

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1030-2017
 :
 CHRISTOPHER MULLEN, : Opinion and Order re Defendant's
 Defendant : Motion to Suppress

OPINION AND ORDER

This matter came before the court on October 12, 2017 for a hearing and argument on the defendant's motion to suppress. The relevant facts follow.

By way of background, the police charged the defendant with persons not to possess firearms, resisting arrest, possession of a controlled substance, and possession of drug paraphernalia. The charges arose out of an incident on June 7, 2017 where parole agents, United States Marshals and police officers went to 408 Anthony Street based on an anonymous tip that the defendant, who was wanted for absconding from parole supervision, was present at that location. When the law enforcement officers entered the residence to arrest the defendant, they allegedly observed guns and drugs in plain view in the residence. The police then obtained a search warrant for the residence and seized various firearms, cocaine, and drug paraphernalia.

On August 10, 2017, the defendant filed a motion to suppress, in which he alleged that the authorities lacked a reasonable belief that the defendant was located inside the residence; therefore, the entry into the residence was unlawful and any evidence observed and seized as a result of that entry must be suppressed.

At the hearing on the defendant's motion to suppress, the Commonwealth presented testimony from Michael Barvitskie, a supervisor with the Pennsylvania Board of Probation and Parole. Supervisor Barvitskie testified that, on June 7, 2017, he received a phone call from an anonymous male, who stated that the defendant was staying with a girlfriend or ex-girlfriend at an apartment across the street from his approved address and there were guns and drugs in the home. Supervisor Barvitskie, along with several parole agents, United States Marshals and police officers, went to 408 Anthony Street to apprehend the defendant, as there was an absconder warrant for his arrest. They surrounded the building, which was a duplex with 406 Anthony Street, and one of the other officers knocked on the door of 408 Anthony Street. Supervisor Barvitskie was standing about two feet from a window of the residence. The blinds on that window opened and he saw the defendant, from his forehead to his chin, peer out the window. The defendant looked at Supervisor Barvitskie, who said "State Parole. State Parole. Come to the door." The defendant looked down the line toward the various law enforcement officers outside the door and then let the blind go. A white male came to the door and initially indicated that the defendant was not present in the residence. One of the Marshals showed the white male a photograph of the defendant, and then the white male said the defendant was in the residence. Supervisor Barvitskie also showed the photograph to the individual at the door. At that point, the various law enforcement officers entered the residence and began searching for the defendant. The peak of the roof area was shared by both sides of the duplex. The defendant "came out of the other side of the connected homes."

Supervisor Barvitskie testified that he was familiar with the defendant from three prior contacts with him. Furthermore, during the briefing that occurred prior to arrival at the residence, everyone was shown a photograph of the defendant. The photograph was introduced as Commonwealth's Exhibit 1. This photograph is also the one that was shown to the individual who answered the door.

Defendant contends that the authorities did not have a reasonable belief that the defendant was inside the residence. The court cannot agree.

In addition to the anonymous tip, Supervisor Barvitskie saw the defendant peer out the window at him before any of the authorities entered the residence. Supervisor Barvitskie saw the defendant's face from his forehead to his chin from a distance of approximately two feet away. He was "absolutely sure" it was the defendant. The court finds this testimony credible.

Accordingly, the following order is entered.

ORDER

AND NOW, this ___ day of October 2017, the court DENIES the defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Joshua Bower, Esquire (APD)
Work File