

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

**IN THE INTEREST OF:**

**JSZ,**

**A Minor**

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**No. JV 195-2017**

**OPINION AND ORDER**

And now this **12<sup>th</sup>** day of **October, 2017**, after a hearing held on September 28, 2017, in regard to the Motion to Suppress filed by the Juvenile on September 19, 2017, at which time the Juvenile was present and represented by Donald F. Martino, Esquire. Jeffrey Yates, Esquire was present on behalf of the Commonwealth. Counsel for the Juvenile filed a brief in support of the Motion to Suppress at the time the Motion was filed. By Order dated September 20, 2017, the Commonwealth was directed to file a responsive brief by September 27, 2017. This Court notes that the Commonwealth's brief was timely filed on September 27, 2017; however, it was filed to an incorrect docket number.

On July 25, 2017, a Petition alleging Delinquency was filed charging the Juvenile with one count of Driving Under the Influence pursuant to 75 Pa.C.S. §3802 and one count of Purchase, Consumption, Possession or Transportation of Alcohol pursuant to 18 Pa.C.S. §6308. These allegations stem from an incident on June 6, 2017, at approximately 7:15 p.m., at which time Patrolman Tyler Bierly of the Tiadaghton Valley Regional Police Department was investigating a harassment case involving a group of juveniles who had driven past the alleged victim several times shouting obscenities and

giving her the finger. It was alleged that the Juvenile who is the subject of this proceeding was driving the vehicle, and another juvenile who was in the front passenger seat was the individual who was actually committing the alleged acts of harassment. There were no observations or allegations that the Juvenile operator of the vehicle was participating in any acts of harassment.

Shortly after speaking with the alleged victim and witnesses, Officer Bierly spotted a vehicle which matched the description provided by the victim. Officer Bierly performed a traffic stop on the vehicle on Allegheny Street in Jersey Shore. According to Officer Bierly's Affidavit of Probable Cause and his testimony, he approached the passenger side of the vehicle and made contact with the juvenile who is alleged to have been shouting obscenities and making obscene gestures. At this time, Officer Bierly testified that he smelled a strong odor of burnt marijuana coming from inside the car. According to the Incident Report, at this time the Officer made contact with the Juvenile operator of the vehicle and again detected an odor of burnt marijuana. Officer Bierly asked the Juvenile to step out of the vehicle and attempted to perform the Lack of Convergence test but was unable to complete it because the other juveniles in the vehicle were being disruptive and required attention. All four juveniles were eventually removed from the vehicle and a search of the vehicle yielded an almost full bottle of Fireball Cinnamon Whiskey under the front passenger seat.

The Juvenile was transported to Jersey Shore Hospital by Officer Bierly and was read the DL-26 Chemical Test warnings. According to the Officer's incident report, the Juvenile at that time did admit to smoking marijuana the previous day and consented to a blood draw, after which the Juvenile was taken back to police headquarters. The

Juvenile was read his Miranda Rights and, after refusing to speak to Officer Bierly without a lawyer present, was released to his father. The toxicology report from the lab indicated that the Juvenile had reportable amounts of Amphetamine (likely from his ADHD medication), 11-Hydroxy Delta-9 THC, an active metabolite of THC, Delta-9 Carboxy THC, an inactive metabolite of THC, and Delta-9 THC, the active ingredient in marijuana. As a result of the traffic stop, the Juvenile was charged with one count of Driving Under the Influence pursuant to 75 Pa.C.S. §3802 and one count of Purchase, Consumption, Possession or Transportation of Alcohol pursuant to 18 Pa.C.S. §6308.

“An officer may make an investigatory stop where he observes unusual conduct which leads him reasonably to conclude that criminal activity may be afoot. Such an investigatory stop of an automobile must be based on objective facts creating a reasonable suspicion that the motorist is presently involved in criminal activity.”

