

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

**COMMONWEALTH**

v.

**CHRISTOPHER MULLEN,  
Defendant**

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**CR: 360-2011  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed an Omnibus Pre-Trial Motion on June 13, 2011, which included a Motion to Suppress. A hearing on the Motion to Suppress was held on February 6, 2012.

***Background***

On January 7, 2011 Troopers Tyson Havens (Havens) and Scott Davis (Davis) of the Pennsylvania State Police (PSP) were on patrol in the City of Williamsport when they stopped a black Ford Taurus in the 800 block of Cherry Street for failure to activate the appropriate turn signal. Upon approaching the driver's side of the vehicle, Havens recognized the passenger of the vehicle as Christopher Mullen (Defendant). The driver of the vehicle, Christopher Bowling, was secured, searched and transported to the State Police Barracks in Montoursville following the stop. Havens observed the Defendant remove his left hand from the hooded sweatshirt he was wearing and at that time Havens saw what he believed to be a plastic bag containing marijuana in the left pocket of the Defendant's sweatshirt. As Havens was familiar with the Defendant's propensity to run from the police, he pointed his taser gun at the Defendant and told him not to run. At the same time Havens observed marijuana in the Defendant's left pocket, Davis observed marijuana in the Defendant's right pocket. Davis opened the door to the vehicle

and told the Defendant to exit the vehicle as he was about to be arrested. Although the Defendant initially complied with Davis' request and exited the vehicle, the Defendant then resisted and attempted to get away from Davis. Before the Defendant was finally arrested and searched, where he was found to be in possession of three separate bags of marijuana and two separate bundles of cash, he had to be hit with the taser three times. The Defendant was then taken to the Lycoming County Prison where his attempts at removing marijuana residue from his jacket again resulted in the use of a taser against him. A search of the Defendant's jacket revealed two Percocet pills and two Oxycodone pills. The vehicle in which the Defendant was a passenger was taken to the PSP barracks in Montoursville where an inventory search revealed a gallon sized Ziploc bag containing marijuana underneath the Defendant's front passenger seat. Following these events, the Defendant was charged with Possession with Intent to Deliver, Possession of a Controlled Substance by an Inmate Prohibited, Possession of a Controlled Substance, Possession of Drug Paraphernalia, Tampering with or Fabricating Physical Evidence, Resisting Arrest, and Escape.

### ***Discussion***

The Defendant raises several issues in his Motion to Suppress: 1) the stop and arrest of the Defendant was done without reasonable suspicion to believe that criminal activity was afoot or that the Defendant was involved in said criminal activity; 2) the search of the Defendant and of the vehicle was done without either an arrest warrant or a search warrant and absent an exception to the warrant requirement; and 3) the search of the Defendant and of the vehicle was done without the requisite consent. The Defendant contends that as the initial stop and arrest,

and subsequent search and seizure were illegal, any evidence obtained therefrom must be suppressed.

As to the Defendant's contention that the stop of the vehicle and arrest of the Defendant were done without reasonable suspicion to believe that criminal activity was afoot, the Court finds that this argument is without merit. Pursuant to 75 Pa.C.S. §6308(b) a police officer may stop a vehicle if he has reasonable suspicion that a violation of the vehicle code has occurred. As indicated above, the Officers stopped the vehicle in question for failure to activate the appropriate turn signal which is a violation of 75 Pa.C.S. §3334. Following the stop of the vehicle, which the Court finds was in fact made with reasonable suspicion to believe that criminal activity was afoot, the Officers approached the vehicle and observed what appeared to be marijuana in the Defendant's jacket pockets. As the possession of marijuana is illegal, it was then appropriate for the Officers to place the Defendant under arrest at that time. See 35 P.S. §780-113(a)(31). Although the Defendant contends that the search of his person was done without a warrant and without the appropriate consent, the Court finds that a search of his person subsequent to his arrest was lawful. See United States v. Robinson, 94 S. Ct. 467 (1973).

The Defendant also argues that the search of the vehicle was done without a warrant, absent an exception to the warrant requirement, and without the appropriate consent. Havens testimony established that the driver of the vehicle, Bowling, was also secured and searched and was transported to the PSP Barracks in Montoursville. The vehicle was then transported to the Barracks along with Bowling, where Havens conducted a custodial inventory search of the vehicle, leading to the discovery of additional marijuana under the Defendant's seat. Case law is clear that an inventory search of a vehicle provides an exception to the warrant requirement provided that: 1) the police have legally impounded the vehicle; and 2) the search is conducted in

accordance with a reasonable, standard policy of routinely securing and inventorying the contents of the impounded vehicle. See Commonwealth v. Hennigan, 753 A.2d 245 (Pa. Super. 2000).

The authority of the police to impound vehicles derives from the police's reasonable community care-taking functions. Such functions include removing disabled or damaged vehicles from the highway, impounding automobiles which violate parking ordinances (thereby jeopardizing public safety and efficient traffic flow), and protecting the community's safety... The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.

See South Dakota v. Opperman, 96 S. Ct. 3092 (1976). Pursuant to 75 Pa.C.S. §3352(c)(3) the police may move a vehicle to a safe location following the arrest of the operator of the vehicle. As it appears that the driver of the vehicle in this case was secured, searched and transported to the Barracks, the Court finds the removal of the vehicle to be lawful. Furthermore, as Havens testified that the search of the vehicle at the Barracks was conducted pursuant to a custodial inventory search of the vehicle, neither a warrant nor consent to search the vehicle was required. As such, the Court can find no merit to the Defendant's contentions.

**ORDER**

AND NOW, this \_\_\_\_ day of March, 2012, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Michael Morrone, Esq.