

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :

VS :

JASON WEBB : 00-10,585

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress. Defendant has been charged with possession with the intent to deliver LSD, marijuana, and hashish and related charges as a result of an incident that occurred on February 3, 2000. After a review of the testimony from the hearing on the motion, the Court finds the following facts relevant to the Suppression.

Officer Dincher of the Williamsport Bureau of Police had a warrant to arrest the Defendant. On February 3, 2000, he received information from an informant that the Defendant was at an address on Second Avenue. After verifying that the Defendant was at the address through a phone call to the residence, he and four other officers went to the residence. The Defendant was apprehended in an upstairs bedroom closet. Officer Dincher testified that he searched the Defendant and handed him over to another officer.

Officer Dincher then went to the kitchen where he made contact with Christine Miles, the person occupying the residence, and asked for her consent to search the residence. Ms. Miles, 19 years old at the time, testified that she was upset when Officer Dincher approached her. Corporal Ungard testified that he could hear the conversation between Officer Dincher and Ms. Miles while he explained her options with regard to the search of her house. He testified that he heard him explain to Ms. Miles that if she did

not cooperate and consent to their search of the residence, any drugs found at the residence would be placed on her. Ms. Miles was told that if that were to happen, Children and Youth would be called to take her children. Ms. Miles testified similarly with regard to the conversation that took place between her and Officer Dincher. Officer Dincher testified that he could not recall that part of the conversation. Ms. Miles eventually consented to the search, but requested that she be able to call her mother to come and get her children before the search began.

Corporal Ungard testified that after consent was given to search the residence, he found two coats behind the couch. He testified that he asked Ms. Miles and Ms. Webb, the Defendant's sister, who the jackets belonged to. Both agreed that the yellow and black jacket belonged to the Defendant. He then searched the jackets. He testified that in the yellow and black jacket he felt a bulge, and could then smell marijuana. Upon further search, Corporal Ungard found 7 plastic bags containing LSD blotters, 5 sandwich bags of marijuana totaling approximately ½ ounce, and some packaging material. At some point, the Defendant, who was detained outside, asked for a coat. Corporal Ungard took the two jackets, including the one that contained the controlled substances, outside to show the Defendant. The Defendant denied that the jacket that contained the controlled substances was his. No other items were found in the residence.

Defendant argues that the jackets and evidence obtained from the jackets must be suppressed, as they are fruit of an illegal search of the residence. He argues that the consent obtained from Ms. Miles was coerced and not valid. In [Schneckloth v. Bustamonte, 412 U.S. 218, 233, 93 S.Ct. 2041, 2050, 36 L.Ed.2d 854 \(1973\)](#), the Court

held that where the subject of the search is not in custody, and the state purports that the search was consensual, the Fourth and Fourteenth Amendments dictate that, to be valid, the consent must be voluntarily given and not the product of coercion or duress. No one factor is determinative in a voluntariness inquiry, it is only by analyzing all the circumstances of an individual consent that it can be ascertained whether, in fact it was voluntary or coerced. In connection with such inquiry, the Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice, and not the result of duress or coercion, express or implied.

After a review of the testimony and circumstances in the instant case, the Court cannot conclude that the Commonwealth has established that the consent given by Ms. Miles for her residence was not the result of duress or coercion. The uncontradicted¹ testimony of Corporal Ungard and Ms. Miles revealed that Officer Dincher told Ms. Miles that if she consented to the search, she would not be held accountable for any contraband found in the residence. Conversely, if she refused to consent to the search, and contraband was later found, she would be arrested, and Children and Youth would be summoned to take her children. The Court would find statements of this nature were meant to coerce, and placed Ms. Miles under duress. The fact that she was under duress is supported by Officer Dincher's testimony with regard to Ms. Miles' demeanor and her concern for her children. As the Court finds that the Commonwealth has not shown that the consent was given voluntarily, the Defendant's Motion to Suppress is granted.²

¹Although Officer Dincher could not specifically recall having made the statements, he did not deny having made them.

² The Commonwealth argued the theory of abandonment, stating that since the Defendant denied ownership of the jacket, he abandoned the property and no longer had standing to complain about the

ORDER

AND NOW, this _____day of September 2000, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Motion to Suppress is GRANTED. It is further ORDERED and DIRECTED that the plastic bags containing LSD blotters (70 hits total), 5 sandwich bags of marijuana, and large plastic bag containing smaller plastic bags are suppressed.

By The Court,

Nancy L. Butts, Judge

cc: CA
E.J. Rymsza, Esquire
Michael Dinges, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire

search and seizure. The Court will not address this argument, since the only way that Corporal Ungard came across the jacket was through the invalid consent.