

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-191-2018**  
 v. :  
 :  
 **BETTY CUMMINGS,** : **OMNIBUS PRETRIAL**  
 **Defendant** : **MOTION**

**OPINION AND ORDER**

Betty Cummings (Defendant) was arrested on January 26, 2018 on two counts of Possession of a Controlled Substance with the Intent to Manufacture or Deliver,<sup>1</sup> two counts of Possession of a Controlled Substance,<sup>2</sup> two counts of Possession of Drug Paraphernalia,<sup>3</sup> and one count of Criminal Use of a Communication Facility.<sup>4</sup> The charges arise from a house check of Defendant's residence, 325 High St. Apartment 4 Williamsport, PA 17701 by Pennsylvania State Parole. Defendant filed a timely Omnibus Pretrial Motion on June 1, 2018. A hearing on the motion was held by this Court on September 14, 2018.

In her Omnibus Motion, Defendant challenges whether the search of her residence by state parole was without reasonable suspicion of the presence of a controlled substance within the residence. Defendant contends as a result of the improper search by state parole any evidence obtained as a result of the search of the residence should be suppressed.

**Background and Testimony**

Agents Lee Mix, Matthew Kieski, and Tracy Gross of Pennsylvania State Parole testified on behalf of the Commonwealth. Their testimony established the following. On

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<sup>1</sup> 35 P.S. §780-113(a)(30).

<sup>2</sup> 35 P.S. §780-113(a)(16).

<sup>3</sup> 35 P.S. §780-113(a)(32).

<sup>4</sup> 18 Pa. C.S. § 7512.

January 26, 2018, Defendant reported to the Williamsport Parole Office for urine testing. Officer Mix obtained a urine sample from Defendant. The container in which Defendant gave the sample indicated that Defendant tested positive for cocaine. Defendant denied the use of cocaine. The sample was sent to the lab for further testing. Agent Kieski, who is Defendant's Parole Officer, was informed of the potential violation. Agent Kieski looked into Defendant's paperwork and saw her approved address was 325 High St. Apartment 4. Defendant was informed an approved residence check would be conducted as a result of the probable violation, at which point she informed Agent Kieski that she moved about a week ago to an address on Brandon Ave. The changing of her residence without approval was in and of itself a violation of her parole. Agents took Defendant to the Brandon Ave. address where she gave Agent Kieski the key. Inside he found only dry goods, some cleaning supplies, and a few toiletries. It was at this point Agent Kieski contacted the landlord of her approved residence at 325 High St. to see if she had moved out. The landlord stated she had not and that she had paid this month's rent. Agent Kieski then decided to search her approved residence and when they arrived the smell of marijuana was emanating from the front door of the residence. He then asked Defendant for her keys and when she handed them to him, he noticed two were missing. Defendant continued to state she no longer lived there and she let someone else move in, but finally took two keys from within her shoe that opened the front door. After clearing the apartment for bodies they started conducting a house search for any parole violations. They began with a closet that was emanating the odor of marijuana. Inside the closet they found a backpack of suspected marijuana, at which point they discontinued their search and contacted police. The search by police yielded over three hundred (300) grams of suspected marijuana, over seventy (70) grams of suspected crack cocaine, and assorted drug paraphernalia.

Defendant's name was on the mailbox of the 325 High St. Apartment 4 and her wallet, bills, and some mail were found in the one bedroom.

**Did Agent Kieski have reasonable suspicion to conduct search of the residence**

Defendant contends that the agents did not have reasonable suspicion that controlled substances would be found within the residence and the search warrant was therefore a product of the initial unlawful search of Defendant's residence. "*Pickron* stands for the proposition that without a prior agreement, or specific guidance from statute or regulation, a parolee's protection from an unreasonable search and seizure is no less than that afforded any other Commonwealth resident." *Commonwealth v. Rosenfelt*, 662 A.2d 1131, 1134 (Pa. 1995) (citing *Commonwealth v. Pickron*, 634 A.2d 1093, 1095 (Pa. 1993)). A Parole Officer must show either a parole violation has occurred, reasonable suspicion a parole violation is occurring, or parolee consents. *Id.* at 1133. The Court is to evaluate the following factors to determine whether a parole officer has reasonable suspicion of a violation:

- (i) The observations of agents.
- (ii) Information provided by others.
- (iii) The activities of the offender.
- (iv) Information provided by the offender.
- (v) The experience of agents with the offender.
- (vi) The experience of agents in similar circumstances.
- (vii) The prior criminal and supervisory history of the offender.
- (viii) The need to verify compliance with the conditions of supervision.

61 Pa. C.S. § 6153(d)(6).

A search will be upheld when the totality of circumstances demonstrates that there is reasonable suspicion a parolee committed a violation and the search is reasonably related to the duties of the parole officer. *Commonwealth v. Colon*, 31 A.3d 309, 315 (Pa. Super. 2011).

Defendant signed a parole/reparole agreement stating:

I expressly consent to the search of my person, property and residence, without a warrant by agents of the Pennsylvania Board of Probation and Parole. Any items, in the possession of which constitutes a violation of parole/reparole shall be subject to seizure, and may be used as evidence in the parole revocation process.

Commonwealth's Exhibit #1, at 2.

When viewing the totality of the circumstances, Agent Kieski knows Defendant and knows of her status as a parolee. The agents observed what appeared to be a positive testing of cocaine from Defendant's urine sample, which she subsequently denied. At this point a violation most likely occurred, but Defendant was not admitting such. Agent Kieski due to his experience and as he has done in other cases determined a search of her approved residence for evidence of a parole violation was necessary. Defendant then stated that she moved to another residence a week ago, which is by itself a parole violation. Then once he arrived at her alleged new residence there was little evidence of anyone living there. Agent Kieski then follows up and verifies with the landlord that Defendant had paid that month's rent, was living there, and had not moved out of the 325 High St. Apartment 4 address. At this point, Agent Kieski determined a search of her original approved residence was warranted. Upon arrival, Defendant's name was still on the approved residence's mailbox and she is attempting to hide the keys in her shoe. Also at this point, Agent Kieski can smell the strong odor of marijuana emanating from Defendant's approved residence.

When looking at the totality of the circumstances there was a reasonable suspicion that evidence of a parole violation was located within Defendant's residence. A positive urine test of cocaine and denial by Defendant would in and of itself constitute reasonable suspicion, but Agent Kieski took further investigative steps that strengthened the finding even further. Defendant's Motion to Suppress is therefore denied.

## **Conclusion**

The Court finds that the facts supporting probable cause for the search warrant were established through a proper search by Agent Kieski which was supported by reasonable suspicion of an ongoing parole violation. Therefore, there is no violation of Defendant's constitutional rights and the evidence resulting from the search of 325 High St. Apartment 4 shall not be suppressed.

## **ORDER**

**AND NOW**, this \_\_\_\_\_ day of October, 2018, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Nicole Ippolito, Esquire, ADA  
Michael Morrone, Esquire