Commonwealth v. Valenzuela, 597 A.2d 93, 98 (Pa.Super. 1991); citing Terry v. Ohio, 392 U.S. 1 (1968). The Commonwealth asserts that Officer Bierly’s interaction with the Juvenile was an investigative detention when he stopped the motor vehicle to investigate whether a passenger in the vehicle operated by the Juvenile was involved in criminal activity, specifically, harassment. The Commonwealth further argues that the stop was permissible because the information regarding the alleged harasser was provided by a credible source and the Officer observed a vehicle shortly thereafter that matched the description provided by the source with the alleged perpetrator in the passenger seat. This, in the opinion of the Commonwealth, was sufficiently specific and reliable that the Officer had the reasonable suspicion necessary to initiate the traffic stop.

The Juvenile's Motion to Suppress avers that the police did not assert that they observed the Juvenile, who was the operator of the vehicle, commit any violation of the vehicle code nor did they articulate reasonable suspicion that the Juvenile operator was engaged in criminal activity. As a result, the Juvenile requests that the evidence obtained from the vehicle stop be suppressed.

75 Pa.C.S. §6308(b) allows an officer to conduct a vehicle stop if he has a reasonable suspicion to believe a violation of the Motor Vehicle Code is occurring or has occurred. "In order to establish reasonable suspicion, an officer must articulate specific facts *in addition to inferences based on those facts*, to support his belief that criminal activity was afoot." Commonwealth v. Holmes, 14 A.3d 89, 97 (Pa. 2011). In its brief, the Commonwealth relies on Commonwealth v. Lohr, 715 A.2d 459, 461 (Pa.Super. 1998), which held "[t]o have reasonable suspicion, police officers need not personally observe the illegal or suspicious conduct, but may rely upon the information of third parties, including "tips" from citizens" to support its assertion that the vehicle stop was constitutionally valid. However, in Lohr, and in the other cases cited by the Commonwealth in its brief<sup>1</sup>, the focus was on the conduct of the *operator* of the vehicles. In the instant case, Officer Bierly initiated a traffic stop of the Juvenile's vehicle not because of a report that the Juvenile was engaged in criminal activity and not because he observed the Juvenile *operator* violating any provision of the Motor Vehicle Code, but because he suspected a *passenger* in the Juvenile's vehicle was engaged in criminal activity. As counsel for the Juvenile indicated in his brief, "a traffic

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<sup>1</sup> Commonwealth v. Nagle, 678 A.2d 376 (Pa.Super. 1996); Commonwealth v. Barber, 889 A.2d 587 (Pa.Super. 2005); The Commonwealth also cites Commonwealth v. Wiley, 858 A.2d 1191 (Pa.Super. 2004); however, that case involves a violation of the Pennsylvania Uniform Firearms Act, and not a traffic stop for violation of the Motor Vehicle Code.

stop is not an appropriate vehicle within which to make inquiries about potential unlawful conduct unrelated to the stop and not supported by reasonable suspicion.”

Commonwealth v. Strickler, 757 A.2d 884, 897 fn. 4 (Pa. 1999); citing Terry v. Ohio, 392 U.S. at 19-20.

Absent specific allegations that the Juvenile himself was engaged in criminal activity or observations by Officer Bierly that he was committing a violation of the Motor Vehicle Code, the fact that the Juvenile was the operator of a vehicle carrying a passenger who is alleged to have committed a crime does not support the vehicle stop. In light of the foregoing, this Court finds that the Commonwealth has failed to meet its burden to prove, by preponderance of the evidence, that the evidence seized from the Juvenile’s person and vehicle was legally obtained. Therefore, the Commonwealth is prohibited from introducing all evidence obtained from the stop of the Juvenile’s vehicle.

### **ORDER**

**AND NOW**, this 12<sup>th</sup> day of **October, 2017**, following a hearing and argument, the Juvenile’s Motion to Suppress is **GRANTED**.

By The Court,

Joy Reynolds McCoy, Judge