paragraphs (b)(9). . . of this section to any person licensed to hunt or fish. . .shall at the time of securing his hunting or fishing license or any time after any such license is issued, registered with the county treasurer the make of the firearm he desired to carry, and the caliber and number thereof, on a blank to be furnished by the Pennsylvania State Police. The original registration shall be delivered to the person registering such firearm, and a copy thereof shall be forwarded by the county treasurer to the Commissioner of the State Police..."

We will consider the first and second of defendant's post trial motions together, for in essence the defendant contends that reloading of shells and shooting-in his handgun falls within the term of hunting, and since he was licensed to hunt in the Commonwealth and had a provisional firearms registration which permits him to carry a handgun while hunting or going to the place to hunt or returning from such places, he must be excepted from the prohibitation against carrying such a weapon in his vehicle.

We applaud in ingenuity of defendant's counsel in asserting this defense. As a hunter, target shooter and reloader of ammunition this Court has no difficulty in recognizing the direct relationship between the shooting-in of a gun (checking the accuracy of the weapon and its sights) and hunting. Therefore, we accept the defendant's thesis that he was engaged in an activity directly related to hunting from 2:30 P.M. until 4:00 P.M. at the farm of his uncle in Big Cove Tannery, Fulton County, Pennsylvania.

Had the defendant proceeded in a reasonably direct route from the site where he exercised this "facet of hunting privilege" to his home, we would not have found the defendant guilty; and had we, we would grant his post trial motions. However, the defendant in the case at bar was on the road in two counties for seven hours and a half after he concluded his activities at his uncle's farm. When he returned from the Borough of Chambersburg, he drove directly past the entrance to the drive to his home and his parents' home, and proceeded through the Borough of McConnellsburg and for a short distance beyond its western boundary. In our judgment the defendant had lost his right to claim he was engaged in actually hunting or returning from the place where he had legitimately engaged in a hunting related activity.

We, therefore, find no merit in the defendant's contention.

ORDER OF COURT

NOW, this 26th day of January, 1981, the defendant's Post Trial Motions are dismissed.

The Probation Department of Fulton County is directed to prepare a Pre-Sentence Investigation Report and file the same.

The Defendant shall appear for sentencing on the call of the District Attorney after the completion and filing of the Pre-Sentence Report by the Fulton County Probation Department.

Exceptions are granted the Defendant.

TALHELM v. TALHELM, C.P., Civil Action - Law, F.R. 1980-444

Custody - Best Interest of Child - Violation of Court Order

1. The open violation by a party of a custody order is an important element in the Court's decision of what is in the best interest of the children.

2. The Court may for present or past acts of misbehavior amounting to civil contempt, impose a fine and order that the injured party's reasonable attorney fees be paid.

David W. Rahauser, Esq., Attorney for Petitioner

Patrick J. Redding, Esq., Attorney for Respondent

OPINION AND ORDER

EPPINGER, P.J., January 27, 1981:

Robert and Edna Talhelm were formerly married and are the parents of two children, Heath and Matthew, nine and eight respectively. On October 10, 1980, the parties stipulated that the children should be in the primary custody of their mother and that the father should have visitation rights. As part of the stipulation the parties agreed and the court ordered that the parties should not exercise custody in the presence of a person of the opposite sex to whom they were not related by blood or marriage. This portion of the agreement and order was based

on the fact that apparently the wife had a boyfriend with whom she was living at the time.

When the father learned that the mother was violating this provision of the order, instead of either asking for a modification of the custody order or asking that she be cited for contempt of court, he filed a Petition for a Writ of Habeas Corpus to secure primary custody of the children. This is the matter that is before the court.

A hearing was held and the evidence was clear that the mother had the children in her home with her paramour and was living with him as though they were married. The children were well aware of this. On the court's own motion, the mother was cited to show cause why she should not be held in contempt of court for her failure to abide by the terms of the order of October 10, 1980. The court set a hearing for the next day.

At that hearing, the court found that up to December 2, 1980 5:30 o'clock p.m., the mother was in violation of the conditions of the order of October 10, 1980 and therefore was in contempt of court. The court further found that after 5:30 p.m. on that day she was not in violation because the man had moved out of the home and was residing at the Anthony Wayne Hotel.[1] We reserved our decision on whether a penalty should be imposed on the mother and particularly on whether, as requested by the father's counsel, she should be required to pay his attorney's fees and other expenses.

On the issue of whether the custody of these children should be altered, the only changed circumstances was the fact that the mother was living with her paramour. This has two implications: The first is the effect that had on the children, and our court has reflected concern about this. *See Walters v. Walters*, 3 Frank. Co. L.J. 105 (1979). The second is whether a mother who in her own priorities deems it more important to have a relationship with a man with the consequences inherent in a violation of the court's order is really a suitable person to have primary custody of the children.

The first question raises no current problems because of the mother's marriage to her paramour. The second problem remains and is more complicated. Here we find little guidance

[1]Since that time, the mother and the man have married and are now living with the children, but of course they are husband and wife.

in appellate decisions. This may be because in most instances contempt proceedings are used to deal with the problem. The father's approach by declaring this to be a change in circumstances, thereby warranting a change of custody, may be novel.

