

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**ADAM DELANEY,
Defendant**

:
:
:
:
:
:

**CR: 105-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress on September 7, 2012. A hearing on the motion was held on December 3, 2012.

Background

Adam Delaney (Defendant) was placed on Electronic Monitoring by the Pennsylvania Board of Probation and Parole (PBPP) because he failed to pay his supervision fees in the sum of six hundred dollars (\$600) and also because he was difficult to contact. While on supervision, the Defendant had a police contact and an incident report was prepared regarding the incident. The Defendant had an argument with his girlfriend at a residence and as a result he had broken a vehicle window and barred her from leaving the residence. Charges were not filed against the Defendant as a result of this altercation.

At the suppression hearing, State Parole Agent John Gerardi (Gerardi) and State Parole Supervisor Roger Way (Way) testified that the Defendant had a history of not abiding by the rules of supervision and that he often expressed anger. After many discussions between Gerardi and Way about the Defendant's supervision, Way met with the Defendant personally in an attempt to rectify his problems with supervision. At the meeting, Way described the Defendant's demeanor as confrontational.

On December 15, 2011, the Defendant reported to the PBPP's office located at 450 Little League Boulevard, Williamsport, PA. The Defendant was to pay five hundred dollars (\$500) to be taken off of Electronic Monitoring. When Defendant arrived at the office he parked his vehicle in the back of the parking lot, which in Way's experience means that the parolee is normally hiding something or they do not want PBPP to know the vehicle they were driving. In this case, the Defendant was driving his girlfriend's vehicle, as his own was in need of repairs.

After arriving at PBPP, the Defendant met with Gerardi in an interview room. Gerardi noticed that the Defendant was acting unusual compared to his past interactions with him. Defendant's eyes appeared strange and that he smelled of marijuana. The Defendant subsequently admitted to Gerardi that he had been using marijuana. In addition, the Defendant stated that he had cut off his Electronic Monitoring bracelet, which was still around his ankle, in the car prior to coming into the office. Gerardi was concerned that the Defendant was in possession of a knife, which is also a violation of supervision. Gerardi met with Way, his supervisor, and was given permission to search the Defendant's vehicle for a weapon/knife and evidence of the admitted drug use. There was also concern for the weapon because the Defendant's prior incident with his girlfriend as well as his overall confrontational behavior exhibited during supervision.

The Defendant was placed in a holding cell while a search was conducted of the Defendant's vehicle. Way testified that the Defendant was not under arrest. In the past Way also explained that individuals have been detained or at least placed in handcuffs during searches and have been consequently released. The search of the vehicle resulted in agents finding marijuana and a pipe within the interior of the vehicle and a loaded rifle found in the trunk. Following the search, the Williamsport Bureau of Police were requested.

The Defendant was charged with Persons Not to Possess,¹ a felony of the second degree; Marijuana-Small Amount Personal Use,² an ungraded misdemeanor; and Possession of Drug Paraphernalia,³ an ungraded misdemeanor. In the Motion to Suppress, the Defendant alleges that the search of the vehicle was illegal.

Whether police legally searched the vehicle driven by the Defendant

The Defendant argues that the search of the vehicle was improper by relying on Rosenfelt. Commonwealth v. Rosenfelt, 662 A.2d 1131 (Pa. Super. 1995). In Rosenfelt, the defendant was on parole and it was suspected that he was driving without a license, which was a parole violation. Id. at 1132. Following a meeting with the Defendant, parole officers followed the defendant leave the building, get behind the wheel of a vehicle, and drive away. Id. The parole officers followed and observed the defendant and when he stopped at a red light took him into custody. Id. While a parole officer was driving the defendant's vehicle back to the parole office he noticed a fifty-dollar (\$50) bill, two four-inch spoons with white powder residue, a syringe, and a box of confectioner's sugar wrapped in a brown paper bag. Id. After the items were reported, another parole officer opened the trunk of the vehicle and found a scale, glassine envelopes, a beeper, pills, and fifteen (15) grams of amphetamine. Id.

The Superior Court of Pennsylvania determined that the evidence found in the trunk should have been suppressed. Id. at 1146. Critical to this case, however, was the fact that there was no policy or agreement between the parolee and the parole board to a diminished expectation of privacy. Id. Without the diminished expectation of privacy, the parolee was entitled to all the rights afforded any other citizen of Pennsylvania. Therefore, the parole agents

¹ 18 Pa.C.S.A. § 6105(A)(1)

² 35 P.S. § 780-113(a)(31)(i)

³ 35 P.S. § 780-113(a)(32).

had to have probable cause and exigent circumstances under Pennsylvania’s automobile exception to search the vehicle without a warrant. The Superior Court found that because “[t]here was no risk that [the vehicle] would have been driven off by a third party,” there was no exigent circumstances. Id.

Absent a clear policy or an agreement between a parolee and the parole board, a parolee does not have a diminished expectation of privacy. This does not mean, however, that parole officers cannot search based upon probable cause. In this instance, based upon her observation of the contents of the passenger compartment and her reasonable inferences drawn therefrom, Officer Henry had probable cause to search the trunk. Absent exigent circumstances apart from the car’s inherent mobility, however, Henry should have first secured a warrant before opening the trunk. Because the car was in the control and dominion of the officers, and no discernible exigency was present, the warrantless search violated *Article 1, Section 8, of the Pennsylvania Constitution*.

On January 16, 1996, following the decision in Rosenfelt, statutory law went into effect that permitted the search of a parolee and his property if a parole officer has reasonable suspicion of a supervision violation. 61 P.S. § 331.27a. The statute, however, was repealed in 2009 and 42 Pa.C.S.A. § 9912, which is almost identical to 61 P.S. § 331.27a, was enacted in its place. See Commonwealth v. Chambers, 2012 PA Super 202, n.2 (Pa. Super. 2012). The pertinent part of 42 Pa.C.S.A. § 9912 states:

(2) A property search may be conducted by an agent if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.

