

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1495-2014**
 v. :
 :
 :
 NAFIS ANTUAN FAISON, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On October 7, 2014, the Defendant filed a Motion to Suppress. A hearing on the motion was held on December 1, 2014.

I. Background

On August 6, 2014 at 12:30 P.M., Detective Alberto Diaz¹ (Diaz) began surveillance of Apartment #3 of 326 Bridge Street, Williamsport, Pennsylvania. Diaz was approximately 100 yards away from the apartment. At 1:00 P.M., Diaz saw a man go to the apartment's door. Another man opened the door. Members of the surveillance team identified the man who opened the door as Randell Peterson (Peterson). The man who went to the door entered the apartment. Less than two minutes after entering, the man exited the apartment. After the man exited, Peterson stepped out of the apartment, looked around, and then entered the apartment. Diaz testified that it looked like a drug deal occurred.

Later, Diaz observed a confidential informant (CI) enter the apartment. Moments after entering, the CI exited the apartment. The CI had a conversation outside of the apartment before entering the apartment again. Later, Diaz observed the CI exit the apartment. Officer Justin

¹ Diaz is a retired Pennsylvania State Police trooper and the current supervisor of the Lycoming County Narcotics Enforcement Unit. As a trooper for over 20 years, he was involved in thousands of drug-related investigations. Diaz has been involved in three or four investigations of 326 Bridge Street. He has been involved in 10 to 15 drug-related investigations specifically in the area of 326 Bridge Street.

Snyder² (Snyder) of the Williamsport Bureau of Police testified that the CI entered Apartment #3 of 326 Bridge Street and purchased \$100 of a substance which field tested positive for cocaine. When the CI entered the apartment, the surveillance team did not know that there was a person other than Peterson in the apartment. Upon return to police, the CI was briefed and Snyder learned that another person was in the apartment. Snyder then applied for a warrant to search the apartment.

After the CI returned to police, Diaz observed another man go to the apartment's door. The man did not enter the apartment. Peterson and the Defendant stepped out of the apartment, had a conversation with each other, and then entered the apartment.

Later, Diaz observed another man on a bicycle go to the apartment. The man entered and exited the apartment a couple of times.

Peterson, the Defendant, and another man had a conversation outside of the apartment. Diaz testified that he believed at 3:17 P.M. the Defendant reached into his pocket and handed currency to Peterson. Peterson did not hand anything back to Defendant. Diaz communicated his observations to Snyder.

At 3:20 P.M., Peterson left the apartment. He was taken into custody shortly after leaving. Snyder obtained the warrant at 3:25 P.M. The warrant did not authorize the search of any and all persons in the apartment. Around 4:00 P.M., the Defendant left the apartment.

After the Defendant left the apartment, Snyder requested that Corporal Jeffrey Paulhamus (Paulhamus) of the Williamsport Bureau of Police detain the Defendant while the investigation was ongoing. Paulhamus detained the Defendant at 4:01 P.M. Paulhamus told the Defendant that he was detained because a drug investigation was ongoing.

² Snyder is a member of the Lycoming County Narcotics Enforcement Unit. He has been involved in approximately 100 narcotics-related arrests. During the suppression hearing, Snyder testified that in the past year he has been involved in 10 to 20 narcotics-related investigations in the area of 326 Bridge Street.

Snyder testified that the Defendant was the last person to leave the apartment before the execution of the warrant. At 4:10 P.M., the warrant was executed. Cocaine and heroin were found in the apartment. Paulhamus testified that he transported the Defendant to police headquarters about 10 to 15 minutes after he was detained. Before transporting the Defendant, Paulhamus searched the Defendant and found a wad of cash in his right pants pocket. The search of the apartment was completed at 4:37 P.M.

The Defendant was strip searched at police headquarters. During the strip search, Paulhamus found a sandwich bag tied to the top button of the Defendant's pants. The bag contained a white substance that was a little smaller than a golf ball and weighed 7.4 grams. Paulhamus handed the bag to Snyder, who testified that the substance field tested positive for the presence of cocaine. Snyder also testified that in his training and experience, the cocaine was packaged for resale.

The Defendant was charged with Possession of Cocaine with Intent to Deliver,³ Possession of Cocaine,⁴ and Possession of Drug Paraphernalia.⁵ The charges stemmed from the cocaine found in the sandwich bag tied to Defendant's pants button.

In his motion, the Defendant argues that police did not have reasonable suspicion to detain him. Specifically, he asserts that he was not involved in the CI drug deal. The Defendant also argues that the cocaine should be suppressed because he was arrested without probable cause.

During the suppression hearing, the Defendant argued that the search warrant was defective because it neither mentioned the Defendant nor authorized the search of any and all persons in the apartment. He further argued that the defective search warrant justified his arrest.

³ 35 P.S. § 780-113(a)(30).

⁴ 35 P.S. § 780-113(a)(16).

⁵ 35 P.S. § 780-113(a)(32).

The Commonwealth argued that there was reasonable suspicion to detain the Defendant because the Defendant was present during the CI drug buy and was seen handing money to Peterson. The Commonwealth also argues that there was probable cause to arrest the Defendant because of his presence in an apartment where drugs were found.

II. Discussion

A. The Detention of the Defendant was Lawful Because Police Reasonably Suspected that the Defendant was Engaged in the Sale of Controlled Substances.

“A police officer may detain an individual in order to conduct an investigation if that officer reasonably suspects that the individual is engaging in criminal conduct.” Commonwealth v. Rogers, 849 A.2d 1185, 1189 (Pa. 2004). “Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to specific and articulable facts leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific reasonable inferences drawn from the facts in light of the officer’s experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.” Commonwealth v. Washington, 63 A.3d 797, 802-03 (Pa. Super. 2013) (quoting Commonwealth v. Holmes, 14 A.3d 89, 95 (Pa. 2011)).

Here, the police reasonably suspected that the Defendant was engaged in the sale of controlled substances. Diaz observed a man exit the apartment less than two minutes after entering it. After the man exited, Peterson stepped out of the apartment and looked around. Diaz testified that it looked like a drug deal occurred. The Defendant was in the apartment during the

suspected drug deal. Later, a CI bought cocaine inside the apartment. The Defendant was also in the apartment during this deal.

After the CI deal, Diaz observed Peterson and Defendant converse outside of the apartment. This shows an association between Peterson and the Defendant. Diaz later observed what he suspected was the Defendant handing currency to Peterson. This again shows an association between Peterson and the Defendant. The sale of cocaine to the CI, the presence of the Defendant during the sale, the movement of various people in and out of the apartment, the Defendant's conversations with Peterson, and the Defendant handing money to Peterson provided police with reasonable suspicion that the Defendant was engaged in the sale of drugs. Therefore, the police lawfully detained the Defendant.

B. The Defendant was Arrested when Corporal Paulhamus Began the Pre-transport Search.

Before determining whether the Defendant was arrested with probable cause, the Court must determine when the Defendant was arrested. “[A]n arrest exists when (1) the police intended to take [a person] into custody, and (2) [the person] was subjected to the actual control and will of the police. This test is an objective test, and all circumstances must be viewed ‘in the light of the reasonable impression conveyed to the person subjected to the seizure.’”

Commonwealth v. Hannon, 837 A.2d 551, 554 (Pa. Super. 2003) (quoting Commonwealth v. Douglass, 539 A.2d 412, 419 (Pa. Super. 1988)).

The Court finds that the Defendant was arrested when Paulhamus began the pre-transport search of the Defendant. When Paulhamus began this search, he intended to take the Defendant into custody, and the Defendant was subjected to the actual control and will of Paulhamus.

C. The Arrest of the Defendant was Lawful Because Police Had Probable Cause to Believe the Defendant was Engaged in the Sale of Controlled Substances.

“[L]aw enforcement authorities must have a warrant to arrest an individual in a public place unless they have probable cause to believe that 1) a felony has been committed; and 2) the person to be arrested is the felon.” Commonwealth v. Clark, 735 A.2d 1248, 1251 (Pa. 1999).

“The following acts and the causing thereof within the Commonwealth are hereby prohibited . . . the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act” 35 P.S. § 780-113(a)(30). “Any person who violates clause . . . (30) of subsection (a) with respect to . . . coca leaves and any salt, compound, derivative or preparation of coca leaves . . . is guilty of a felony” 35 P.S. § 780-113(f)(1.1).

