

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1459 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
ELAINE HARRIS,	:	
Defendant	:	Omnibus Pre-trial Motion

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pre-Trial Motion, filed November 17, 2006. A hearing on the motion was held December 27, 2006.¹

Defendant was charged with Possession With Intent to Deliver a Controlled Substance and related offenses after a stop of her person on July 4, 2006, led to the discovery of a package containing heroin. In her motion, Defendant seeks to suppress the evidence obtained as a result of the stop, contending the stop was unsupported by the requisite level of suspicion, and also seeks habeas corpus relief, arguing that without the tainted evidence, the Commonwealth fails to make a prima facie case.

With respect to the suppression motion, the Court finds, based on the testimony of Officer Thomas Ungard, that Defendant was subjected to an investigative detention. Officer Ungard testified to observing Defendant go into an alley, waiting for her to come back, and then, as she was returning to the vehicle from which she left, turning on the flashing lights on his vehicle and asking Defendant to stop. Thus, to justify the detention, Officer Ungard had to have had a reasonable suspicion that Defendant was engaged in criminal activity. As all he was able to articulate, however, was that Defendant appeared very nervous when she got out of the passenger side of the vehicle, and that the driver of the vehicle also appeared nervous, the Court finds a lack of reasonable suspicion. *See Commonwealth v. DeHart*, 745 A.2d 633 (Pa. Super. 2000)(a police officer's assessment that the occupants of a vehicle appear nervous does not provide reasonable suspicion for an investigative detention); *see also Commonwealth v. Sierra*,

¹ At the hearing, counsel stipulated to the Court's use of the Preliminary Hearing transcript for purposes of the instant motion. No further evidence was presented.

723 A.2d 644 (Pa. 1999). Simply walking into an alley and then returning two minutes later cannot possibly support a reasonable suspicion of criminal activity. Moreover, Officer Ungard's belief that "this [was] a drug deal",² is also of no help to the Commonwealth, as a police officer's intuition does not constitute a reasonable ground to suspect criminal activity is afoot. Commonwealth v. Lopez, 609 A.2d 177 (Pa. Super. 1992). The Court thus finds that the stop was unsupported by reasonable suspicion of criminal activity, and that the evidence obtained as a result of that stop, the package of heroin found in the car,³ must be suppressed.

The Commonwealth argues that the package of heroin should be held nevertheless admissible under either the plain view exception, or the abandoned property exception. Both arguments fail. First, Officer Ungard testified that what he saw when he looked into the car (after stopping Defendant) was a folded magazine page, not the heroin itself. While Officer Ungard also testified that "it's a common way for bundles of heroin to be wrapped", N.T. at p. 6, the plain view exception does not apply to legal items with legal purposes, even though they may contain contraband. *See* Commonwealth v. Stevenson, 744 A.2d 1261 (Pa. 2000). Second, even were the Court to accept for purposes of the argument that once thrown into the car, the property was abandoned, although abandoned property may normally be obtained and used for evidentiary purposes by the police, such property may not be utilized where the abandonment was coerced by unlawful police action. In the Interest of Evans, 717 A.2d 542 (Pa. Super. 1998). It is clear that Defendant threw the package into the car as a result of Officer Ungard's unlawful stop.

Inasmuch as the heroin is being suppressed, the Commonwealth has indeed failed to present a prima facie case of possession with intent to deliver, possession, and possession of drug paraphernalia. All charges will therefore be dismissed.

² N.T., August 15, 2006, at p. 5.

³ When Officer Ungard asked Defendant to stop, she continued to approach the vehicle from which she had previously exited, and threw something into the car just before Officer Ungard grabbed her hands. Id. at pp 5-6.

ORDER

AND NOW, this 29th day of December 2006, for the foregoing reasons, Defendant's Motion to Suppress Evidence is hereby granted. Further, Defendant's Petition for a Writ of Habeas Corpus is also granted, and all charges are hereby dismissed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson