

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**SHARIF ATO COLEMAN,
Defendant**

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CP-41-CR-0000487-2017

OMNIBUS PRETRIAL

OPINION AND ORDER

Sharif Ato Coleman (Defendant) filed an Omnibus Pretrial Motion on May 12, 2017. A hearing was held on November 13, 2017.

Background

Defendant is charged with Possession with Intent to Deliver¹, an ungraded felony; Criminal Attempt², an ungraded misdemeanor; and Possession of Drug Paraphernalia³, an ungraded misdemeanor. The charges arise out of an incident at the Genetti Hotel in Williamsport, PA on December 17, 2016.

Testimony

Testimony of Marc Schefsky, General Manager, Genetti Hotel

Marc Schefsky (Schefsky) General Manager of the Genetti Hotel testified on behalf of the Commonwealth. While on duty, on December 17, 2016, there was a disturbance, a "fight", on the 10th floor of the hotel between 3 am and 4 am. Schefsky testified that a young lady was screaming in the hallway and that feathers from a boa or a coat were strewn in the hallway. She was insisting on getting into the room to get her belongings. She had a fight with other girls in the room, either 1020 or 1022, Schefsky could not recall the specific room number, however the room was reserved

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa.C.S. § 901(a).

³ 35 P.S. § 780-113(a)(32).

under Defendant's name. Schefsky brought her down to the front desk; and then called up to the room to see if her parcels were in that room and the room occupants were asked to leave the hotel as soon as possible. The young lady started to get belligerent again after Schefsky called the room to tell them to vacate. Schefsky had a front desk person staff person call the police.

Schefsky stayed down in the lobby while police responded so he was unable to testify regarding how the police entered the hotel room. After the occupants left room, the young lady's parents came to the room and got her purse. Schefsky returned to room after police left. It is hotel policy to inventory/inspect any belongings which were left to determine their rightful owner rather than throw them away. Schefsky was advised by police to contact them if he were to find anything illegal in his inventory of the room. He found several mason jars full of marijuana in a bag underneath the clothes; so he recalled the police and they came back and searched the room.

Testimony of Officer Miller, Williamsport Bureau of Police

Officer Laura Miller (Miller) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. She was one of the three officers that responded to the call from the Genetti Hotel. All three officers, Miller, Hagan and Strus, herein referred to by last name only, were in full uniform and on duty when responding to the call.

When arriving on the 10th floor of the hotel Miller noticed a strong odor of marijuana. Police, including Miller, went to Room 1022 because the disturbance was regarding that room. The door was closed. Police knocked on door to make contact, There were two people inside room, later identified as Defendant and Landon

Washington. Miller testified that police asked permission to enter room and permission was granted by Defendant. She testified that police weapons were visible but not drawn; they identified themselves as police officers; and that all three officers entered the hotel room with the Defendant's consent.

Miller testified that at the time of police entering the room, Defendant had a garbage bag and a backpack. She recalled that Washington had a backpack and woman's bag and jacket and there was an orange duffle bag by the door. Defendant appeared to Miller as if he were ready to leave and in fact remarked that when he did leave the hotel room, he was not wearing shoes. She estimated the interaction between police and the room occupants lasted fifteen to twenty minutes.

Police asked for consent to search Defendant and Washington; both consented to a search of his person. Defendant refused to consent to a search of the room. Police recovered marijuana flakes from the trash bag and nothing from the backpack.

Miller could not recall who left the room first, the officers or Defendant; but after the encounter, she went back to City Hall. After returning to City Hall, police then received another phone call from the hotel that illegal items identified in the hotel's subsequent search of the duffle bag. Police returned to the hotel and took custody of the duffle bag. Police searched the duffle bag and photographed some of the contents. Commonwealth's 1-4 were admitted with no objection by Defense Counsel at the hearing.

Exhibit 1 shows an orange duffle bag containing a mason jar of marijuana and a preserved vacuum-sealed bag of marijuana. Exhibit 2 shows a close up picture of

the vacuum-sealed bag and a mason jar containing what appears to be marijuana. Exhibit 3 shows US Currency contained in the duffle bag. Exhibit 4 shows a close up of a stack of currency resting on the duffle bag.

Testimony of Defendant

Defendant testified regarding his recollection of the police encounter the early morning of December 17, 2016. He checked into the hotel at 5:30 pm in the afternoon. The disturbance, Defendant testified, was regarding one young lady and some other women she had invited. Defendant testified that Washington did not know who the girls were and the he himself was “trying to settle the situation” at the front desk. He said that management told him to “Go back upstairs” and “if I hear one more thing we are going to have to kick you out”.

Regarding the police entrance into the hotel room, Defendant testified that Washington opened the door and that “they [police] just came in the room. Defendant called his dad to say “something is wrong; cops are in here” and asked his Dad to hurry up and get to the hotel. Defendant at that time started recording the interaction with police. Defendant testified that Hagan was the only one talking and that he was threatening to get a search warrant. Officers Strus and Miller were also trying to get him to consent to a search of the room. Defendant denied ownership of bag. He felt like police were pressuring him and he did not feel it was right; Defendant testified that police told him “if we find anything it won’t be on you; we just need drugs, money or weapons.” Defendant said he told the officers that he did not have drugs, money or weapons. He said the interaction lasted thirty minutes, and it is all recorded. He testified that he asked if he was being detained and the police said they just needed

to talk to him. He testified that he asked over and over if he were being detained, and they told him “no”.

Audio Recording

Defense Counsel sought to introduce into evidence the recording Defendant had made of his interaction with police during the time of the incident. The Commonwealth objected, arguing that the recording was made in violation of the Wiretap Act and thus was not admissible into evidence. Defense Counsel submitted a letter brief to the Court arguing that the recording was not made in violation of the Wiretap Act in that the officers had no expectation of privacy in the communication they had with Defendant that early morning and therefore the oral communications were not the type of communication protected by the Wiretap Act. Defense Counsel submitted case law in support of that position, Commonwealth v. Henlen, 564 A.2d 905 (Pa. 1989). The Commonwealth subsequently responded that it no longer had objection to the recording being admitted as an Exhibit and heard by the Court. The Court listened to the audio outside the presence of counsel. Counsel did not request an opportunity to further argue after the Court heard the audio and rested on briefs submitted to the Court.

The audio recording is approximately twenty-seven minutes in length. It begins with Defendant on the phone with his father. Hagan notes that it smells like marijuana [in the room] and that Defendant’s eyes are blood shot. He tells Defendant that if you “walk out of here with more “bud” that’s a problem”. At 1:12 Defendant denies having “weed” and denies consent to search the room because he can’t control what others might have done in the room. At 2:05 Hagan tells Defendant that

he has probable cause to get a search warrant. At 2:33 Defendant consents to the search of his person. At 2:50 Washington consents to search of his person. There is audio noise of a search but it is unclear what is being searched. At 10:17 Defendant again refuses to consent to a search of the room. At 15:48 Hagan says the reason that Defendant is not consenting to the search is "that there is a large amount of drugs in the room with Defendant's fingerprints on them". After that statement Defendant consented to the search; however, police did not search. Defendant does consent to the manager searching for any damage.

Discussion

I. HABEAS CORPUS

At the hearing, Defense Counsel withdrew its habeas motion.

II. MOTION TO SUPPRESS

Defense Counsel presents the issue for the Court to decide as whether police lawfully entered the hotel room and argues that if they did not lawfully enter the hotel room, any evidence secured as result of illegal entry should be suppressed.

Preliminarily, the Court notes "A hotel room can clearly be the object of Fourth Amendment protection as much as a home or an office." Commonwealth v. Dean, 940 A.2d 514, 519 (Pa. Super. 2008). The Commonwealth posits that any privacy right Defendant would have had in his hotel room was diminished when he was evicted by the hotel manager an eviction that made necessary a subsequent call to police. The Court finds the Commonwealth persuasive in its argument.

Nevertheless, dispositive for the Court is the credibility determination it makes after hearing the testimony, both oral and audio recorded. First, the Court finds Miller

credible in her statement that the Defendant granted permission to police to enter his hotel room. Even if a warrant were required for the entry into the premises, which the Court does find as the Defendant had already been evicted; his consent to the entrance removed the need for a warrant. Moreover, after listening to the audio recording, the Defendant at no time asked “if he were being detained”, which he testified to having asked repeatedly. As a result, the Court finds Defendant’s testimony at the hearing not credible.

However, to answer Defendant’s unasked question, “yes” police officers were detaining him, albeit lawfully. Why the officers did not immediately seek a search warrant, the Court cannot determine as they certainly, as Hagan stated, had probable cause to do so, based not only on the smell of marijuana in the hallway and in the room but also on the reason for the police call in the first place. The young lady had reported via the hotel front desk that her items were being held unlawfully by the room’s occupants. Instead they spent 15 minutes trying to convince Defendant to consent, which was unnecessary, but not an illegal, delay.

Lastly to the question regarding the abandoned duffle bag:

The theory of abandonment is predicated upon the clear intent of an individual to relinquish control of the property he possesses. Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances 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.

Commonwealth v. Shoatz 366 A.2D 1216, 1220 (PA. 1976)

The Shoatz Court went on to say that, no one has standing to complain of a

search or seizure of property that he has voluntarily abandoned. Id. Property will be deemed to be voluntarily abandoned subsequent to a lawful police investigation. As the Court finds the duffle bag to have been voluntarily abandoned by the Defendant subsequent to a lawful police investigation, there is no basis to suppress. The Court accepts Defendant's argument that the hotel staff were acting as State actors when searching Defendant's parcels however as the Court finds that search to be lawfully conducted without a warrant, as the property was abandoned, the results of the search will not be suppressed.

ORDER

AND NOW, this _____ day of January, 2018, based upon the foregoing Opinion, the Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Peter T. Campana, Esq. Defense Counsel
Martin Wade, Esq. First ADA
Gary Weber, Esq.