

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

**OPINION AND ORDER**

Before the court is Defendant's Motion to Suppress filed on November 7, 2013. By Opinion and Order filed on April 25, 2014, the Court clarified what issues it would address in connection with Defendant's Motion.

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 Seltzer, 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 a shed, later determined to be the storage building or area at the Love Center located in Jersey Shore, PA.

The police searched the Love Center's shed, located the bag, opened it, and discovered the ashtray stand base.

Defendant's suppression motion asserts that the search of the shed and bag were illegal and that the evidence discovered should be suppressed. Defendant asserts that the Love Center was a social service center that he worked at and frequently visited, that he stored his bag in the Love Center's shed, and that he did not abandon the property; therefore, he had a reasonable expectation of privacy in the shed and in the bag. Defendant further asserts that the representative of the Love Center who allegedly consented to the search of the shed, did not have the authority to consent to the search of the bag because it was not the Love Center's bag and/or the consent given did not encompass the bag, which contained Defendant's personal property.

Defendant contends that because the search was conducted without a warrant and without any recognized exception to the warrant requirement, the evidence discovered must be suppressed.

The hearing on Defendant's Motion to Suppress was held on May 5, 2014. Craig Gibbs first testified on behalf of the Commonwealth.

The American Rescue Workers operate the Love Center in Jersey Shore, Lycoming County, Pennsylvania. He has been the Director of the Love Center for eight years. The facility provides food for those in need. The services include lunches, a soup kitchen and a Food Bank.

The physical layout of the Love Center includes the main building as well as one shed which is not attached to the building and then a storage building that is attached to the main building. The storage building is used to store various items including, but not limited to, a compressor, rock salt, shovels and assorted tools.

Over the years, different individuals would volunteer at the Love Center. One of those individuals was Michael Winchester. While Mr. Winchester was permitted to store personal items in the storage building, no one else had such permission except under limited circumstances. It also was understood that Mr. Gibbs was permitted to go through any personal items that were stored in the building in order to make sure that “nothing was in there that wasn’t supposed to be.”

Mr. Gibbs was familiar with Defendant. Defendant used the soup kitchen and volunteered a few times per week. As with others, Defendant had access to the storage building. However, he was not generally allowed to store personal items in the building.

While the door to the storage building was not locked and while other people had access to the building including many volunteers who assisted at the facility, only Mr. Winchester had the specific authority to keep personal items in the storage building.

It was understood by all of the volunteers, including Defendant, that in order to store any item of personal property in the storage building, one had to first receive permission from Mr. Gibbs. On occasion, Defendant would ask Mr. Gibbs’ permission to store dog food in the storage building. Apparently, Defendant would purchase the dog food, leave it in the storage building until he finished his volunteer activities, and then retrieve the

dog food to take it home.

Except for the dog food, Mr. Gibbs never was aware of Defendant storing any other type of personal items in the storage building. As well, he never heard from any other individuals including Mr. Winchester, that Defendant stored anything in the storage area.

The storage building at the Love Center was searched by law enforcement on March 7, 2013. Approximately a week beforehand, Defendant approached Mr. Gibbs and asked if he could take care of the sidewalks by shoveling them and then salting them. This was somewhat unusual in that Defendant had never previously volunteered for such chores. The next morning when Mr. Gibbs showed up for work, he assumed that Defendant had shoveled and salted the walks because they were all “cleaned.”

On March 6, 2014, the day before the search, Defendant was at the Love Center, he had used the soup kitchen and had dinner. According to Mr. Gibbs, Defendant did not seem himself. He was “mumbling” and had a “secretive conversation” with Mr. Winchester. Mr. Gibbs overheard Defendant saying that he wanted to sell his 12 gauge shotgun.

On March 7, 2013, the Pennsylvania State Police came to the Love Center and spoke with Mr. Winchester. Mr. Gibbs overheard “bits and pieces of the conversation.”

Following the conversation with Mr. Winchester, the Pennsylvania State Police asked Mr. Gibbs if they could search the storage area. Mr. Gibbs said they could “go through the whole building.” Mr. Gibbs also signed a written consent form authorizing the search of the Love Center including the storage building.

According to the signed consent to search, Mr. Gibbs voluntarily gave his consent to the police to conduct the search and to seize any and all property, which constituted evidence of the commission of a criminal offense or had been used as a means of committing a criminal offense.

Michael Winchester was next called as a witness on behalf of the Commonwealth. He was familiar with the Love Center and had volunteered there on and off for at least three years.

He knew Mr. Gibbs as the “manager of the Love Center” and was familiar with Defendant as they had “grown up” together. He explained that he volunteered at the Love Center approximately five days a week and with the permission of Mr. Gibbs kept a backpack in the storage area.

