

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR 048-07
:
vs. :
:
: CRIMINAL
DAVID T. FAUSEY, : Defendant's
Defendant : Motion to Suppress

ORDER

AND NOW this 4th day of October 2007, after review of the testimony heard by the Court on September 24, 2007, the Court **GRANTS** Defendant's Motion to suppress evidence.

The Court finds the Commonwealth did not prove that the Defendant's wife consented to the police entry into the home she shared with Defendant.¹ The evidence at best only showed mere acquiescence.²

The evidence obtained by the police after entry into Defendant's home is hereby **SUPPRESSED**.

The evidence obtained by the police outside the home, before the entry, is not subject to this suppression of evidence.

1 The Commonwealth attorney at the suppression hearing stipulated that the entry was not based on fresh pursuit or exigent circumstances and that the only issue was whether the Pennsylvania State Police entered Defendant's home with lawful consent of Defendant's wife. Thus, the Court only considered the consent issue.

2 The testimony of the lead trooper who entered the house acknowledged the Defendant's wife did not expressly invite them in, nor did he ask her for permission to come into the residence. Although he felt Defendant's wife was allowing him to enter when she started to walk toward the living room, the evidence does not prove a lawful consent to enter.

The Court also credits the testimony of Defendant's wife, Kim Fausey that she preferred that the troopers didn't enter the house because her husband was sleeping on the couch and her two children were sleeping in the downstairs bedroom nearby. She was fearful of exposing the children to a potential confrontation in the home at 2:15 a.m. when the troopers came to

By The Court,

Kenneth D. Brown, P.J.

cc: Gregory D. Drab, Esquire
Charles Brace, Esq. (ADA)
Work File
Gary Weber, Esquire (Lycoming Reporter)