

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 99-10749
	:
	:
vs.	: CRIMINAL DIVISION
	:
BILLIE JO HOLDREN,	:
Defendant	: Motion to Suppress Evidence

OPINION AND ORDER

This matter came before the Court on the defendant's Motion to Suppress Evidence. The defendant is charged with Possession of Drug Paraphernalia, to wit, a five (5) inch pipe used to smoke marijuana. At the time scheduled for hearing on her Motion, the defendant stipulated to the facts contained in the Affidavit of Probable Cause submitted with the Complaint, which was filed on March 30, 1999. The defense further stipulated that the traffic stop of the vehicle was lawful. With these stipulations in mind, the Commonwealth did not call witnesses, but relied upon the Affidavit of Probable Cause as the record in this case.

The issue in this case is whether the arresting officer, Trooper Conard, violated the defendant's rights under the United States and Pennsylvania Constitutions when he requested that the defendant exit the vehicle in which she was a passenger. The relevant facts are as follows. On October 29, 1998 at 2:43 a.m., Trooper Conard observed a red Chevrolet Beretta bearing the license plate BMB5141 standing in the roadway at the intersection of Little League Boulevard and Campbell Street in the city of Williamsport.

The trooper effectuated a traffic stop of the vehicle ¹ and found it to be operated by Kenneth Caris, Jr. The defendant sat in the front passenger seat. Also, Herman Artis was seated in the right rear passenger seat.

During the course of the traffic stop, the officer requested the defendant exit the vehicle so he could talk with her about the vehicle being stopped on the roadway. Upon exiting the vehicle the trooper observed the defendant drop a blue jacket on the ground which she was holding in her hands. When the jacket dropped, the trooper heard a clang which he recognized as glass hitting an asphalt surface. The trooper observed the defendant moving furtively and, upon inspecting the ground near the defendant's feet, the trooper observed an approximate five (5) inch glass pipe with suspected marijuana residue.

The Court believes this case is controlled by the cases Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)("Mimms II") and Commonwealth v. Brown, 439 Pa. Super. 516, 654 A.2d 1096 (1995). In Mimms II, the United States Supreme Court upheld a police officer's request of a driver to exit a motor vehicle where the officer effectuated a valid traffic stop, despite the lack of an articulable basis to believe that criminal activity was afoot or that the driver was armed and dangerous. The Supreme Court, relying upon studies about the incidence of assaults and murders of police officers resulting from contacts with suspects in motor vehicles, found the safety of the police

¹In light of the stipulation that the traffic stop was lawful, no further evidence was developed on this point by the Commonwealth. Pursuant to the stipulation, the Court is considering this to be a lawful traffic stop.

officer on the street to be "legitimate and weighty." The Supreme Court balanced this important interest against the intrusion into a driver's personal liberty occasioned by an order to get out of a vehicle and described this later interest of the driver as "de minimus."

In Commonwealth v. Brown, *supra*, a panel of the Pennsylvania Superior Court held that an officer may order the occupants out of the car when making a lawful vehicle stop. The Superior Court panel felt that the reasoning underlying the Mimms II decision applied to the passengers of a stopped vehicle as well as the driver. The Brown case recognizes that a police officer confronted by several occupants of a motor vehicle may be more vulnerable to injury than where an officer is only confronting one occupant of a vehicle.

This Court agrees with the logic and analysis of the Brown decision. Certainly, a police officer stopping a multi-occupant vehicle on a city street at 2:43 a.m. has cause to be concerned for his safety. Asking the defendant to momentarily exit her seat in the front passenger side of the vehicle is a minimal intrusion at best. Common sense indicates a police request, such as the one here, is reasonable and appropriate. Thus, the Court finds no constitutional infirmity leading to the observation of the marijuana pipe and, accordingly, will deny the defendant's Motion to Suppress.²

²In support of her motion, the defendant cites the decision of the Pennsylvania Supreme Court in Commonwealth v. Sierra, 723 A.2d 644 (Pa. 1999). Sierra is a decision by an equally divided Supreme Court. Thus, it lacks precedential value. Commonwealth v. Covil, 474 Pa. 375, 380-81, 378 A.2d 841, 844 (1977) (opinion in support of affirmance has no precedential value where it adopted by only three of six justices, and could be cited only for its persuasive value). Moreover, the facts of the Sierra case are distinguishable from this case since the police in Sierra followed up an order to exit the vehicle with a pat-down of the defendant.

ORDER

AND NOW, this ____ day of September, 1999, the Court DENIES the defendant's Motion to Suppress Evidence.

By The Court,

Kenneth D. Brown, J.

cc: District Attorney
Jay Stillman, Esquire (APD)
Work File