article I, Section 8 of the Pennsylvania Constitution. Id. at 567.

The Pratt Court reasoned that the public interest in promoting officer safety by allowing the police to control movement during a traffic stop outweighs the slight encroachment on personal liberty. Id.

In this case, the vehicle was stopped for failure to use a turn signal; the Defendant does not challenge the legality of the stop. When the Fishel and Simpler approached the stopped vehicle, the Defendant exited and proceeded to go into Donna's Restaurant, specifically ignoring Simpler's request to get back into the vehicle. Applying Pratt to the facts of this case, the Court finds that it was in fact lawful for the troopers to order the Defendant to stay inside the vehicle and to order the Defendant out of the restaurant to finish the investigation or to complete the stop. Furthermore, Simpler and Fishel both testified at the hearing on the Motion to Suppress that based on their experience and training they were aware that many times passengers of traffic stops will often try and distance themselves from the vehicle if they are in possession of contraband at the time of the stop. Therefore, the Court would find that despite the holding in Pratt, Simpler and Fishel would have had reasonable suspicion to stop the Defendant based upon that behavior alone. As this Court finds that it was lawful under Pratt for the troopers to order the Defendant to remain in the vehicle, or at least to return to it, the Court finds the Defendant's arguments that he was forced to abandon the drugs, and his contention that any incriminating statements made were the result of an unlawful detention, to be without merit.

The Defendant also claims that he did not knowingly, intelligently or voluntarily waive his right to counsel, or his right to remain silent, prior to making any alleged incriminating statements. At the hearing on the Motion to Suppress both Simpler and Fishel testified that the Defendant was informed of, and acknowledged his Miranda rights. Simpler additionally testified

that after acknowledging his rights, the Defendant was then willing to answer questions for the police. After a defendant is given his or her Miranda rights, a statement by the defendant that he understands those rights followed by the answering of those questions posed by the interrogating officer constitutes a sufficient manifestation of a defendant's intent to waive those rights as to satisfy state constitutional protections. Commonwealth v. Baez, No. 908 MDA 2010, 2011 Pa. Super. LEXIS 617 (Pa. Super. May 23, 2011) (citing Commonwealth v. Bomar, 826 A.2d 831 (Pa. 2003)). Therefore, the Court finds the Defendant's claim that he did not knowingly, intelligently or voluntarily waive his Miranda rights to be without merit.

As an alternative argument, Defense Counsel asserts that what ever Miranda warnings were given by Simpler, presumably since they were not memorialized by a written waiver, were deficient. The Court finds this assertion to be specious. As the Defendant alleges he was not read his Miranda warnings at all, the Court refuses to accept the mutually exclusive argument that if they were read, they were not properly given. The Defendant cannot point to specific sections of the rights which were either misstated or omitted by Simpler, leaving this Court at a loss to determine how the Defendant's Miranda warnings may have been deficient.

**ORDER**

AND NOW, this \_\_\_\_day of June, 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  
Peter T. Campana, Esq.