



that there may be someone in the apartment, and there may be things unknown to the Defendant in the apartment. The Defendant also said that he did not have a key to the apartment and had to call his mother to get a key. The Defendant tried but was unable to contact his mother. He was told that the agents were entering the apartment even if they did not have a key. The Defendant then said that he had a key.

LaMay and Agent Tracy Gross (Gross) searched the apartment. They did not find anybody in the apartment. The agents searched the only bedroom in the apartment. They saw two pills on the bed, but they did not know the content of the pills. Gross opened a backpack found in the bedroom. He saw small plastic bags and a larger plastic bag in the backpack. When Gross opened the top drawer of the TV stand in the bedroom, he smelled the odor of marijuana. In the drawer, Gross found a plastic bag with a substance in it. Gross suspected that the substance was marijuana. The agents then contacted the police.

Detective Justin Segura<sup>3</sup> (Segura) arrived at the apartment. Segura was shown the bag of suspected marijuana in the still open drawer. Segura was also shown the pills and the bags in the backpack. Segura noticed a strong odor of marijuana coming from the larger bag in the backpack. He saw a substance, which he suspected was marijuana residue, in the larger bag.

Segura applied for and obtained a warrant to search the Defendant's apartment for controlled substances and drug paraphernalia. While executing the warrant, Segura found 42 bags of heroin in the TV stand drawer below the drawer where the bag of suspected marijuana was found. The Defendant was charged with Possession of Heroin with Intent to Deliver,<sup>4</sup>

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<sup>3</sup> Segura is a member of the Narcotics Enforcement Unit of the Lycoming County District Attorney's Office.

<sup>4</sup> 35 P.S. § 780-113(a)(30).

Possession of a Small Amount of Marijuana,<sup>5</sup> Unlawful Possession of Oxycodone,<sup>6</sup> and Possession of Drug Paraphernalia.<sup>7</sup>

During the preliminary hearing, Detective Segura testified that he observed the bags of heroin in the drawer before executing the warrant. During the hearing on the Defendant's motion, Segura testified that he was incorrect during the preliminary hearing and did not find the bags of heroin until he executed the warrant.

In his motion, the Defendant argues that the search by the parole agents was illegal because they did not have the required reasonable suspicion to search the Defendant's apartment. In addition, the Defendant argues that Detective Segura conducted a warrantless search of the apartment without constitutional justification. Furthermore, the Defendant argues that the evidence should be suppressed because it was obtained as a result of the agents' illegal search and Detective Segura's illegal search before the warrant. Finally, the Defendant requests the Court's permission to file additional pre-trial motions once discovery is complete.

## **II. Discussion**

“A property search may be conducted by a[] [state parole] 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.” 61 Pa. C.S. § 6153(d)(2). “[R]easonable suspicion is required to search the property of a state parolee.” Commonwealth v. Hunter, 963 A.2d 545, 550 (Pa. Super. 2008). “The search of a parolee is only reasonable . . . where the totality of the circumstances demonstrate that ‘(1) the parole officer had reasonable suspicion to believe that the parolee committed a parole violation;

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<sup>5</sup> 35 P.S. § 780-113(a)(31)(i).

<sup>6</sup> 35 P.S. § 780-113(a)(16).

<sup>7</sup> 35 P.S. § 780-113(a)(32).

and (2) the search was reasonably related to the duty of the parole officer.”” Id. at 552 (quoting Commonwealth v. Hughes, 836 A.2d 893, 899 (Pa. 2003) (plurality)). In determining whether reasonable suspicion exists, the following factors, where applicable, may be taken into account:

- (i) The observations of 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.

61 Pa. C.S. § 6153(d)(6).

After examining the totality of the circumstances, the Court finds that Agents LaMay and Gross had reasonable suspicion to believe that the Defendant’s apartment contained contraband. Tests revealed that the Defendant’s urine contained opiates. The Defendant was on supervision because he had been convicted of possession of a controlled substance with intent to deliver. While en route to the apartment, the Defendant said that there may be somebody in the apartment and there may be things unknown to the Defendant in the apartment. The Defendant had a key to his apartment although he initially said that he did not. The above facts provided the agents with reasonable suspicion to believe there was contraband in the Defendant’s apartment.

The Court also finds that the search of the Defendant’s apartment was reasonably related to the duties of the agents. In other words, the search was not a “subterfuge for a criminal investigation.” *See* Commonwealth v. Edwards, 583 A.2d 445, 448 (Pa. Super. 1990) (stating that a parole search may not be a subterfuge for a criminal investigation). The duties of parole agents include ensuring parolees comply with conditions of parole. LaMay and Gross went to the Defendant’s apartment because they had reasonable suspicion that the Defendant had violated a condition of his parole by unlawfully using a controlled substance. In searching the

apartment, LaMay and Gross were attempting to ensure that the Defendant was complying with the conditions of his parole. Therefore, the search was reasonably related to the duties of LaMay and Gross.

Determining whether Detective Segura searched the Defendant's apartment before obtaining a warrant is a matter of determining credibility. During the preliminary hearing, Segura testified that he observed the bags of heroin before executing the warrant. To observe the heroin, Segura would have had to search the apartment because neither LaMay nor Gross found the heroin, and it was in a drawer. During the hearing on the motion, Segura testified that he did not observe the bags of heroin before executing the search warrant. He also testified that he was incorrect during the preliminary hearing when he testified that he observed the heroin before the warrant.

“It is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given to their testimony.” Commonwealth v. Elmobdy, 823 A.2d 180, 183 (Pa. Super. 2003) (quoting Commonwealth v. Griffin, 785 A.2d 501, 505 (Pa. Super. 2001)). The Court finds credible Segura's testimony that he did not observe the heroin before executing the warrant. Segura's testimony that he did not observe the heroin before the warrant is supported by the contents of Segura's affidavit of probable cause contained in the application for the warrant. In the affidavit, Segura mentions the odor of marijuana, the plastic bag of suspected marijuana, and the other plastic bags. He does not, however, mention heroin. Furthermore, the findings of LaMay and Gross alone gave Segura enough knowledge to believe that there was probable cause that the Defendant had controlled substances in his apartment. Segura did not need to obtain more information to get a warrant. Because the court finds that

Segura's testimony during the hearing on the motion is credible, the Court finds that Segura did not search the apartment before the warrant.

In Commonwealth v. Williams,<sup>8</sup> a parole agent searched a parolee's bedroom. 692 A.2d at 1033. The agent notified police after he found cocaine, a scale, and ammunition. Id. Police went into the bedroom, seized the items, and then obtained a warrant for parolee's arrest. Id. The parolee was charged with a drug offense. Id. at 1033-34. The trial court denied the parolee's motion to suppress the evidence from the bedroom. Id. at 1034. The Supreme Court of Pennsylvania held that the trial court was correct in its conclusion. Id. at 1038.

In Commonwealth v. Smith,<sup>9</sup> a parolee let a parole agent into his residence. 85 A.3d at 533. The agent noticed a strong odor of unburnt marijuana coming from the basement. Id. The agent went into basement and found a large quantity of marijuana, a large amount of money, and a scale. Id. About 15 minutes later, police arrived at the residence. Id. Police searched the residence and found marijuana, currency, a scale, and ammunition. Id. The parolee was charged with possession of marijuana with intent to deliver. *See id.* at 533-34. The trial court denied the parolee's motion to suppress the evidence obtained as a result of the agent's search. Id. at 533. The Superior Court of Pennsylvania held that the trial court correctly denied the motion. Id. at 536.

From Williams and Smith, it can be gathered that when a parole agent's search is supported by reasonable suspicion and reasonably related to the duty of the agent, police can lawfully enter a residence to view items found during the agent's search. Therefore, Detective Segura's entry into the Defendant's apartment was lawful. As discussed above, Segura did not search the apartment until he obtained a warrant.

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<sup>8</sup> 692 A.2d 1031 (Pa. 1997).

<sup>9</sup> 85 A.3d 530 (Pa. Super. 2014).

### **III. Conclusion**

Agents LaMay and Gross had reasonable suspicion to believe that the Defendant's apartment contained contraband. Furthermore, their search of the apartment was reasonably related to their duties as parole agents. Detective Segura lawfully entered the Defendant's apartment to view items found by the agents. Detective Segura did not search the apartment before obtaining a warrant. Pursuant to Pennsylvania Rule of Criminal Procedure 579, if the Defendant receives new information providing grounds for another pre-trial motion, he may file a motion.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of November, 2014, based on the foregoing opinion, the Defendant's Omnibus Pre-trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge