

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

IN THE INTEREST OF:	:	No. JV-46-2024
J.W.,	:	
	:	
A Minor	:	

ORDER

AND NOW, this 25th day of **June, 2024**, before the Court is a Motion to Suppress filed on May 23, 2024, by Alyssa Fenoy, Esquire. A hearing was held on June 6, 2024, at which time the J.W. was present and represented by Alyssa Fenoy, Esquire. Blake Marks, Esquire, appeared on behalf of the Commonwealth.

The alleged facts which led to the filing of the motion are as follows. On May 18, 2023, Officer Tyson Minier attempted to take a juvenile into custody in relation to a bicycle theft that he had observed. J.W. (“J.W.”), carrying a red backpack, was present on the scene along with two other juveniles. J.W. became confrontational with Officer Minier while he was taking the juvenile into custody, as well as adult bystanders and was instructed multiple times by Officer Minier to leave but the J.W. refused. At one point, J.W. took off his shirt and handed the red backpack to one of the other juveniles as he attempted to engage Officer Minier. The other juveniles left the scene with the red backpack and eventually J.W. was also taken into custody. Afterwards, Officer Minier located the other two juveniles and obtained the red backpack from them. A search of the red backpack yielded, among other things, a plastic container containing twelve (12) individually packaged bags of marijuana and \$213 in cash.

The Motion to Suppress alleges that the police did not obtain a warrant before searching the red backpack that J.W. previously had in his possession. The motion further alleges that J.W. did not give his consent to search the red backpack, the items seized were not in plain view, there

was not an automobile involved, he was not frisked, and the red backpack was not even in his possession when it was searched and therefore no exception to the warrantless search applies under the circumstances. J.W.'s motion requests that the Court find the search of the red backpack illegal and suppress all evidence seized and statements made as a result thereof. Prior to the commencement of the hearing on the motion, the Commonwealth made an oral motion to dismiss J.W.'s Motion to Suppress for lack of standing on the basis that J.W. abandoned the bag. As J.W.'s counsel was only made aware of the Commonwealth's challenge to standing at the time of the hearing, she was not prepared to respond specifically to the argument at that time and therefore the Court allowed the hearing to proceed with the understanding that upon its conclusion the Court would determine whether J.W. has standing to pursue the Motion to Suppress before making a ruling on the merits of the motion.

It is well settled in this Commonwealth that a "defendant has no standing to contest the search and seizure of items which he has voluntarily abandoned." *Commonwealth v. Hall*, 305 A.3d 1026, 1035 (Pa. Super. 2023). "That is, before a defendant can challenge the seizure of physical evidence, he must demonstrate that he had both a possessory interest in the evidence and a legally cognizable expectation of privacy in the area from which the evidence was seized." *Commonwealth v. Byrd*, 987 A.2d 786, 790 (Pa. Super. 2009). At the hearing, J.W. did not put forth any testimony regarding his possessory interest in the backpack. Thus, the Court is left to review the circumstances surrounding his relinquishment of possession of the bag to determine if J.W. had abandoned the property for purposes of standing to contest a search of the bag. The Superior Court of Pennsylvania has held:

"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. 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.”

Commonwealth v. Barnett, 760 A.2d 1166, 1170-1171 (Pa. Super. 2000) (citations and emphasis omitted) *appeal denied*, 781 A..2d 138 (Pa. 2001).

In the present case, J.W. voluntarily handed off the bag to another juvenile as they were walking down the street. J.W. gave the bag to the other juvenile in order to take off his shirt while engaging with a uniformed officer who was attempting to take another juvenile into custody. Officer Minier testified that he directed J.W. to (1) stop interfering with his detention of the other juvenile and (2) leave the scene. J.W. chose to ignore the officer’s directives, which would have given him the opportunity to retrieve his bag and avoid his own detention by police.

J.W.’s actions were impulsive and showed no indication that he was taking steps to preserve his privacy interest in the bag and its contents. The video does not reflect J.W. instructing the recipient of the bag to not open the bag or not look inside it. By handing the bag off to a third party, with no instructions or conditions, and walking away to pursue his interaction with Officer Minnier, J.W. gave up his ability to control what would happen with the bag and its contents. This was evidenced by the fact that the third party walked away from the scene with the bag and later dropped the bag on the ground when they saw the officer approaching them. In essence, the other juvenile – the third party – abandoned the bag himself when he saw the officer.

The Court notes that “[a]lthough abandoned property may normally be obtained and used for evidentiary purposes by the police, such property may not be utilized where the abandonment is coerced by unlawful police action.” *Byrd*, 987 A.2d at 791. “When the causative factor in the abandonment is an unconstitutional search and seizure, the contraband must be suppressed.” *In the Interest of Evans*, 717 A.2d 542, 545 (Pa. Super. 1998) (citation omitted) *appeal denied*, 736

A.2d 604 (Pa. 1999). The Court finds that the police in this case had not done anything illegally which prompted J.W. to relinquish the bag. To the contrary, Officer Minier tried to get J.W. to walk away from the scene. Officer Minier was attempting to detain a separate juvenile for a theft of a bicycle. J.W. was free to leave the scene with the bag in his possession. Instead, J.W. voluntarily handed off the bag to a third party to take off his shirt and confront and interfere with an officer performing his duties. Thus, J.W. freely abandoned both his possessory interest in the bag and his privacy expectation thereto, and the Court finds that he does not have standing to contest the search of the bag and seizure of its contents.

Accordingly, the Commonwealth's oral motion is **GRANTED** and J.W.'s Motion to Suppress is **DISMISSED FOR LACK OF STANDING**.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. DA (Blake Marks, Esq.)
PD – Alyssa Fenoy, Esq.
JPO (3)
Gary Weber, Esquire