

10/1/10

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 08-10,918
	:
CORY ANTHONY RINGKAMP,	:
Defendant	: POST-SENTENCE MOTION

OPINION RE: POST-SENTENCE MOTION
FILED BY DEFENDANT

I. Pertinent Procedural History

Defendant, Cory Ringkamp was found guilty in a non-jury trial on March 10, 2010 of Count 1, Possession With Intent to Deliver marijuana; Count 2, Possession of marijuana; Count 3, Possession of Drug Paraphernalia, baggies; Count 4, Possession of Instrument of a Crime, replica firearm, pellet gun; Count 5, possession of Instrument of a Crime, a macheté, and Count 6, Criminal Conspiracy.

Prior to trial Defendant filed a Motion to Suppress Evidence and a habeas corpus motion which were heard by the Honorable Nancy L. Butts, President Judge. The motion was heard by Judge Butts on November 3, 2008 and on January 6, 2009, Judge Butts issued a written "Opinion and Order" denying the motion. Defendant on or about March 17, 2009, filed a motion to Reconsider, which Judge Butts heard on April 20, 2009. By written order of April 23, 2009, Judge Butts denied Defendant's Motion to Reconsider Suppression.

Defendant was sentenced by the undersigned on October 4, 2010. The Court, found that the mandatory minimum sentence found in 42 Pa. C.S. §9712.1 applied to the case as the pellet gun seized by the state police was located with the marijuana seized by the police from

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Defendant's vehicle. The pellet gun was found to be a firearm as defined by §9712.1, and the Court was obligated to impose a five-year mandatory minimum sentence which it duly imposed for Count 1, Possession With Intent to Deliver Marijuana. The court found Count 2, Possession of Marijuana merged with Count 1. The Court imposed a one-year probation term for Count 3, Possession of Drug Paraphernalia which was to run concurrent to Count 1. Defendant was given a 1-12 month concurrent sentence for possession of the pellet gun, Count 4, and likewise a 1-12 month concurrent sentence for Count 5, Possession of the macheté. On Count 6, the conspiracy to possess with intent to deliver, the Court imposed a two-year consecutive probation term.

Defendant, on October 6, 2010, filed a post-sentence motion. In the post-sentence motion, Defendant challenged the sufficiency of the evidence as to all the counts. Defendant, in a section of the motion entitled "Motion for a New Trial," specifically raised two issues which pertained to searches performed by the Pennsylvania State Police. One issue raised the argument that the state police seizure of Defendant's vehicle and subsequent transfer of the vehicle to the state police barracks, where a search warrant was then obtained, was an unlawful seizure. The second issue raised concerned a search by the Pennsylvania State Police of a digital camera found by the state police in the search of the vehicle. The digital camera was found to contain several incriminating photographs of Defendant with the pellet gun and a quantity of cash.

The Court held an argument on the post-sentence motion and also held an evidentiary hearing on November 12, 2010 on the issue pertaining to the search of the digital camera as this issue had never been raised prior to the post-sentence motion. The Court felt it would benefit the handling of the entire case to hear the motion post trial as to the search of the digital camera. However, the Court on November 12, 2010, did not address Defendant's claim

of unlawful seizure of his vehicle by the Pennsylvania State police because this exact issue was raised by Defendant in the Motion to Reconsider the initial suppression denial and Judge Butts, by Order of April 23, 2009, specifically denied Defendant's Motion to Reconsider.¹

This Opinion is now written to address Defendant's Post Sentence Motion including the sufficiency of the evidence and the issue raised for the first time after the November jury trial as to the search of Defendant's digital camera. Otherwise, we are not here addressing the suppression issues as they have been decided in Judge Butts' Opinion and Order of January 6, 2009 and April 23, 2009.

II. Facts of the Case

On April 29, 2008 Trooper Tyson Havens and Corporal Michael Simpler of the Pennsylvania State Police were patrolling during the evening in the area of Hepburn and Campbell Street in the City of Williamsport. Trooper Havens had significant experience in drug investigations having worked undercover for nine years. He has investigated over 1,000 drug cases and has testified as an expert witness on drug transactions on many occasions. Trooper Havens and Corporal Simpler were in uniform in a marked cruiser. The area they were patrolling in was noted to be an area with significant criminal activity.

¹ Judge Butts' Order of April 23, 2009, does not specifically address the seizure of vehicle issue. This issue was first raised by Defendant in his Reconsideration of Suppression.

While this issue is not specifically before the undersigned, we note that when the State Police towed the vehicle to the barracks to obtain a search warrant there clearly was probable cause to support the inference that there was marijuana in the vehicle.

