

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-1235-2015**  
 v. :  
 :  
 **TERENCE DWIGHT FORSYTHE,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

**I. Background**

On December 29, 2015, the Defendant filed a Motion to Suppress Evidence. A hearing on the motion was held on February 9, 2016. On March 1, 2016, the Motion to Suppress Evidence was granted in part and denied in part.<sup>1</sup>

On March 11, 2016, the Commonwealth filed a Brief in Support of a Motion to Reconsider the Opinion and Order granting the suppression. The court heard argument on March 22, 2016, from the Commonwealth and Defendant’s counsel on the Motion to Reconsider. Upon review of the motion, the Commonwealth’s brief, and argument, the Trial Court incorporates the factual findings from its March 1, 2016, order in this opinion and order and DENIES the Commonwealth’s requested relief.

**A. Findings of Fact**

1. The trial court finds that Sergeant Kriner was working at the behest of Detective Al Diaz of the Lycoming County Narcotics Enforcement Unit (NEU).
2. A “Municipal Drug Task Force Agreement” exists between the Pennsylvania Attorney General and Lycoming County District Attorney, dated January 15, 2014.

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<sup>1</sup> Suppression Order. 3/1/2016, at 9. The controlled substances, the Defendant’s statements, the evidence from the Blazer, and the officers’ observations made on June 3, 2015 are suppressed. [The driver’s] proposed testimony can be submitted into evidence.

## **B. Arguments**

1. Whether Trial Court misinterpreted Subchapter D. Municipal Police Jurisdiction of Title 42 Pa.C.S.A. Judiciary and Judicial Procedure, Part VIII. Criminal Proceedings, Chapter 89. Commencement of Proceedings. The Municipal Police Jurisdiction Act is referred to herein as the “MPJA”.
2. Whether Trial Court erred by concluding that suppression was the appropriate remedy when an officer makes an arrest outside his primary jurisdiction.

## **II. Discussion**

The Commonwealth argues that Sergeant Kriner has authority to act under 42 Pa.C.S.A. § 8953(a)(3) “where the officer has been requested to aid or assist any local, State, or Federal law enforcement officer or park police officer or otherwise has probable cause to believe that the officer is in need of aid or assistance” and introduced the Municipal Drug Task Force Agreement between PA Attorney General and Lycoming County District Attorney at the hearing to reconsider the grant of the suppression. Upon consideration of this additional evidence, the Trial Court still finds that Sergeant Kriner did not have the authority to make the traffic stop that led to Defendant’s arrest. Furthermore, though there are cases where a violation of the MPJA did not lead to exclusion of the evidence, the Trial Court finds exclusion of the evidence to be the appropriate remedy in this case.

In prior instances where the authority to investigate and arrest was found under the MPJA, 42 Pa.C.S.A. § 8953(a)(3), a potential defendant was specifically named by the officer requesting aid. For example, in Commonwealth v. Eicher, 605 A2d. 337 (Pa. Super. 1992), the officer acting outside his primary jurisdiction was doing so at the behest of a police chief of a neighboring jurisdiction. A specific defendant was named, and in fact, the name of the defendant had come to the officer’s attention while performing a legal arrest in his primary

jurisdiction. He merely contacted the neighboring jurisdiction to report the information and the Chief of that neighboring jurisdiction requested additional personnel to assist in the investigations of defendant's alleged illicit activities (Eicher p. 345). In Commonwealth v. McHugh, 605 A2d 1265 (Pa. Super. 1991), the arresting officer called the police department with primary jurisdiction over the speeding vehicles, who had failed to stop at stop signs, and asked whether he should stop the vehicles. The officer responding from the primary jurisdiction answered affirmatively (McHugh p. 1267). In the present case, defendant was not specifically named by Detective Diaz in his request for assistance, nor was defendant's behavior (sitting as a passenger in a parked vehicle that was missing a license plate light) such that Sergeant Kriner felt it necessary to ask the police department with primary jurisdiction over the Weis parking lot whether it wanted him to detain the vehicle. Defendant was not creating a safety hazard to himself or others as the defendant in Commonwealth v. Chernosky, 874 A.2d 123 (2005) did when she "went to the left side of the road, across the double yellow line and also to the right shoulder, the right side of the road" and "did not drive in a single lane and drifted over to the left and right side of the road continually" (Chernosky p.125).

