

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 v. : No.: 1369-2008  
 :  
 ANTHONY BARASKY, : APPEAL  
 Defendant :  
 :

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)**  
**OF THE RULES OF APPELLATE PROCEDURE**

The Commonwealth appeals this Court’s Opinion and Order dated January 13, 2009, granting the Defendant’s Motion to Suppress. The Court notes a Notice of Appeal and Concise Statement of Matters Complained of on Appeal were timely filed on January 16, 2009. The Commonwealth raises two issues on appeal; the Court will address each issue *seriatim*.

***The Court erred when it suppressed the evidence of the stop by a police officer***

By way of Opinion, this Court will rely on its previous Opinion and Order filed on January 13, 2009.

***The Court erred when it sustained defense objections to hearsay evidence***

The Commonwealth asserts this Court erred in sustaining defense objections to hearsay evidence.

Abuse of discretion is the standard of review of a trial court’s decision on evidentiary rulings. Commonwealth v. Owens, 929 A.2d 1187, 1190 (Pa. Super. Ct. 2007). “A trial court’s ruling regarding the admissibility of evidence will not be disturbed ‘unless that ruling reflects ‘manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support as to

be clearly erroneous.’’ Owens, 929 A.2d at 1190 (quoting Commonwealth v. Einhorn, 911 A.2d 960, 972 (Pa. Super. Ct. 2006)).

Pennsylvania Rules of Evidence 801(c) provides that ‘‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’’ Hearsay is not admissible unless prescribed by the rules. Pa.R.Evid. 802. The Pennsylvania Superior Court in Commonwealth v. Kavanaugh, held that the Officer’s testimony regarding the contents of a report on incidents he had no specific knowledge of, had not participated in preparing, and was not certified, was inadmissible hearsay. 482 A.2d 1128, 1133 (Pa. Super. Ct. 1984).

At the Suppression Hearing in this case, the Commonwealth attempted to introduce information that Officer Brown gathered from reading a report that was written by another officer. The testimony was as follows:

COMMONWEALTH: How are you familiar with him?

WITNESS: . . . We see a lot of information, a lot of intelligence from confidential sources and confidential informants so I was familiar with him and in addition to that previous arrest to include information from a report that I was familiar with that was written by another officer in ’06 indicating that Anthony –

DEFENSE COUNSEL: I’m going to object to the other statement of an officer and the report that he received. It’s hearsay.

. . .

COMMONWEALTH: So based on this information you knew the Defendant?

WITNESS: Yes. Based on a lot of information provided by confidential informants, confidential sources and other officers I knew of him. I knew of his activities.

COMMONWEALTH: Okay. And those activities would be related to what?

DEFENSE COUNSEL: Again, I'm going to object it's a continuation of that – it's information that he received from an outside source.

The Court sustained both of Defense Counsel's objections, but did allow Brown to relate he read a report which made him familiar with the Defendant. The Court finds that the testimony was properly excluded as Brown's testimony cannot be admitted under one of the hearsay exceptions, he had no specific knowledge of the Defendant's activities, and had not participated in preparing the other officer's report. Therefore, the Court finds that its ruling excluding Brown's testimony regarding the Defendant's activities was proper as it was inadmissible hearsay.

As none of the Commonwealth's contentions appear to have merit, it is respectfully suggested that the Court's Opinion and Order of January 13, 2009 be affirmed.

By the Court,

Dated: \_\_\_\_\_

Nancy L. Butts, Judge

xc: DA (MK)  
PD (NS)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)