

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**JASON THOMAS,
Defendant**

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**CR-1590-2010
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress on February 10, 2011. A hearing on the Motion was held March 22, 2011.

Background

On September 20, 2010, Jason Lee Thomas (Defendant) was taken into custody for a probation violation by Officer Anthony Oeler (Oeler) of the Muncy Borough Police Department. Oeler had been in contact with the Defendant on several occasions in the weeks prior to the Defendant's arrest. Oeler was in contact with the Defendant as he was looking for fugitive Cody Steinbach (Steinbach). On at least three (3) occasions prior to September 20, 2010, Oeler asked the Defendant if he knew where Steinbach was located. On each occasion, the Defendant replied that he did not know where Steinbach was located. After his arrest in September 20, 2010, the Defendant was again asked if he knew where Steinbach was located; the Defendant again responded that he had not spoken to Steinbach and did not know where Steinbach was located. After the Defendant was arrested, and before he was taken to prison, Oeler took the Defendant back to the Defendant's mother's (Gloria Temple's) residence. The Defendant wanted to go

back to his mother's residence to apologize to her, and to give her his cell phone. The Defendant did give his mother his cell phone, and then the Defendant was taken to prison.

After taking the Defendant to prison, Oeler returned to the Defendant's mother's home to speak with her. The Defendant's mother then told Oeler that there were some text messages on the Defendant's phone that he might like to see. While the Defendant's mother was in possession of the phone, the phone received a text message that stated it was from a "Megan." However, upon reading the text, the Defendant's mother could tell that the text was not from a female. The Defendant's mother thought that the text indicated that the Defendant might be hiding someone, so she gave the phone to Oeler. The Defendant's mother relayed that she thought the text was actually from her son's, the Defendant's, friend Cody Steinbach. Once Oeler had possession of the phone, more text messages came in that he attempted to write down. The Defendant's mother then told Oeler that he could take the phone. On September 21, 2010, Lycoming County Sheriff Deputy Matt Kula went to the Lycoming County Prison to speak with the Defendant. At that time, the Defendant advised Kula that Steinbach was hiding in the attic at a Megan Hitzeman's residence. As a result of these facts, the Defendant was charged with 18 Pa.C.S. §5105 Hindering Apprehension or Prosecution.

Discussion

The Defendant alleges in his Motion to Suppress that Oeler did not have a warrant at the time of the search of the cell phone; therefore, the initial search violated his rights under the Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution. The Defendant alleges further that the consent to search given by the Defendant's mother, Gloria Temple, was invalid and should be suppressed.

The Court disagrees with the Defendant's assertions. The Defendant undoubtedly gave possession of his cell phone to his mother. Instead of keeping the phone with him, the Defendant chose to put the phone into his mother's possession. Therefore, the Defendant voluntarily abandoned any expectation of privacy he might have had in the phone. See In Interest of Bosket 567 A.2d 1142 (Pa.Super.1990). Furthermore, case law is clear that evidence obtained by a private citizen and later turned over to a government authority is not subject to suppression on Fourth Amendment grounds. See Commonwealth v. Glaza, 48 Pa. D. & C.2d 369, 371 (Pa.D. & C.2d 1970); See also Burdeau v. McDowell, 265 U.S. 465 (1921). Therefore, the Court finds the Defendant's contentions to be without merit.

ORDER

AND NOW, this ____ day of April, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Kirsten Gardner, Esq.