We note also that Defendant, owner of the vehicle, was being detained as a probation violator at the time in question. There was also a second listed owner who was not present at the scene. *See, also*, Footnote 3 in this Opinion.

The Troopers approached a group of individuals on a street corner in the 800 block of Hepburn Street. As they did this a white Chevy Impala vehicle pulled up and Defendant Cory Ringkamp exited the passenger side of the vehicle and the driver, Shawn Brister exited the driver's side. The two men walked toward the Troopers and seemed to simply watch what the Troopers were doing. The two men kept their hands in their pockets and seemed concerned by the Troopers' presence. The Troopers were concerned that the men could be concealing weapons in their jackets.

The Troopers then broke off their contact with the four individuals and they returned to their cruiser. Defendant and Mr. Brister said nothing to the Troopers. The Troopers then continued patrolling.

Subsequently, the Troopers noted six individuals playing basketball on a street. The men were interfering with vehicle travel so the Troopers approached them. They engaged them in conversation. They asked the men for identification. At this point one of the individuals used a cell phone.

Within 20-30 seconds the Troopers again noticed the same white Impala vehicle come to the scene. Defendant and Mr. Brister came out of the vehicle and started to engage with some of the men approached by the Troopers. Defendant and Mr. Brister did not speak to the Troopers. After checking some of the ID's from the initial group, the Troopers decided to move on. This second encounter occurred about 15-20 minutes after the first encounter and was about ¼ mile from the first encounter.

The Troopers returned to patrol. On Locust Street the Trooper noted a vehicle with an expired inspection sticker. They stopped this vehicle. Two individuals got out of this

vehicle, a Michael Ballard, the driver, and a Devon Grissom, a passenger. Mr. Grissom was known to the Troopers as a member of the Bloods street gang. The Troopers asked those men for identification. The Troopers then again noticed that Defendant and Mr. Brister appeared to be walking on the sidewalk near their patrol vehicle. The Troopers became concerned about Defendant and Mr. Brister and felt they were shadowing them since this was the third time they appeared. Mr. Brister's hands were again in his pockets and the Troopers observed a bulge in the pocket. Corporal Sempler asked the two men to leave the area of the vehicle stop. The two men then walked to a corner where they stayed to watch the Troopers.

The Troopers, becoming more concerned about the two men, decided they would pat them down for weapons. Trooper Havens approached the two men and ordered them onto a nearby porch and told them they were going to pat them down. Both men were patted down. No weapons were felt in the pat down. However, Trooper Havens felt soft items in the pockets of both men.

Trooper Havens asked Defendant if he would permit the Trooper to further check his pockets. He told Mr. Ringkamp he did not have to permit this search. Mr. Ringkamp agreed that the Trooper could do this. The Trooper then found \$672.00 cash on Defendant. Defendant immediately explained that this money was from his last paycheck from a Richard Hibler for painting that he did for Mr. Hibler. The Trooper was familiar with Mr. Hibler as he had previously arrested him for possession of marijuana and cocaine.

Trooper Havens then asked Mr. Brister if he could search his pockets. He likewise told him he did not have to consent to the request. Mr. Brister agreed. The Trooper then found 56 Ziploc baggies in Brister's pocket. The 56 bags were contained within a large

bag. The baggies were consistent with dime bag packages of marijuana. Mr. Brister advised the Trooper he used the bags to package jewelry. The bags contained green dollar signs as part of its packaging. The baggies were marked as Com. Ex. 6. The Trooper also found \$115.00 cash on Mr. Brister. The Troopers then secured Defendant and Mr. Brister.

The Trooper asked Defendant where the vehicle was parked and he indicated it was around the corner. The Troopers found the vehicle parked on the 600 block of Maple Street. When the Troopers detained the two individuals, they learned that Defendant was currently under supervision with the Lycoming County Adult Probation Office. The Trooper contacted the night on duty probation officer. Probation Officer, Erick Fortin, responded to the scene and placed Defendant in custody for violation of probation.

While at the vehicle Officer Fortin visually observed a macheté or knife under the front passenger floor of the vehicle. He also observed what appeared to be marijuana residue on the driver's seat of the vehicle. Mr. Fortin was outside the vehicle and did not use a flashlight or any other form of illumination to make these observations.

Trooper Havens observed a small bud of marijuana on the seat of the vehicle. He also observed the handle of the macheté sticking out of the passenger seat floor. The macheté was marked as Com. Ex. 4. The small piece of marijuana was marked as Com. Ex 8.

From all of his observations that evening, Trooper Havens believed that Defendant and Mr. Brister were involved in drug trafficking. Based on their observations, the Troopers secured the white Impala vehicle and had it towed to the Montoursville State Police barracks pending application for a search warrant.

The next day, while the vehicle was at the Montoursville barracks, Trooper Havens had Trooper William Langman, who has worked with K-9 drug dogs for five years, do an exterior dog sniff of the vehicle. The dog "Sarik" was certified as a drug dog. *See, Com. Ex. 3.* During the exterior sniff, the dog alerted indicating that drugs were contained within the vehicle.

Trooper Havens then obtained a search warrant to search the white Impala vehicle. The warrant was obtained on May 1, 2008, from Magistrate Roger McCrae. Trooper Havens had learned that the white Impala vehicle was registered to Emma Thompson and Defendant Cory Ringkamp. This information was contained in the search warrant application.

In the search Trooper Havens recovered marijuana from the front driver's seat. In a locked glove box of the vehicle, Trooper Havens recovered 5 "dime" bags of marijuana, 4 eight-ounce bags, and 3 quarter-ounce bags of marijuana. In total 12 bags containing marijuana were found. Six empty "dime" bags were also found. The "dime" bags were identical to the bags that were found in Mr. Brister's pocket.

Directly on top of the bags of marijuana, was a gun. Trooper Havens referred to the gun as a replica handgun or pellet gun. A macheté was also seized from the vehicle. The macheté was in a sheath and stuck out from under the passenger seat. In the driver's door the Trooper found a digital camera. The camera was seized pursuant to the search warrant. On May 5, 2008, Trooper Havens applied for and received a second search warrant obtaining permission to search the contents of the digital camera.

The seized marijuana was marked as Com. Ex. 12. The alleged marijuana was lab tested and confirmed to be marijuana. The "dime" bags contained 4.6 grams of marijuana total.

The larger bags contained 40.1 grams of marijuana. The residue on the driver's seat was found to be marijuana but no weight was given by the lab.

The firearm, Com. Ex. 15, found in the glove box on top of the marijuana, was made of heavy metal with a working slide. The Trooper believed it to be a "real gun until he examined it closely. The gun was determined to be a BB, or pellet, gun. It had a CO2 container to fire the gun. When the trigger of the gun was pulled, air expelled BB's from the gun.

Defendant turned the car key over to the Trooper when it was transported to the Montoursville barracks. The Trooper also learned by obtaining Defendant Ringkamp's driving record that his driving privileges were suspended at the time of the events on April 29, 2008. *See*, Com. Ex. 15, Certified Driving Record.

The May 5, 2008 search, authorized by a separate search warrant for the digital camera found several photographs with the camera. The camera was marked Com. Ex. 17. the following photos were found.

Com. Ex. 18 – Photo of Defendant's arm with tattoo recognized by Trooper. Defendant's arm held a Ruger firearm.

Com. Ex. 19 – Defendant by a sink, standing over a pile of money and the pellet gun found in the glove box of the vehicle.

Com. Ex. 20 – Face of Defendant – tattoo on arm showing.

Com. Ex. 21 – Defendant in front of white vehicle.²

Later, in May 2008, Defendant was interviewed by Trooper Havens. The statement given only pertained to the Ruger gun seen in the photo, Com. Ex. 18, taken from the digital camera. Defendant acknowledged this was a "real" gun. He claimed the gun belonged to

² The Court in preparing this Opinion does not have a trial transcript or the actual trial exhibits. The court is relying on the notes made at trial. For this reason, the description of the photos are sketchy.

Michael Ballard, who was the driver of the vehicle stopped by the Trooper on April 29, 2008, which stop led to the eventual confrontation with Defendant.

The Commonwealth also called Trooper Dennis Haines as an expert witness in support of their case. Trooper Haines works in the vice-narcotics unit for Troop F, Montoursville. He has worked drug undercover and is familiar with drug users and dealers. He reviewed the evidence in the case. He offered the opinion that the drugs found in Defendant's vehicle were possessed with intent to deliver. He considered the various packagings, the weapon found atop the drugs and the amounts of cash found on the suspects. He noted the drugs were packaged in "quarters," "eights" and "dime" bags, indicating a sales operation.

Finally, the Commonwealth called Richard Hibler as a witness. Mr. Hibler owns a painting company, R. Hibler Painting. He does know Defendant Ringkamp. Defendant worked for him for a brief period for about 5-6 days. On May 2, 2008 he issued a check for Defendant for \$144.00, but Defendant did not pick up the check. Mr. Hibler also acknowledged that there may have been an earlier check for \$104.00 which would have been picked up by Defendant. These were the only payments issued to Defendant.

