

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA,	:	
Plaintiff	:	
	:	
v.	:	NO. CR 219-2006
	:	
TAURANCE JOHNSON,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Motion to Suppress filed by the defendant on May 5, 2006. The defendant has been charged with Possession with Intent to Deliver a Controlled Substance, Cocaine, and also Possession of Drug Paraphernalia. The charges arise out of a search of the defendant's hotel room, during which law enforcement officers found cocaine. The facts of the case are as follows.

On December 7, 2005, members of the South Williamsport Police, along with members of the U.S. Marshals Services' Fugitive Task Force, were attempting to apprehend Curtis Mitchell on a number of Lycoming County domestic relations bench warrants. Law enforcement had received information that Mr. Mitchell might be staying at the King's Inn Motel in South Williamsport.

Upon arriving at the King's Inn Motel, the officers learned from the desk clerk that Mr. Mitchell was staying in Room No. 10.¹ The desk clerk also gave the police a master key. The officers knocked upon Mr. Mitchell's door, but received no answer. They then entered the room and found no one there. However, the room looked as though it had been recently occupied, with the television on, items of clothing strewn around, and McDonald's condiments present. Drug paraphernalia was in plain view.

Officer Finnerty was posted outside Mr. Mitchell's room, while the other law enforcement officers returned to the hotel clerk, who told them Mr. Mitchell's brother,

¹ The testimony was contradictory about the actual number of Mr. Mitchell's hotel room, as well as the number of Mr. Johnson's room, but the court considers that inconsequential.

Taurance Johnson, was staying in Room 3, that Mr. Mitchell frequently went to Mr. Johnson's room, and that Mr. Mitchell and Mr. Johnson were the only two black males staying at the motel. The police then went to Mr. Johnson's room and set up surveillance. They saw a white car pull up near Mr. Johnson's room, driven by a black male who met the description of Mr. Mitchell. They did not see where the black male went after he exited the car.

The officers knocked on the door of Mr. Johnson's room and announced their presence, but received no answer. They then entered the room using the master key. They did not see anyone in the room, but spotted a ceiling tile askew. Marshall Alex Fils-Aime pushed up on the tile and a package fell out containing what looked like drugs. Officer Finnerty stayed to guard the room, while the other officers left to obtain a search warrant.

Later that day, law enforcement officers received a call about a white car driven by a black male in the vicinity of the hotel. Chief Lowmiller stopped the car, and Officer Finnerty and Marshall Fils-Aime responded, as well. Mr. Johnson was identified to be the driver, and was arrested. He subsequently made several statements, and a search of the vehicle found \$1400 in the glove compartment. A search of his hotel room after the warrant was obtained turned up illegal drugs.

The defendant alleges that the warrantless entry and search of his hotel room was conducted in violation of his constitutional right to privacy under the Pennsylvania and United States Constitutions. He further argues that the money in the glove compartment and statements he made upon his arrest must be suppressed as they flow from that unlawful search.

Certainly, the defendant had an expectation of privacy in his hotel room. *See Commonwealth v. Winfield*, 835 A.2d 365, 368-69 (Pa. Super. 2003). Therefore, a search warrant was required, absent consent or exigent circumstances. *Commonwealth v. Walker*, 836 A.2d 978, 981 (Pa. Super. 2003). Exigent circumstances arise where the

need for prompt police action is imperative. Commonwealth v. Griffin, 785 A.2d 501 (Pa. Super. 2001). The Commonwealth bears the burden of establishing by clear and convincing evidence that circumstances surrounding the search were truly exigent. Commonwealth v. English, 839 A.2d 1136, 1141 (Pa. Super. 2003). Police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests. Commonwealth v. Roland, 637 A.2d 269, 271 (Pa. 1994). In determining whether exigent circumstances exist, the court must view a number of factors, including: the gravity of the offense, whether there is a reasonable belief the suspect is armed, whether there is above and beyond a clear showing of probable cause, whether there is a strong reason to believe the suspect is within the premises being entered, whether there is a likelihood the suspect will escape if not swiftly apprehended, whether the entry was peaceable, the time of the entry, i.e., whether it was made at night, whether the officer was in hot pursuit of a fleeing felon, whether there is a likelihood that evidence may be destroyed, and whether there is danger to police or others. Id. at 270-71.

