

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**ALIEK CARR,**

**Defendant**

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**CR: 1990-2012  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Suppress Evidence on January 2, 2013. A hearing on the motion was held April 16, 2013. On May 22, 2013, the Court re-opened the record and heard additional testimony.

***Background***

On May 2, 2013, this Court issued an Opinion and Order regarding the Defendant's Motion to Suppress. The Court found that the Commonwealth had not sufficiently proved that Montoursville Police had jurisdiction to conduct the controlled buy and arrest. This Court summarized the facts as stated below:

On October 17, 2012, Douglas Paulhamus (Paulhamus) was in his vehicle outside the Wal-Mart on 1015 N Loyalsock Ave, Montoursville waiting for his drug dealer to arrive so that he could purchase heroin. Paulhamus stated that he had waited in the parking lot for approximately two (2) hours before the Montoursville Police Department made contact with him, which resulted in them finding him in possession of drug paraphernalia.<sup>1</sup> Paulhamus was asked whether he would set up a narcotics purchase by calling his drug dealer, which Paulhamus agreed to do. Paulhamus called his drug dealer, whom he was supposed to meet at the Wal-Mart, and was told to now meet at the Best Buy parking lot in Muncy Township. Paulhamus was searched prior to the controlled buy and was told to buy \$110.00 worth of heroin.<sup>2</sup>

Chief Jeffrey Gyurina (Gyurina) of the Montoursville Police Department realized that the Best Buy was not in his jurisdiction. Gyurina made a phone call to Chief McKibben (McKibben) of the Muncy Township Police Department. As a result of this

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<sup>1</sup> Paulhamus was not charged with any crimes as a result of the drug paraphernalia being found.

<sup>2</sup> The money was photographed and the serial codes were documented. Paulhamus' personal money was used for the controlled buy.

phone call with McKibben, Gyurina believed that he had jurisdiction to pursue the controlled buy in Muncy Township. McKibben did not testify at the suppression hearing.

Montoursville Police positioned themselves in the McDonald's lot across the street from the Best Buy parking lot. Gyurina observed a white Pontiac Bonneville with dark tinted windows pull next to Paulhamus' vehicle, stop, and then leave. Paulhamus stated at the hearing that the drug dealer pulled his white Bonneville next to his vehicle, they each rolled down their windows, and he threw the \$110.00 into the white Bonneville. The driver in the Bonneville then threw eleven (11) bags of heroin into Paulhamus' vehicle and left. Montoursville Police approached the Bonneville identifying themselves as police and ordering the driver out of the vehicle. The driver began to back his vehicle away from the officers but after his vehicle stopped he was taken into custody. The driver was identified as Aliek Carr (Defendant). A search incident to arrest resulted in cash being found in the Defendant's right pant pocket and three cellphones. Gyurina also observed that a vent was missing from the dashboard of Defendant's vehicle and that he could see in plain view a bag with multiple smaller bags within it. From Gyurina's past experience he believed the smaller bags contained heroin.

Paulhamus drove his vehicle to the police waiting nearby and while doing so consumed three (3) bags of the heroin. Gyurina had questioned Paulhamus about whether he had consumed any of the heroin because he saw a piece of wax paper outside the pavement of his vehicle. Paulhamus originally denied consuming the heroin and stated that he tried to consume a single bag but the heroin blew out of the packaging. At the suppression hearing, however, Paulhamus stated for the first time that he had consumed three (3) bags of heroin.<sup>3</sup>

The Defendant was transported to the Montoursville Police Department where he waived his Miranda Rights. Officer Kurt Hockman (Hockman) asked the Defendant whether he would consent to a search of his vehicle or whether they should obtain a search warrant. At the time, Hockman stated that the Defendant was in a holding cell cuffed to a bench. Hockman would have been in full uniform and it would be possible that he had a holstered gun on his person. Hockman stated that the Defendant wanted to get to Lycoming County Prison as soon as possible and that he wanted to consent to a search. Hockman then read the Defendant the consent to search form and the Defendant signed the document. The document, in part, states:

“Without a search warrant, and of my right to refuse to consent to such search without a warrant, hereby authorize members of the Montoursville Police and their agents, to conduct a complete search of the above located at Montoursville Police Department.

These police officers are authorized by me to take from the item searched any letters, materials or other property that they may desire. Drugs, phones, guns, money.

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<sup>3</sup> Paulhamus stated that his attorney advised him to tell the truth at the suppression hearing and that is why he now testified that he had consumed the three (3) of the bags of heroin.

I am giving this written permission to the Montoursville Police and its officers and agents voluntarily and without threats or promises of any kind.”

