

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1244-2012
 :
 DOMINIQUE GUY ADAMS-COFFEY, : Opinion and Order re
 Defendant : Defendant's Motion to Suppress

OPINION AND ORDER

By way of background, Defendant Dominique Guy Adams-Coffey is charged with receiving stolen property, firearms not to be carried without a license, possession with intent to deliver a controlled substance, two counts of possession of a controlled substance and two counts of possession of drug paraphernalia. The charges arise out of the execution an arrest warrant for a fugitive at 811 Second Street on October 8, 2012, a pat down of all the occupants including Defendant, and a subsequent search of that residence.

Defendant filed a motion to suppress the evidence, claiming that the police had neither a search warrant nor facts to support any recognized exception to the warrant requirement such as consent or exigent circumstances prior to entering the residence.

The Court held evidentiary hearings on Defendant's motion on March 7, 2013 and May 7, 2013. The parties requested an opportunity to brief the issues, which the Court granted. Each party has filed a brief and the matter is now ripe for decision.

The Commonwealth called two witnesses at the hearings – Marshal Fils-Aime and Officer Jeremy Brown of the Williamsport Bureau of Police. The defense presented testimony from Defendant.

Marshal Fils-Aime testified that he had a fugitive arrest warrant for an

individual named Nafis Buie, who had been wanted for several months. He received a call from a confidential source that Buie was located inside a residence at 811 Second Street in the City of Williamsport. A separate source indicated Buie made statements that he wasn't going to go back to jail. The marshal was aware that Buie had six prior narcotic charges on his criminal history. He also had information that other individuals were inside the residence but it was not known how many.

About a half-hour after receiving the phone call concerning Defendant's whereabouts, Marshal Fils-Aime and three other Fugitive Task Force members were at the second floor apartment about to make entry, with Williamsport police officers present at the scene securing the perimeter. The apartment could be accessed by two separate external stairways with decks or platforms on the south side of the building. Marshal Fils-Aime chose the east entrance because there was a light on in that side of the residence. There also was an outside floodlight on the deck. Marshal Fils-Aime knocked on the door and said "police" several times. Someone inside the residence turned off the inside lights.

Marshal Fils-Aime kicked the door with the toe of his shoe, and turned the door handle; the door pushed open. He and his team of Task Force members entered the residence and began giving commands to the individuals that they could see across the kitchen at the end of the hallway. Buie disappeared into another part of the residence. Three other individuals stayed where there were and were ordered to the ground. Once Buie was in custody, Williamsport police officers identified the other individuals in the residence.

Jeremy Brown, an officer with the Williamsport Bureau of Police, testified

that he was asked by Marshal Fils-Aime to assist his unit with the execution of an arrest warrant for a fugitive. Officer Brown was one of the officers guarding the perimeter. After Marshal Fils-Aime executed the warrant, he approached Officer Brown and told him that he had observed a handgun in plain view and smelled the odor of marijuana in the residence. Officer Brown testified that he smelled marijuana before he got to the threshold of the residence, but he was cross-examined with his affidavit of probable cause and his incident report which stated that he entered the apartment and immediately smelled marijuana. Marshal Fils-Aime told Officer Brown that the handgun was in close proximity to Defendant. Officer Brown testified that when he entered the apartment Defendant was on the floor in the kitchen. Marshal Fils-Aime led him to the handgun, which was located on the couch along with other miscellaneous items including clothing.

Officer Brown conducted a pat down search for weapons on all the occupants. When Officer Brown conducted the pat down of Defendant, he felt what he immediately recognized as heroin in his left cargo pocket. He also felt money in a front pocket. Once the occupants and the residence were secured, Officer Brown applied for a search warrant for the residence.

The other occupants, in addition to Defendant and Buie, were Adrian Washington-Deemer and Lindsey Stewart. Ms. Stewart told Officer Brown that she and Defendant were hanging out and Defendant attempted to get her to engage in oral sex with him.

Officer Brown also testified that he completed Defendant's booking sheet.

Defendant did not give Officer Brown a permanent address for the booking sheet; he either said he didn't have one, didn't live at Second Street or something like that. Officer Brown got Defendant's last known address of 625 Grace Street either from Defendant's driver's license or the police department's in-house records.

Defendant testified that Anthony Shields, Adrian Washington and Bruce Grimes lived at 811 Second Street. He was close friends with them and was permitted to spend the night there whenever he wanted. He did not have keys to the residence, but if the door was unlocked he would just walk in. He had just met Ms. Stewart and he took her to the residence to have her perform oral sex on him.

Defendant testified that he was staying with his mom at the Grace Street address but he was staying at a couple different places during this time period. Whenever he needed someplace to stay, he would stay at 811 Second Street. He would be there "maybe two, maybe three days, maybe a week." He occasionally stayed at his grandmother's on First Street, but not too often; and he stayed at his mom's two or three days or a week.

DISCUSSION

Defendant claims that all evidence discovered during the warrantless entry into 811 Second Street must be suppressed.

When officers serve an arrest warrant at a third party residence, they must have a search warrant or an exception to the warrant requirement for the entry into the residence to be considered lawful against anyone other than the person named in the arrest warrant. Steagald v. United States, 451 U.S. 204, 101 S.Ct. 1642 (1981); Commonwealth v.

Martin, 620 A.2d 1194 (Pa. Super. 1993). However, in order for a defendant to be entitled to the remedy of suppression, he or she must show a reasonable expectation of privacy in the area searched. Commonwealth v. Bostick, 958 A.2d 543, 551 (Pa. Super. 2008). Generally, the defendant must show a subjective expectation of privacy and one that society is prepared to recognize as legitimate and reasonable. Commonwealth v. Gordon, 546 Pa. 65, 683 A.2d 253, 256 (1996). “Factors to be considered in determining whether a defendant has a legitimate expectation of privacy in another person’s home include: (1) possession of a key to the premises; (2) having unlimited access to the premises; (3) storing of clothing or other possessions on the premises; (4) involvement in illegal activities conducted on the premises; (5) ability to exclude other persons from the premises; and (6) expression of a subjective expectation of privacy in the premises.” Commonwealth v. Miller, 56 A.3d 1276, 1279 (Pa. Super. 2012), citing Bostick, supra at 553; Commonwealth v. Govens, 632 A.2d 1316, 1319 (Pa. Super. 1993).

The Court concludes that Defendant has not shown that he had a legitimate expectation of privacy in 811 Second Street. Defendant admitted that he did not possess a key to the premises. While Defendant testified that he could stay at the premises whenever he wanted, the Court did not find this testimony particularly credible. When Defendant’s counsel initially asked him where he stayed, Defendant testified, “I was staying with my mom, but I was staying at a couple of different places.” He also stated that Anthony Shields, Adrian Washington and Bruce Grimes lived at 811 Second Street. It was only upon further questioning from counsel that Defendant stated that he would spend the night there whenever

he would pick and choose. Notably, Defendant did not testify that he lived at 811 Second Street or that he intended to spend the night there on the date in question. Furthermore, although Officer Brown testified that there were items of male clothing and other items in the living room, there is nothing in the record to show that those items belonged to Defendant. The Court is unwilling to find that these items belonged to Defendant when three other males lived in the apartment; Defendant, Buie and Washington-Deemer were at the premises when the police arrived; and Defendant never testified that the clothing or other items belonged to him. Buie had been a fugitive for four or five months. For all the Court knows Buie could have been hiding out in the apartment for some time and the items could have belonged to him. There also is nothing in the record to show that Defendant had the ability to exclude others from the residence.

Since Defendant has not shown he had a legitimate expectation of privacy in the premises, he is not entitled to suppression of the evidence even if the entry into the residence was unlawful.

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of August 2013, the Court DENIES Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)

Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file