

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	:	
vs.	:	CR-1906-2017
	:	CR-1669-2017
NAFIS S. JONES,	:	
Defendant	:	Motion to Suppress

OPINION AND ORDER

Before the court is Defendant's motion to suppress which was filed on March 20, 2018. The hearing was held on April 20, 2018. While President Judge Butts ordered briefs to be submitted prior to the hearing, Defendant did not file a brief. Accordingly, the Commonwealth filed a response to Defendant's motion referencing case law. At the hearing in this matter, the Commonwealth also provided to the court additional case law.

At the hearing in this matter, the Commonwealth presented the testimony of Jason Lamay, a Parole Agent with the Pennsylvania Board of Probation and Parole; Clinton Gardner, an officer with the Williamsport Bureau of Police; and Joshua Bell, also an officer with the Williamsport Bureau of Police. Only a summary of their testimony is necessary in order to address the issues raised in the suppression motion.

On September 8, 2017, Officer Gardner was on patrol working day shift. He was investigating suspected activity at 340 Mountain Avenue in Williamsport. At about the same time that he pulled up to the residence, Nazeer Burks pulled up to the residence in his vehicle. They made contact with each other near the front door of the residence.

While they were talking, the front door opened and then immediately closed. Officer Gardner noticed the odor of marijuana but was not sure whether it came from the residence or Mr. Burks' vehicle. After the door closed, however, he was certain that the odor

came from the residence because it quickly dissipated. While Officer Gardner and Mr. Burks were speaking with each other near the front door, Officer Bell arrived as backup.

Coincidentally, Agent Lamay was also working that day and heard a call on the radio regarding activity in the area. Because he was supervising Mr. Burks and knew that his approved address was 340 Mountain Avenue, he decided to go to the residence. Before Agent Lamay got to the residence, and while Officer Gardner was speaking to Mr. Burks, he heard the back door to the residence close. He went to the side of the residence and saw three individuals running. He gave chase for several blocks but then abandoned the chase and returned back to the residence.

By that time, Agent Lamay had arrived. Officer Gardner told Agent Lamay that he smelled the odor of marijuana coming from the house and he observed individuals running from the back of the house.

Based on what he was told by Officer Gardner, as well as the fact that Mr. Burks had previously signed a consent to search his residence as a condition of supervision, Agent Lamay entered the residence. A protective sweep was done of the residence by Agent Lamay and the police officers. The officers then left to secure the perimeter.

Agent Lamay found a shoebox near the front door in the living room and in the shoebox, he located suspected marijuana. He then left the premises and informed the police officers of his discovery. The premises were secured and eventually two separate search warrants were obtained and executed on the property. The search warrant, however, contained a typographical error which stated the address as 304 Mountain Avenue, instead of 340 Mountain Avenue.

Neither the protective sweep, initial entry and brief search by Agent Lamay nor the detailed searches conducted pursuant to the two separate search warrants yielded any indicia of occupancy of the residence by Defendant, Nafis Jones. Defendant did not present any evidence to support any contention that he had any privacy interest in the house. In fact, following the hearing, defense counsel conceded that Defendant “did not have an expectation of privacy” in the house and that he lived in Philadelphia.

While the court conceded to defense counsel that Defendant was entitled to file the motion, the court questioned whether Defendant was entitled to relief without establishing any privacy interests. Defense counsel asserted that “everything from Burks affects my client.” She further argued that everything Defendant was charged with resulted from the search of Burks’ property and, accordingly, she was entitled to argue it too. Defense counsel submits that Defendant can vicariously assert the constitutional rights of Burks. Defense counsel is incorrect.

To be entitled to a suppression, a defendant must have an expectation of privacy that society accepts as reasonable in the place or item searched or seized. *Commonwealth v. Peterson*, 636 A.2d 615, 617 (Pa. 1993) (having had his standing acknowledged, appellant was then required to “demonstrate that he had a privacy interest which was actual, societally sanctioned as reasonable, and justifiable in the place invaded...”).

Further, “Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.” *Commonwealth v. Ferretti*, 577 A.2d 1375, 1378 (Pa. Super. 1990), citing *Rakas v. Illinois*, 439 U.S. 128, 133-134, 99 S. Ct. 421, 425 (1978). The same rule applies to the rights against unreasonable searches and seizures

provided by Pennsylvania Constitution Article 1, Section 8. *Commonwealth v. Hawkins*, 718 A.2d 265, 268-269 (Pa. 1998).

Accordingly, the court need not and will not address Defendant's other arguments. Defendant lacks a privacy interest in the place searched, i.e., the residence located at 340 Mountain Avenue. Accordingly, he is not entitled to suppression.

ORDER

AND NOW, this ____ day of May 2018, following a hearing, argument and submission of the Commonwealth's response to Defendant's motion to suppress, for the reasons set forth above, Defendant's motion to suppress is **DENIED**.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire ADA
Mary Kilgus, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File