

FORREST B. SEBRING

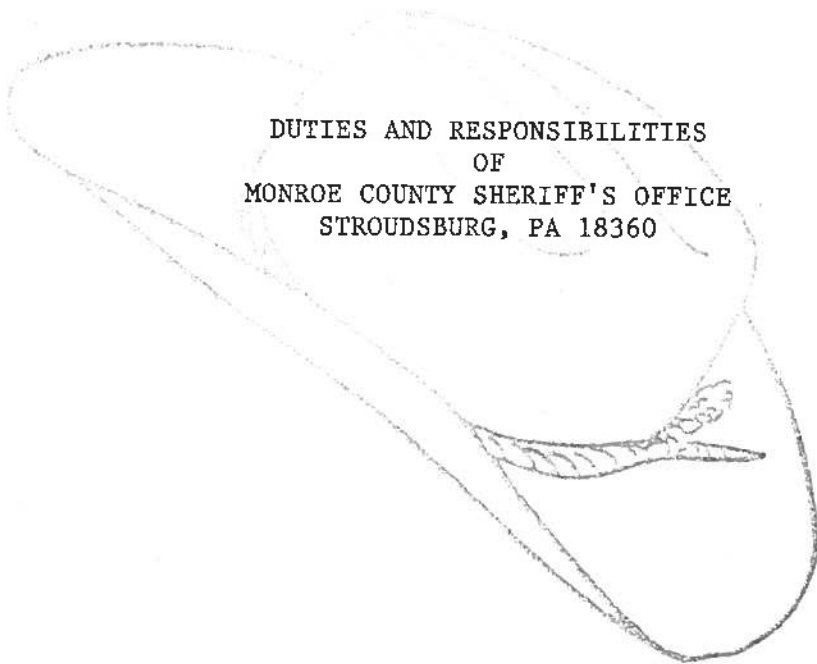
**Sheriff**



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DUTIES AND RESPONSIBILITIES  
OF  
MONROE COUNTY SHERIFF'S OFFICE  
STROUDSBURG, PA 18360



## THE SHERIFF AS PEACE OFFICER

### Criminal Procedure

As a peace officer, the Sheriff is responsible for maintaining order throughout the county and for preventing and quelling riots and uprisings. These duties were once of major importance. Today he shares this responsibility with state and local police officers. He makes arrests, both with and without warrant, may execute search warrants, may seize illegal property or property used in violation of the law, and may remove certain nuisances on order of the court. The Sheriff has certain responsibilities in extradition procedure, he issues firearms licenses, and has special law enforcement duties under certain general codes of law, such as the Dog Law, the Fish Law, and the Military Code.

#### 1. DUTY TO KEEP THE PEACE

1. General powers as peace officer. From earliest days, the Sheriff has been a peace officer. It is his responsibility to keep the peace, to apprehend those who fail to keep the peace, and to protect law-abiding citizens. Originally the Sheriff was the major and sometimes the sole law enforcement officer in the county. From time to time, however, other offices have been established with certain law enforcement duties. These include policemen in the cities, boroughs and townships and the State Police who also act within the county where the Sheriff has jurisdiction. These officers, under ordinary circumstances, relieve the Sheriff of most if not all of the responsibility for keeping the peace and maintaining order. The district attorney of the county, with the detectives who work under him, as well as the local and State Police, undertake a great deal of criminal investigation. However, the Sheriff is still the chief law enforcement officer of the county and has full powers as criminal investigating official. The Sheriff still possesses a number of general peace powers and often has need to exercise them. Some of those powers are under the old Common Law, and it would be difficult to find precise statutory authority for the Sheriff to use them. This includes the general power to keep the peace and to prevent riot and insurrection.

## COURTHOUSE SECURITY

In Monroe County, the Sheriff's Office is responsible for the security of the courthouse and the safety of the general public and county employees. We have many volatile situations occurring daily, and deputies must be constantly alert for persons intending wrong doing. We have witnessed a tremendous increase in the threats and attempts to demonstrate vengeance towards the courts, mostly in the area of Family Courts through acts of domestic violence. Deputies walk a fine line in performing their duties between preventing a tragedy and offending members of the community by suspicious scrutiny.

Deputies are normally all that stands between the safety of other employees and the general public utilizing the courthouse and a person who may, for any reason, want to cause injury or damage to government personnel or structure. As we have all read and seen on the news, these problems appear to be a growing phenomenon nationwide for a disgruntled person to become instantly violent by assaulting or shooting government officials and/or their staff.

## TRANSPORTING PRISONERS

This is the most time consuming duty. Deputies are assigned this assignment and are responsible for assuring the prisoners prompt arrival at any number of different types of proceedings, such as: court hearings, criminal and civil arrests, extraditions from state to state, funerals, doctors appointments, mental hospitals and to and from other county and state correctional facilities. Deputies must constantly remain alert for possible escape attempts; their own safety; and the inmates safety from himself or others, such as a defendant who is charged with child molestation, and the victims family may want to retaliate.

Deputies may also be transporting a wide variety of prisoners without prior knowledge of their state of mind. Prisoners vary from young to old with any number of health problems such as heart problems, Hepatitis, or even HIV/AIDS. With current disclosure regulations, deputies may be completely unaware of an AIDS or Hepatitis patient who at anytime could require first aid or even knowingly attempt to transmit the disease to a deputy or deputies.

Deputies must make potentially critical decisions on their own; such as during an extended transport should the deputies stop to allow a prisoner to use a restroom. Does the prisoner really need to use the facilities or is he or she feigning a sickness in order to attempt an escape?

It is a very difficult duty to ensure an inmate's family or friends don't have any physical contact prior to transports, during court sessions and prior to their return to a facility, because of the possible passing of contraband, although the family or friend may be well-intentioned. Deputies are required to transport juveniles and mentally ill prisoners and are routinely subjected to transports involving prisoners who have vomitted or even deficated in close confines of their vehicles.

Deputies have to maintain constant physical control of all prisoners in their custody whether they are hand cuffed or not via the discretion of the court. Deputies must make critical decisions regarding how much force to use to maintain control, given the constant thought of liability concerns. It is a given fact

that a deputy is liable if any harm comes to, or is caused by, a prisoner in the deputy's control. This office routinely brings fugitives from state to state, and deputies must be able to deal with strange places and handle road-way detours, route changes and dangerous traffic, while being security conscious. They must be capable of treating prisoners humanely, regardless of what type of crime they have committed. Routinely, deputies must make long trips with prisoners involving overnight stays away from their families and friends.

Prisoners have to be transported to funerals and the deputies have the responsibility of being torn between security concerns and the expressed feelings of family members present. When deputies show up at a funeral with a handcuffed and leg shackled "family member", quite often the family's displeasure is usually directed at the deputies.

