

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**NIKEMA DAVIS,
Defendant**

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**CR: 98-2011
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on April 4, 2011. The Motion included a Motion to Suppress and a Petition for Writ of Habeas Corpus. After several scheduling delays, a hearing on both Motions was held September 1, 2011.

Background

On November 8, 2010, Trooper Tyson Havens (Havens) of the Pennsylvania State Police arrested Carlos Boothe (Boothe) for Possession of a Controlled Substance. Havens found a house key on Boothe and received information from Officer Justin Snyder (Snyder) of the Williamsport Bureau of Police that Boothe was currently residing at 310 High Street in Williamsport. Havens, along with Trooper Kenneth Fishel, also of the Pennsylvania State Police, went to the residence to do a “knock and talk,” during which Havens hoped to gain permission to search the residence from the persons present and to obtain information on Boothe. As soon as Havens stepped onto the porch of 310 High Street, he could smell a “very strong odor of burnt marijuana coming from inside the residence.” Havens recognized and identified the odor of marijuana as he has dealt with the substance in over one thousand drug cases, knows the

substance by its unique smell, and has never previously confused the odor with another smell. Havens could see inside the residence through the blinds on the window of the front door, and he observed two individuals, one of whom was later identified as Nikema Davis (Defendant), on the couch in the living room of the residence about 10 feet from where Havens stood out on the porch. The Defendant saw Havens standing on the porch in full uniform and immediately stood up and began to flee toward the kitchen of the residence. Believing that the Defendant was in the process of destroying evidence, Havens proceeded to unlock the front door with the key he obtained from Boothe and Havens and Fishel entered the residence. The Defendant was then taken into custody. Once inside the residence, Havens viewed suspected marijuana on the coffee table. Havens then obtained a search warrant and thereafter discovered a marijuana blunt underneath the kitchen cabinet of the residence. The Defendant admitted that she put the blunt under the cabinet, this being the reason she ran to the kitchen when she saw Havens at the front door. The Defendant also produced marijuana that she was carrying in her brassiere and turned said marijuana over to Fishel. The suspected marijuana found in this case all field tested positive for marijuana.

Motion to Suppress

The Defendant contends that the troopers' entry into her residence was unlawful as no exigent circumstances warranted the entry. The Defendant further contends that, in the event the Court finds exigent circumstances did exist, said circumstances were created by the troopers' actions in announcing their presence at the residence; therefore, the Defendant contends this fact nullified the finding of any exigency. In support of her argument, the Defendant cites to Commonwealth v. Dean, 940 A.2d 514 (Pa. Super. 2008) where the Superior Court upheld the

suppression of a warrantless entry into a hotel room where no exigent circumstances justified the warrantless entry. The Dean Court found that if there were any exigent circumstances, “[t]hey were the by-product of the police’s decision to make a warrantless entry rather than secure a search warrant.”

It is well settled that “[w]arrantless searches and seizures inside a home are presumptively unreasonable unless the occupant consents or probable cause and exigent circumstances exist to justify intrusion.” Dean at 521. Several factors are to be considered in determining whether exigent circumstances justify the police proceeding without a warrant:

- (1) the gravity of the offense;
- (2) whether the suspect is reasonably believed to be armed;
- (3) whether there is a clear showing of probable cause;
- (4) whether there is a strong reason to believe that the suspect is within the premises being entered;
- (5) whether there is a likelihood that the suspect will escape if not swiftly apprehended;
- (6) whether the entry was peaceable;
- (7) the time of the entry;
- (8) whether there is hot pursuit of a fleeing felon;
- (9) whether there is a likelihood that evidence will be destroyed if police take the time to obtain a warrant; and
- (10) whether there is a danger to police or other persons inside or outside the dwelling to require immediate and swift action.

Dean at 522 (See Commonwealth v. Demshock, 854 A.2d at 555-556).

The Court notes that the troopers’ in this case did not go to the residence with the objective of catching the Defendant with drugs, unlike the officers in Dean, but instead went to the residence with the hopes of acquiring incriminating evidence against Boothe. However, upon their arrival at the residence, the troopers smelled a very strong odor of marijuana coming from the residence, which would ordinarily require the issuance of a search warrant. Dean at 522 (citing Johnson v. United States, 68 S. Ct. 367 (1948)). However, while standing on the porch of the residence and executing the “knock and talk”, the troopers saw the Defendant observe them in full uniform and immediately thereafter flee the living room area into another room of the residence not visible to the troopers. As Havens had reason to suppose that marijuana was

present within the residence, the Defendant's actions provided the troopers with reason to believe that the Defendant would destroy evidence of the marijuana if they did not enter the residence at that time. Therefore, the Court finds that once the troopers had probable cause to obtain a search warrant of the residence, exigent circumstances prevented them from doing so before they were required to enter the residence. As the Court finds that exigent circumstances justified the troopers' entrance into the residence, the Defendant's Motion to Suppress will be denied.

Petition for Writ of Habeas Corpus

The Defendant opines that in the event the Court suppresses the evidence obtained through the warrantless entry into the residence, the Commonwealth would then be unable to prove the Defendant was in possession of a small amount of marijuana and of drug paraphernalia. However, as the Court will deny the Defendant's Motion to Suppress, the Commonwealth will be able to try its case using the evidence obtained. Accordingly, the Defendant's Petition for Writ of Habeas Corpus will also be denied.

ORDER

AND NOW, this ____ day of September, 2011, based upon the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus are DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Trisha D. Hoover, Esq.