

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 99-10,612
	:
vs.	: CRIMINAL
	:
MICHAEL S. LYONS,	: Petition for Habeas Corpus/
Defendant	: Motion to Suppress

ORDER

AND NOW, this day of November, 1999, the Court DENIES the defendant's Petition for Habeas Corpus. The Court finds that the evidence presented at the preliminary hearing and at the suppression hearing was sufficient to establish a prima facie case for each of the offenses charged.

The Court also DENIES the defendant's Motion to Suppress. An individual may be handcuffed for safety reasons and still not be considered under arrest. However, the officer's testimony did not establish a factual basis for his conclusion that the defendant in this case was handcuffed for his own safety, as well as that of the police. The officer testified on cross-examination that he did not believe the defendant was armed and dangerous; nor did he fear for his or his fellow officer's safety.

Nevertheless, defense counsel conceded the stop of the defendant's vehicle would be a valid Terry-type stop, given the police officer's reasonable suspicions of a domestic disturbance. As a result of the stop, and not the handcuffing, the police observed a moderate odor of alcohol emanating from the defendant and noticed that his eyes were extremely blood shot and glassy. These observations, which would have been made by the police even if the defendant had not been handcuffed, gave the police probable cause

to believe the defendant was driving a vehicle while under the influence of alcohol. It was not until after he was told he was under arrest for DUI and given Miranda warnings that the defendant was questioned about or made any statements regarding his consumption of alcohol.¹ Under these circumstances, the Court does not believe that suppression of the observations or statements is required. See Commonwealth v. Butler, 729 A.2d 1134, 1138-39 (Pa.Super. 1999)(finding the lower court did not err when it denied appellant's motion to suppress since the evidence at issue was not discovered as a result of exploitation of his illegal arrest); Commonwealth v. Martinez, 437 Pa.Super. 93, 649 A.2d 143, 147-48 (1994)(finding no error in the trial court's refusal to suppress appellant's statements to police following illegal arrest when appellant was given Miranda warnings, understood those warnings and set forth no claim that his statement was involuntary or that it was coerced due to the illegal arrest).

By The Court,

Kenneth D. Brown, J.

cc: William Miele, Esquire
Daniel Holmes, Esquire (ADA)
Work file

¹The Court notes that when the police handcuffed the defendant they informed him it was for safety purposes.