

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-708-2013
 :
 GLENN A . JACKSON, :
 Defendant :

OPINION AND ORDER

This matter came before the court for an argument on whether Defendant is entitled to a hearing on certain issues raised in his motion to suppress. The relevant facts follow.

The Commonwealth charged Defendant with criminal homicide, two counts of aggravated assault, possessing instruments of crime, abuse of a corpse, simple assault and tampering with physical evidence after the police investigated information that a missing person, Michael Krauser, may be deceased and buried under Defendant's residence. The possessing instruments of crime and tampering with physical evidence charges relate, in part, to an ashtray stand base that had some blood and possible decaying flesh on it.

Defendant's neighbor, Jennifer Seitzer, allegedly told the police that Defendant advised her that he was involved in an altercation with Krauser and hit him in self-defense. She also indicated that Defendant spoke to an individual named Michael Winchester and asked him to burn or discard evidence. The police then questioned Winchester, who eventually told them that Defendant told him that he had put a bag in the shed at the Love Center.

The police searched the Love Center's shed, located the bag, opened it, and

discovered the ashtray stand base.

Defendant filed a suppression motion in which he asserted that the evidence discovered as a result of the search of the shed and the bag should be suppressed because the search was unconstitutional or unlawful for the following reasons: (1) the search was conducted without a warrant; (2) the police lacked probable cause; (3) there was no recognized exception to the warrant requirement such as exigent circumstances or consent to justify a warrantless search; and (4) the search of the bag was the fruit of an unlawful detainment and illegal interrogation of Michael Winchester.

The Commonwealth asserted that Defendant either lacks standing or a sufficient privacy interest for him to be entitled to a hearing or the relief requested based on the allegation that the police unlawfully detained and interrogated Michael Winchester. The Commonwealth also claimed that Defendant did not have a privacy interest in the Love Center shed. Finally, the Commonwealth sought clarification regarding Defendant's claim that the search of the shed at the Love Center and the bag that was stored therein was done without consent when the Commonwealth had previously provided defense counsel with a written consent to search form signed by a representative from the Love Center.

After review of the allegations in paragraphs 53-67 of Defendant's motion to suppress and the relevant case law, the Court finds as a matter of law that Defendant is not entitled to suppression of Winchester's statements based on an alleged unlawful detainment and illegal interrogation of Winchester.

"It is a fundamental constitutional principle that a person may not vicariously

assert another's rights." *In Re Search Warrant B-21778*, 513 Pa. 429, 521 A.2d 442, 439 (1987)(citations omitted); see also *Commonwealth v. Hawkins*, 553 Pa. 76, 718 A.2d 265 (1998).

The crux of Defendant's argument is that the statements must be suppressed because Winchester's *Miranda* rights were violated. A similar argument was made and rejected in *Commonwealth v. Butler*, 448 Pa. 128, 291 A.2d 89 (1972). The Pennsylvania Supreme Court stated:

Appellant also contends that the testimony of Denby and Thomas, both of whom testified at Butler's trial that they saw Butler thrusting something which looked like a knife into the victim, should have been suppressed because the Fifth Amendment rights of Denby and Thomas had been violated. However, it is settled law that appellant lacks standing to assert the alleged deprivation of another's constitutional rights. *Alderman v. United States*, 394 U.S. 165 (1967). While *Alderman* deals with Fourth Amendment rights, its rationale is equally applicable to Fifth Amendment rights. *United States v. Bruton*, 416 F.2d 310 (8th Cir. 1969), cert. denied, 397 U.S. 1014 (1970).

291 A.2d at 90-91.

Even if Defendant had standing to challenge the alleged illegal detainment and interrogation of Winchester, he would not be entitled to the relief requested, because Defendant did not have a personal privacy interest in Winchester's conversations with the police. See *Hawkins*, supra (appellant did not have a reasonable expectation of privacy in evidence seized from the mouth of his codefendant; therefore he was not entitled to suppression).

Although Defendant is not entitled to suppression based on a violation of

Winchester's rights, such does not mean that the circumstances surrounding Winchester's statements are irrelevant in this case. Defendant also seeks suppression of the evidence because the police lacked probable cause and the reliability of Seitzer and Winchester was not established. Defendant's Motion to Suppress, paragraphs 26-45.

Generally speaking, a warrantless search must be supported by probable cause and/or a recognized exception to the warrant requirement, such as consent or exigent circumstances. See *Commonwealth v. Johnson*, 68 A.3d 930, 935 (Pa. Super. 2013)(It is well established that probable cause alone will not support a warrantless search unless some exception to the warrant requirement is also present; absent consent or exigent circumstances, private homes may not be constitutionally entered to conduct a search or to effectuate an arrest without a warrant, even when probable cause is present.); *Commonwealth v. Simmen*, 58 A.3d 811, 816 (Pa. Super. 2012)(although as a general rule warrantless searches unsupported by probable cause are unreasonable, our courts have recognized an exception when police obtain voluntary consent from a third party who has the authority to give consent). Since information regarding the voluntariness of Winchester's could be relevant to the reliability of his statements and any determination regarding whether those statements in conjunction with other evidence gives rise probable cause in this case, the Court will not preclude either party from inquiring about the circumstances that gave rise to Winchester's statements to the police.

The Commonwealth asserts that Defendant lacks standing or a legitimate privacy interest to contest the search of the Love Center's shed. The Court concludes that it

cannot determine this issue as a matter of law prior to a hearing in this case, because there are factual issues that need to be addressed at the evidentiary hearing. The Court notes that generally a defendant who is charged with a possessory offense has automatic standing to challenge a search, but he must demonstrate that he has a reasonable privacy interest in order to obtain suppression of the evidence. *Commonwealth v. Peterson*, 535 Pa. 492, 636 A.2d 615, 617-18 (1993).

The allegations which form the basis of the possessing instruments of crime and tampering with physical evidence charges are that Defendant struck the victim with the base of the ashtray stand, he put it in a bag, and then stored the bag in the shed at the Love Center. Later, Defendant allegedly asked Winchester to retrieve the bag from the Love Center and burn or discard it. Defendant is charged with a possessory offense with respect to the base of the ashtray stand. Moreover, a reasonable inference from the Commonwealth's allegations is that Defendant was the owner of the ashtray stand.¹ Therefore, Defendant has standing to challenge the search of the bag and the seizure of the ashtray stand.

In his suppression motion, Defendant avers that the Love Center was a social service center that he worked at and frequently visited, he stored his bag in the Love Center's shed, and he did not abandon his property; therefore, he had a reasonable expectation of privacy in the shed and in the bag. The Court finds that an evidentiary hearing is necessary before it can determine the extent of Defendant's relationship with the Love Center and

¹The Commonwealth has alleged that Defendant struck the victim with the ashtray stand and stabbed him with a sword when the victim was visiting Defendant's residence and then Defendant buried the victim in a basement crawl space.

whether that relationship would give rise to a reasonable expectation of privacy in the shed.

Finally, the Commonwealth seeks clarification of Defendant's claim that the search of the shed and the bag were done without consent when the Commonwealth had previously provided defense counsel with a consent to search form signed by a representative from the Love Center. Defense counsel explained that Defendant had permission to store belongings at the Love Center. While defense counsel was arguably contending that the individual did not have the right to consent to the search of the shed for Defendant's property, she admitted that she was more focused on her contention that a representative of the Love Center did not have the authority to consent to the search of the bag because it was not their bag and/or the consent given did not encompass the bag which contained Defendant's personal property. Furthermore, Defendant did not consent to the search of the shed or the bag.

ORDER

AND NOW, this ___ day of April 2014, after a conference with counsel and an argument regarding whether Defendant is entitled to a hearing on certain claims raised in his motion to suppress, it is **ORDERED** and **DIRECTED** as follows:

1. The Court finds that Defendant lacks standing or a reasonable privacy interest to challenge the alleged illegal detainment and interrogation of Michael Winchester. Thus, Defendant is not entitled to suppression based on a violation of Winchester's Fifth Amendment or *Miranda* rights.

Nevertheless, the circumstances surrounding Winchester's statements to the police may be relevant to Defendant's other claims concerning probable cause and/or the reliability of Winchester's statements.

Therefore, the Court will not preclude either party from inquiring about the circumstances surrounding Winchester's statements.

2. The Court finds that it cannot determine as a matter of law that Defendant did not have a reasonable expectation of privacy in the shed or in the bag. There are factual issues concerning Defendant's relationship with the Love Center and whether that relationship would give rise to a reasonable expectation of privacy in this case.
3. Defendant's claim that the police did not have consent to search in this case was clarified. Defendant is claiming that he never consented to a search of his property. He also asserts that the Love Center did not have authority to consent to the search for his property that was stored in a bag in the shed and/or the consent given by the Love Center did not encompass the bag.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Jeana Longo, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file