

COMMONWEALTH OF KENTUCKY  
McCRACKEN CIRCUIT COURT  
DIVISION NO. II  
INDICTMENT NO. 06-CR-00408

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

RACHEL AHMANN LEATHERMAN

DEFENDANT

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**ORDER GRANTING DEFENDANT'S MOTION TO SUPPLEMENT RECORD  
AND  
ORDER SETTING ASIDE ORDER DENYING  
MOTION TO SUPPRESS EVIDENCE  
AND  
SUBSTITUTING THIS ORDER**

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This matter is before the Court on Defendant's motion, through counsel, to supplement the record and to reconsider and set aside an order denying his motion to suppress evidence. The record is ORDERED supplemented with a 911 transcript. The Court now sets aside its prior order denying Defendant's motion to suppress and substitutes this order denying the motion to suppress.

**FINDINGS OF FACT**

1. Police dispatch received a telephone call from a person who gave his name and address, stating that a white female in a vehicle that looked like a late 80's or early 90's dark blue Buick LaSabre, bearing Seattle Washington license plate number 273 LRQ was "...walking around in [his] neighbors yard and everything and writing stuff down, and she'd talked to him and mentioned something about tar heroin and all that stuff."

2. A Sheriff's deputy testified that dispatch radioed the incident and stated that

the white female was attempting to buy heroin.

3. The deputy observed a dark blue LaSabre with the 273 LRQ Washington plate, driven by a white female in a right hand traffic lane with her left turn signal activated. The vehicle did not turn but pulled to the right side of the roadway and stopped.

4. The deputy pulled in behind the stopped vehicle and activated his emergency lights.

5. When the deputy went to the vehicle he observed the Defendant with her pants unzipped and unbuttoned. The deputy observed in plain view an open container of what he suspected to be beer and an opened but corked bottle of wine in the car.

6. Defendant failed all six clues of a horizontal gaze nystagmus test, had very glassy eyes, and appeared nervous. When the deputy asked her if she was taking any medication that would explain her condition she stated that she was on several medications, including Clonazepam.

7. The maker of Clonazepam warns that it should not be used when driving a vehicle and that the drug causes abnormal eye movements.

8. The deputy arrested Defendant for operating a motor vehicle under the influence of drugs or alcohol and placed her in the back seat of his patrol car, which he had searched and found clean of any drugs or other items.

9. When Defendant later exited the patrol car the officer searched the back seat and found a piece of cellophane which appeared to contain a controlled substance. The cellophane was located behind the back seat adjacent to what Defendant identified as her wristwatch.

10. The suspected controlled substance lab tested as cocaine.

**CONCLUSIONS OF LAW**

1. The deputy did not conduct a stop of Defendant's vehicle. Defendant pulled off the roadway and stopped. The deputy then pulled in behind her and activated his emergency lights so as to investigate.

2. The combination of a report of an unknown person, driving a Washington state licensed vehicle in a Paducah, Kentucky residential area, asking about tar heroin, later observed to signal a left turn but pull off the roadway to the right, constitutes reasonable suspicion to investigate and possibly cite for improper signal.

3. A report of suspicious activity by a person who identifies himself by name, telephone number, and address, is presumptively reliable.

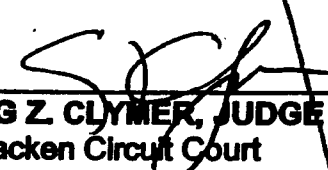
4. Defendant's inquiring about heroin, failing a HGN test, signaling a left turn and pulling off the road to the right, and stating that she was taking medication that would cause her to fail the test, constitutes probable cause to arrest for DUI.

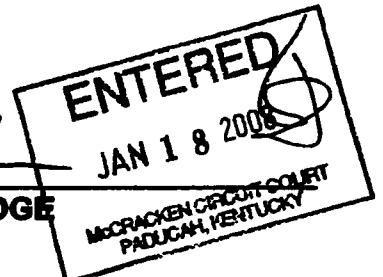
5. A police officer may legally search the back seat of his patrol car where the defendant was placed incident to arrest.

6. The results of the search and the plain view discovery of the wine and suspected beer is admissible as evidence at trial.

**IT IS HEREBY ORDERED** that Defendant's motion to suppress is **DENIED**.

**ENTERED** this 18 day of January, 2008.

  
**CRAIG Z. CLYMER, JUDGE**  
McCracken Circuit Court  
Division No. II



CLERK'S CERTIFICATE

The foregoing Order was entered on this 18 day of January, 2008, and copies mailed to:

Commonwealth Attorney  
Department of Public Advocacy (Hon. Chris McNeill)

MIKE LAWRENCE, CLERK  
McCRACKEN CIRCUIT COURT

BY:  D.C.