The defense called three witnesses at the trial. Witness Tearne Pittinger, age 19, observed the troopers stop the Michael Ballard vehicle. She saw Defendant and Mr. Brister walk up to the car. The Troopers talked to them and they walked away. The Troopers walked toward them. The Troopers physically took down Defendant and Mr. Brister and took things off their person. Defendant was handcuffed.

Ms. Pittinger claimed she then saw Trooper Havens physically go to and enter Defendant's car to search the car. A dog was also running around the car. The witness was

about a half block away from the car. Ms. Pittinger has known Defendant for 4 years from high school. The Court did not believe Ms. Pittinger's testimony that Trooper Havens entered the car to search it while at the scene.

Emma Thompson testified for the defense. She was living with Defendant at 2008 Memorial Avenue at the time in question. In April 2008 Defendant was employed painting. Their rent was \$900 a month. Ms. Thompson testified that some of the \$672.00 cash found by the police on Defendant's person was given to him to pay the rent. She claims she gave him \$550.00.

On April 29, 2008 she received word from the state police that her car was impounded at the Montoursville barracks. She spoke on the phone to Trooper Havens. He told her she could have the vehicle after the search.

Defendant Cory Ringkamp testified on his own behalf. He denied he placed the marijuana into the car. He only learned about the marijuana after he served a 48-hour probation detainer in the Lycoming County prison after the April 29, 2008, arrest. He bought the machete at Walmart and left it in the car. It was only in the car 2-3 days. He admitted he had \$672.00 in cash in his pocket when stopped by the state troopers. He claimed most of the money came from Emma Thompson to pay the landlord. He testified that some of this was for rent money but some of it was for him to travel to Philadelphia. He claimed he worked on April 29, around 10:30 a.m. Shawn took him to work in the car. He was going to go out of town that night, but he ran into the Troopers. Defendant denied that he put the BB gun in the glove box of the car. He admitted that he and Shawn used the BB gun to shoot cans. He was less than clear on where

the gun was located prior to April 29th. He acknowledged he was in the white Impala every day. He drove it only “once in a blue moon” because his license was suspended.

On cross-examination Defendant acknowledged that only he and Shawn Brister used the car. He acknowledged he was stopped on both February 1, 2008 and April 26, 2008 by the Williamsport Police for driving the vehicle while under suspension. He acknowledged he was in the picture found in the digital camera with the pellet gun and cash in his apartment.

On rebuttal the Commonwealth called Williamsport Police Officer Jason Dockey as a witness. Officer Dockey is a K-9 dog handler. On April 29, 2008, Officer Dockey responded to the location of Defendant’s vehicle to assist the state police. He had his drug dog with him, but the dog at the time was not certified. He did have the dog do an exterior sniff of the car. The dog alerted positive for drugs to every door of the car.

Trooper Havens was recalled by the Commonwealth. He denied Ms. Pittinger’s testimony that he entered the car.

III. Discussion

Defendant in his post-sentence motion filed October 6, 2010, claims that there was insufficient evidence to sustain the Court’s finding of guilt on all the counts. In a section of the motion entitled “Motion for New Trial” Defendant contends that pretrial counsel, the Lycoming County Public Defender’s Office, provided ineffective assistance to Defendant for when they filed and litigated a suppression motion prior to trial they failed to raise the issue concerning the second search warrant allowing the search of the digital camera.

This Opinion will thus address the sufficiency of evidence issues and the suppression of evidence issue in regard to the digital camera. We will rely on Judge Nancy Butts' Opinion and Order in regard to the other suppression issues.

A. Sufficiency of Evidence

The Court, with the exception of Count 5, Possessing Instruments of Crime, macheté, is satisfied after reviewing our notes of the non-jury trial, that there is sufficient evidence to support the convictions. The Commonwealth's case is a combination of direct and circumstantial evidence. When the evidence is looked at in a common sense manner, it is clear to the Court that Defendant, on January 29, 2008, was involved in a drug selling operation with Shawn Brister.

The Court believes that the conduct of Defendant and Brister in following the two state troopers for three stops of various individuals was not happenstance. We note on one of the stops, one of the individuals on the street playing basketball called someone on a cell phone and Defendant and Mr. Brister immediately appeared. On the third stop, the driver was Michael Ballard, an acquaintance of Defendant. Interestingly, Defendant admitted the digital camera photograph of Defendant with the Ruger pistol, Com. Ex. 18, contains a gun given to him by Michael Ballard.

Defendant was an owner of the vehicle in question. He was sitting within feet of the glove compartment containing the marijuana, drug packaging and the BB firearm. One of the digital photographs has Defendant in his apartment holding this same gun over a pile of

money. *See*, Com. Ex. 19. Clearly, the photographs infer Defendant's involvement in a drug operation.

The cash found on Defendant's person, over \$600.00, is further evidence of his involvement with drug dealing on April 29, 2008. The Court does not believe Defendant's explanation for how he came to have this significant quantity of money on his person.

Furthermore, the testimony of Mr. Hibler tends to contradict the explanation for the money given by Defendant to the state police after his arrest.

The different packaging quantities is also persuasive evidence that Defendant was not simply possessing marijuana, but that he possessed the marijuana with intent to sell it for profit. The Court finds Defendant was engaged in this conduct in conspiracy with Shawn Brister who was also carrying money and packaging materials on his person.

The only count which the Court has some hesitation about is Count 5, Possessing Instrument of Crime, the macheté. While it is possible and even probable that the weapon was a secondary weapon in support of Defendant's drug activity, it is also possible it had no significant relation to Defendant's drug conduct. Since we have some hesitation on this point, the Court will vacate the conviction for Count 5 and will likewise vacate the sentence for Count 5.

As to all other counts, the Court is satisfied that the aggregate evidence supports the findings of guilt of the non-jury trial.

B. The Search of the Digital Camera

As stated earlier, the Court will rely on Judge Nancy Butts, P.J., Opinion and Order issued on January 6, 2009 in denying the initial suppression motion and of April 23, 2009,

denying Defendant's motion to reconsider suppression, in regard to all the suppression issues but for the issue pertaining to the search warrant for the search of the digital camera.

Since this later issue was never raised before Judge Butts, this Court held a post-trial suppression hearing, as part of the post-sentence motion, on November 12, 2010. The evidence presented by counsel at the November 12th hearing consisted of the original search warrant for Defendant's car, marked here as Defendant's Ex. 1, Defendant's Ex. 2, the second search warrant for the digital camera and Defendant's Ex. 3, and a letter from the Assistant District Attorney to defense counsel, stipulating that there was no reasonable basis for prior defense counsel to not raise this issue as part of the original suppression motion.³

The issue yet before this Court is whether the search warrant, Defendant's Ex. 2, at the November 12, 2010 hearing, states probable cause for the search of the camera.

The subject search warrant, Defendant's Ex. 2, was obtained by Trooper Havens on May 5, 2008, after the search of Defendant's vehicle, by prior search warrant yielded incriminating evidence which has been discussed in this Opinion. Defendant's Ex. 2, the second search warrant thus contains all the same information which was in the first search warrant with two additional paragraphs. The next to last paragraph reports the evidence found from the first search warrant.

³ The issue of the warrantless seizure of Defendant's vehicle and transfer to the state police barracks where a search warrant was then obtained to search the vehicle was raised before Judge Butts when she heard the defense motion to reconsider suppression. As stated, she denied reconsideration by Order of April 29, 2008.

While the seizure of the vehicle was not before the undersigned, the Court notes there was clear probable cause to search based on all the events of April 29, 2008, including the visual observations of both the probation officer and Trooper Havens as to seeing marijuana in the vehicle.

Since Defendant was under arrest and the other owner was not present, it seems reasonable and prudent to remove the vehicle from the scene while a search warrant could be applied for.

The final paragraph of the second search warrant, Defendant's Ex. 2, contains Trooper Havens' statement that from his experience in drug case, drug dealers will often time take photographs of themselves with proceeds of their drug sales and weapons which they use to protect their drugs and proceeds.

Trooper Havens in the first paragraph of the search warrant details all his drug investigative experience which allows him to state his belief as to why he felt the digital camera may well have contained photographic evidence of the drug operation.

The Court believes the extensive listed experience of the Trooper, coupled with the list of events of April 29, 2008 and the listed results of the search of Defendant's vehicle, allowed the Magistrate to appropriately find the probability the search of the digital camera would reveal further evidence of the drug operation.

The Court is mindful this was simply part of an investigation only requiring probable cause. The camera was already seized as part of the first search warrant.

The procedure used by the state police in obtaining yet a second search warrant for the camera was appropriate and proper. The Court believes there was sufficient information to permit this search by search warrant. The Court will thus deny Defendant's Post-Sentence Motion in regard to the search of the digital camera.

Accordingly, the following Order is separately entered.

BY THE COURT,

Date March 4, 2011

K D Brown

Kenneth D. Brown, Senior Judge

cc: Peter Campana, Esquire
Aaron Biichle, Esquire
Gary Weber, Esquire, Lycoming Reporter