As a result of this consent, Montoursville Police searched the white Pontiac Bonneville and heroin and cash were found. As seen by Gyurina at the time of arrest, heroin was found in one of the vehicle’s air vents.

Following the Court’s Opinion and Order, the Commonwealth filed a Motion to Reconsider or Reopen. After argument, the Court granted the Commonwealth’s Motion, in the interest of justice, and heard testimony from Chief Chris McKibben (McKibben) of the Muncy Township Police Department. McKibben testified that on October 17, 2012 he received a call from Gyurina requesting permission to pursue a controlled drug buy near the Lycoming Mall. Gyurina also requested assistance by McKibben and the Muncy Township Police; however, McKibben was entering the Lycoming County Courthouse for a hearing. McKibben gave Gyurina permission to enter his jurisdiction to pursue the controlled buy. In addition, McKibben did not believe Gyurina needed to receive permission because local police chiefs had signed a document agreeing to allow their agencies into their jurisdictions for criminal investigations. After McKibben left the Courthouse he went directly to the scene of the controlled buy at the Best Buy and saw that the Defendant was already handcuffed.

The Defendant argued two (2) issues at the suppression hearing: 1) that the Montoursville Police did not have jurisdiction to conduct the controlled buy; and 2) the Defendant’s consent to search his vehicle was not given voluntarily. These were issues the Court did not reach in its initial opinion.

*Motion to Suppress*

***a. Whether Montoursville Police had jurisdiction to conduct a controlled buy in Muncy Township***

The Defendant argues that police did not have jurisdiction to conduct the investigation, controlled buy, and arrest of the Defendant. 42 Pa.C.S. § 8953 has determined when a municipal officer shall have the power and authority to enforce the laws of the Commonwealth when beyond their territorial limit:

(4) Where the officer has obtained the prior consent of the chief law enforcement officer, or a person authorized by him to give consent, of the organized law enforcement agency which provides primary police services to a political subdivision which is beyond that officer's primary jurisdiction to enter the other jurisdiction for the purpose of conducting official duties which arise from the official matters within his primary jurisdiction.

42 Pa.C.S. § 8953(a)(4).

Prior to entering Muncy Township, Gyurina called McKibben, the chief law enforcement officer, and requested permission to enter his jurisdiction. McKibben gave consent to Montoursville Police before they entered the jurisdiction. The main issue regarding the applicability of § 8953(a)(4) is whether the drug sale first arose in the Montoursville jurisdiction (i.e. primary jurisdiction). Montoursville Police had found Paulhamus with drug paraphernalia while he waited two (2) hours in the Wal-Mart parking lot for the Defendant to sell him cocaine. After Paulhamus agreed to be an informant he corresponded with the Defendant and the location of the drug transaction was changed to the Best Buy, which is outside the jurisdiction of Montoursville. As the transaction was originally arranged in Montoursville, the Court finds that the matter arose out of their primary jurisdiction. Pursuant to Pa.C.S. § 8953(a)(4) the Court finds that Montoursville Police had jurisdiction to conduct the investigation, controlled buy, and arrest of the Defendant. See Commonwealth v. Sestina, 546 A.2d 109 (Pa. Super. 1988).

In addition, a written agreement between municipalities allows an officer to enter agreed upon jurisdictions. “[P]rior written consent by one authorized to give it satisfies the consent requirement of subsection (a)(4).” Stein v. DOT, Bureau of Driver Licensing, 857 A.2d 719 (Pa. Commw. 2004) (citing Commonwealth v. Sestina, 546 A.2d 109 (Pa. Super. 1988)). Further, “[t]he statute does not require individualized consent,” which the Commonwealth Court refused to implement as it would be burdensome. Id. The previous agreement allowing Montoursville Police into Muncy Township would also have appeared to give jurisdiction to Montoursville for the controlled buy and arrest.

***b. Whether the Defendant’s consent to search his vehicle was not given voluntarily***

The Defendant contends that he did not voluntarily consent to the search of his vehicle. Generally, a police officer must obtain a warrant supported by probable cause to conduct a search. An exception to this rule is when a person with proper authority “unequivocally and specifically consents to the search.” Commonwealth v. Acosta, 815 A.2d 1078, 1083 (Pa. Super. 2003). “To establish a voluntary consensual search, the Commonwealth must prove that a consent is the product of an essentially free and unconstrained choice - - not the result of duress or coercion, express or implied, or a will overborne - - under the totality of the circumstances.” Id. A variety of factors are considered when assessing the voluntariness of the consent: 1) length and location of the detention; 2) whether there were any police abuses, physical contact, or use of physical restraints; 3) any aggressive behavior or any use of language or tone by the officer that were not commensurate with the circumstances; 4) whether the questioning was repetitive and prolonged; 5) whether the person was advised that he or she was free to leave; and 6) whether the person was advised of his or her right to refuse to consent. Commonwealth v. Caban, 60 A.3d 120, 131 (Pa. Super. 2012).

