

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-2088-2014
v.	:	
	:	
KAITRILL G. FLANAGAN,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On April 16, 2015, the Defendant filed an Omnibus Pre-Trial Motion. The motion includes a Motion to Suppress Physical Evidence and a Motion for the Court to Conduct a Brady Colloquy. A hearing on the motion was held on September 24, 2015.

I. Background

A. Alberto Diaz's Testimony

Alberto Diaz (Diaz) is the supervisor of the Lycoming County District Attorney's Narcotics Enforcement Unit (NEU). Before he began working in the Lycoming County District Attorney's Office, Diaz was a Pennsylvania State Police trooper for 26 years. Diaz is trained in detecting the smell of marijuana, and has smelled burnt marijuana numerous times. On November 25, 2014, Diaz and other members of the NEU conducted an investigation around the Marriott hotel in Williamsport. At 1:25 p.m., Diaz observed Bilal Blackwell (Blackwell) leave the Marriott hotel and execute a drug transaction in the parking lot of the Holiday Inn hotel, which is near the Marriott. After the transaction, Blackwell returned to the Marriott. Later, Diaz saw Blackwell execute another drug transaction on Pine Street in Williamsport. Blackwell again returned to the Marriott after the transaction. Later, Diaz saw Anthony Autry (Autry) exit the Marriott, execute a drug transaction in the parking lot of the Holiday Inn hotel, and then return to the Marriott. Members of the NEU stopped the person involved in the drug transaction with

Autry. The person told the NEU her name and said that she had bought crack cocaine from Autry. Diaz solicited the person's cooperation and, through questioning, discovered that the Defendant had been her source of cocaine before Autry. The person also told the NEU that Autry was from Philadelphia.

Members of the NEU then went to the Marriott and asked if anybody from Philadelphia was renting a room. The hotel said that the Defendant was the only person from Philadelphia who was renting a room. The hotel also told the NEU that the Defendant was renting room 308. The NEU then obtained a photo of the Defendant and showed the photo to the person involved in the drug transaction with Autry. The person said that the individual in the photo sold her cocaine before she started buying from Autry. The person said that Autry's phone number was the same phone number that she used to call to talk to the Defendant. She said that she last bought cocaine from the Defendant "some time ago."

Four or five officers, including Diaz, then went to room 308 of the Marriott. One or two officers were in uniform, and all were armed. When the officers arrived at room 308, Autry was already in police custody, but the NEU had not seen Blackwell leave the hotel. One of the officers knocked on room 308's door; some of the officers had their guns drawn. Before the door opened, the officers said that they were police. When the Defendant opened the door, Diaz smelled the odor of burnt marijuana. The officers "grabbed" the Defendant, handcuffed him, and then entered the room "to make sure no one else was in the room." The officers did not see anybody else in the room, but they saw marijuana and crack cocaine in plain view. The officers then applied for a warrant to search the room for controlled substances.

B. Detective Justin Segura's Testimony

Since February of 2014, Justin Segura (Segura) has been a detective for the Lycoming County District Attorney. He prepared the affidavit of probable cause in support of the arrest warrant for the Defendant. In the affidavit, Segura wrote that he observed the drug transaction that occurred in the parking lot of the Holiday Inn on November 25, 2015 at 1:25 p.m. However, Segura did not observe that transaction; he made a mistake. Segura observed a drug transaction in the parking lot of the Holiday Inn, but it was not the transaction that occurred at 1:25 p.m.

C. Arguments

The Defendant argues that there is no exception to the warrant requirement to justify the officers' warrantless entry into the hotel room. He argues that the exigent circumstances exception does not justify entry because there was no evidence of danger or other people in the room, and there were no allegations of violence, guns, or evidence destruction. The Defendant also contends that the odor of burnt marijuana did not provide the police with probable cause because the odor could have been there before the Defendant entered the room. In addition, the Defendant asks the Court to conduct an on-the-record Brady colloquy with the Commonwealth to ascertain whether undisclosed exculpatory evidence exists.

The Commonwealth argues that the officers had reasonable suspicion to investigate the Defendant. It also argues that the odor of marijuana and the marijuana in plain view in the room provided the officers with probable cause to arrest the Defendant. In addition, the Commonwealth argues that the entry into the room was justified as a protective sweep because the officers did not know Blackwell's location. Last, the Commonwealth argues that even if the entry into the room was not justified, the marijuana and the cocaine inevitably would have been discovered. In response to the Commonwealth's arguments, the Defendant notes that the officers

immediately pulled him out of the room without asking any questions. He also notes that the inevitable discovery doctrine does not apply because the requirements of Commonwealth v. Berkheimer¹ have not been met.

II. Discussion

A. The Knock on the Door of Room 308 was Lawful Because Police had Reasonable Suspicion.

“[A] police officer may, short of an arrest, conduct an investigative detention if he has a reasonable suspicion, based upon specific and articulable facts, that criminality is afoot. The fundamental inquiry is an objective one, namely, whether ‘the facts available to the officer at the moment of the [intrusion] ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate.” Commonwealth v. Zhahir, 751 A.2d 1153, 1156 (Pa. 2000) (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)). “This assessment, like that applicable to the determination of probable cause, requires an evaluation of the totality of the circumstances, with a lesser showing needed to demonstrate reasonable suspicion in terms of both quantity or content and reliability.” Id. at 1156-57 (citation omitted).

Here, the police had specific and articulable facts which would warrant a man of reasonable caution in the belief that the Defendant was involved in criminal activity. The NEU witnessed Autry exit the Marriott hotel, execute a transaction with another person, and then return to the hotel. The NEU stopped the other person, who provided her name and said that she bought cocaine from Autry. The person said that Autry was from Philadelphia. The hotel said that the Defendant was the only person from Philadelphia who was renting a room. The person who bought cocaine from Autry was shown a photo of Defendant and said the Defendant used to

¹ 57 A.3d 171 (Pa. Super. 2012).

be the source of her cocaine. She said that Autry's phone number was the same phone number that she used to call to talk to the Defendant. The above facts and circumstances provided police with reasonable suspicion to investigate the Defendant.

B. The Arrest of the Defendant was Lawful Because Police had Probable Cause When the Door Opened.

“To be constitutionally valid, a warrantless arrest must, of course, be supported by probable cause.” Commonwealth v. Evans, 685 A.2d 535, 537 (Pa. 1996). “Probable cause to arrest exists when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances. Furthermore, probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent [persons] act.” Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008) (citations and quotation marks omitted).

Here, Diaz was trained in detecting the odor of marijuana and had smelled burnt marijuana numerous times. When the Defendant opened the door to room 308, Diaz smelled the odor of burnt marijuana. At that moment, the police had probable cause to believe that there was marijuana in the room. See Commonwealth v. Johnson, 68 A.3d 930, 936 (Pa. Super. 2013) (holding that police had probable cause for a warrant to search a trailer once they detected a strong smell of marijuana emanating from the trailer). Since the police knew that the Defendant was renting the room and was inside of the room, they had probable cause to believe that the Defendant possessed marijuana. Therefore, the Defendant was lawfully arrested.

C. The Initial Entry into the Room was a Lawful Protective Sweep.

In Commonwealth v. Taylor,² the Pennsylvania Supreme Court discussed a protective sweep:

A protective sweep is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” *Maryland v. Buie*, 494 U.S. 325, 327, 108 L. Ed. 2d 276, 110 S. Ct. 1093 (1990). *Buie* sets forth two levels of protective sweeps. *Id.* at 334. The two levels are defined thus:

As an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.

Pursuant to the first level of a protective sweep, without a showing of even reasonable suspicion, police officers may make cursory visual inspections of spaces immediately adjacent to the arrest scene, which could conceal an assailant.

771 A.2d at 1267.

Here, the Defendant was “grabbed” and handcuffed when he opened the door to room 308. Therefore, room 308 was immediately adjacent to the place of arrest. Since the room was immediately adjacent to the arrest scene and could conceal an assailant, the police did not need reasonable suspicion or probable cause to make a cursory visual inspection of the room. Therefore, the Court finds that the entry into the room was a lawful protective sweep.

III. Conclusion

The knock on the door of room 308 was lawful because police had reasonable suspicion. The arrest was lawful because police had probable cause when the door opened. The entry into the room was a lawful protective sweep. At this time, the Court does not intend to conduct a Brady colloquy because the Defendant has not shown some type of suspected violation or other

² 771 A.2d 1261 (Pa. 2001).

facts and circumstances such as an investigation that involves multiple agencies or the potential for multiple types of reports for the same incident. This does not mean that the Court would not conduct a colloquy in the future if circumstances warranted it.

ORDER

AND NOW, this _____ day of November, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress Physical Evidence and Motion for the Court to Conduct a Brady Colloquy are hereby DENIED.

By the Court,

Nancy L. Butts, President Judge