

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

: No. CR-425-2016

vs.

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JEFFREY COFFEY,
Defendant

: Motion to Suppress

OPINION AND ORDER

Defendant is charged by Information filed on March 24, 2016 with persons not to possess, a felony of the second degree. On February 27, 2016, Defendant, a prior convicted felon, allegedly unlawfully possessed a .22 caliber rifle.

Defendant filed a petition to proceed pro se which was granted following a hearing on January 25, 2017. Subsequently, on February 8, 2017, Defendant filed what he titled as an “Application to Suppress Evidence Obtained from Premises.”

Not unexpectedly, the “Application” is somewhat disjointed in its factual and legal averments. However, a hearing on the Application was held on March 20, 2017 and at said hearing, the Court clarified Defendant’s claims.

First, Defendant claims that police entered his premises without a warrant or any other justification. Even if true, any suppression claim would fail because the police did not seize any evidence or obtain any evidence against Defendant as a result of the alleged illegal entry.

Second, Defendant claims that the police coerced consent from the individual who allowed the police to enter the premises. This claim fails as well for the reasons as set

forth above. Nothing was seized and no incriminating evidence was obtained against Defendant from the inside of the residence or as a result of the entry.

Lastly, Defendant claims that the seizure of the box and rifle found partially under the outside of his house, was in violation of his constitutional rights because there was no warrant.

Karina Washington, a neighbor of Defendant, testified that on February 7, 2016, early in the morning at approximately 2:18 a.m., she witnessed Defendant and his friend arguing out in front of Defendant's residence. In response to the friend asking Defendant if he was going to shoot him, Defendant said "I am going to get a gun." Ms. Washington witnessed Defendant walk to the side of the outer portion of Defendant's house, walk down a pathway on the outside and pull a rifle out of a cardboard box that was stored in what she described as a "peephole."

Defendant took the gun, and walked back toward his friend and where Ms. Washington was standing. Ms. Washington ran from Defendant but observed Defendant pointing the gun at his friend. Ms. Washington yelled to Defendant that she was calling the police and that he should put the rifle "back." Soon thereafter, Defendant walked back and placed the rifle in the cardboard box.

After she contacted the police, they arrived on scene and Ms. Washington told the police what happened and pointed to where the gun was located. The police walked to the side of the house, looked down the pathway, observed the gun, took photographs and eventually seized it.

Officer Andrew Stevens of the Williamsport Bureau of Police next testified. He was working on February 7, 2016 and was dispatched to the scene.

When he arrived, he observed Defendant standing outside of the residence, 846 First Street. He also observed Defendant's friend, who was identified as a Mr. Quartman.

Neither Mr. Quartman nor Defendant were very cooperative. While admitting that they were engaged in somewhat of an altercation, they denied that anyone possessed a firearm. Officer Stevens then spoke with Ms. Washington. She told him that Defendant obtained a rifle from the box that was on the side of the house. Shortly thereafter, Officer Stevens was informed by Officer Ryan Bague, also of the Williamsport Bureau of Police, that the firearm was located on the side of the house. More specifically, there was a six-foot gap between the houses that could "possibly" be used as a walkway and the gun was located in a cardboard box that was sticking out from underneath the house.

Officer Stevens confronted Defendant about the presence of the gun. Defendant indicated that he knew it was there.

Officer Bague next testified. He too was dispatched to the scene. He initially was attending to Mr. Quartman when he heard some of the "females outside" talking about a gun on the side of the house. Concerned about the presence of a weapon, he spoke directly with Ms. Washington.

Ms. Washington told him what she had observed and told him where the rifle was located. She pointed to the side of the house. Officer Bague first shined his flashlight down the pathway and observed the butt of a gun partially sticking out from under the house.

He then walked down the pathway and discovered the weapon. He immediately notified other officers. They took photographs of the weapon and then seized it.

The photographs that were taken depicted what the officers observed. Down the pathway one could see what appears to be a truck tire lying partially under the house and partially outside. On the tire is a cardboard box with the butt-end of a rifle sticking out. The rifle was clearly in plain view from looking down the pathway and shining the light.

As indicated previously, Defendant claims that the seizure of the rifle was unconstitutional because the police did not obtain a warrant. The Court cannot agree.

Under what is known as the plain view doctrine, if an officer views “from a lawful vantage point” an item, the incriminating nature of which is immediately apparent, he may seize it. *Commonwealth v. Gibbs*, 981 A.2d 274, 279-280 (Pa. Super. 2009)(citing *Commonwealth v. English*, 839 A.2d 1136, 1139 (Pa. Super. 2003)). Defendant does not contend that when the police viewed the rifle underneath or partially underneath the side of his house that they were standing in an unlawful vantage point. Indeed, the police were standing on public property and easily viewed the rifle. Under the circumstances, the incriminating nature of the rifle was immediately apparent.

Accordingly, no warrant was needed and the defendant’s constitutional rights were not violated.

ORDER

AND NOW, this ___ day of April 2017, following a hearing, the court **DENIES** Defendant’s “Application for Suppression.”

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Jeffrey Coffey, pro se
850 First Street
Williamsport, PA 17701
Kirsten Gardner, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file