#### ASSISTING OTHER AGENCIES

Deputies may be called upon for assistance at any moment of the day or night by another agency. It could be a police department, (state/local) needing assistance with a disorderly defendant, assisting county Fire Departments, Ambulance Corps, or Search and Rescue or to assist Children and Youth with placement of a child. Deputies may have to make a last minute change in their daily plans to assist any agency in need. Deputies are often called by the Probation Office at late night hours to take juvenile offenders to detention centers throughout the state, since Monroe County does not have a center. These trips can range from (2) hours to (7) hours on the road depending the availability of space in the surrounding detention centers. Also, deputies are subject to "call-out" for assistance on any emergency deemed necessary by the Sheriff, Chief Deputy, and Office of Emergency Service Coordinator. (OES)

Deputies may often be the first person to arrive at an accident or crime scene, because the job requires them to cover many square miles while on duty. Being the first on an accident scene or crime scene, a deputy must be responsible for making the right decisions until the proper police agency, fire department, or rescue units arrive. This could include administering first aid, securing a scene, or chasing down a fleeing suspect, etc. A deputy could encounter a wide variety of these situations which emphasize the need for staff training and development.

\* (Average 22 assists per month)

#### MAINTAINING ORDER IN STRIKES, RIOTS, AND UNLAWFUL DEMONSTRATIONS

Sheriff's Offices in Pennsylvania have the responsibility to maintain order at labor strikes, riots, and unlawful demonstrations. This is not encountered often in Monroe County, which at times can be a problem in itself because of the lack of true experience gained in handling these situations routinely. Deputies, though trained at the academy, could easily find themselves in a position of being a peacemaker between emotionally charged working class people, and making decisions on individual confrontations at or around the scene that could easily lead to major disturbances.

Once an injunction has been filed with the courts and a Judge has signed a court order directing the Sheriff to act accordingly, the Sheriff may be responsible to provide (24) twenty-four hour coverage of the scene for a time period determined by the court. Many times, the coverage of these types of situations result in double shifts of (16) hours on and (8) hours off to cover not only this type of situation, but also the routine duties and responsibilities of this office.

\* (Average 2 per year)

#### WARRANT SERVICE

Sheriff's Deputies must serve all warrants as ordered by the Courts by obtaining physical custody of the defendant who has already willfully failed to appear and is rarely cooperative. A warrant is a court order that commands the Sheriff or his deputies to arrest the defendant and bring him/her before the court forthwith.

In executing a warrant, deputies must develop good communication skills to locate a defendant who obviously does not want to be apprehended. Usually, the only valid information this office is provided with is the name of the defendant and their offense for which they were charged with. Deputies must have and master investigative skills in order to track down the defendant through intervenes with family members, former neighbors, former employers, and suspected associates of the defendant, who are normally very uncooperative. Deputies must develop insight and persuasiveness when dealing with this type of individual and his mannerism must be appropriate for each situation.

Deputies must also know the limitations of the law, given their eagerness to apprehend the defendant, knowing that an illegal or improper arrest could result in the defendant's later release and possibly a civil lawsuit towards the County and this office. Deputies are normally dealing with the general public on warrant details and must walk a fine line between being a courteous public servant and a successful warrant server.

\* (Currently have 104 outstanding warrants; Average 11 new warrants a month)

#### SERVING CUSTODY ORDERS

A custody order involves taking physical custody of minor children from one family member and placing them with another family member or Children & Youth Services. Custody orders are volatile and emotional situations that can easily turn into a violent confrontation. In this type of situation, one party has already refused to turn over custody for one reason or another, therefore a court order is issued by a Judge and must be served immediately. Deputies executing a custody order are seen as unwanted intruders into the personal life of the person receiving the order. Commonly, this person will attempt to use the minor children against the deputies. Deputies must be prepared to deal with any situation possible, but still must be understanding and professional to all parties, especially the children.

#### SERVING OF PROTECTION FROM ABUSE ORDERS

Deputies, upon receiving a Protection From Abuse (PFA) Order, must find the defendant (who may be avoiding service) as soon as possible in order to preserve

the safety and well being of the affiant. The conditions of the order usually consists of the defendant being evicted from his/her home, their firearms being seized, and/or custody of their children being taken away. In order for a PFA to be issued, one party must be in fear because of acts of violence already incurred or threatened. The Judge issuing the order may direct that the Sheriff's Office confiscate all weapons owned by the defendant. These defendants are rarely cooperative and usually the misuse of drugs and/or alcohol are commonly a factor in this type of Domestic Violence. A defendant who has already proven to be physically abusive to another knows it is not good news when deputies arrive at his residence, place of employment or a bar or friends house they may frequent.

We, in this county, have seen a major rash of physical harm and abuse from domestic incidents. Deputies are routinely involved in physical altercations with highly agitated or uncontrollable defendants. Every deputy is very aware that domestic incidents result in the highest number of law enforcement deaths per year, but must show no fear or indecisiveness in order to accomplish this duty.

These orders must be served as soon as possible to avoid further escalation of violence.

#### DEPUTY SHERIFF'S TRAINING ACADEMY

The State of Pennsylvania mandates that every newly appointed Deputy Sheriff attend and successfully complete the standards set by the Pennsylvania Commission on Crime and Delinquency. Currently the academy is held at the Dickison School of Law in Carlisle, Pennsylvania and requires the deputy to be housed in the college dorm type atmosphere for a (4) four week time period. Training is scheduled throughout the day and into the evening hours daily. The academy covers many subjects required in the field of law enforcement, but because of the limited (4) four week duration, they cannot cover all the possible scenarios a deputy may encounter on the job.

During the academy, a deputy is subjected to a curriculum in Criminal Laws of Pennsylvania, Rules of Civil Procedure, Prisoner Transport, Court Security, First Aid, Self Defense, Use of Force-Lethal & Non-Lethal, the use and retention of Firearms and many other topics.

Once a deputy has successfully completed his/her basic training, they are once again mandated to successfully complete updated training every two years through the Pennsylvania Commission on Crime and Delinquency, Allentown Police Academy and Temple University. Failure to successfully complete such training would result in termination of employment.

#### ON-CALL STATUS

All Deputies are responsible for being "on-call" for any type of emergency upon the call out of the Sheriff or the Chief Deputy.

A deputy is responsible to be "on-call" on a weekly rotating schedule to routinely transport juvenile offenders throughout the state. The on-call deputy is also responsible for all late night/early morning service of process that is not possible during the day and evening shifts as designed by this office. Deputies must routinely report to the office during non-business hours, to answer other States and jurisdictions who may have one of our "wanted" defendants in custody, as to whether we are willing to extradite or to advise us that we

need to pick up the defendant forthwith from jurisdictions within Pennsylvania. The "on-call" deputy also must respond, with another deputy, to any leads, sightings or arrest of a "wanted" defendant regardless of time of day or the deputies previous personal plans. When a possible location of a subject is learned, deputies must exercise extreme caution being the deputies are normally unfamiliar with the surroundings, while the defendant is very familiar with them.

Deputies are responsible for carrying a personal pager so they can be contacted when needed for any type of assignment, at any time of the day or night.

\* (A deputy is subject to "on-call" status once every (7) weeks, the Chief Deputy is subject to "on-call" (24) hrs. a day unless relieved by the Sheriff or designee)

### WRITS OF EXECUTION

#### Personal Property

This type of civil process arrives at the Sheriff's Office in the form of a court order. These court orders originate at both the District Magistrate and the Common Pleas Court levels and direct this office to levy upon and sell any or all personal property belonging to the defendant. The majority of these executions stem from unpaid debts due and owed to the plaintiff. This is yet another duty that may be emotionally charged, as the defendant has already refused to pay the debt. The debt may have resulted in any number of situations, including divorce judgments, landlord/tenant rent disputes, or money owed to a private person or business.

Deputies must levy (list & secure), and sometimes seize, the defendant's property to satisfy the amount of the debt. As one can imagine, levying on an individual's vehicle(s), firearms, televisions, children's furniture, etc., and selling them at a public sale commonly results in dangerous situations. Deputies must have the ability to fulfill their duties while maintaining safety and setting aside their personal feelings. When levying on businesses, deputies are responsible to take into their possession all monies on the premises. This at times can range from a couple of dollars to thousands of dollars for which the deputies become personally responsible for until turned over to the Chief Deputy or Deputy/Office Manager.

\* (Average service per month 45--requires minimum of 2 deputies)

### CIVIL PROCESS

The Sheriff's Office is relied on every day by (4) four Common Pleas Judges, (8) eight District Magistrates (10 as of 1994) and countless attorneys throughout the United States for the service of civil documents. The service of these documents involves the transferring of such; which would be a court order from the Judges and Magistrates, summonses or subpoenas, or a civil complaint in which a party may be being sued due to their actions. These types of documents are just a few of the types of civil process which are involved with the Civil Justice System. These documents are to be personally delivered to the designated party. This sounds simple, but it's not. Deputies are trained and soon develop certain skills in which help complete this difficult task. Deputies must have and master investigative skills, as Monroe County, is one of the faster growing counties in the state, and it can be extremely difficult to locate a person who the deputies are attempting to serve.

Deputies must have a good knowledge and be familiar with the many county roads and the numerous housing developments in order to make an efficient and timely service. Deputies must be knowledgeable of the Rules of Civil Procedure for the service of each different process, if the service was not proper the courts would consider this ineffective service which could be very costly later in a lawsuit. Deputies must have good social skills as they are constantly dealing with the general public. Keep in mind that the deputies are almost always delivering bad news and they must know how to handle an unruly person. An example of such would be serving an eviction notice and physically removing an entire family from the premises. Deputies must know how to explain, comfort, give direction, and listen to the respondent, in order to make sure the service is executed professionally, effectively, and safely. Deputies must be sure that all their decisions are made correctly, responsibly and professionally, and in accordance to the law, keeping in mind that they are constantly in the public's eye both on-duty and off-duty.

\* (Average services per month 223)

#### MISCELLANEOUS

Deputies are also required to perform computer and typing skills, maintain reports and records as well as maintaining mandated and desired training. They are also required to perform public service duties in hopes of educating the general public on anti-drug education, public safety, as well as promoting the "McGruff Program" which includes finger printing for Child Identification, public awareness of law enforcement and crime prevention.

Deputies work countless hours of public service work in helping children and senior citizens in grasping the knowledge needed to be "street smart". Many deputies volunteer their time to schools, social groups, and professional organizations.



have made clear that "the exclusionary rule will not be extended to areas where its application would not tend to achieve its primary purpose of deterring unlawful police conduct." *Id.* 507 Pa. at 552, 491 A.2d at 835 (emphasis in original). "It is only where the violation also implicates fundamental, constitutional concerns, is conducted in bad faith or has substantially prejudiced the defendant that exclusion may be an appropriate remedy." *Mason* at 407, 490 A.2d at 426 (emphasis in original). Since it has been concluded that a deputy sheriff is not a police officer regardless of his having erroneously attempted to act as one, none of the conditions specified in *Mason* is present, and no other factor exists which compels suppression of the evidence as a remedy.<sup>1</sup>

Finally, the dissent also found that a deputy sheriff is not empowered to arrest for summary offenses. This court has held that the right of a private citizen to arrest does not include summary violations. *See, Commonwealth v. Stahl*, 296 Pa.Super. 507, 442 A.2d 1166 (1982). This parallel further extends the notion that evidence obtained as the fruits of the arrest herein not be suppressed.

Accordingly, I would find that the arrest was illegal, but would decline to suppress its fruits.

CIRILLO, President Judge, dissenting:

Because I am firmly convinced that a sheriff and his or her deputies are vested by the Pennsylvania constitution with all

1. The majority states that suppression is the appropriate remedy because otherwise deputy sheriffs would merely be given by indirection carte blanche to "hold[ ] motorists at gunpoint or otherwise" until a "valid" arrest could be effected. I would suggest that criminal charges of kidnapping, false imprisonment, aggravated assault, and possible criminal conspiracy, or tort actions for false arrest, false imprisonment, assault and battery, etc., which would inevitably follow upon such a scenario would tend to discourage its repetition. The main point of the exclusionary rule is to punish the state, which is otherwise immune from liability for an actionable detention. However, where a person without "a privilege defined by the law of the state" *Commonwealth v. Corley*, 507 Pa. at 548, 491 A.2d at 832, engages in behavior such as that described, he is not shielded from the civil or

the powers and duties of a peace officer, including the authority to arrest for a summary traffic violation committed in his or her presence, I would reverse the trial court's order suppressing the evidence obtained from Leet as a result of the roadside stop conducted by Deputy Sheriff Gibbons. This conclusion is based upon a careful study of the history of the powers and duties of the sheriff and his traditional role in the enforcement of our criminal laws.<sup>1</sup>

The word sheriff evolved from the Saxon word "scyre" meaning shire or county, and the word "reve" meaning guardian or keeper. *The Compact Edition of the Oxford English Dictionary*, Volume II, 2783-2784 (1971); A.E. Gwynne, *Practical Treatise on the Law of Sheriff and Coroner, with Forms and References* at 2 (1849) (hereinafter Gwynne, *Sheriff and Coroner*). Instinctively, when we think of a sheriff, we are reminded of Sherwood Forest where the Sheriff of Nottingham was the chief law enforcement officer who possessed far reaching powers. *See* H. Pyle, *The Merry Adventures of Robin Hood* (1883) (King Henry of England stated to the Sheriff of Nottingham: "[b]ut look well to it, master Sheriff, for I will have my laws obeyed by all men within my kingdom, and if thou art not able to enforce them, thou art no sheriff for me"). The modern sheriff's powers and duties, however, are not as clearly defined.

In Pennsylvania, the office of sheriff is constitutionally created: "[c]ounty officers

criminal repercussions of his acts. *Id.* The majority definitively deprives deputy sheriffs of the privilege to arrest for summaries. They may not contravene that decision with impunity.

1. Although it is unclear whether Deputy Sheriff Gibbons actually arrested Leet, intuitively, the power to stop without a warrant is a logical corollary to the power to arrest without a warrant. If an officer has the authority to make a warrantless arrest, it is unreasonable to require that he get a warrant to make the stop that precedes the arrest. Consequently, this analysis focuses on the sheriff's authority to arrest, and the factual issue of whether Deputy Sheriff Gibbons made an actual arrest, as opposed to an investigatory stop, is immaterial to this analysis.

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shall consist of ... sheriffs...." Pa. Const. art. IX, § 4. While our constitution created the sheriff's office, it did not define his powers.<sup>2</sup> There are, however, two statutory sections which address the modern sheriff's powers and duties. The majority, like the suppression court, concludes that

2. The Commonwealth Court has acknowledged that neither our constitution nor our statutes enumerate the sheriff's powers and duties.

Quite candidly ... we are somewhat dismayed by our research disclosure that the Legislature has never chosen to enact legislation delineating the general powers, duties, and responsibilities of the sheriff.

*Venneri v. County of Allegheny*, 12 Pa.Comm. 517, 529, 316 A.2d 120, 126 (1974).

Most jurisdictions have statutorily defined the duties of a sheriff. Moreover, the majority of those statutes have expressly granted sheriffs the authority to arrest without a warrant. See, e.g., Arizona, (Ariz.Rev.Stat. Ann. §§ 1-215(23), 11-441(A)(2), and 13-3883 (1989)); California, (Cal.Penal Code §§ 830.1 and 836 (West 1985 & Supp.1990)); Colorado, (Colo.Rev.Stat. Ann. §§ 16-3-102 and 18-1-901 (West 1990)); Connecticut, (Conn.Gen.Stat. Ann. §§ 54-1f and 53a-3(9) (1985 & Supp.1990)); Hawaii, (Haw.Rev. Stat. § 601-33 (1985 & Supp.1989)); Illinois, (Ill.Stat. Ann. ch. 125, para. 17 (Smith-Hurd 1967 & Supp.1989)); Indiana, (Ind.Code Ann. § 36-2-13-5 (Burns 1981 & Supp.1989)); Iowa, (Iowa Code §§ 801.4(7)(a) and 804.7 (1979 & Supp.1990)); Kentucky, (Ky.Rev.Stat. §§ 446-010(24) and 431.005 (1985 & Supp.1988)); Maine, (Me.Rev.Stat. Ann. tit. 15 § 704 (1980)); Maryland, (Md. Ann. Code art. 27, §§ 594B(a) and 594B(g)(9) (1988 & Supp.1989)); Missouri, (Mo. Ann. Stat. § 544.216 (Vernon 1987)); Nevada, (Nev.Rev.Stat. §§ 169.125(2) and 171.124 (1987)); New Hampshire (N.H.Rev.Stat. Ann. §§ 594:10 and 594:1(III) (1986 & Supp.1989)); New Jersey, (N.J.Rev.Stat. § 2A:157-2.1 (1985)); New York, (N.Y.Crim.Proc. Law §§ 1.20(34)(b), 140.10, 140.25 and 2.10(2) (McKinney 1981 & Supp.1990)); North Dakota, (N.D.Cent. Code §§ 29-05-10 and 29-06-02 (1974 & Supp.1989)); Ohio, (Ohio Rev. Code Ann. § 2935.03(A) (1975 & Supp.1989)); Oklahoma, (Okla.Stat. Ann. tit. 22, § 196 (1969 & Supp.1990), Okla.Stat. Ann. tit. 21, § 99 (1983)); South Carolina (S.C.Code Ann. § 23-13-60 (Law.Co-op.1977)); South Dakota, (S.D.Codified Laws Ann. § 7-12-1 (1981), S.D. Codified Laws Ann. §§ 23A-3-2 and 23A-45-9(9) (1988)); Texas, (Tex.Code Crim.Proc. Ann. arts. 2.12 and 2.13 (Vernon 1977 & Supp.1990)); Utah, (Utah Code Ann. §§ 77-1a-1(1)(a)(i) and 77-7-2 (1990), Utah Code Ann. § 17-22-2(1)(b) (1987 & Supp.1989)); Vermont, (Vt.R.Crim.P. 3(a) and 54(c)(6)); Virginia, (Va.Code Ann. § 19.2-81 (1983 & Supp.1989)); West Virginia (W.Va.Code § 62-10-9 (1989)); Wisconsin, (Wis.Stat. Ann. §§ 967.02(5) and 968.07(1)(d) (West 1985), Wis.Stat. Ann. § 59.24 (West 1988));

Wyoming, (Wyo.Stat. Ann. §§ 7-2-101(a)(iv)(A) and 7-2-103 (1987)).

Several other jurisdictions, while not granting express authority to make warrantless arrests, have interpreted their arrest statutes as allowing sheriffs to make such arrests. See, e.g., Florida, (Fl.Stat. Ann. §§ 30.07 and 30.15 (West 1988), Fl.Stat. Ann. § 901.15 (West 1985 & Supp.1990), *Fields v. State*, 160 Fla. 877, 878, 36 So.2d 919, 920 (1948) (court justified a deputy sheriff's warrantless arrest by stating that "[t]he law of [Florida] by statute makes the sheriff and the deputy sheriff officers to conserve the peace and authorizes them to make arrests"), 72 Fl. Att'y Gen. Op. 381 (1972)); Louisiana, (La.Code Crim. Proc. Ann. art. 213 (West 1967 & Supp.1990), *Castriotta v. Cronvich*, 277 So.2d 744, 746 (La. Ct.App.1973) (warrantless arrest for a misdemeanor committed in the presence of the deputy sheriff was "authorized by virtue of Article 213 of the Code of Criminal Procedure"); Michigan, (Mich.Comp.Laws § 764.15 (1982 & Supp.1990), *People v. Robinson*, 344 Mich. 353, 364, 74 N.W.2d 41, 42 (1955) ("[a]uthority of a deputy sheriff of the county to arrest or stop defendant for a misdemeanor committed in the officer's presence cannot be questioned"); Minnesota, (Minn.Stat. Ann. § 387.03 (West 1968), Minn.Stat. Ann. §§ 626.84 and 629.34 (West 1983 & Supp.1990), *Bielejeski v. Commissioner of Public Safety*, 351 N.W.2d 664, 666 (Minn.Ct.App.1984) (deputy sheriff, who was also a policeman, effectuated a warrantless arrest outside of the police's jurisdiction but the court held that "the officer had the power to arrest as a Crow Wing County Sheriff"); North Carolina, (N.C.Gen.Stat. § 15A-401(b) (1988) *State v. Gray*, 55 N.C.App. 568, 286 S.E.2d 357 (1982) (warrantless arrest by a deputy sheriff was valid under N.C.Gen.Stat. § 15A-401(b)).

Many other state statutes authorize the sheriff to arrest criminals as part of his duties without indicating whether the sheriff may make warrantless arrests for all crimes committed in the sheriff's presence. See, e.g., Alabama, (Ala.Code § 36-22-3(4) (1977)); Arkansas, (Ark.Stat. Ann. § 14-15-503(b) (1987)); Idaho, (Idaho Code § 31-2202(2) (1983 & Supp.1989)); Massachusetts (Mass.Gen.L. ch. 37 § 11 (1985) and ch. 276 § 28 (1972 & Supp.1990)); Mississippi, (Miss.Code Ann. § 99-3-1 (1973 & Supp.1989)); Montana, (Mont.Code Ann. § 7-32-2121(2) (1989)); Nebraska (Neb.Rev.Stat. § 23-1710 (1987)); Oregon, (Or.Rev.Stat. § 206.010(1) (1989)); Tennessee, (Tenn.Code Ann. § 8-8-213 (1988)); Washington, (Wash.Rev.Code Ann. § 36.28.010 (West 1964 & Supp.1990)).

These statutes delimit the sheriff's authority. This interpretation has the effect of stripping the constitutional office of the sheriff of any powers not enumerated by the legislature, removing the sheriff from his traditional position as the primary law enforcement officer of the county, and re-

gating him to a secondary role with duties consisting primarily of serving process and enforcing specific directives of our courts. I cannot agree that the legislature intended, or could constitutionally attempt to achieve, such a result.

Sheriffs and deputy sheriffs, in their capacity as peace officers, "shall perform all those duties authorized or imposed on them by statute." 16 P.S. § 1216. Section 1216, which took effect in 1976, was an unnamed act intended to clarify the powers of sheriffs and deputy sheriffs. See Act of June 29, 1976, P.L. 475, No. 121 § 1. The act clearly contemplates legislative action to define those duties further. It does not, however, abolish the common-law duties of the sheriff. That it was not intended to do so was made clear later that same year, when the legislature enacted the Judiciary Act of 1976 amending Title 42 of the Pennsylvania Consolidated Statutes. In section 27(a) of the Judiciary Act, the legislature carefully articulated how the Title 42 amendments would affect certain officers:

[N]either this act nor any provision of Title 42 (relating to judiciary and judicial procedure) as added by this act shall impair or limit the existing rights, powers, functions or immunities of any district attorney, sheriff, register of wills, prothonotary of any county except the City and County of Philadelphia, clerk of the courts, Clerk of Quarter Sessions of the City and County of Philadelphia, clerk of the orphans' court division or coroner.

Act of July 9, 1976, P.L. 586, No. 142 § 27(a) (emphasis added). Section 27(a) unmistakably emphasizes the legislature's intent that sheriffs retain the powers they already possessed.

3. There are two conflicting methods of interpreting our legislature's codification of one common law duty. First, utilizing the general rule of statutory construction that *expressio unius est exclusio alterius*, "that which is not included in the law shall be understood as excluded from the law," *Commonwealth v. Defusco*, 378 Pa.Super. 442, 446, 549 A.2d 140, 141 (1988), it can be argued that JARA 10(27) prescribes all of the modern sheriff's powers. However, JARA 10(27) does not contain any language which supports reading it as an exclusive list. More-

In 1978, the powers and duties of sheriffs were further delineated in the Judiciary Act Repealer Act ("JARA"): "[t]he sheriff, either personally or by deputy, shall serve process and execute orders directed to him pursuant to law." Act of April 28, 1978, P.L. 202, No. 53 § 10(27) (codified at 42 Pa.C.S. § 2921) (hereinafter JARA 10(27)). JARA also repealed section 27 of the Judiciary Act of 1976 "insofar as inconsistent with the Judiciary Act Repealer Act." Act of April 28, 1978, P.L. 202, No. 53 § 2(a) (codified at 42 Pa.C.S. § 20002(a) (1474)) (hereinafter JARA 2(a)). Finding this general repeal insufficient to accomplish the goal sought, the legislature, in the Judiciary Act Repealer Act Continuation Act, subsequently repealed the specific portion of section 27(a) of the Judiciary Act which dealt with the powers of the Prothonotary, Clerk of Courts, Clerk of the Quarter Sessions and the Clerk of the Orphans' Court. See Act of December 20, 1982, P.L. 1409, No. 326 § 316 (codified at 42 P.S. § 20076) (hereinafter JARACA 316). This repeal, however, did not affect the sheriff's office.

From this history it is apparent that the portion of section 27(a) which addresses sheriffs' powers and duties has not been repealed. Nothing in section 27(a) of the Judiciary Act contradicts any provision of JARA and therefore, JARA 2(a) does not affect section 27(a). JARA 10(27) is not inconsistent with section 27(a), but simply enumerates the sheriff's duty to serve process and execute court orders. JARA 10(27) does not purport to be an all-inclusive list of a sheriff's powers and duties and should not be interpreted as one. It is not inconsistent to statutorily define one common law duty of a sheriff while leaving others basically intact.<sup>3</sup> Codifying one

over, such a reading would render section 27(a) meaningless. Ascribing no meaning to section 27(a) would contravene the *express* rule of statutory construction that statutes relating to the same "things," must, if possible, be read together, as one consistent statute. 1 Pa.C.S. § 1932. It is possible to read JARA 10(27) and section 27(a) together and assign each one meaning. When this method of construction is applied, it becomes apparent that the sheriff's statutorily defined powers are supplemented by his traditional common law powers and duties. I would

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duty does not substantially diminish the sheriff's other common law duties. See generally *Soper v. Montgomery County*, 294 Md. 331, 337, 449 A.2d 1158, 1161 (1982). Moreover, the legislature, through JARACA 316, specifically repealed a particular portion of section 27(a) of the Judiciary Act. JARACA 316 is an unambiguous legislative statement which must take precedence over JARA 2(a), an earlier enacted general statutory section. Compare JARACA 316 and JARA 2(a); cf. 1 Pa.C.S. § 1933 (if a general provision of a statute and a special provision of the same or a different statute conflict, "the special provisions shall prevail and shall be construed as an exception to the general provision ..."). Accordingly, the portion of section 27(a) which concerns sheriffs is still in effect.<sup>4</sup>

The conclusion that section 27(a) is still viable and that JARA 10(27) does not enumerate all of the sheriff's powers is also supported by the principle that neither JARA nor JARACA could constitutionally divest a sheriff of his common law duties. Where the sheriff is a constitutional officer, he is vested with the powers and duties possessed by sheriffs at common law. W. Anderson, *A Treatise on the Law of Sheriffs, Coroners and Constables with Forms*, Volume 1, § 43 at 37 (1941) (hereinafter Anderson, *Sheriffs*); W. Murfree, Sr., *A Treatise on the Law of Sheriffs and other Ministerial Officers*, § 41 at 22 (1884) (hereinafter Murfree, *Sheriffs*); 70 Am.Jur.2d *Sheriffs, Police, and Constables* § 56 at 270 (1987) (hereinafter *Sheriffs and Police*). "While the legislature may impose additional duties upon the sheriff, where he is recognized as a constitutional officer, it cannot restrict or reduce his powers as allowed by the Constitution,

adopt this latter interpretation because it is derived from principles enunciated in our Statutory Construction Act, 1 Pa.C.S. § 1501 *et seq.*, and, as elucidated on page 1043, *infra*, the legislature cannot limit the sheriff's common law powers by statute.

4. Although the majority relies heavily upon JARA 10(27)(42 Pa.C.S. § 2921) in building his argument that the legislature has stripped sheriffs of their authority to arrest, notably absent from Judge Wicand's opinion is any explanation

or as they were recognized when the constitution was adopted." Anderson, *Sheriffs and Police*, § 56 at 270; *Brownstown Township v. County of Wayne*, 68 Mich. App. 244, 248, 242 N.W.2d 538, 539 (1976) ("[t]he Legislature may vary the duties of a constitutional office, but it may not change the duties so as to destroy the power to perform the duties of the office").

The notion that a statute cannot limit the sheriff's common law powers and duties is reflected in the deferential language of section 27(a) of the Judiciary Act; subsequent amendments to that Act did not, and could not, alter that constitutionally required deference. Consequently, today, the sheriff possesses the power and the obligation to perform all the duties of a common law sheriff, except so far as those powers and duties may have been modified by our state constitution or enlarged by statute. Anderson, *Sheriffs*, § 43 at 37; see also Murfree, *Sheriffs*, § 41 at 22 ("[i]t is competent for the state legislature to impose upon [the sheriff] new duties growing out of public policy or convenience, but it cannot strip him of his time-honored and common-law functions, and devolve them upon the incumbents of other offices created by legislative authority"); 80 C.J.S. *Sheriffs and Constables*, § 35 at 203-204 (1953) (hereinafter *Sheriffs and Constables*) (in addition to express constitutional and statutory grants of power, sheriffs also have "such implied authority as is necessary to carry out such express authority").

Since JARA 10(27) cannot be read as an exclusive list of the modern sheriff's powers and duties, the scope of those duties must be determined with reference to the powers of the office when it was first created.<sup>5</sup> This inquiry requires reference

of the legislature's intent with regard to section 27(a), nor any explication of the foundation upon which the legislature's power to alter the fundamental nature of a constitutionally created office could rest.

5. Our present constitution was adopted in 1968. However, our constitutions have always provided for the sheriff's office. See, e.g., Pa. Const. § 31 (1776) (repealed) ("[s]heriffs and coroners shall be elected annually in each city and county ..."); Pa. Const. art. VI, § 1 (1790) (repealed)

in turn to the common law of England under 1 Pa.C.S. § 1503(a), which states:

[t]he common law and such of the Statutes of England as were in force in the Province of Pennsylvania on May 14, 1776 and which were properly adapted to the circumstances of the inhabitants of this Commonwealth shall be deemed to have been in force in this Commonwealth from and after February 10, 1777.

1 Pa.C.S. § 1503(a).

"The office of sheriff is one of the oldest offices known to the common law system of jurisprudence. It is an office of great dignity and greater antiquity." Anderson, *Sheriffs*, § 1 at 2.

[Sir Edward] Coke ascribes to [the sheriff] a treble custody, to wit, of the life of justice, of the life of the law, and of the life of the republic; of the life of justice, to serve process and to return indifferent juries for the trial of men's lives, liberties, lands, and goods; of the life of the law, to make execution, which is the life of the law; and of the life of the republic, to keep peace, etc.

Gwynne, *Sheriff and Coroner* at 57-58. In his role as peace keeper, the sheriff is "the principal conservator of the peace within his bailiwick." *Commonwealth v. Vandyke*, 57 Pa. 34, 39 (1868); see also Anderson, *Sheriffs*, § 42 at 36-37 (the sheriff is "responsible as conservator of the

("[s]heriffs and coroners shall, at the times and places of election of representatives, be chosen by the citizens of each county ..."); Pa. Const. art. VI, § 1 (1838) (repealed) ("[s]heriffs and coroners shall, at the times and places of election of representatives, be chosen by the citizens of each county"); Pa. Const. art. XIV, § 1 (1874) (repealed) ("[c]ounty officers shall consist of sheriffs ..."). Because the office of the sheriff has been perpetuated in each of these charters without specification or limitation of its powers, it is fair to conclude that the modern sheriff retains those powers which were understood to be inherent in the office at the time it was codified in the 1776 constitution.

6. The sheriff's duty to preserve the peace is heightened when he knows that a particular area is not adequately patrolled by local authorities. See *Sheriffs and Police*, § 47 at 262; *Sheriffs and Constables*, § 42(c) at 213; see also *Soper*, 294 Md. at 338, 449 A.2d at 1162 (in counties where a police force has not been es-

peace and protector of society against vice and crime"). "In short, all legislation tending to secure the peace, order, safety, and comfort of the community, naturally falls within [the sheriff's] province." Murfree, *Sheriffs*, § 1172 at 640; see also *Elder v. Camp*, 193 Ga. 320, 323, 18 S.E.2d 622, 625 (1942) (citation omitted) ("sheriff has the right and duty to enforce the laws enacted for the protection of the lives, persons, property, health, and morals of the people ..."); *State v. Reichman*, 135 Tenn. 653, 665, 188 S.W. 225, 228 (1916) ("it is the duty of the sheriff and his deputies to keep their eyes open for evidence of public offenses, and that it is a distinct neglect of duty for them to ignore common knowledge of law violations ...").<sup>6</sup>

Under the common law of England, the sheriff's powers and duties as keeper of the queen's peace required him to

apprehend, and commit to prison, all persons who break the peace, or attempt to break it; and may bind any one in a recognisance to keep the peace. He may, and is bound *ex officio* to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody.

H. Broom and E. Hadley, *Commentaries on the Laws of England*, Volume I at 410 (1869); see also E. Jenks, *Stephen's Commentaries on the Laws of England*, Vol-

established, the sheriff provides local law enforcement and executes all duties otherwise performed by policemen); *Brownstown Township*, 68 Mich.App. at 251, 242 N.W.2d at 541. In Clarion County, Pennsylvania, for example, one night a week during the summer months, the Clarion County Sheriff's Office provides a deputy sheriff to patrol townships and boroughs that have not established a police force. See *The Clarion News* (July 26, 1989). Even if a jurisdiction within the sheriff's county has established its own police force, the sheriff's powers and duties are not diminished. See *Soper*, 294 Md. at 337, 449 A.2d at 1161 ("[w]e shall note that ordinarily [the common law powers of a sheriff] are concurrent with the powers now ordinarily exercised by police officers"); *Wolfe v. Huff*, 232 Ga. 44, 45, 205 S.E.2d 254, 255 (1974) ("[e]ven when a county police force is established, the power and authority of the sheriff to enforce the law and preserve the peace is not legally diminished. Both should act cooperatively and in concert to achieve this desired purpose").

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ume I at 313-314 (18th ed. 1925). When apprehending criminals, the sheriff could arrest, without a warrant, a person who committed a breach of the peace in his presence or any felon. See *id.* Volume IV at 275; see also Anderson, *Sheriffs*, § 166 at 160. When the sheriff's office was transplanted from England to the colonies, including Pennsylvania, its common law role as the primary peace officer of his bailiwick was not substantially altered.<sup>7</sup>

In Pennsylvania,

[t]he general rule is, 'A peace officer may, without a warrant, arrest for a felony or a misdemeanor committed in his presence although the right to arrest for a misdemeanor, unless conferred by statute, is restricted to misdemeanors amounting to a breach of the peace.'

