

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,501

VS :

GERALD BARTLETT :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress. Defendant has been charged with possession with the intent to deliver cocaine and possession with the intent to deliver paraphernalia as a result of an incident that occurred September 13, 2000. After a review of the testimony from the hearing on the motion, the Court finds the following facts relevant to the Suppression.

On September 13, 2000, an arrest warrant was executed on the Defendant at his residence at Timberland Apartment 7B. Five armed officers with weapons drawn approached and knocked on the door of Defendant's apartment. Officer Mayes, of the Williamsport Bureau of Police, testified that although he could not specifically recall yelling out "this is the police" on this occasion, it is his practice to do so on every occasion. Within moments, the Defendant opened the door and stood in the doorway. The Defendant was immediately handcuffed and placed facedown on the floor just inside the door in the living room area. The officers conducted a sweep of the apartment. On the coffee table, in front of the sofa, the officers saw in plain view a clear bag containing a white residue. There was also an amount of cash in the bag.

Upon seeing the items on the coffee table, Officers Mayes and Helm asked the Defendant for his consent to search the apartment. Officer Mayes testified that he may have told the Defendant that he could make it easier on him if he cooperated. The

Defendant consented to the search. After receiving the Defendant's consent, the officers asked the Defendant whether there were any additional controlled substances in the apartment. The Defendant directed the officers to a red cloth bag containing 18 yellow and 10 pink heat sealed straws. The Defendant was moved to the sofa where he sat with two officers while the residence was searched for additional substances.

Defendant first argues that the items obtained from the apartment should be suppressed, as the officers did not comply with the "knock and announce" rule. Under [Pa.R.Crim.P. 2007\(a\)](#), "a law enforcement officer executing a search warrant shall, before entry, give, or make reasonable effort to give, notice of his identity, authority and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require his immediate forcible entry." The Court finds, under the circumstances presented in this case, that the requirements of the "knock and announce" rule have been satisfied. The Court finds that there is evidence to establish that the officers made a reasonable effort to give notice of their identity upon approaching the door to the Defendant's residence. Specifically, there is testimony by at least two officers that they knocked on the door of the residence. Additionally, there was testimony by Officer Mayes that it is his practice to yell out "this is the police" after knocking. This evidence, when coupled with the fact that the Defendant answered the door without the need for forcible entry, satisfies the Court that the requirements of the rule were met. The Court therefore rejects Defendant's motion to suppress on this basis.

Defendant next argues that the items obtained from the apartment should be suppressed, as they are fruit of an illegal search of his residence. He argues that the

consent obtained was coerced and not valid. The Fourth Amendment protections against official intrusion are not applicable where the party has consented to the intrusion. The consent, however, must be given freely, specifically, unequivocally, and voluntarily.

The burden of proving a valid consent to search, since it represents a waiver of a substantial constitutional right, rests with the Commonwealth; and, the courts will indulge every reasonable presumption against such waiver. Commonwealth v. Griffin, 232 Pa. Super 163, 336 A.2d 419, (1975) *citing* [16 Am.Jur.2d, Constitutional Law s 131](#). The Commonwealth's burden is especially heavy when the consenter has been placed under arrest. Griffin, *supra.*, *citing* [Annotation, 9 A.L.R.3d 858 \(1966\)](#). "The question of whether an arrested individual has voluntarily consented to a search 'is one of fact which must be determined in each case from the totality of the circumstances.' "Commonwealth v. Washington, 438 Pa.Super. 131, 651 A.2d 1127, (1994), *citing* [Commonwealth v. Elliott](#), 376 Pa.Super. 536, 553, 546 A.2d 654, 662, (1988), [Commonwealth v. Walsh](#), 314 Pa.Super. 65, 74, 460 A.2d 767, 771, (1983).

The Superior Court in Commonwealth v. Danforth, 395 Pa.Super. 1, 576 A.2d 1013, (1990), provides the factors that should be considered in determining whether or not the consent was voluntary. Factors which would tend to indicate that a search is voluntary include: "(1) if the defendant's background indicates his understanding of investigating procedures or his understanding of his constitutional rights, [Commonwealth v. Dressner](#), 232 Pa.Super. 154, 157, 336 A.2d 414, 415 (1975); (2) if the suspect has aided an investigation or search, as by providing a key, *Id.*; (3) if the consenter believed the evidence to be so well concealed that it probably would not be

discovered, [id.](#); (4) the fact of some prior cooperation by the consentor which produced no incriminating evidence, [id.](#); (5) if the consentor was advised of his constitutional rights prior to giving his consent, [id.](#); (6) if the suspect felt that the best course of conduct was cooperation given the fact the he had been caught virtually "red-handed", [Commonwealth v. Griffin](#), 232 Pa.Super. 163, 169, 336 A.2d 419, 421 (1975); and (7) the presence of probable cause to arrest or search the suspect, [Commonwealth v. Thompson](#), 292 Pa.Super. 108, 113-14, 436 A.2d 1028, 1031 (1981). [Commonwealth v. Mancini](#), 340 Pa.Super. 592, 603-604, 490 A.2d 1377, 1383 (1985).” [Danforth](#), [supra.](#), 576 A.2d at 1022.

The Court additionally identified factors that weigh against a finding that the consent was voluntary. These factors include: “(1) that the defendant was interrogated numerous times while the defendant was in custody for hours, [Commonwealth v. Smith](#), 470 Pa. 220, 228-29, 368 A.2d 272, 277 (1977) (a defendant was questioned while in custody for twelve hours); (2) that the police used express or implied threats to obtain the defendant's consent, [id.](#); (3) that the defendant acquiesced in an order, suggestion, or request of the police, [id.](#); and (4) the lack of probable cause to arrest or search the subject, [Thompson](#), [supra.](#), [Commonwealth v. Mancini](#), [supra](#) 340 Pa.Super. at 604, 490 A.2d at 1383-84.” [Danforth](#),[supra](#), 576 A.2d at 1022-1023.

After a review of the testimony and circumstances in the instant case, the Court concludes that the Commonwealth has established that the consent given by the Defendant for a search of his residence was voluntary. The evidence established that after being placed in handcuffs following his arrest, the Defendant was in the living room area of his residence. On the coffee table, in the immediate proximity of the Defendant

and the officers, was the clear bag containing the white residue and an amount of cash. Having been virtually caught “red handed,” he directed officers to the red cloth bag containing the controlled substances, also located on the coffee table. The Defendant aided in the investigation by telling the officers exactly where they would find the additional controlled substances. The Defendant sat on the sofa with two of the officers while the other officers searched. As the Court finds that the Commonwealth has shown that the consent was given voluntarily, the Defendant’s Motion to Suppress is denied.

ORDER

AND NOW, this _____ day of April, 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant’s Motion to Suppress is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
DA
E.J. Rymsza, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire