

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 905-2015
 :
 MATTHEW R. SMITH, :
 Defendant : Motion to Suppress

OPINION AND ORDER

Defendant is charged by Information filed on June 9, 2015 with one count of Possession with Intent to Deliver Marijuana.

According to the affidavit of probable cause attached to the criminal complaint, on May 16, 2015 at approximately 11:45 p.m., while in full uniform, on duty and in a marked patrol unit, Officer Ryan Brague of the Williamsport Bureau of Police responded to 1425 Memorial Avenue to assist other officers.

Upon his arrival, Officer Brague made contact with multiple parole officers employed by the Pennsylvania Board of Probation and Parole (PBPP).

The parole officers had conducted a search of Defendant's room. In it they saw, in plain view, a plastic Tupperware container located in a black laundry hamper next to Defendant's bed. The plastic Tupperware container contained in it 19 zip lock red apple distribution baggies, which field-tested positive for marijuana, as well as 54 empty zip lock red apple distribution baggies. There also was a small amount of suspected marijuana which was packaged in two separate plastic baggies and \$22.00 in cash inside the Tupperware container.

Defendant's arraignment was scheduled for June 22, 2015 but was waived.

Defendant scheduled a guilty plea for July 31, 2015.

Prior to the scheduled guilty plea, Defendant requested that the matter be placed on the status list, because he “changed his mind.”

On November 4, 2015, Defendant filed a motion to suppress alleging that the evidence obtained against him must be suppressed because the “parole officer had no reasonable suspicion” to search Defendant’s room.

The Commonwealth argues that Defendant’s Motion to Suppress is untimely and, accordingly, it should be dismissed.

As previously noted, Defendant’s arraignment was June 22, 2015, but the motion to suppress was not filed until November 4, 2015, well over four months after that date. Defendant concedes that the suppression motion was filed out of time but requests “in the interests of justice” that it be heard nonetheless.

Rule 581 of the Pennsylvania Rules of Criminal Procedure governs the timeliness of suppression motions. Unless the opportunity did not previously exist, or the interests of justice otherwise require, a suppression motion must be made in an omnibus pretrial motion as set forth in Rule 578. If a timely motion is not made, the issue of suppression is deemed to be waived. Pa. R. Crim. P. 581 (B). An omnibus pretrial motion must be filed within 30 days after the arraignment unless the opportunity therefor did not exist or the defendant, defense attorney or the attorney for the Commonwealth was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown. Pa. R. Crim. P. 579 (A).

Defendant argues that in May of 2015 he was scheduled for a parole violation (PV) hearing and received PBPP paperwork. His PV hearing was kept at a preliminary pending the disposition of this charge. After he decided to not plead guilty on July 30, 2015, he looked in detail at the paperwork. He did not get an opportunity to discuss the paperwork with his attorney until October of 2015. Defendant's attorney, after reviewing the paperwork, decided to file the suppression motion. Defendant asserts it would be unfair if he were required to proceed to trial with the Commonwealth being permitted to utilize evidence that was arguably seized in violation of his constitutional rights. A trial judge may excuse a defendant's tardy presentation of a suppression motion when required in the interests of justice. *Commonwealth v. Johonoson*, 844 A.2d 556, 561 (Pa. Super. 2004).

Under the circumstances in this particular case, the court declines to conclude that the interests of justice require that the suppression motion be heard at this time.

First, Defendant clearly had knowledge of the facts in support of the motion at the time he received a copy of the criminal complaint and supporting affidavit on May 18, 2015, as well as when he received his PV paperwork in May.

From the inception of this case, Defendant has been represented in both the PV case and this case by the same attorney. Said attorney represented Defendant at Defendant's preliminary hearing on May 26, 2015.

Next, the merits of the underlying suppression motion are not so apparent that the interests of justice require it to be heard. The motion itself indicates that Board Officer Kreiger visited Defendant's residence based on information that Defendant was "using

marijuana.” The standard for a PBPP search is reasonable suspicion and the agents were acting on a tip from a confidential informant.

Finally, the interests of justice are not exclusively the province of a defendant. It is patently unfair to the Commonwealth to be put through the time and expense of litigating a suppression motion at this late date especially in light of the fact that Defendant waived his preliminary hearing on May 26, 2015 and entered into a tentative plea agreement. Defendant subsequently waived his arraignment scheduled for June 22, 2015 and set the case for a guilty plea on July 31, 2015. Defendant “changed his mind” on or about July 30, 2015 and the case was placed on a status list. The status was scheduled for November 6, 2015 with a pretrial set for December 8. Notice of the trial term was sent to Defendant on November 3, 2015 indicating that jury selection was scheduled between January 5 and January 8 and the trial term was set between January 11 and January 29, 2016. Defendant then filed his Motion to Suppress on November 4, 2015. The court views Defendant’s filing of a motion to suppress as nothing other than a last ditch attempt to further delay his trial. The court cannot sanction such.

As well, the basis for the suppression motion involves facts known to Defendant since May of 2015. It is not the Commonwealth’s fault that Defendant did not share his paperwork with his counsel until October of 2015. Defendant did not even look at the paperwork until after he decided not to accept the plea agreement in late July of 2015. As well, Defendant cannot argue that the delay in filing the motion was attributable to the Commonwealth not providing discovery. Indeed, Defendant did not even request discovery

until November 4, 2015, the same date that Defendant filed his untimely motion to suppress.

ORDER

AND NOW, this 14th day of December 2015, the Court **GRANTS** the Commonwealth's oral motion to dismiss Defendant's motion to suppress as untimely. Defendant's motion to suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)
Andrea Pulizzi, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file