He explained that he knew that Mr. Gibbs had the authority to go through his backpack. He explained that no one was allowed to keep personal items in the storage area and he never saw personal items stored in the storage area by anyone else.

A couple weeks before March 6, 2013, Defendant approached Mr. Winchester and asked if he would dispose of something for him. Defendant explained that he wanted Mr. Winchester to “burn something.”

On March 6, 2013, Mr. Winchester saw Defendant at the Love Center. Defendant asked him to get “rid of something for him.” He said that it was in the back of the storage area, and that he wanted Mr. Winchester to burn it.

On cross-examination, Mr. Winchester admitted that Defendant had access to

the shed and that sometimes he would keep “extra stuff in the shed for use later.” This extra stuff included “dog food and/or produce.” Mr. Winchester explained, however, that in order for anyone to store items in the storage shed, they needed to get Mr. Gibbs’ permission first.

Corporal Joseph Akers of the Pennsylvania State Police next testified for the Commonwealth. He has been a Criminal Investigation Unit Supervisor for several years.

In March of 2013, he was contacted by a Mrs. Seltzer. They spoke about a conversation that she had with Defendant in which Defendant told her that he killed Michael Krauser. Defendant told her as well that he had enlisted the aid of Mr. Winchester to get rid of an item by burning it.

Subsequent to his conversation with Mrs. Seltzer, Corporal Akers confirmed that Mr. Krauser was missing and that Defendant and Mr. Krauser were friends.

Then, a search warrant was obtained for Defendant’s house and Mr. Krauser’s body was found. As well, Corporal Akers confirmed that Defendant gave Mrs. Seitzer items to get rid of.

On March 7, 2013, the Pennsylvania State Police located Mr. Winchester at the Love Center. He was interviewed. He told them that Defendant brought a bag to the Love Center and asked Mr. Winchester to burn and bury it. Mr. Winchester indicated that the item was stored in the storage area. Mr. Winchester showed the police where the item was located. The police observed and Mr. Winchester explained that the item consisted of a bag that was wrapped in a green jacket, which was located at the back of the storage area underneath the table on which the compressor was located.

The police had already spoken with Mr. Gibbs. He orally and in writing gave his consent to search the storage area and seize any items related to the alleged criminal activity. In fact, Mr. Gibbs gave “carte blanche authority” to search the entire facility.

After Mr. Gibbs gave his consent, numerous pictures were taken both outside and inside the shed. The green shirt was located under the table with the compressor on top.

Corporal Akers described all of the pictures and what they depicted. The pictures sequentially depict what the State Police observed and seized which included a green shirt or jacket inside of which was portions of a dog food bag that were wrapped in plastic by a yellow chord and in which was located a lampstand that was bloody and perhaps had decaying flesh on it.

On cross-examination, Corporal Akers admitted that he did not obtain a search warrant. There was no identification on the jacket but inside of it was a plastic bag tied by a yellow rope and inside of that was a portion of a Pedigree dog food bag which was consistent with items found in the Defendant’s home.

No further evidence was presented by the Commonwealth. Defendant presented no evidence.

Defendant argued that Mr. Gibbs did not have actual or apparent authority to consent to the search and that because a search warrant was not obtained for the bag, its contents must be suppressed.

The Commonwealth countered that Defendant did not have a reasonable expectation of privacy in the area searched, that Mr. Gibbs had the authority to consent to the

search and finally, that in the alternative, the property was abandoned.

As a general rule, for a search to be reasonable under the Fourth Amendment to the United States Constitution or Article 1, Section 8 of the Pennsylvania Constitution, the police must first obtain a warrant, supported by probable cause and issued by an independent judicial officer. Commonwealth v. Gary, 2014 Pa. LEXIS 1119 (April 29, 2014). This general rule however, has exceptions, such as exigent circumstances and/or consent. Id. (citations omitted). The objective of these constitutional protections is the protection of privacy. Id. (citations omitted).

Because the purpose of these constitutional protections is to protect one's privacy, a defendant must demonstrate a protected privacy interest in order to successfully have seized evidence suppressed. Specifically, a defendant must demonstrate a privacy interest that was "actual, societally sanctioned as reasonable, and justifiable in the place invaded." Commonwealth v. Barnette, 760 A.2d 1166, 1170 (Pa. Super. 2000) (citing Commonwealth v. Carlton, 549 Pa. 174, 701 A.2d 143, 145 (1997)). Defendant must prove by the totality of the circumstances that he had a legitimate expectation of privacy in the place invaded. Id. (citing Commonwealth v. Sell, 504 Pa. 46, 470 A.2d 547, 464-465 (1983)).