*Commonwealth v. Pincavitch*, 206 Pa.Super. 539, 544, 214 A.2d 280, 282 (1965) (citation omitted). It is apparent from the discussion above that the common law powers of the sheriff included those of a peace officer. As these common law powers have been retained by the sheriff under the Pennsylvania constitution, it follows that the modern sheriff, in accordance with the general rule stated in *Pincavitch*, retains the common law authority to arrest for breaches of the peace committed in his presence.<sup>8</sup>

This court has stated:

7. In the United States, the English common law was altered only to allow the sheriff to arrest for all offenses attempted or committed in his presence, without a warrant. Murfree, *Sheriffs*, § 169 at 163; Anderson, *Sheriffs*, § 1161 at 629; see also Reichman, 135 Tenn. at 664, 188 S.W. at 228; cf. *United States v. Watson*, 423 U.S. 411, 418, 96 S.Ct. 820, 825, 46 L.Ed.2d 598 (1976) ("the ancient common-law rule [was] that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable grounds for making the arrest").

8. The Pennsylvania Crimes Code, which defines the term "peace officer," was not enacted until 1973. See 18 Pa.C.S. § 501. Therefore, the Code's definition is not controlling in determining whether the sheriff was a peace officer at common law, and whether the sheriff falls within the purview of the the *Pincavitch* court's description of the powers of a "peace officer."

[since] 'all crimes are offenses against the peace, the phrase 'breach of the peace' would seem to extend to all indictable offenses, as well those which are in fact attended with force and violence, as those are only constructive breaches of the peace of the government, inasmuch as they violate its good order.'

*Commonwealth v. Magaro*, 175 Pa.Super. 79, 82, 103 A.2d 449, 451 (1954), quoting *Williamson v. United States*, 207 U.S. 425, 444, 28 S.Ct. 163, 169, 52 L.Ed. 278 (1908). It appears then, that any criminal offense constitutes a breach of the peace. ✓

Because the sheriff had, at common law, the authority to make a warrantless arrest for any breach of the peace that was committed in his presence, an authority which was given constitutional dimension when the office of sheriff was incorporated in each of Pennsylvania's constitutions, it necessarily follows that the office retains identical arrest powers today. Additionally, there is no doubt that any criminal violation constitutes a breach of the peace. ✓  
Consequently, the modern sheriff is authorized to stop and arrest, without a warrant, someone who violates the Motor Vehicle Code in his presence. See Anderson, *Sheriffs*, § 153 at 149; see also 69 Op.Ga.Att'y Gen. 385 (1969) ("[t]he enforcement of the criminal law, which include[s] traffic regulations, is logically comprehended by the phrase 'preserving the peace'").<sup>9</sup> ✓

However, I believe that the sheriff is a "peace officer" as defined by the Crimes Code. A "peace officer" is "[a]ny person who by virtue of his office or public employment is vested by law with the duty to maintain public order or to make arrests for offenses whether that duty extends to all offenses or is limited to specific offenses...." 18 Pa.C.S. § 501 (emphasis added). As I have discussed, the office of the sheriff has always been charged with the duty to maintain public order.

9. Our Motor Vehicle Code allows uniformed Pennsylvania State Police Officers to make warrantless arrests for violations occurring in their presence. 75 Pa.C.S. § 6304(a). Further, other uniformed police officers may arrest, without a warrant, nonresidents found committing code violations. 75 Pa.C.S. § 6304(b). These sections do not preclude the sheriff from performing a warrantless arrest.

As previously noted, a statute cannot extinguish the common law powers and duties of a

It is true, as Leet contends, that the sheriff's arrest powers date from a period when crimes were defined by the common law and that these common law crimes have since been abolished in Pennsylvania, 18 Pa.C.S. § 107(b), and replaced by the Crimes Code. However, it is a *non sequitur* to argue that because no common law crimes exist, there are no crimes for which the sheriff may arrest. A distinction must be drawn between the ability to arrest for common law crimes and deriving one's authority to arrest from the common law. The common law imparted to sheriffs the power to arrest for *all crimes committed in their presence*. While common law crimes have been expressly abrogated, the constitutional powers of the sheriff have not been altered. Because the legislature could not, by redefining crimes, accomplish indirectly what it could not do directly, i.e., truncate the constitutionally endowed powers of the sheriff, it follows that the sheriff retains the authority to arrest without a warrant for all crimes, however defined, committed in his presence.

In my opinion, since Deputy Sheriff Gibbons had the authority to stop Leet for the Motor Vehicle Code violation committed in

constitutional officer. See *supra* at p. 1037. Moreover, "[t]he powers of arrest conferred by [section 6304] are in addition to any other powers of arrest conferred by law." 75 Pa.C.S. § 6304(c). This clearly evidences the legislature's intent that section 6304 is *not*, as the majority states, an exclusive list of those officers authorized to make warrantless arrests. Because, as outlined above, the common law and our constitution confer upon the sheriff the power to arrest for any violation of a criminal statute occurring in his presence, 75 Pa.C.S. § 6304(a) and (b) should not be construed to limit the power to make warrantless arrests to state and local policemen.

In *Commonwealth v. Galloway*, — Pa. —, 574 A.2d 1045 (1990), the Commonwealth argued that an investigator for the Attorney General's Office possessed the power to stop and arrest a motorist violating the Motor Vehicle Code. Our supreme court disagreed. The Commonwealth Attorney's Act, 71 P.S. § 732-101 *et seq.*, grants members of the Attorney General's Office the power to arrest *but restricts that power to arrests made in connection with the investigation and prosecution of offenses enumerated in 71 P.S. § 732-205*. — Pa. at —, 574 A.2d at 1048. The court acknowledged that if enforcement of the Motor Vehicle Code was listed as a duty in section 732-205, by virtue of 75

his presence, it is clear that suppression of the evidence based on the illegality of the stop was improper. However, because this court may affirm the trial court's order, if correct, on any basis, *Soloski v. Hetrick*, 396 Pa.Super. 140, — n. 8, 578 A.2d 445, 453 n. 8 (1990), further review of the suppression court's ruling is warranted here. Should the evidence have been suppressed as the result of an illegal search of Leet's car? A careful review of the record and applicable case law can only lead to the conclusion that the methamphetamine found in the tape deck of Leet's car was procured during a valid consensual search of Leet's car and that the evidence seized should have been admitted.

After moving Leet's car to a safe parking space, Deputy Sheriff Gibbons asked Leet if he would mind opening the paper bags that were in Leet's car. Following each request, Leet voluntarily opened a bag, eventually opening a bag containing marijuana. The voluntariness of Leet's consent must be determined by the totality of the circumstances. *Commonwealth v. Elliott*, 376 Pa.Super. 536, 553, 546 A.2d 654, 663 (1988). Further, the record must

Pa.C.S. § 6304(c), the investigator would possess the power to arrest for violations of that Code. However, section 732-205 does not mention enforcement of the Motor Vehicle Code. Hence, the power to stop for a Motor Vehicle Code violation was not otherwise "conferred by law" as required by 75 Pa.C.S. § 6304(c) and accordingly, the investigator had no authority to arrest for Motor Vehicle Code violations. See *Galloway*, — Pa. at —, 574 A.2d at 1046.

*Galloway's* holding that members of the Attorney General's Office cannot stop motorists for Motor Vehicle Code violations does not affect the conclusion that the sheriff does possess such power. *Galloway* is easily distinguished because it is based wholly on the supreme court's interpretation of the scope of power conferred on the Attorney General by the Commonwealth Attorney's Act. This Act does not purport to regulate the powers and duties of a sheriff and therefore the Act, and the *Galloway* decision, are not dispositive of the issue before this court. However, the *Galloway* court expressly recognized that arrest powers can arise from sources other than section 6304. — Pa. at — n. 2, 574 A.2d at 1048 n. 2. Thus, our statutes do not preclude this court from looking to the common law as the origin of the sheriff's arrest powers.

Unrelated to Sheriff arrest powers

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disclose that consent was not obtained through the use of duress or coercion. *Commonwealth v. Smagala*, 383 Pa.Super. 466, 474, 557 A.2d 347, 350 (1989). None of the testimony from the suppression hearing even remotely suggests the existence of threats, duress, or coercion. Hence, the marijuana was lawfully obtained.

After discovering the marijuana and arresting Leet, the officers began to search Leet's car.

To justify ... a [warrantless] search ... [of an automobile,] an officer must have independent probable cause to believe that a felony has been committed by the occupants of the vehicle, or that it has been used in the furtherance of the commission of a felony, or the officer must have a basis for believing that evidence of a crime is concealed within the vehicle, or that there are weapons contained therein which are accessible to the occupants.

*Commonwealth v. Lewis*, 442 Pa. 98, 101, 275 A.2d 51, 52 (1971) (emphasis added); *Commonwealth v. Rodriguez*, 379 Pa.Super. 24, 28-29, 549 A.2d 578, 580 (1988) *allocatur granted*, 523 Pa. 649, 567 A.2d 652 (1989); see also *Commonwealth v. Milyak*, 508 Pa. 2, 8, 493 A.2d 1346, 1349 (1985) ("where there exists probable cause related to the vehicle or its occupants, a search of the vehicle is permissible"); *Commonwealth v. York*, 381 Pa.Super. 55, 63, 552 A.2d 1092, 1096 (1989) ("[w]here police officers have probable cause to believe a vehicle is carrying contraband, they may conduct a search of the vehicle as thorough as a district justice could authorize in a warrant"). Probable cause to believe that an automobile contains the fruits or instrumentalities of crime exists when the facts available to the officer would warrant such a belief in a man of reasonable caution. *Rodriguez*, 379 Pa.Super. at 28, 549 A.2d at 580. Here, the smell of marijuana and beer emanating from Leet's car and the subsequent lawful discovery of both substances inside the car gave rise to probable cause to believe that the car contained additional contraband. *Commonwealth v. Duell*, 305 Pa.Super. 431, 433, 451 A.2d 724, 725 (1982) ("probable

cause to believe that the car might contain further contraband in the form of marijuana or alcohol" arose after police, during a roadside traffic stop, observed an open bottle of wine in the car and smelled marijuana); see also *Commonwealth v. Bailey*, 376 Pa.Super. 291, 545 A.2d 942 (1988) (warrantless search of entire car was valid even though the defendant had already been arrested and handcuffed, where probable cause to believe that evidence of a crime was concealed in the automobile arose after a policeman observed the defendant holding a clear plastic bag which contained a white powder during the course of a roadside traffic stop); *Commonwealth v. Stoner*, 236 Pa.Super. 161, 165, 344 A.2d 633, 635 (1975) (probable cause to search automobile arose where, during a routine traffic stop, officer "observed marijuana seeds and leaves in plain view on the floor, seats, and clothing in" defendant's car); *Commonwealth v. Wright*, 234 Pa.Super. 83, 86, 339 A.2d 103, 105 (1975) (where officer observed heroin in defendant's car during a roadside stop, the officer had the "right to search the entire vehicle").

Thus, it was during the course of a valid search that Leet yelled to the officers that more drugs were hidden in the tape deck, leading to the discovery of the methamphetamine. The only conceivable motivation for Leet's behavior was his belief that the drugs would inevitably be discovered in the course of the search. I would not characterize a legal search based on probable cause to be a source of duress or coercion or to constitute a threat that would vitiate the voluntariness of Leet's behavior. Accordingly, it is clear that Leet voluntarily instructed the officers of the location of the methamphetamine. *Smagala, supra*. Consequently, I would find that the methamphetamine, the drug on which the charges against Leet were based, is admissible at trial.

The foregoing discussion may be summarized as follows: first, that Deputy Sheriff Gibbons possessed the authority to stop Leet for a traffic violation committed in his presence; and second, since Leet voluntarily disclosed during the course of a valid



automobile search information leading to the discovery of methamphetamine, the drugs should not have been suppressed. For these reasons, I would reverse the suppression order and remand the case for trial.

FORD ELLIOTT, J., joins.



**COMMONWEALTH of Pennsylvania**

v.

**Mark J. STEIN, Appellant.**

Superior Court of Pennsylvania.

Submitted Oct. 9, 1990.

Filed Jan. 28, 1991.

Defendant was convicted in the Court of Common Pleas, Allegheny County, Criminal Division, No. CC 89-00006, Bigley, J., of 18 counts charging him with theft by failure to make required disposition of funds received and 18 counts of conspiracy for the theft offense. Defendant appealed. The Superior Court, No. 817 Pittsburgh 1990, Beck, J., held that: (1) evidence would not support convicting defendant who was salesperson for construction company and accepted deposit money from homeowners on contracts for which work was not done of theft even on accomplice theory of liability, and (2) evidence would not support conspiracy convictions.

Reversed.

**1. Embezzlement ⇨4**

To find individual guilty of theft by failure to make required disposition of funds received, Commonwealth must prove that defendant obtained property of another subject to agreement or known legal obligation upon receipt to make specific payments or other disposition thereof, that defendant intentionally dealt with property

obtained as his own, and that defendant failed to make required disposition of property. 18 Pa.C.S.A. § 3927(a).

**2. Conspiracy ⇨23**

Individual is guilty of criminal conspiracy if, with intent to promote or facilitate crime, he agreed to aid another person in attempt, solicitation, planning, or commission of crime. 18 Pa.C.S.A. § 903(a).

**3. Criminal Law ⇨59(1)**

"Intent" element required to be proven by Commonwealth is the same for accomplice liability as for conspiracy. 18 Pa.C.S.A. §§ 306(c), 903(a).

**4. Embezzlement ⇨44(6)**

Evidence would not support conviction for theft by failure to make required disposition of funds received; defendant was salesperson for construction company, and although defendant accepted deposit money from homeowners for work that was not done and defendant received salary from construction company, evidence did not establish that defendant intentionally dealt with homeowners' property as his own. 18 Pa.C.S.A. § 3927(a).

**5. Embezzlement ⇨44(1)**

Evidence would not support convicting defendant of theft by failure to make required disposition of funds received on theory of accomplice liability, although defendant as salesperson for construction company obtained deposit money from homeowners on contracts for which work was not done and defendant received salary from construction company. 18 Pa.C.S.A. § 3927(a).

**6. Conspiracy ⇨47(11)**

Evidence would not support convicting defendant of conspiracy to commit theft by failure to make required disposition of funds received, although defendant worked as salesperson for construction company and accepted deposit money from homeowners on contracts for which work was not done; evidence did not suggest that defendant had agreement with his brother who owned company to commit theft of

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