

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**CARLOS BOOTHE, JR.,
Defendant**

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**CR: 108-2011
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on April 7, 2011. The Motion included a Motion to Suppress and a Petition for Writ of Habeas Corpus. A hearing on both motions was held May 27, 2011.

Background

On November 8, 2010, around 10:00 a.m., Trooper Tyson Havens (Havens) and Trooper Samuel Kenneth Fishel (Fishel), both of the Pennsylvania State Police, were on patrol in the City of Williamsport around the area of High Street, between Cherry Street and Locust Street, when they observed two black males near the alley to the east of Locust Street. Havens and Fishel observed Carlos Boothe, Jr. (Defendant) and another black male briefly meet until they looked up and saw the troopers' marked State Police unit, at which time the two individuals went in opposite directions. Havens and Fishel then followed the Defendant as he walked west on High Street to Locust Street and then to 721 Locust Street, where they parked and exited the vehicle and attempted to engage the Defendant in conversation. In response to the troopers' questioning, the Defendant replied that he did not have anything illegal on his person and declined to allow them to search his person. The Defendant appeared nervous while talking to the troopers as he

was visibly shaking. After he was told he was free to leave, the Defendant left the troopers and tried to enter 721-1/2 Locust Street by knocking on the door of the residence. When no one answered the door at 721-1/2 Locust Street, the Defendant walked north up the alley between Locust and Cherry Streets. Havens waited a few seconds, and then walked to where he could watch the Defendant walk up the alley. At the Preliminary Hearing held before Magisterial District Judge Allen Page on January 21, 2011, Havens testified that it would have been impossible for the Defendant to know that Havens followed him down the alley, as there was a fence and a residence that blocked the Defendant's view once he walked from 721-1/2 Locust Street to the alley. As the troopers could not see the Defendant at that point, the Defendant could not see them, and therefore would not have known that Havens shortly thereafter began following the Defendant around the residence and into the alley. When the Defendant reached the area of Louisa Street, Havens saw the Defendant retrieve a plastic bag from his pocket and discard the bag into a patch of weeds. At the time he observed the Defendant discard the bag, Havens was approximately fifty (50) feet away from the Defendant. The troopers waited until the Defendant was out of sight, and then went and retrieved the bag the Defendant had discarded. The bag contained two small bags of suspected crack cocaine. After Havens and Fishel discovered the suspected crack cocaine, the Defendant was taken into custody. A search incident to arrest revealed a digital scale on the Defendant's person. The suspected crack cocaine was field tested and tested positive for cocaine.

Motion to Suppress

The Defendant avers in his Motion to Suppress that all of the evidence seized on November 8, 2010, must be suppressed, as the accidental or intentional abandonment of the

cocaine was caused by the unlawful and coercive action of Havens and Fishel. Specifically, the Defendant contends that the troopers' pursuit of the Defendant after their brief interaction was a seizure under Pennsylvania law that was not supported by either reasonable suspicion or probable cause. The Defendant contends that any contraband abandoned during a pursuit is considered abandoned by coercion, forcing the officer in pursuit to demonstrate either probable cause to make the seizure or reasonable suspicion to stop and frisk.

Contrary to the Defendant's assertion otherwise, the Court finds that the Defendant was not 'seized' within the meaning of the Fourth Amendment of the United States Constitution or Article 1 Section 8 of the Pennsylvania Constitution. The Supreme Court in United States v. Mendenhall, 446 U.S. 544, 554 (1980) determined that a person is "'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." In this case, the Defendant evidently believed he **was** free to leave, demonstrated by the fact that he actually left the troopers and walked up the alley between Locust and Cherry Street, and by the fact that it would have been physically impossible for the Defendant to have even known that Havens followed him into the alley. It is clear by the description of the Defendant's demeanor when approached by the troopers that he was in possession of something he needed to get rid of and did so when he thought he was out of sight. In light of the uncontradicted facts presented by the Commonwealth at the preliminary hearing, the Court finds that the Defendant was not 'seized' at the time he discarded the crack cocaine from his person, and was not coerced into abandoning the contraband in the alley. For these reasons, the Defendant's Motion to Suppress will be denied.

Petition for Writ of Habeas Corpus

In his Petition for Writ of Habeas Corpus, the Defendant asserts that the suppression of the evidence seized would render the Commonwealth unable to present a *prima facie* case against the Defendant for the charges of Possession of a Controlled Substance and Possession of Drug Paraphernalia. Since the Defendant's Motion to Suppress will be denied for the reasons stated above, the Commonwealth will have access to both the crack cocaine, which the Defendant discarded from his person, and the digital scale, found on the Defendant's person incident to arrest, for use at trial. Therefore, as the Court finds the Commonwealth would be able to present a *prima facie* case for the charges of Possession of a Controlled Substance and Possession of Drug Paraphernalia, the Petition for Habeas Corpus will also fail.

ORDER

AND NOW, this ____ day of June, 2011, based upon the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus are DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Trisha D. Hoover, Esq.