It is undisputed that Mr. Gibbs, as the Director of the Love Center and with the permission of the Love Center's owner had equal access and control over the entire premises including the storage area. It is undisputed as well that all personal property stored in the storage area by any volunteer could only be stored with the permission of Mr. Gibbs. It is also undisputed that all personal property stored in the storage area was subject to being



searched by Mr. Gibbs. Finally, it is undisputed that Mr. Gibbs did not give Defendant permission to store the contested items in the storage area and was not aware that they were in the storage area.

While Defendant's apparent concealing of the stand in a dog food wrapper, a plastic bag tied by yellow rope and a green jacket in the back area of the storage area under a compressor table might indicate a subjective expectation of privacy, the Court cannot conclude that Defendant's expectation under the circumstances was reasonable and legitimate.

The area in the storage room was open to access by many different individuals, including volunteers at the Love Center. The door was not locked and individuals needing the items in the storage area could come and go as they pleased in order to access those items. It was clear to all of the volunteers at the Love Center that personal items could not be stored or kept in the storage area unless the volunteer first obtained the specific permission of Mr. Gibbs. Defendant was permitted on a few occasions only to store dog food and if so, for no longer than a day. Finally, it was understood by all of the volunteers, including Defendant, that Mr. Gibbs had the absolute authority to search any item stored in the storage area.

Under all of these circumstances, including those referenced below, Defendant did not have a reasonable expectation of privacy to the contested items. See, for example, Commonwealth v. Latshaw, 481 Pa. 298, 392 A.2d 1301 (1978); Commonwealth v. Lawley, 741 A.2d 205 (Pa. Super. 1999).

Moreover, an individual has no privacy expectation in property that he has abandoned. Barnette, 760 A.2d at 1170 (citing Commonwealth v. Pizarro, 723 A.2d 675, 679 (Pa. Super. 1998)).

Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered. The issue is not abandonment in the strict property-right sense *but whether the person prejudiced by the search has voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.*

Commonwealth v. Clark, 746 A.2d 1128, 1133-34 (Pa. Super. 2000).

In this case, it is clear that Defendant abandoned the property. He left it in a storage shed in which numerous individuals had access. More importantly, he instructed Mr. Winchester to discard the evidence by burning it. He did so on more than one occasion. It cannot possibly be said that he retained an expectation of privacy with regard to the item at the time of the search.

Again, while the items were somewhat secreted in the back of the storage area, it is undisputed that there was open access to the storage shed, the shed was unsecured and the bag and/or item was unmarked. Defendant did not have an objectively reasonable expectation that the bag/item would remain undisturbed. See, for example, Lawley, supra.

As well, a search warrant is not required if the search is with voluntary consent. Barnette, supra. In order for the consent to be valid, it must be unequivocal, specific and voluntarily. Barnette, supra.

There is no doubt in this case, that the consent was unequivocal, specific and

voluntary. The uncontradicted and credible testimony of Mr. Gibbs supports such, as does the signed consent form.

Defendant argues, however, that Mr. Gibbs did not have the authority to consent to the search of Defendant's bag. Even assuming that Defendant may have had a privacy interest in the bag and that it was not abandoned, the Court concludes that Mr. Gibbs' consent was sufficient for the search.

The third party consent exception to the warrant requirement is "firmly established." Latshaw, 392 A.2d at 1305. The only question is whether Mr. Gibbs' control over the Love Center storage area vested him with the right to authorize police officials, without a warrant, to open and examine the contents of a bag placed therein by another. "The answer to this question rests upon a determination as to whether the owner of [the contested item] had a reasonable expectation of privacy as to their contents." Latshaw, supra.

Defendant, as the alleged owner of the bag, did not have a reasonable expectation of privacy in the bag. There was no express or implied understanding with Mr. Gibbs that the property could be stored there or that it would not be searched. In fact, the testimony presented clearly established that even items placed in the storage area with Mr. Gibbs' consent could be subjected to inspection or search by Mr. Gibbs. Furthermore, there are no facts to suggest that Mr. Gibbs relinquished any authority over the storage shed or any items in the shed, including the disputed item. There was no indication on the item itself that identified it as belonging to Defendant or precluded others from seizing and searching it. Clearly, Mr. Gibbs' rights were superior to Defendant's rights in the storage area and its

contents. Thus, under all of the circumstances, Mr. Gibbs legally consented to the search of the storage shed and contents. See, for example, Latshaw, supra. (Defendant's aunt had authority to consent to search locked containers that Defendant kept in her barn).

**ORDER**

**AND NOW**, this \_\_\_ day of May 2014, following a hearing and argument, Defendant's Motion to Suppress is **DENIED**.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: William Miele/Jeana Longo, Esquire (PD)  
Eric Linhardt/Kenneth Osokow, Esquire (DA)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file