

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-2126-2017
v.	:	
	:	
DARIEN HASSAN BLACK,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Darien Hassan Black (Defendant), was arrested by the Old Lycoming Township Police Department on December 5, 2017 on three counts of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,¹ three counts of Possession of a Controlled Substance² and one count of Possession of Drug Paraphernalia.³ The charges arise from police being called to the report of a person trying to break into an apartment in Old Lycoming Township. Defendant filed a timely Omnibus Pretrial Motion on February 9, 2018. Hearing on the motion was held by this Court on May 8, 2018.

In his Omnibus Motion, Defendant challenges that the police lacked reasonable suspicion to initially detain the Defendant and that the entry into his residence was without consent or any other exception to the warrant requirement. As a result of their illegal entry, any information used to form the basis of a search warrant was unlawfully obtained and should be suppressed.

¹ 35 P.S. §780-113(a) 30.

² 35 P.S. §780-113(a) 16.

³ 35 P.S. §780-113(a) 32.

Testimony

Officer Michael Engel (Engel) of the Old Lycoming Township police testified on behalf of the Commonwealth. On December 5, 2017 Engel was working patrol when he was dispatched to a domestic in progress between a parent and child at 1838 Blanchard Avenue, Old Lycoming Township. The dispatch stated that a child had a gun and was firing the gun from the balcony. Another call came from County that the gun was being fired again, but Engel who was on scene did not hear anything. When he arrived at the apartment building there was no one observed outside on the balcony. As he approached the second floor to the door of apartment four, he observed the small glass window in the front door was broken out. When Engel approached the front door he observed a male peeking out the window. Engel said he was not aware that the individual from the apartment was the caller to the 911 center. Officers approached the male inside and extracted him from the apartment while they secured the premises. Engel testified the reason they secured the apartment was to make sure there was no gunman inside or anyone else who needed assistance. The individual they took from apartment number four was later identified as Defendant.

Once Engel began speaking with Defendant he determined that Defendant was housesitting for his girlfriend while she was in Philadelphia. Upon further investigation officers determined that Defendant was actually a resident there; he receives checks on a monthly basis for his rent. The landlord indicated that Defendant has lived there at Apartment four for approximately three years.

Engel described the condition of the apartment after he had removed Defendant. He said that it smelled heavily of marijuana and had observed multiple mason jars sitting on the floor

with a green leafy substance in them. While going through the apartment, checking for a gunman or any individuals who needed assistance, Engel observed two round green leafy substance balls lying on the dresser in the bedroom. In addition, he saw multiple plastic sandwich type baggies in the trash can and throughout the apartment. Police did not ask the Defendant at the scene whether or not the marijuana belonged to him. They did search him and found \$881 in cash, a cell phone and his apartment keys. Engel testified that the next day at about 9 o'clock in the morning officers executed a search warrant on the apartment. He was not a part of the search warrant detail. He also testified that he had never met the Defendant before that evening.

Defendant also testified at the suppression hearing. He testified that he was the 911 caller that evening. Officers asked Defendant if anyone was in the apartment and he told them that there was not. However when the police arrived Defendant said that he was in the closet so that if someone did try to come in he would be able to protect himself; he thought that he saw someone strike the front door and break the window. He claimed that he did not give his incorrect name to the 911 dispatchers or the police.

The information and contraband in the form of marijuana and packaging materials that the police obtained from the scene that evening formed the basis of a search warrant that was executed the next day by other officers from Old Lycoming Township police. Bulk quantities of marijuana, cocaine and methamphetamine, U.S. currency and packaging materials were found upon executing the search warrant.

Was the Defendant detained in violation of his constitutional rights

Defendant alleges that he was detained by the police in violation of his constitutional rights and his continued detention was done without probable cause or an exception to the

probable cause requirement, therefore any evidence seized by the police through the search warrant should be suppressed. Defendant relies upon the case of *Commonwealth v. Rowland*, 637 A.2d 269 (Pa. 1994) in which the Supreme Court found that the police violated the defendant's rights while investigating an underage drinking party in his home without a warrant. 637 A.2d at 270-71. The police received a report of an assault on one of the partygoers and returned to the scene of the party to investigate. *Id.* at 270. Seeing what they believed was an underage drinking party and marijuana while standing at the open door, police entered and began investigating, ultimately taking the defendant into custody. *Id.* The Court found that there were no exigent circumstances to justify the search of the residence without a warrant. *Id.* at 272.

Commonwealth alleges that the facts of this case more accurately reflect the situation where the police are coming to the aid and entered Defendant's residence for his protection, and while inside discovered the contraband. Commonwealth relies on *Commonwealth v. Miller*, 724 A.2d 895 (Pa. 1999). In *Miller*, the Supreme Court determined that the combination of the requests of the family and witnesses statements about the history of the parties' drug and physical abuse justified the entry of the home to investigate whether someone inside was in need of immediate aid. 724 A.2d at 897-98, 900.

As a general rule, only a limited number of circumstances will excuse the police from compliance with the warrant and probable cause requirements of the Fourth Amendment. The Fourth Amendment does not bar police officers from making warrantless entries and searches of houses when they reasonably believe that a person within is in need of immediate aid. *Commonwealth v. Silo*, 502 A.2d 173, 175 (Pa. 1985); *see Commonwealth v. Maxwell*, 477

A.2d 1309 (Pa. 1984); *Commonwealth v. Norris*, 446 A.2d 246 (Pa. 1982); *Mincey v. Arizona*, 437 U.S. 385 (1978).

Here, the police have a report of gunshots being fired, a report that was admittedly called in by Defendant himself. He was obviously concerned for his safety as he saw someone breaking the window of his front door. When the police arrive, based upon the shots fired report and the reasonable belief that someone is inside the residence after seeing the broken window, it is logical for them to enter to investigate the situation. The Court finds, supported by the fact that Engel had never met Defendant before, that this entry was not a pretext to investigate the residence without the need for a search warrant. The police had a reasonable belief based upon the fact that a gun was allegedly involved that justified their entry to investigate for injured parties. Therefore, the police did not violate the Defendant's constitutional rights.

ORDER

AND NOW, this _____ day of August, 2018, based upon the foregoing Opinion, the Defendant's Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esquire, ADA
Michael C. Morrone, Esquire