In *Reed v. High*, 254 Pa. Super. 367, 385 A.2d 1384 (1978), a dissenting judge opined that disrespect for legal process should not totally preclude the possibility of granting custody of a child to her mother and that flouting of the law should only be one factor, albeit an important one, in resolving the issue in the child's best interest.

The issues in the *Reed* case are not at all like the ones here. But Judge Hoffman's distum is one to which we subscribe. Therefore we come again to the question of what is in the best interest of the children, considering the open violation of this court's order as being an important element in the decision.

We referred the husband's Habeas Corpus petition to our Child Custody Mediation officer. His report noted the mother's poor judgment in living with her paramour and raised the question about the mother's ability to separate her own needs and desires from doing what is necessary to keep the children with her. It also expressed the hope that the mother would terminate her living relationship with her boyfriend so as not to confuse the boys and cause continued difficulties with their father.

However, the Mediation Officer, who also testified at the hearing, recommended that the children remain with their mother and our own review of the evidence compels us to concur in this recommendation. The children both expressed a desire to live with their mother, both seemed to have made a satisfactory adjustment to life with her now husband, and while her action in defiance of the court order was indeed a changed circumstance, it was not one that materially affected the life of the children. So we will not change the custody arrangements; this means that the father's petition for a Writ of Habeas Corpus will be denied.

The way the mother's contempt of court was considered may be somewhat unique. A petition was not filed to have her found in contempt, but the habeas corpus petition did allege that she was in contempt of court and her answer admitted the facts upon which such a finding by the court could be based. Moreover, the hearing evidence bore out the allegations.

Notice to the mother that she would be required to defend

herself in a contempt proceeding raised by the court's own motion was not required because any penalty would be for her failure to comply with a court order of which she was fully cognizant. *Brocker v. Brocker*, 429 Pa. 498, 524, 241 A.2d 336, 341 (1968).

The *Brocker* case also instructs us:

> ". . . [a] Court can for present or past acts of misbehavior amounting to civil contempt impose an unconditional compensatory fine and/or a conditional fine and imprisonment, and such fine may be payable to the United States or to the Commonwealth or to the county or to the individual who was injured."

429 Pa. at 519, 520; 241 A.2d at 339.

For her contempt we assess against the mother the costs of these proceedings, $60.00 to be paid by her for the services of the Court Child Custody Mediation Officer and the father's reasonable counsel fees which shall be submitted to the Court for approval. Act of 1976, July 9, P.L. 586, No. 142, as amended Sec. 2503(7), 42 CPSA Sec. 2503(7); Act of 1978, April 28, P. L. 108, No. 47, Sec. 2416(b), 11 P.S. Sec. 2416 (b). As to the latter citation, the father did not have to travel from one court to another to enforce the order, but it is clear from this legislative statement that counsel fees are an item of injury as mentioned in *Brocker.*

ORDER OF COURT

January 27, 1981, it is ordered that custody of Heath and Matthew Talhelm shall remain as heretofore provided.

It is further ordered that for her contempt Edna Jane Talhelm shall pay the costs of these proceedings, the fee required to be paid to the Child Custody Mediation Officer and Robert E. Talhelm's reasonable counsel fees in this proceedings which shall be submitted to Edna Jane Talhelm and her counsel for comment and then approval by the Court.

COMMONWEALTH v. McCARTNEY, C.P. Franklin County Branch, No. 119-1980

Criminal Law - Game Laws - Search and Seizure - Plain View Doctrine

1. Specific restrictions on a game protector's ability to make warrantless

arrests are imposed by statute.

2. Where game protectors went to defendant's home to wait for him to appear after being informed by other game protectors of defendant's action, they had not caught the defendant in the act of violating the law or in pursuit immediately following such violation as required by the Game Law for an arrest without a warrant.

3. Where an entry onto someone's property is made illegally, the plain view doctrine no longer applies.

4. Where a game protector's entry onto the defendant's property was not authorized, the evidence they seized must be suppressed.

John N. Keller, Esq., Assistant District Attorney

William C. Cramer, Esq., Attorney for the Defendant

OPINION AND ORDER

EPPINGER, P.J., February 10, 1981:

John Dean McCartney was observed by Pennsylvania Game Commission officers spotlighting deer from a vehicle in Huntingdon County. He was chased, but after abandoning his car and fleeing on foot through the woods, he lost his pursuers.

Another group of Game Commission officers who had been alerted went to McCartney's home in Franklin County intending to apprehend him for some summary game law violations. These officers had probable cause to believe that McCartney committed the offenses. But the officers had neither an arrest nor a search warrant.

Among the latter group was Game Protector Foreman who went to the defendant's trailer, knocked on the door, received no answer and heard no movement inside. While there he noticed deer fur and blood spots on the porch. Meanwhile two other officers who were with him were making a search of the outbuildings. They came to a shed. The opening was partially covered by a leaning door. The bottom of the door was far enough from the shed that Officer Kline could shine a flashlight through the opening into the shed. When he did this he saw some deer hides. At that time he did not know that Foreman had seen the fur and blood.

The game protectors left McCartney's place to obtain a search warrant. When they returned, he was there and signed a consent form authorizing a search on his premises. Found were