The Commonwealth argues exigent circumstances exist because the officers were in hot pursuit of Mr. Mitchell, and had good reason to believe Mr. Mitchell was in Mr. Johnson's hotel room. Even if that were the case, however, it does not explain why the police could not have waited outside Mr. Johnson's hotel room until they obtained a warrant, as the testimony indicated the police knew there was only one door into or out of the hotel room. Had Mr. Mitchell actually been inside the hotel room and tried to escape, the posted officer could certainly have apprehended him at that time. Clearly, the warrantless entry was not needed to prevent the likelihood Mr. Mitchell would escape.

Regarding the other factors for exigent circumstances, the gravity of the offense was not great, there was no reason to believe Mr. Mitchell was armed, there was not a very strong showing of probable cause or that Mr. Mitchell was in the room, Mr.

Mitchell was not a fleeing felon, and there was little danger to police or others. Mr. Mitchell was being pursued for domestic relations warrants, not for drugs or violent crime.

As for the likelihood that evidence would be destroyed before a search warrant was obtained, the court again believes the Commonwealth has failed to show exigent circumstances. As stated by the Supreme Court in Commonwealth v. Mason, 637 A.2d 251, 255 n.2 (Pa. 1993), “It is always possible that criminals may destroy evidence before the police arrive with a warrant, but unless there is something more than the suspicion that such destruction of evidence may occur, the circumstances are not exigent.” Based upon the information the police knew about Mr. Mitchell at the time, it is far too great a stretch to conclude that Mr. Mitchell was in Mr. Johnson’s room, possessed contraband in the room, and would immediately set about destroying the drugs or drug paraphernalia. The possible destruction of evidence was nothing more than a hunch. Therefore, the court finds the Commonwealth has failed to show that prompt police action was imperative.

Moreover, even if the court were to find the warrantless entry into Mr. Johnson’s hotel room was authorized under exigent circumstances, the court would have to suppress evidence of the package that fell out of the ceiling tile. This package was not in plain view, nor was it discovered in the course of a reasonable search for Mr. Mitchell, as the court does not believe Marshall Fils-Aime could reasonably have believed Mr. Mitchell was hiding in the ceiling tile. The evidence showed that Mr. Mitchell was a heavy man, and that the ceiling tile was fourteen by twelve inches. Moreover, the ceiling was eight feet high, and there was no stool or chair below the ceiling tile to assist Mr. Mitchell in hoisting himself up behind the tile. The court will therefore suppress the evidence regarding the package that fell out of the ceiling tile. The court will further suppress all other evidence obtained from Mr. Johnson’s room after the search warrant was obtained, as it flowed from the illegal search.

Furthermore, the court rejects any notion the warrantless search was justified by the “inevitable discovery” doctrine.² Even if the officers had obtained a search warrant for Mr. Johnson’s hotel room, the purpose of that warrant would have been to find Mr. Mitchell, and as already discussed above, any discovery of the packet that fell out of the ceiling would have been suppressed because it was unreasonable for the police to believe Mr. Mitchell was hiding behind the ceiling panel

And finally, the court must conclude that Mr. Johnson’s arrest was unlawful, as it flowed from evidence obtained illegally, namely the drugs found in his room, and is therefore “fruit from the poisonous tree”.

² See Mason, *supra*, at 255.

ORDER

AND NOW, this _____ day of July, 2006, the defendant's Motion to Suppress, filed on May 5, 2006, is granted. All evidence seized in the defendant's hotel room is suppressed, and all evidence and statements obtained as a result of the defendant's stop and arrest is suppressed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
District Attorney (HM)
Paul Petcavage, Esq.
Gary Weber, Esq.