

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1329 – 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
DERRICK ELLISON,	:	
Defendant	:	Omnibus Pre-trial Motion

OPINION AND ORDER

Before the Court are Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus, contained in his Omnibus Pre-trial Motion, filed October 5, 2007. A hearing on the motion was held November 30, 2007.

Defendant has been charged with two firearms offenses, recklessly endangering another person and two summary offenses, in connection with an incident in the early morning hours of July 15, 2007. In the instant motions, Defendant contends the evidence should be suppressed as the result of an illegal search and that the evidence is insufficient to support the firearms charges as well as the charge of recklessly endangering.

According to the Commonwealth's witnesses, Shrona Clipper called police to her home in the early morning hours of July 15, 2007, after Defendant entered the residence and pulled his girlfriend, Annette Short, out of the residence by the arm. Ms. Clipper testified that Defendant had a gun in his hand and that he hit her in the face after they argued over Ms. Short, Ms. Clipper wanting Ms. Short to stay since she was very intoxicated and Defendant wanting her to go with him. Ms. Clipper also testified that there were several other people in the residence at that time, including her children and Ms. Short's children. When police arrived, Ms. Clipper told them what happened and that she was concerned for Ms. Short's safety, and asked police to go to Ms. Short's residence nearby, since that is where she believed they had gone.

Annette Short testified that she remembers Defendant coming to get her at Ms. Clipper's residence and returning to her own residence with him, she remembers the police

coming to her residence and that she would not let them in, but that she doesn't remember much else because she was "pretty intoxicated" at the time.

David Rausher of the Pennsylvania State Police testified that he and several other troopers went to Annette Short's residence and when they knocked on the door, Ms. Short came to the door but, when asked, denied that Defendant was inside the residence. Trooper Rausher asked Ms. Short to step outside as he was concerned Defendant might be standing behind or beside her,¹ and she did so. According to Trooper Rausher, Ms. Short appeared intoxicated and also appeared upset. She was asked a second time whether Defendant was inside the residence and she said again that he was not. When Trooper Rausher asked her if they could enter the residence to look for themselves, Ms. Short said she did not want them to, that her children were inside sleeping. Police then called Elizabeth Turner of the Lycoming County Housing Authority² who spoke with Ms. Short upon her arrival at the scene and then informed the troopers they could enter the residence. Four troopers entered and Trooper Rausher found Defendant hiding in a closet in an upstairs bedroom,³ and then after Defendant was removed in handcuffs by two other troopers, Trooper Rausher searched the master bedroom and in a clothes hamper found a 9mm pistol and, lying beside it, a magazine containing rounds of ammunition. According to Trooper Rausher, the search for the weapon was performed immediately after taking Defendant into custody as he was concerned that any children in the residence might find a loaded weapon.

Elizabeth Turner testified she was called to come to Annette Short's residence by the state police in the early morning hours of July 15, 2007, and informed there was a potential hostage situation. Upon arrival at the residence, she spoke with Ms. Short and asked where her children were, to which Ms. Short responded she had no idea.⁴ Ms. Short told Ms. Turner no one else was in the residence. Ms. Turner then asked if she minded "if we look around" and

¹ Trooper Rausher testified that it was impossible to see through the screen door into the room.

² Both Ms. Clipper and Ms. Short were residents of apartments owned by the Lycoming County Housing Authority.

³ It was indicated this was a child's bedroom and that no children were in the room.

⁴ Ms. Turner testified that Ms. Short was "very intoxicated".

Ms. Short said no, meaning she did not mind.⁵ Ms. Turner then told Trooper Rausher they could enter the residence to look for Defendant.

With respect to the legality of the search, based on Ms. Turner's testimony that Ms. Short gave permission for police to enter and look for anyone who might be there, the Court finds that the initial search which led to the discovery of Defendant hiding in a closet was valid. Although Defendant argues Ms. Short gave permission to only Ms. Turner, and that the police could not enter based on that limited permission, it appears the permission was given to both Ms. Turner and the police, as Ms. Short was asked whether "we" could look around, while the two women were standing a few feet from four troopers who had previously expressed a desire to enter the residence. In any event, the Court also finds exigent circumstances would have justified a search even without consent, as the troopers had been informed (1) Defendant had a gun, (2) he had dragged Ms. Short from Ms. Clipper's apartment by the arm after hitting Ms. Clipper and indicating he was angry, (3) Ms. Clipper thought they had gone to Ms. Short's apartment, (4) Ms. Clipper was concerned for Ms. Short's safety, and (5) Ms. Short's children were in the apartment.⁶ Police are excused from the warrant and probable cause requirements of the Fourth Amendment when they reasonably believe that someone within a residence is in need of immediate aid. Commonwealth v. Miller, 724 A.2d 895 (Pa. 1999); Commonwealth v. Winfield, 835 A.2d 365 (Pa. Super. 2003).

The Court also finds the search subsequent to the discovery of Defendant, through which police discovered the handgun and ammunition, to be a valid continuation of the search for Defendant pursuant to the exigent circumstances which, in the Court's opinion, continued to exist until the weapon was found. Trooper Rausher testified he was afraid Ms. Short's children, whom he had been told were in the residence, had hidden out of fear and might come across the gun if it were not immediately located. Under these circumstances, the warrantless search, which ended when the weapon was located, was reasonable, and any evidence or statements obtained as a result of the search need not be suppressed.

⁵ Ms. Turner specifically testified on cross-examination that when Ms. Short said no one else was in the residence, she asked her "You don't mind if we look around then, do you?", to which Ms. Short responded "no."

⁶ Although Ms. Clipper testified the children remained at her apartment when Defendant took Ms. Short from the apartment, it is not clear that this information had been conveyed to Trooper Rausher. Trooper Rausher testified Ms. Short told him the children were in her apartment sleeping.

With respect to the Petition for Writ of Habeas Corpus, Defendant argues first that if the evidence of the weapon is suppressed, neither the firearms charges nor the charge of recklessly endangering can stand. Inasmuch as the evidence is not being suppressed, this argument is moot. Second, Defendant argues the Commonwealth has failed to show that Ms. Clipper was placed in danger of death or serious bodily injury, and thus the charge of recklessly endangering another person must be dismissed. Specifically, Defendant argues the Commonwealth has presented no evidence that the gun was loaded and capable of being fired. To the contrary, Trooper Rausher testified that after the gun was confiscated it was test-fired and it was operable, and further, the evidence that the magazine containing ammunition was found in close proximity to the gun is circumstantial evidence that it was loaded when possessed by Defendant. While not proof positive, such is sufficient for a prima facie case. Thus, evidence that Defendant had in hand a loaded pistol in a room with other persons while he expressed anger, is sufficient to sustain a charge that he recklessly engaged in conduct which may have placed another person in danger of death or serious bodily injury.

ORDER

AND NOW, this 6th day of December 2007, for the foregoing reasons, Defendant's Motion to Suppress and his Petition for Writ of Habeas Corpus are both hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson