

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-536-2018
 :
 JAMIR M. CERUTI, : Motion to Suppress
 Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on April 20, 2018 with persons not to possess, firearms not to be carried without a license, possession with intent to deliver and numerous other charges.

On March 23, 2018, Officer Clinton Gardner of the Williamsport Bureau of Police was patrolling the area of Second and Park Avenues in Williamsport. He identified Defendant walking with a group of other individuals. Knowing that Defendant had three active arrest warrants, Officer Gardner pulled his patrol vehicle near to the group at which time Defendant took off running away from Officer Gardner.

Officer Gardner soon exited his vehicle and chased Defendant on foot. Defendant had been wearing a black backpack when he was first observed and while fleeing from Officer Gardner. Except for a very brief period of time, Officer Gardner had Defendant in his sight during the foot chase. While chasing Defendant, Officer Gardner was yelling at him to stop.

After about a block and a half, Defendant ran between two houses, 870 and 874 Park Avenue. A wooden stationary fence was located between the houses and blocked Defendant's flight path. While still running away from Officer Gardner, approximately 10

feet from the fence, Defendant removed the backpack and tossed toward the one house. Defendant kept on running and tried to climb the fence to get away. Defendant started up the fence, sidestepped a Taser attempt by Officer Gardner but was soon apprehended before he could get over the fence.

Defendant was taken into custody and transported from the scene. Approximately three to four minutes later, while the backpack was in the exclusive custody of the police, Officer Gardner conducted a warrantless search and located incriminating evidence.

Before the court is Defendant's Motion to Suppress claiming that the search of the bag was illegal because it was conducted without a warrant and without any exception to the warrant requirement.

Defendant argues that the search was not justified by the search incident to arrest search warrant exception or any other exigency. The Commonwealth, however, first argues that Defendant lacks standing to complain about the seizure and subsequent search of the backpack because Defendant voluntarily abandoned it.

The theory of abandonment is predicated upon the clear intent of an individual to relinquish control of the property he possesses. *Commonwealth v. Shoatz*, 469 Pa. 545, 366 A.2d 1216, 1219 (1976). No one has standing to complain of a search or seizure of property he has voluntarily abandoned. *Id.* at 1220.

Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All

relevant circumstances existing at the time of the alleged abandonment should be considered. Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

Id. (internal citations omitted). Abandonment, however, that is coerced by unlawful police action is deemed involuntary. *Id.*

In this particular case, Defendant's behavior indicated a clear intent to relinquish both control of the backpack as well as any expectation of maintaining any privacy interest in its contents. While running away from Officer Gardner, he removed the backpack from his back and tossed it to the side, continuing to run away and attempting to climb over a fence to evade being captured. He clearly was aware of Officer Gardner chasing him. He first ran when Officer Gardner approached him and then continued to run despite Officer Gardner's demands to stop. Defendant made a choice. That choice was to abandon the backpack to make it easier for him to evade capture by climbing over the fence.

Defendant clearly attempted to disassociate himself from the backpack. There are numerous cases which support abandonment under similar circumstances where individuals discard property in reaction to the lawful approach of law enforcement officers. *Commonwealth v. Taylor*, 33 A.3d 1283, 1286 (Pa. Super. 2011)(the defendant discarded chip bag containing drugs); *Commonwealth v. Rodriguez*, 559 A.2d 947 (1989)(the defendant discarded keys to abandoned house from which the defendant was dealing drugs); *Commonwealth v. Anderl*, 477 A.2d 1356, 1363-1364 (Pa. Super. 1984)(the defendant hid a

satchel on property of unknown third party and denied ownership of it).

Because the court concludes that Defendant has abandoned the property, he does not have standing to attack the search and seizure and accordingly, the court need not address Defendant's argument regarding the search being invalid.

ORDER

AND NOW, this 18th day of December 2018, Defendant's Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Donald Martino, Esquire,
Work file
Gary Weber, Esquire, Lycoming Reporter