“To be constitutionally valid, a warrantless arrest must, of course, be supported by probable cause. It is well-settled that in considering whether probable cause exists to justify a warrantless arrest, the totality of the circumstances must be considered. As this court has held, ‘probable cause exists where the facts and circumstances within the officer’s knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed.’ As we quoted several years ago, probable cause must be ‘viewed from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training.’” Commonwealth v. Evans, 685 A.2d 535, 537 (Pa. 1996) (citations omitted).

“[M]ere presence at the scene of a crime, coupled with a prior criminal conviction, does not constitute probable cause for an arrest.” Commonwealth v. Reece, 263 A.2d 463, 466 (Pa. 1970).

Here, the Defendant was lawfully arrested if the police had probable cause when Paulhamus began the pre-transport search of the Defendant. After examining the totality of the circumstances, the Court finds that the police had probable cause to arrest the Defendant when Paulhamus began the pre-transport search. The sale of cocaine to the CI, the presence of the Defendant during the sale, the movement of various people in and out of the apartment, the Defendant's conversations with Peterson, and the Defendant handing money to Peterson provided police with probable cause to believe that the Defendant was engaged in the sale of controlled substances. Therefore, the Defendant was lawfully arrested.

D. The Validity of the Search Warrant does not Control Whether Police had Probable Cause to Arrest the Defendant Because Police had Probable Cause Even Without the Controlled Substances Found Pursuant to the Warrant.

The Defendant argues that the search warrant was defective and the findings pursuant to the warrant justified the arrest of the Defendant. The Commonwealth contends that the cocaine and heroin found pursuant to the warrant properly contributed to the police having probable cause to arrest the Defendant.

The Court disagrees with the Defendant's contention that the warrant was defective. A search warrant must be supported by probable cause. Pa. Const. Art. I, § 8. "The standard for evaluating whether probable cause exists for the issuance of a search warrant is . . . the 'totality of the circumstances' test." Commonwealth v. Glass, 754 A.2d 655, 661 (Pa. 2000). "The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is

simply to ensure that the magistrate had a ‘substantial basis for . . . conclud[ing] that probable cause existed.’” Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985) (quoting Illinois v. Gates, 462 U.S. 213, 238-39 (1983)).

Here, Snyder testified that he applied for the warrant after the CI bought cocaine inside the apartment. The purchase of cocaine in the apartment provided the magisterial district judge with a substantial basis for concluding that money from the cocaine sale, controlled substances, and other evidence of drug dealing would be found in the apartment. Therefore, the search warrant was not defective.

The cocaine and heroin found pursuant to the warrant can contribute to probable cause if the substances were found before Paulhamus began the pre-transport search of the Defendant. From the testimony during the suppression hearing, it is unclear whether the pre-transport search occurred before the cocaine and heroin were found in the apartment. The Defendant was detained at 4:01 P.M. Paulhamus testified that he transported the Defendant to police headquarters about 10 to 15 minutes after the Defendant was detained. Therefore, the transport occurred around 4:11 P.M. to 4:16 P.M. The warrant was executed at 4:10 P.M., so the police could have found the cocaine and heroin before 4:16 P.M. and, thus, before the pre-transport search. However, the cocaine and heroin could have been found after the pre-transport search since the search of the apartment was not completed until 4:37 P.M. The affidavit of probable cause attached to the criminal complaint supports that the cocaine and heroin were found before the pre-transport search. It provides that the police decided to transport the Defendant to headquarters after finding the cocaine and heroin in the apartment. However, given the testimony during the suppression hearing, the Court will refrain from finding that the cocaine and heroin were found before the pre-transport search.

As discussed Section II. C., the police had probable cause to arrest the Defendant even without the cocaine and heroin found pursuant to the warrant. The cocaine and heroin did not significantly contribute to probable cause because police already knew that cocaine was sold in the apartment. A CI bought cocaine inside the apartment before police even applied for a warrant. Therefore, the determination of whether the police had probable cause to arrest is not controlled by the determination of whether the search warrant was valid.

III. Conclusion

The detention of the Defendant was lawful because the police reasonably suspected that he was engaged in the sale of controlled substances. The Defendant was arrested when Paulhamus began the pre-transport search. Even without the controlled substances found pursuant to the warrant, the police had probable cause to arrest the Defendant.

ORDER

AND NOW, this _____ day of January, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge