

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-231-2013
	:	
vs.	:	CRIMINAL DIVISION
	:	
	:	
ANTHONY SHIELDS, Defendant	:	
	:	

OPINION AND ORDER

This matter came before the court on Defendant’s motion to suppress evidence. By way of background, Defendant Anthony Shields is charged with possession with intent to deliver a controlled substance, possession of a controlled substance, and possession of drug paraphernalia. The charges arise out of the execution of an arrest warrant for a fugitive at 811 Second Street in Williamsport on October 8, 2012, and a subsequent search of that residence.

Defendant filed a motion to suppress evidence, claiming that law enforcement officers illegally entered 811 Second Street, because the fugitive was not a resident of the premises and the officers neither received consent to enter the premises nor obtained a search warrant for the premises prior to making entry.

At the hearing on Defendant’s motion, the parties agreed to incorporate the testimony from the hearings in a companion case, Commonwealth v. Dominique Adams-Coffey, No. 1744-2012 and to supplement that testimony with a partial stipulation of facts and additional testimony from Deputy U.S. Marshal Alex Fils-Aime.

Deputy Marshal Fils-Aime testified that he had a fugitive arrest warrant for an individual named Nafis Buie, who had been wanted since May for failure to appear on a narcotics warrant. At approximately 9:30 p.m. on October 8, 2012, he received a tip from a

“confidential source” that Buie was located inside a residence at 811 Second Street in the City of Williamsport. A separate source previously indicated that Buie made several references that he wasn’t going to go back to jail. The marshal was aware that Buie had six prior narcotic arrests on his criminal history. He also had information that other individuals were inside the residence but he did not know how many.

About a half-hour after receiving the phone call concerning Buie’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 north side of the building. At the hearing held on March 7, 2013 in the companion case, Marshal Fils-Aime testified that he 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. At the hearing held on August 23, 2013, Marshal Fils-Aime testified that it was indicated by the source to go in the east entrance. Marshal Fils-Aime knocked on the door, but he received no response. He knocked again and said “police.” Someone inside the residence walked toward the door and 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 they 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 first testified that he smelled marijuana before he got to the threshold of the residence, but was not certain after 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 Dominique Adams-Coffey. Officer Brown testified that when he entered the apartment Adams-Coffey 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 a pat down of Adams-Coffey, he felt what he immediately recognized as heroin in his left cargo pocket. The other occupants, in addition to Adams-Coffey and Buie, were Adrian Washington-Deemer and Lindsey Stewart. Once the occupants and the residence were secured, Officer Brown applied for a search warrant for the residence.

Adams-Coffey testified that Anthony Shields, Adrian Washington and Bruce Grimes lived at 811 Second Street. Officer Brown also testified that he determined that Anthony Shields was a resident at 811 Second Street.

DISCUSSION

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

Absent consent or exigent circumstances, when officers serve an arrest warrant at a third party residence, they must possess a search warrant for the premises 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).

In this case, it is conceded that the officers had neither a search warrant for the premises nor the consent of any of the residents to make entry. Nonetheless, the Commonwealth contends the entry was lawful because there were exigent circumstances in that the officers had reason to believe Buie was inside the residence, that he would be leaving soon and that he made references or statements that he was not going to go back to jail.

The court cannot find that there were exigent circumstances in this case because the Commonwealth did not present any evidence from which the court could assess the reliability of the information provided to Marshal Fils-Aime. The marshal testified that he received a tip that Buie was present in a residence on Second Street. The source gave a description of the residence and indicated a belief that the address was 811 Second Street but was not positive. After the marshal arrived at the scene, he had a second conversation with the source. At the March 7, 2013 hearing, the marshal testified that he received a call after he arrived confirming that the target was still inside. At the August 23, 2013 hearing, the marshal explained that time was a concern. He stated that he asked the source how long the

target would be there. The response was it could be twenty minutes or an hour, but didn't believe it was going to be that long. The court does not know whether this information came from an anonymous tip or an individual who had previously provided reliable information to Marshal Fils-Aime. The court also does not know the basis of the source's knowledge. Were these statements made based on personal observations by the source, conversations between Buie and the source or hearsay from other individuals? The Commonwealth neither called the source as a witness nor established the reliability of the source through testimony from Marshal Fils-Aime. If the marshal had applied for a warrant, he would have had to establish the reliability of his sources or the warrant would have been defective and Defendant would be entitled to suppression.

The Commonwealth's claim of exigent circumstances is also based on Buie allegedly saying he was not going to go back to jail. At the March 7, 2103 hearing, Marshal Fils-Aime testified that a separate source previously indicated that Buie had made references that he wasn't going to back to jail and that he would resist. A hearsay objection was made to this evidence. The court deferred ruling on this issue at the time, but it is inclined to grant the objection. The Commonwealth argued that this was not hearsay because it wasn't offered for the truth of the matter, but rather Buie's state of mind and the frame of mind of the marshal as he was executing the arrest warrant. Contrary to the Commonwealth's argument, the evidence was being offered to prove that Buie would resist if actions were taken to arrest him. It was clear hearsay.

At the August 23, 2013 hearing, Marshall Fils-Aime testified that he had been told by several people that Buie made statements that he wasn't going to go back to jail.

Receiving the same information from multiple sources can show the reliability of the information, but it was still hearsay. Furthermore, at the March 7 hearing, Marshal Fils-Aime stated that he received this information from a “separate source,” which gave the court the impression that the marshal only received this information from one person. The testimony also was conclusory. No details were provided regarding the number of individuals that provided this information to the marshal, how the individuals acquired this information (e.g., personal knowledge or rumor on the street), or the context of the statements. Moreover, the Commonwealth inexplicably failed to call any one or more of these witnesses in order to establish the reliability of the statements.

However, even if the Commonwealth had established the reliability of the marshal’s sources, the court questions whether there were truly exigent circumstances in this case. Exigent circumstances arise when the need for prompt police action is imperative because the evidence sought is likely to be destroyed or because the officer must protect himself or others from danger. Commonwealth v. Rispo, 487 A.2d 937, 939 (Pa. Super. 1985). As defense counsel aptly noted in his argument, Buie couldn’t be flushed down the toilet. There were at least four members of the Fugitive Task Force present to make entry into the residence, as well as Williamsport police officers securing the perimeter. There were only two exits from the residence, both of which were located on the north side of the building. Marshal Fils-Aime admitted on cross-examination that he had not received any information that Buie was armed and dangerous.

Under these circumstances, the court finds the marshal could have obtained a warrant prior to entering the residence. Before they knocked on the door without a warrant,

there was no indication that the occupants of the residence had any idea that law enforcement officers were outside. If Buie came out while the marshal was getting the warrant, there were plenty of officers present to apprehend him and ensure that he did not escape.¹

ORDER

AND NOW, this 2nd day of December 2013, the Court GRANTS the Defendant's motion to suppress evidence.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Cuica, Esquire (ADA)
Julian Allatt, Esquire
Work file

¹ To the extent the Commonwealth argued the officers safety was in jeopardy once one of the occupants turned out the inside lights and they were exposed on the lighted deck, the court rejects this argument on the basis that the officers created the exigency by notifying the occupants of their presence before they had a search warrant.