

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	No. 1223-2009
	:	CRIMINAL DIVISION
WAYMAN MOORE,	:	
Defendant	:	

COMMONWEALTH	:	
	:	
v.	:	No. 1465-2009
	:	CRIMINAL DIVISION
WAYMAN MOORE,	:	
Defendant	:	

OPINION AND ORDER

Defendant filed an Omnibus Pre-Trial Motion for docket number 1223-2009 on September 9, 2009 and an Omnibus Pre-Trial Motion for docket number 1465-2009 on November 9, 2009. A hearing on both Motions was held on December 3, 2009. At the time of the hearing, the Court took testimony on docket number 1223-2009, but not on 1465-2009 as that case is dependent upon the Court's decision in 1223-2009. Also, at the time of the Hearing, by Order the Court dismissed the Motions to Dismiss in each Omnibus Pre-Trial Motion. The remaining issue before the Court is the Motion to Suppress for both cases.

Background

The following is a summary of the facts presented at the Suppression Hearing. On June 19, 2009 around 10:00 a.m., Sergeant Christopher Kriner (Kriner) of the Old Lycoming Township Police Department received information from Agent Kevin Stiles (Stiles) of the Williamsport Bureau of Police (WBP) that Tricia Derr (Derr), for whom he had a Material

Witness warrant, was observed in a maroon Dodge Intrepid with her boyfriend, a black male named Wally. Stiles also related earlier that day while at Bing's Motel on another drug tip, he observed a maroon Dodge Intrepid parked outside one of the rooms at the motel. Kriner proceeded to Bing's where he observed a maroon Dodge Intrepid parked in front of room # 12. He ran the registration plate which came back to Derr.

Kriner spoke with Bing's Motel Management who provided him with registration information for the hotel, showing the room was registered to Derr and a copy of her driver's license and vehicle information. While keeping the room under surveillance, Kriner observed Defendant and Derr exit room # 12, enter a maroon Dodge Intrepid, and drive southbound on Lycoming Creek Road. Officer Samar, also of Old Lycoming Township Police Department and Stiles proceeded to conduct a vehicle stop on Derr's vehicle. Samar made contact with the Defendant who was operating the Intrepid. When Defendant reached into his pocket to obtain his photo identification card a small plastic baggie containing several orange colored pills, later identified as Suboxone fell out of his pocket. The Defendant's photo identification card revealed a Newark, NJ address.

Derr was asked for and consented to a search of the hotel room. Derr then left with Stiles. Kriner asked the Defendant if he would consent to a search and he said it was not his room, but that he had property in the room. Kriner asked Defendant if he wanted to come in for the search, but he declined appearing nervous and evasive. The Defendant was permitted to leave. Kriner testified that he asked for consent to search the hotel room from Derr as she was known to have drugs on her. He added that he also believed that since Defendant was from Newark, NJ which is a source city and had loose Suboxone tablets on him, increased the likelihood there were also drugs in the room.

Kriner conducted a search of room # 12 and found both female and male clothing, along with papers for both Derr and Defendant. In a nightstand, several bricks of heroin were discovered. Immediately the search was halted to enable Kriner to obtain a search warrant. The search resumed and on the nightstand officers found papers containing Defendant's name, a bundle of heroin containing approximately 237 packets and a counterfeit bill. Marijuana was found in the pocket of a pair of men's jeans and another small bag of marijuana and check stub was found in a woman's shoe belonging to Derr. Charges were filed against Defendant and a warrant was issued for his arrest.

According to the Affidavit of Probable Cause for docket number 1465-2009, on July 21, 2009, Police Officer Joseph Ananea (Ananea) of the WBP observed the Defendant in the 700 Block of West Edwin Street. Knowing there was an active warrant for Defendant's arrest¹, Defendant was taken into custody. Defendant was taken to the WBP headquarters where he was processed and strip searched. While removing his jeans, three glassine baggies containing suspected heroin fell to the floor. The substance field tested positive for heroin. Defendant was then charged with Possession of a Controlled Substance and Possession of Drug Paraphernalia.

Discussion

Motion to Suppress under docket number 1223-2009

Defendant alleges that the officers did not have consent to search the hotel room.

According to the Pennsylvania Supreme Court, “where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that

¹ The Arrest Warrant was issued by Magisterial District Judge C. Roger McRae for Magisterial District Judge James G. Carn on June 19, 2009 for the offenses charged under docket number 1223-2009.

the challenged evidence is admissible.’’ Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

“Under both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, a search . . . which is conducted without a warrant, is deemed to be per se unreasonable.” Commonwealth v. Witman, 750 A.2d 327, 338 (Pa. Super. Ct. 2000). However, valid consent “may render an otherwise illegal search permissible.” Id. “To establish a valid consensual search, the prosecution must first prove that the consent was given during a legal police interaction, or if the consent was given during an illegal seizure, that it was not a result of the illegal seizure; and second, that the consent was given voluntarily.” Commonwealth v. Newton, 943 A.2d 278, 283-84 (Pa. Super. Ct. 2007) (quoting Commonwealth v. Reid, 811 A.2d 530, 545 (Pa. 2002)).

The Court finds that the officers obtained proper consent prior to searching the hotel room. The testimony reveals that Derr was arrested pursuant to a Material Witness warrant, whereupon she was asked to consent to a search of the hotel room registered in her name and freely gave her consent. Defendant was also asked for permission to search and told the officers that it was not his room. He was not in custody and was free to leave the scene even while officers performed the search. The Court sees nothing from the evidence to establish that Derr did not voluntarily consent to the search of the room and her belongings. In addition, nothing from the testimony presented by the Commonwealth shows that Defendant was coerced or forced into providing consent to search his things. Based upon the description of his demeanor at the scene, it is clear Defendant wanted to place as much space between him and law enforcement as possible. Therefore, as the officers had valid consent to the initial search, the motion shall be denied.

Motion to Suppress under docket under 1465-2009

Defendant alleges that if the Court grants the Suppression Motion under docket number 1223-2009 that the drugs found during the arrest and execution of the warrant should be suppressed.

According to the United States Supreme Court “‘it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.’” United States v. Robinson, 414 U.S. 218, 226 (1973) (quoting Chimel v. California, 395 U.S. 752 (1969)). Further, the Supreme Court of Pennsylvania states that “officers ‘. . . when making a lawful arrest with or without a search warrant [may] discover and seize any evidence, articles or fruits of crime found upon the prisoner or upon the premises under his control at the time of his lawful arrest . . .’” Commonwealth v. Aljoe, 216 A.2d 50, 53 (Pa. 1966) (quoting Commonwealth v. Gockley, 192 A.2d 693, 699 (1963)).

The Court finds that the search of the Defendant’s person was valid as it was conducted pursuant to a lawful arrest. Whether the evidence for some of the charges may or may not be suppressed, the charges themselves for which the Defendant was arrested still remain, having no effect on the status of the warrant. Since Defendant was searched incident to a lawful arrest, the Motion shall be denied.

ORDER

AND NOW, this ____ day of December, 2009, based on the foregoing Opinion, it is
ORDERED and DIRECTED as follows:

1. The Defendant's Motion to Suppress under docket number 1223-2009 is hereby
DENIED.
2. The Defendant's Motion to Suppress under docket number 1465-2009 is hereby
DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (PP)
Andrea Pulizzi, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)