

COMMONWEALTH : No. CR-2158-2015
:
vs. : CRIMINAL DIVISION
:
NAVARRO BANKS, :
Defendant : Motion to Suppress

OPINION AND ORDER

On March 9, 2016, Defendant filed a Motion to Suppress. A hearing on said Motion was held on April 29, 2016.

Tracy Gross testified on behalf of the Commonwealth. He is employed by the Commonwealth of Pennsylvania Board of Probation and Parole as a Parole Agent.

On July 21, 2015, an anonymous tip by phone call was made to Board Agent Kriner. The tip indicated that Defendant was “violating parole.”

Based on the tip, Agent Gross and Agent Kriner traveled to Defendant’s approved residence and made contact with him. Specifically, they went to Defendant’s residence and knocked on the door. Defendant answered the door and they spoke on the porch. They specifically asked Defendant if there was anything in the house that he should not have or which would be a violation of parole. In response to their questions, Defendant indicated that he had a firearm behind the door of his bedroom as well as synthetic marijuana.

As a result of what Defendant admitted, the agents entered the house, found the firearm and synthetic marijuana and called the police.

According to the affidavit of probable cause used to support the search warrant that was subsequently obtained, however, Agent Gross’s office received “credible”

information that Defendant was illegally distributing controlled substances from his residence. Based on this information, the agents initiated an “in home contact” visit. During a field interview, Defendant reported that he had synthetic marijuana, a digital scale and a rifle that he was holding onto for his cousin. The agents began to search the residence and located a plastic grocery-style bag containing about 8 to 12 unopened packets of synthetic marijuana and a Weatherby .270 bolt action rifle. The synthetic marijuana was located alongside the couch in the living room and the firearm was leaning up against the wall in the bedroom. After locating these items, the agents stopped searching the residence and contacted the Lycoming County Narcotics Enforcement Unit.

Officer Justin Snyder of the Williamsport Bureau of Police (WBP) responded to the call, made contact with Agent Gross, entered the residence and observed the firearm and synthetic marijuana. He subsequently completed an affidavit of probable cause and a search warrant application. The search warrant was approved and as a result of the execution of the search warrant, law enforcement seized the marijuana, the rifle, seven cell phones, a digital scale, another bag containing synthetic marijuana and indicia of occupancy for another individual.

The affidavit of probable cause, search warrant, and receipt were admitted and marked as Defendant’s Exhibit 1.

Defendant makes two claims with respect to his motion to suppress. First, Defendant claims that the parole officers did not have reasonable suspicion to search Defendant’s residence. Secondly, Defendant argues that the portions of the affidavit of probable cause relating to the unlawful search should be excised from the search warrant and if so, the allegations set forth in the search warrant cannot establish the requisite probable

cause.

Parole officers may perform a search of a parolee's residence where the totality of the circumstances demonstrates reasonable suspicion that evidence of contraband or a violation of parole will be discovered. 61 Pa. C.S. § 6153; *Commonwealth v. Coleman*, 130 A.3d 38 (Pa. Super. 2015). The Commonwealth concedes that the uncorroborated anonymous tip of a violation of parole does not constitute the requisite reasonable suspicion. The Commonwealth contends, however, that the parole agents had reasonable suspicion to conduct a warrantless entry and search after Defendant admitted that he violated parole by possessing both a firearm and synthetic marijuana.

The determinative issue in this case, however, involves the level of interaction the parole agents had with Defendant once they went to his home.

More specifically, was the interaction a mere encounter or an investigative detention? A mere encounter or request for information need not be supported by any level of suspicion, but carries no official compulsion to stop or respond. *Commonwealth v. Williams*, 73 A.3d 609, 613 (Pa. Super. 2013), *appeal denied*, 87 A.3d 320 (Pa. 2014). An investigative detention must be supported by reasonable suspicion; it subjects a suspect to a stop and period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. *Id.* at 613; see also *Commonwealth v. Mason*, 130 A.3d 148, 152 (Pa. Super. 2015).

The Court concludes that once the parole officers went to Defendant's home, and specifically questioned him about alleged violations of parole, it constituted an investigative detention and not a mere encounter.

Two Board Agents went to Defendant's residence. They knocked on his door.

Defendant answered and they asked him pointed questions regarding alleged violations of his supervision. The Court cannot find that Defendant under these circumstances could have reasonably expected to refuse to answer the questions or shut the door to his residence. There clearly was a level of “official compulsion to stop or respond.”

To conclude that it was a mere encounter would be to ignore the realities of the relationship between a parole officer and a parolee. To construe this level of interaction as a mere encounter would essentially sanction “any probation officer to stop any probationer, at any time, for any reason.” *Commonwealth v. Chambers*, 55 A.3d 1208 (Pa. Super. 2012).

Moreover, contrary to what Officer Snyder set forth in his affidavit of probable cause, there was no “credible information” whatsoever to support the investigative detention. Officer Snyder specifically noted in his affidavit of probable cause that “according to Agent Gross, his office received credible information that Navarro Banks was illegally distributing control substances from his residence.” Agent Gross, however, testified that the only information his office received was an anonymous uncorroborated tip that Defendant was “violating parole.”

Furthermore, given the discrepancies between the affidavit of probable cause and Agent Gross’ testimony, the Court cannot determine even to a preponderance of the evidence whether the agents interviewed Defendant on the porch or inside his residence.

Because the investigative detention of Defendant was without the requisite reasonable suspicion, Defendant’s motion to suppress shall be granted.

ORDER

AND NOW, this ____ day of May, 2016, following a hearing and argument, Defendant's motion to suppress is **GRANTED**. All of the evidence seized from the Defendant's residence on July 21, 2015 is suppressed.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Joshua M. Bower, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file