

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

**IN THE INTEREST OF:
RK,**

A Minor

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No. JV 94-2017

OPINION AND ORDER

And now this 8th day of **June, 2017**, after a hearing on May 25, 2017, on the Motion to Suppress Evidence filed by the Juvenile on May 3, 2017, at which time the Juvenile was present and represented by Donald F. Martino, Esquire. Jeffrey Yates, Esquire was present on behalf of the Commonwealth. Pursuant to a scheduling order dated May 8, 2017, this Court ordered a brief be filed by the attorney for the Juvenile on or before May 22, 2017, and a responsive brief be filed by the attorney for the Commonwealth on or before May 24, 2017. A brief was filed on May 11, 2017, on behalf of the Juvenile. The Commonwealth failed to file a brief.

The Juvenile's Motion to Suppress concerns evidence obtained from a backpack in the Juvenile's bedroom. The Juvenile alleges that the evidence was obtained in violation of the United States and Pennsylvania Constitutions and, therefore, the Commonwealth must be prohibited from introducing it. At the hearing on the Motion to Suppress, the only testimony elicited was that of Officer Chad Aldenderfer of the Tiadaghton Valley Regional Police Department.

Officer Aldenderfer testified that on March 14, 2017, he was dispatched to the Juvenile's home for a domestic disturbance between the Juvenile and his mother,

regarding the Juvenile's backpack which had been left outside. Officer Aldenderfer testified that he spoke with the Juvenile in his bedroom and asked what was in the backpack and whether he could look in it. According to Officer Aldenderfer's Incident Report dated March 15, 2017, the Juvenile picked up the backpack, opened the main compartment, and dumped the contents on the floor. Officer Aldenderfer further testified that when he requested a second time to search the backpack, the Juvenile did not verbally consent but handed the backpack over to him. Officer Aldenderfer testified that he looked into the main compartment and it was empty and that he began to open the zipper of the front compartment. Officer Aldenderfer stated that at that point, he saw a silver socket with a soda cap attached to it and smelled an odor of marijuana. Officer Aldenderfer also testified that the Juvenile grabbed the backpack back and indicated that he never gave it to Officer Aldenderfer, but that Officer Aldenderfer stated to the Juvenile that it was too late and he had already seen the paraphernalia. Officer Aldenderfer testified that the Juvenile then let go of the backpack. At that time, possession of the backpack was solely with Officer Aldenderfer, who testified that he opened the front compartment the rest of the way and, in addition to the socket, discovered a pill bottle and a marijuana grinder. Officer Aldenderfer took the items back to the police station, where the green vegetable matter in the grinder tested positive for the presence of marijuana. The Juvenile was subsequently charged with two counts of Possession of Drug Paraphernalia, 35 P.S. §780-113(a)(32).

The Juvenile seeks to have the evidence obtained from his backpack suppressed as a result of Officer Aldenderfer's failure to properly obtain a warrant prior to searching the backpack. At the suppression hearing on May 25, 2017, the

Commonwealth argued that the search was conducted with the permission of the Juvenile and therefore the evidence was validly obtained. It is clear from the testimony that the Juvenile initially handed the backpack to the officer after emptying the contents of the main compartment on the floor. It is equally clear, however, that the Juvenile did not verbally consent to the search. Furthermore, upon Officer Aldenderfer moving the zipper on the front compartment of the backpack, the Juvenile grabbed the backpack and stated “I never gave that to you.” At that point, any consent previously given was considered revoked. Only when Officer Aldenderfer indicated that “it was too late” and that he “already saw the paraphernalia” did the Juvenile relinquish the backpack to him. According to the Incident Report, when an additional officer walked into the bedroom, the Juvenile reiterated to that officer that he never gave the backpack to Officer Aldenderfer. By his words and actions, the Juvenile did not give the officer permission to search the additional compartments of his backpack.

Having found that Juvenile did not consent to the search of his backpack, we now must determine whether the warrantless search was permissible. Generally, “for a search to be reasonable under the Fourth Amendment of the United States Constitution or Article I, Section 8 of the Pennsylvania Constitution, police must obtain a warrant, supported by probable cause and issued by an independent judicial officer, prior to conducting the search.” Commonwealth v. Gary, 91 A.3d 102, 107 (Pa. 2014). There are only a few specifically established and well-delineated exceptions to this requirement. Id. Exceptions arise where the need for prompt police action is imperative, either because evidence sought to be preserved is likely to be destroyed or secreted from investigation, or because the officer must protect himself from danger to his person

by checking for concealed weapons. Commonwealth v. Holzer, 389 A.2d 101, 106 (Pa. 1978). Searches in these situations fall under the “search incident to arrest” exception to the warrant requirement. These exceptions reflect practical compromises between the interests of the state in effective law enforcement and the privacy interests of its citizens. Id.

The facts of the case before this Court, even those most favorable to the Commonwealth as stated in Officer Aldenderfer’s Affidavit of Probable Cause and his testimony at the hearing on May 25, 2017, do not meet any of the exceptions to the search warrant requirement, including the search incident to arrest exception. First and foremost, counsel for the Juvenile notes that at the time of the search, the Juvenile was not actually placed under arrest. An arrest has been defined as “any act that indicates an intention to take the person into custody and subjects him to the actual control and will of the person making the arrest.” Commonwealth v. Bosurgi, 190 A.2d 304, 311 (Pa. 1963). The police officers were dispatched to the home for reports of a domestic dispute. There was no testimony that the Juvenile was aggressive or threatening at any time the police officers were at the residence, nor was he restrained or detained in any manner. There were no charges filed against the Juvenile other than those stemming from the evidence obtained from the backpack following the search. This Court agrees that the Juvenile was not under arrest at the time the search was conducted, and therefore the search incident to arrest exception to the warrant requirement does not apply.

Even if it could be deemed that the Juvenile was under arrest at the time of the search, this Court finds that the search of the backpack was not supported by an

exception to the warrant requirement. “The two historical rationales for the search incident to arrest exception to the warrant requirement are (1) the need to disarm the suspect in order to take him into custody and (2) the need to preserve evidence for later use at trial.” Commonwealth v. Taylor, 771 A.2d 1261, 1271 (Pa. 2001). There was no testimony that Officer Aldenderfer suspected that the Juvenile was armed. Notably, the Juvenile himself was not searched, nor was he taken into custody. With the backpack solely in his possession and under his control, Officer Aldenderfer conducted the search and discovered the items which eventually lead to the charges of Possession of Drug Paraphernalia. Even if there was a weapon contained in the backpack, the fact that the backpack was securely in the possession of Officer Aldenderfer eliminated the need to search the bag prior to obtaining a warrant to ensure the Officer’s safety. Similarly, upon Officer Aldenderfer gaining possession of the backpack, the threat of the Juvenile destroying any potential evidence contained within the backpack was eliminated.

When Officer Aldenderfer opened the front compartment of the backpack he saw a socket attached to a soda cap, which he believed to be a device commonly used for smoking marijuana. At that point, the officer had probable cause for a search. However, as there were no exigent circumstances that would justify the search without a warrant, a warrant was required prior to searching the Juvenile’s backpack. The officer could have detained the Juvenile for a reasonable period of time while securing the search warrant. As a result of his failure to obtain a search warrant, the evidence obtained from the backpack on March 14, 2017, is inadmissible against the Juvenile.

ORDER

AND NOW, this **8th** day of **June, 2017**, following a hearing and argument, the Juvenile's Motion to Suppress is **GRANTED**.

By The Court,

Joy Reynolds McCoy, Judge