(3) Prior approval of a supervisor shall be obtained for a property search absent exigent circumstances. No prior approval shall be required for a personal search.

. . . .

(5) The offender may be detained if he is present during a property search

(6) The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following facts, where applicable, may be taken in to account:

- (i) The observations of the agents.
- (ii) Information provided by others.
- (iii) The activities of the offender.
- (iv) Information provided by the offender.
- (v) The experience of agents with the offender.
- (vi) The experience of agents in similar circumstances.
- (vii) The prior criminal and supervisory history of the offender.
- (viii) The need to verify compliance with the conditions of supervision.

In addition, the statute defines “property search” as “[a] warrantless search of real property, *vehicle* or personal property which is in the possession or under the control of the offender.” 42 Pa.C.S. § 9911 (emphasis added); 2009 Pa. ALS 33.

In Altadonna, an informant set up a drug buy at a county fair parking lot with a parolee. Commonwealth v. Altadonna, 817 A.2d 1145, 1147-48 (Pa. Super. 2003). The parolee, driving a van, arrived at the parking lot and was removed, cuffed, and placed on the ground while his vehicle was searched. During the search, Parole agents found cocaine. Id. at 1148. Applying 61 P.S. § 331.27a, the Superior Court of Pennsylvania found “that the suppression court did not err in concluding that reasonable suspicion existed to stop Appellant and search the van.”⁴ Id. at 1152. No issue was raised as to whether the defendant was properly detained, which is allowed under 42 Pa.C.S.A. § 9912(5).⁵

⁴ “With the passage of 61 P.S. § 331.27a, effective January 16, 1996, parole officers were permitted to search a parolee’s person and property if there is reasonable suspicion to believe that the person or property has evidence of parole violations.” Id. at 1152.

⁵ A main issue raised in Altadonna was whether the parole officers were acting as parole officers or as agents of the police at the time of the search. If acting like police, parole officers would need a search warrant. In determining this the court would assess whether the search was to investigate a violation of parole.

As Pennsylvania case law has shown that 42 Pa.C.S.A. § 9912 authorizes state parole agents to search a parolee's person or property "if there is reasonable suspicion to believe the [parolee] possesses contraband or other evidence of violations of the conditions of supervision," this Court must determine if the state parole agents had reasonable suspicion prior to their search of Defendant's vehicle and not apply the higher standard used in Rosenfelt.⁶ Commonwealth v. Chambers, 2012 PA Super 202, p.14-15 (Pa. Super. 2012) (applying the same statute and language on an individual on county probation). Again, as dictated by 42 Pa.C.S.A. § 9912, this Court will address the eight (8) factors listed in the statute to determine reasonable suspicion.

The first and fourth factor to be considered are the observations made by the agent and the activities of the defendant, respectively. Gerardi observed that the Defendant was acting odd compared to his past interactions with him, his eyes appeared strange, and that he smelled of marijuana. The Defendant had also cut his Electronic Monitoring bracelet, which was a violation of his supervision. Finally, the Defendant engaged in an argument with his girlfriend that resulted in him breaking a vehicle window and allegedly prevented his girlfriend from leaving the residence, which generated a police contact.

The fourth factor to be considered is the information provided by the offender. Here, the Defendant told Gerardi that he had been previously smoking marijuana. In addition, the Defendant told Gerardi that he had cut off his Electronic Monitoring bracelet in the car prior to arriving at the office. Defendant provided information to Gerardi and Way that he was in violation of his supervision because contraband was located in his vehicle.

⁶ Rosenfelt, which was prior to 42 Pa.C.S.A. § 9912, stated that the parolee did not have a diminished expectation of privacy because there was no policy or agreement indicating otherwise. Thus, the Superior Court applied the Pennsylvania Automobile Exception and both probable cause and exigency would have been needed to conduct a warrantless search. Even if Rosenfelt was applicable, this Court finds that the facts are distinguishable because third parties would have had access to the vehicle, as the Defendant was driving his girlfriend's vehicle. Therefore, exigency would have existed, which did not exist in Rosenfelt and was a factor weighed heavily by the Superior Court.

The experience of the agent in similar circumstances is the sixth factor to be considered. In this case, the Defendant parked his vehicle in the back of the parking lot. Way stated that when individuals on parole park far from the building they tend to be trying to conceal the vehicle or its contents from the PBPP.

Seventh, this Court is to consider the prior criminal and supervisory history of the offender. Gerardi and Way testified that the Defendant had a history of not abiding by the rules of supervision and was highly confrontational. The Defendant's supervision was so problematic that Way, a parole supervisor, met with the Defendant himself in order to get him to comply with supervision. The Defendant was also on the Electronic Monitoring bracelet because PBPP had difficulty locating and communicating with the Defendant and because he was not paying his supervision fees. Lastly, the search of the vehicle was performed to verify if the Defendant was complying with his conditions of supervision.

Although evidence supporting all of the eight factors was not presented, the Court finds that there is sufficient evidence to find the Board agents possessed reasonable suspicion. Based upon the evidence presented by the Commonwealth and discussed above, this Court finds that Gerardi and Way had reasonable suspicion to search the Defendant's vehicle. In addition, the Court finds that Defendant was legally detained during the property search, in accordance with 42 Pa.C.S.A. § 9912(5) ("The offender may be detained if he is present during a property search . . .").

ORDER

AND NOW, this _____ day of December, 2012, based upon the foregoing Opinion, the Court finds that the state parole agents had reasonable suspicion to conduct a search of Defendant's vehicle. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
PD (RC)
Eileen Dgien, Dep. CA
Gary Weber