Additionally, Paragraph 5 of the Municipal Drug Force Task Agreement between the Attorney General and the District Attorney states

"Each municipality shall exercise their best efforts to have and maintain in effect a mutual aid agreement by which the employees of each municipality are authorized to carry out their duties in all other Municipalities within the Task Force region. Each municipality shall submit a copy of the agreement upon request to BNI [Bureau of Narcotic Investigation]. These agreements shall be executed pursuant to and in compliance with 53 Pa. C.S. § 2303 (formerly 53 P.S. § 483) and ratified by mutual ordinance pursuant to 53 Pa. C.S. § 2305 (formerly 53 P.S. § 485).<sup>2</sup>

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<sup>2</sup> 53 Pa.C.S.A. § 2303 Authorizes intergovernmental cooperation and states that "local governments or other entities so cooperating shall enter into any joint agreements as may be deemed appropriate for those purposes." § 2305 states that "A local government may enter into intergovernmental cooperation with or delegate any functions, powers or responsibility to another governmental unit or local government upon the passage of an

In Stein v. Com., Dept. of Transp., Bureau of Licensing, 857 A.2d 719, Cmwlt. 2004, the Commonwealth Court stated that “intergovernmental cooperation agreements are effected upon each municipality’s adoption of an ordinance. 53 Pa.C.S. § § 2305, 2315. Failure to do so renders an intergovernmental agreement void. (Stein p.724). Defense Counsel cited Stein for this proposition at the argument for reconsideration. Stein involved the case of a licensee who argued that a police offer lacked authority to stop his vehicle as he was outside his jurisdiction and lacked probable cause to stop him for a traffic violation. Stein is illustrative for the case at bar as the Commonwealth Court explained that the question of a police officer’s ability to act outside his jurisdiction is governed by the MPJA not the Local Government Code. But, because the Trial Court finds that the Sergeant Kriner did not have the authority to act under the MPJA, and because the Municipal Drug Task Force Agreement in place specifically requires that agreements between municipal police departments be adopted by ordinance, the fact that the MIPA is controlling over the Local Government Code is inapposite in this case.

The Commonwealth Court in Stein cited the rule of statutory construction, 1 Pa.C.S. § 1933, that states that whenever a general provision in a statute are conflict with a special provision in the same or another statute, the two shall be construed, if possible so that that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail. As the Local Government Code applies to “all local governments” and the MPJA only applies to the “duly employed municipal police officers” the MPJA is controlling. The Stein court found that the officer had authority to

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ordinance by its governing body. If mandated by initiative and referendum in the area affected, the local government shall adopt such an ordinance.”

act under § 8593 (a)(4) where the officer had obtained prior consent of the chief law enforcement officer to enter the other jurisdiction for the purpose of conducting official duties which arise from official matters within his primary jurisdiction (a written agreement, not adopted by ordinance, existed between that the Chief of Polices to patrol a shared street). No such consent from the Chief Law Enforcement officer exists in the case at bar, but as the MPJA § 8953(e) states, nothing in the Municipal Police Jurisdiction Act should be construed to “restrict the authority of any municipality to maintain current or to enter into new cooperative police service agreements with another municipality or municipality for purposes including but not limited to describing conditions for mutual aid, assigning liability and determining appropriate costs of these cooperative efforts.”

Lastly, the test for whether suppression of the evidence is the appropriate remedy for when police have acted without authority was enunciated in Commonwealth v. Mason, 507 Pa.396, 490 A.2d 421 (1985). The decision to suppress evidence depends upon “all of the circumstances of the case including the intrusiveness of the police conduct, the extent of deviation from the letter and spirit of the act, and the prejudice to the accused.” (Chernosky p. 130). The *Mason* test is applied on a case by case basis. Here, Sergeant Kriner engaged in an extraterritorial patrol, which is exactly what the MPJA seeks to restrict. See Commonwealth v. Henry, 943 A.2d 967, 973 (Pa. Super. 2008) (holding that suppression was unwarranted when an officer did not enter another jurisdiction to conduct an extraterritorial patrol or to embark on a fishing expedition in hopes of gathering more evidence to reach a determination of probable cause). Kriner was on an extraterritorial patrol and though this court will not go as far as to say Sergeant Kriner was on a fishing expedition in hopes of gathering more evidence to reach a determination of probable cause, he did not have probable cause to stop the vehicle. As such,

his actions were contrary to the letter and spirit of the MPJA and the evidence gathered from his actions do prejudice the accused, so suppression is the appropriate remedy in this case.

**ORDER**

**AND NOW**, this 31st day of March, 2016, based upon the foregoing Opinion, it is **ORDERED** and **DIRECTED** that the Commonwealth's Motion for Reconsideration of Court's Order Granting Suppression is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esq., Assistant District Attorney  
Pete Campana, Esq., Defendant's Counsel