

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 69 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
ERIC COLLINS,	:	
Defendant	:	Omnibus Pre-Trial Motion

OPINION AND ORDER

Before the Court are Defendant’s Motion to Suppress Evidence, Motion to Dismiss and Motion for Severance, all contained in his Omnibus Pre-Trial Motion, filed October 12, 2006. A hearing on the motion was held November 17, 2006, at the conclusion of which the Court directed the preparation of a transcript of the hearing. That transcript was completed January 17, 2007.

Defendant was charged with receiving stolen property, criminal conspiracy, and drug offenses after a search of his residence by police revealed a handgun and marijuana. In his Motion to Dismiss, Defendant seeks to dismiss the charge of receiving stolen property, contending there is no credible evidence to establish the handgun was stolen. Since Defendant waived his right to a preliminary hearing, however, he may not now seek habeas corpus relief on this basis.

In the Motion to Suppress Evidence, Defendant challenges the initial search of his residence, as well as a subsequent search pursuant to a warrant which was obtained based on information gleaned from the first search. Defendant contends the warrant-less initial search was illegal, as it was made without a voluntary consent. Considering the testimony offered at the hearing, the Court agrees.

A warrantless search of a residence is *per se* unreasonable unless justified by a specific exception to the warrant requirement. Commonwealth v. Gutierrez, 750 A.2d 906 (Pa. Super. 2000). Exigent circumstances may excuse the need for a warrant, Commonwealth v. Conn, 547 A.2d 768 (Pa. Super. 1988), but in the instant case, the Commonwealth does not argue that exigent circumstances existed. Indeed, the officers testified that they meant to merely secure

the residence while a warrant was being obtained. The Commonwealth relies on a different exception to the warrant requirement, that consent to search was given by one authorized to give such consent. *See Commonwealth v. Edwards*, 735 A.2d 723 (Pa. Super. 1999). In order for consent to be valid, however, it must be voluntary, given free from coercion, duress, or deception. *Id.* In the instant case, the Court finds the “consent” to search obtained by police was not voluntary, and thus invalid.

Officers testified to having observed a controlled buy, arresting the sellers, obtaining a set of keys from one of the individuals and then proceeding to the residence from which the sellers had exited just prior to the buy. According to the officers, they knocked on the door for several minutes, tried the key while waiting, unlocking and then relocking the door, knocked again, at which time the door was answered by one Rhonesia Brooks, who provided entry, learned that Ms. Brooks was the “matriarch” of the residence, were given oral consent to search without even asking for such, and then obtained written consent to search from her, searched the residence and found the gun and drugs at issue. According to Ms. Brooks and two other witnesses, however, an entirely different sequence of events unfolded. Ms. Brooks testified that when she heard the knocking at the front door she did not immediately respond as she was on the phone, but then as she did walk toward the front door it opened and Officer Ungard entered the residence. According to Ms. Brooks, Officer Ungard announced “Williamsport PD”, ordered everyone to sit down in the living room, asked who was upstairs, was told Defendant was upstairs, went upstairs and brought Defendant down, handcuffed, and directed Defendant to sit down in the living room as well. Officer Kreitz then entered the residence and the occupants were questioned regarding ownership of the home. When one of the other women present, Donata Everett, indicated it was her home, she was asked whether she would consent to a search but responded, “No”. Miss Brooks was then asked by Officer Ungard if she lived there, and when she said she did, was asked whether the child present was her child. When Ms. Brooks responded that she had custody of the child, Officer Ungard then told Ms. Brooks that she was going to sign a consent-to-search form or he would call Children and Youth to come take her children, call the SPCA to come take her dog, and that he would have her car impounded at a significant cost to her. According to Ms. Brooks, these threats were

made several times, and while this was being said, Officer Kreitz had stepped outside to obtain a consent-to-search form. Ms. Brooks testified that she consented to the search only because of the threats made by Officer Ungard.

The Court recognizes that the conflicting testimony in this matter results in the credibility of the police officers being placed in issue, but considering all of the testimony, resolves that issue in favor of Defendant. Therefore, since the consent was not voluntary, it was not valid and the search was illegal. All evidence discovered as a result of the search, including that discovered during the search executed pursuant to the warrant,¹ must be suppressed.

In light of the suppression of the gun and the drugs, the Court deems it unnecessary to address Defendant's final motion, his request to sever the charges for trial.

ORDER

AND NOW, this 6th day of February 2007, for the foregoing reasons, it is hereby Ordered and Directed as follows:

1. The Motion to Dismiss is hereby DENIED.
2. The Motion to Suppress is hereby GRANTED. All evidence seized as a result of a search of the residence, whether pursuant to the consent-to-search form or the search warrant, is hereby SUPPRESSED and shall not be introduced into evidence at trial.
3. The Motion for Severance is hereby DISMISSED as moot.

BY THE COURT,

cc: DA
Michael Morrone, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

¹ The Commonwealth failed to introduce the warrant in question into evidence, and thus the Court is unable to determine whether it would have been properly issued without the observations of the police during the first search. Since the burden is on the Commonwealth to establish the validity of a search warrant, Commonwealth v. Ryan, 407 A.2d 1345 (Pa. Super. 1979), the Court must conclude that the warrant would not have been supported by probable cause without the officers' observations during the first search.