

# The search: what triggered the search, and when did it happen?

The Bethlehem Gadfly Police, Southside February 16, 2020

 *Latest in a series of posts on Bethlehem Police* 

**DiLuzio and Meixell to Greene 11 20 19**

**Englesson to Greene 11 29 19**

**Englesson to Donchez 12 20 19**

So let's talk about this incident.

What do we know, and what do we not know as we attempt to evaluate this situation of dueling complaints about a serious matter regarding racial profiling by a police officer or what we might call abuse of power by a district judge?

We'll take it in small chunks. Think along with the Gadfly. And let him know your thoughts as we go. As always, contrary opinion invited.

## **Witnesses:**

- We don't know if there are any "corroborators." The arresting officer seems to have been alone at the traffic stop (the officer who made the second statement seems to have only been at the conversation with the Judge). Both officers say that the Judge "raised his voice" during their conversation, which the Judge denies. We don't know if any of the Judge's staff could weigh in on this point of contention.

## **The search:**

- We need a clear time line of the traffic stop events. For instance, when did the information about the warrant arrive, before the search of the car or after? The stop was for a traffic violation, which, on the face of it, would not seem to trigger a search of the car. The officer would write a ticket, and the driver would be on his way. It might not even necessitate the driver getting out of the car, which happened here at some point. What triggered the search, and when did it happen?

- The officer described the search as a “consent search.” What exactly does that mean? The Judge indicates that a reason is normally given for such a consent search. The officer did not give one on his Affidavit of Probable Cause. Should he have? What was the probable cause for the search? We don’t know. In any event, the driver (through his conversation with the Judge) says he was not asked for nor did he give consent.
- If the search happened after knowledge of the warrant out for a deported felon, would consent to search the car be necessary? Would that warrant constitute probable cause to search the car? Again, the question is what triggered the search, and when did it happen?
- The wording of the arrested officer’s statement suggests that the arrest for marijuana came before the knowledge of the warrant (“was arrested for possession . . . his name also came back for a warrant”). The statement of the second officer more clearly indicates the marijuana arrest came first: “the male was in custody because of a drug arrest. While in Custody a deported felon warrant came back to the male’s name.” The Chief’s letter also seems to indicate that the man was “in custody” (synonymous for formally arrested?) for the marijuana violation when the warrant info arrived. The timing needs to be clarified. But we are brought back yet again to what triggered the car search, and when did it happen?
- It appears that the marijuana arrest came first, came before knowledge of the warrant, and thus the legality of the car search is of paramount importance.
- And that legality seems problematic because of the uncertainty about the officer’s motivation and the driver’s consent.

### **The charge:**

- The marijuana is several times referred to as a “small amount.” We have a recent ordinance that permits the officer to treat possession of a small amount of marijuana as a summary offense along the order of a traffic violation. Why did the officer not choose that option? (Maybe he did — Gadfly is not clear on this point from the available documents.)

*to be continued . . .*