In Mack, the Houston Texas Police Department called the Philadelphia Police Department and stated that a narcotic-detecting dog indicated the presence of drugs in a piece of luggage that was bound for Philadelphia. Commonweath v. Mack, 796 A.2d 967, 968 (Pa. 2002). The Philadelphia Police received a description of the luggage, the flight, the claim ticket number, and a description of the passenger seen with the luggage. Id. at 968-69. An officer observed an individual that matched the description claim the bag. Id. at 969. The officer asked to inspect her claim ticket, which bore the same number as the luggage from Houston. Id. The Defendant was accompanied to an airport office where she was told she was stopped on suspicion of transporting drugs and she was given her Miranda warnings. Id. The defendant was asked if she would consent to a search of her bag but that if she refused they would obtain a search warrant. Id. After the Defendant read a consent to search form, she signed the document and the police found twenty-five (25) pounds of marijuana. Id.

The Supreme Court of Pennsylvania found that the consent to search was voluntary. Initially, the Supreme Court rejected a *per se* rule that a consent to search in the context of a lawful custodial detention is involuntary.<sup>4</sup> Id. at 971. Further, “[t]he statement by the police that they ‘would have to get a search warrant’ is merely a factor, but not a dispositive one, in the totality of the circumstances that a court must review in determining whether the police coerced the individual into consenting to the search.” Id. Based on the fact that the police advised the defendant that she could refuse to consent and that they advised her of her Miranda rights, the Supreme Court found that overall the factors supported a voluntary consent to search her bag.

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<sup>4</sup> A “custodial detention” is functionally equivalent to a formal arrest. Commonwealth v. Ellis, 662 A.2d 1043, 1048 n.3 (Pa. 1995). The term is used to “describe incidents in which the police do not verbally inform a suspect that he is under arrest, but rather, undertake actions which result in the conditions of the detention becoming so coercive as to amount to the functional equivalent of a formal arrest.” Id.

First, this Court will address whether the Defendant's detention/arrest was lawful. Since if the detention was without probable cause the consent to search would be involuntary and there would be no need to address the specifics of the consent itself. "[A]n arrest or 'custodial detention' must be supported by probable cause." Ellis, 662 A.2d at 1048. "The police have probable cause where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." Commonwealth v. Rogers, 849 A.2d 1185, 1192 (Pa. 2004). Probable cause is determined by considering all the relevant facts under the totality of the circumstances. Commonwealth v. Gray, 503 A.2d 921 (Pa. 1985).

Here, the Court finds based on the totality of the circumstances that the Defendant was legally under arrest. Paulhamus had set up a controlled drug buy with the Defendant. Paulhamus and the Defendant met at the Best Buy parking lot, which was observed by officers. Paulhamus, who was searched before the drug buy, obtained eleven (11) bags of heroin and gave it to police following his contact with the Defendant. The Defendant attempted to flee when police tried to stop him. Finally, Gyurina observed a vent missing in the Defendant's vehicle and in plain view saw what he believed to be multiple bags of heroin.

Next, the Court must determine whether the Defendant while lawfully in custody gave voluntary consent. Based upon testimony, the Defendant was detained in a holding cell and while cuffed to a bench he was given the choice of either consenting to a search or for the police to obtain a search warrant. On first blush it would appear the Defendant's consent would not be voluntary.

The Court, however, must consider the totality of the circumstances presented. The Defendant was advised of his Miranda rights. The Defendant was read the consent to search

form and informed of his right to refuse consent to search. The Defendant specifically informed police that he wanted to get to Lycoming County Prison as quickly as possible and wanted to consent to the search. There was no testimony presented or evidence to lead this Court to conclude that the police used aggressive behavior or language towards the Defendant. In addition, there was no indication that Defendant's questioning by police was repetitive or prolonged. As this case is factually similar to Mack, where the defendant was in custodial detention and informed that if she did not consent a search warrant would be obtained, the Court finds that the Defendant's consent to search was voluntary.

**ORDER**

AND NOW, this \_\_\_\_\_ day of June, 2013, based upon the foregoing Opinion, the Court finds that the Montoursville Police Department had jurisdiction to enforce the laws of the Commonwealth in Muncy Township and that the Defendant voluntarily consented to have his vehicle searched. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)  
Edward J. Rymysza, Esq.  
Eileen Dgien, Dep. CA