

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:
	:
vs.	: No. CR-1092-2016
	:
JORDAN D. WATKINS,	: Omnibus Pretrial Motion
Defendant	:

OPINION AND ORDER

Defendant is charged by Information filed on July 6, 2016 with Count 1, receiving stolen property, a felony of the third degree; Count 2, firearms not to be carried without a license, a felony of the third degree; Count 3, possession of a small amount of marijuana, an ungraded misdemeanor; and Count 4, possession of drug paraphernalia, also an ungraded misdemeanor. The charges arise out of an incident that occurred on May 6, 2016.

Cindy Pardee is the property manager for the Weightman Block Apartments located at 770 West Fourth Street in Williamsport, Pennsylvania. On May 6, 2016, Apartment 215 was leased to an individual named Myeesha Porter. The written lease term was from November 20, 2015 to October 31, 2016. While the maximum number of people permitted to live in the leased property was two, no other occupants were listed as living there. If Ms. Porter allowed anyone else to live in the leased premises, the lease could be terminated. Further, Ms. Porter was not permitted to assign the lease or sublease the property to any third person. Defendant did not sign the lease and was not listed on the lease as a permitted occupant.

On May 6, 2016, Ms. Pardee called police after receiving complaints from other tenants that a “pot smell” was coming from Apartment 215. Officer Eric Derr of the

Williamsport Bureau of Police responded to the call.

Officer Derr has experience and training in drug interdiction and firearm investigations and prosecutions. Through his experience and training, he can recognize the smell of burnt as well as raw marijuana. Officer Derr met with Ms. Pardee at the apartment complex. He accompanied her to the hallway in which Apartment No. 215 was located. The entire hallway “reeked of burnt marijuana.” The strongest odor, however, was coming from Apartment 215. Officer Derr suspected that the occupants of 215 had been or were smoking marijuana.

Ms. Pardee knocked on the door. After approximately one minute, Defendant answered and partly opened the door. Officer Derr engaged Defendant in conversation. A portion of Defendant’s body was concealed behind the door. The left side of Defendant’s body was visible and facing Officer Derr and Ms. Pardee, while his right side was not visible.

Officer Derr observed Defendant to be “above-average” nervous. Defendant kept looking down to his right concealed side and back into the apartment. Officer Derr also noticed that Defendant kept touching something on his concealed right side. Officer Derr knew Defendant was touching something but he did not know what it was. Defendant did not have identification on him and corrected himself regarding his age. Officer Derr noticed a large bulge in Defendant’s pocket. When asked about it, Defendant claimed it was cash. Defendant claimed he got the cash from his girlfriend but was unable to state his girlfriend’s full name. Becoming increasingly concerned about that possibility of Defendant being

armed, Officer Derr pushed the door fully open but still remained in the threshold area. He asked Defendant if he had any weapons on him. Defendant looked down and to his right and stuttered slowly saying “n-no.” Officer Derr was concerned that Defendant’s body language suggested he was concealing something. Officer Derr was so concerned that he decided to conduct a pat-down search of Defendant. Prior to this, Officer Derr had no idea what Defendant was doing with his hands and body.

As soon as Officer Derr began to pat down Defendant by asking Defendant to place his hands on his head, Defendant stated that he had a gun in his right pants pocket. Defendant stated as well that he was not supposed to have the gun. Defendant was immediately handcuffed and the gun was seized from Defendant’s front-right sweatpants pocket. As Officer Derr continued with the pat-down, he also found in Defendant’s left front sweatpants pocket, a plastic baggie containing a small amount of marijuana.

Defendant knew Ms. Porter for the past few years as friends. She informed Defendant that she was moving out of the apartment and that Defendant could “take the apartment over” if he paid her \$200.00. He paid her \$100.00 and she gave him the key to the door of the apartment and the key to the apartment complex front door.

On May 6, 2016, the date of the incident, he was taking a shower when he heard a knock on the door. He still did not have a chance to move his “stuff” into the apartment.

At the time of his interaction with Officer Derr as well as afterwards when he was arrested on the charges and taken for his preliminary arraignment, Defendant told

authorities that he lived at 1030 Park Avenue in Williamsport.

Defendant filed an omnibus pretrial motion on August 5, 2016. The hearing and argument were held on October 12, 2016. Defendant first asserts through a petition for habeas corpus that there is insufficient evidence to hold the firearms count for court because he was allegedly “in his place of abode when he was found with the firearm.”

A pretrial habeas corpus motion is the proper means for testing whether the Commonwealth has sufficient evidence to establish a prima facie case. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016)(citing *Commonwealth v. Carroll*, 936 A.2d 1148, 1152 (Pa. Super. 2007)). “To demonstrate that a prima facie case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant’s complicity therein.” *Id.*

A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. The Commonwealth need not prove the defendant’s guilt beyond a reasonable doubt. Rather, the Commonwealth must show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.

Commonwealth v. Fountain, 811 A.2d 24, 25-26 (Pa. Super. 2002)(citations omitted). “In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such.” *Commonwealth v. Hendricks*, 927 A.2d 289, 291 (Pa. Super. 2007)(quoting *Commonwealth v. Engel*, 847 A.2d 88, 91 (Pa. Super. 2004)).

Since the trial court must view the evidence in a light most favorable to the Commonwealth, “it is inappropriate for the trial court to make credibility determinations in deciding whether the Commonwealth established a prima facie case.” *Commonwealth v. Landis*, 48 A.3d 432, 448 (Pa. Super. 2012).

Count 2 charges Defendant with carrying a firearm without a license in violation of 18 Pa. C.S.A. § 6106. Under the facts and circumstances of this case, one of the elements the Commonwealth must prove is that the firearm was concealed on the defendant’s person outside his home or place of abode.¹ *Commonwealth v. Parker*, 847 A.2d 745, 750 (Pa. Super. 2004).

“Place of abode” is defined as one’s residence or domicile. “Domicile” is defined as person’s legal home, and “residence” is defined as a place where one actually lives or has a home. *Commonwealth v. Ortiz*, 738 A.2d 403, 404-405 (Pa. 1999).

For prima facie purposes, the Commonwealth has met this burden. The apartment was leased to Myeesha Porter. Defendant was not listed as a tenant or an approved or authorized occupier. Ms. Porter was precluded from subleasing or assigning her lease to any third party, including Defendant. None of Defendant’s personal items or any item which would constitute indicia of occupancy was found in the residence. Furthermore, at the time Defendant was taken into custody, as well as when he was processed on this case, he indicated that he resided at 1030 Park Avenue.

Defendant next argues that Officer Derr entered the apartment illegally

¹ A person may also be guilty of possessing a firearm without a license if he carries a firearm in any vehicle

because he did not have a warrant and/or there was an absence of exigent circumstances. Defendant argues that Officer Derr created his own exigency and that the apartment was illegally entered.

Candidly, during the oral argument in this matter and after exhaustive questioning by the court, the court could not understand Defendant's argument. Officer Derr never entered the apartment nor seized anything. Even if he did, Defendant has no standing to attack the search of the property. Furthermore, and perhaps determinatively, during the argument in this matter, defense counsel conceded that the ultimate and only remaining issue was whether Officer Derr had sufficient cause to conduct a frisk of Defendant.

This issue appears to be the only arguable issue that can be gleaned from the facts and Defendant's motion. It is undisputed that Defendant was frisked while standing in the threshold of the doorway and/or perhaps immediately inside the apartment after opening the door and that the inculpatory items were found on Defendant's person.

A police officer is constitutionally permitted to conduct a pat-down search for weapons if the officer has a reasonable suspicion that a crime has been committed or is imminent, and that the individual searched may be armed and dangerous. *Commonwealth v. Stoner*, 710 A.2d 55, 57 (Pa. Super. 1998). The facts at the officer's disposal need not be enough to constitute probable cause. *Id.* Rather, if the officer's suspicion is based on specific, articulable facts and reasonable inferences drawn from those facts in light of the officer's experience, the officer may conduct a weapons search. *Id.*

In this particular case, there was clearly sufficient reasonable suspicion to frisk Defendant for weapons. Officer Derr's suspicion was based on specific facts and reasonable inferences drawn from those facts in light of his experience.

First, the recognizable odor of burnt marijuana was clearly coming from the premises. It took a while for Defendant to answer the door but when Defendant answered the door, he was extremely nervous and he was hiding the right side of his body. He was evasive in his answers and appeared to have little connection with the apartment. His body language as well as his movements suggested that he was hiding something and had immediate access to something that could in fact harm the manager of the apartment and Officer Derr.

ORDER

AND NOW, this ____ day of November 2016, following a hearing and argument, the court **DENIES** Defendant's omnibus pretrial motion in the nature of a petition for habeas corpus and a motion to suppress. With respect to Defendant's motion for bail, the court directs the court scheduling technician to place said motion on the next available motions court docket for a hearing.

By The Court,

Marc F. Lovecchio, Judge

cc: CST
Nicole Ippolito, Esquire (ADA)
Joshua Bower, Esquire (APD)
Work File
Gary Weber, Esquire (Lycoming Reporter)