

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-2108-2017
v.	:	
	:	
JEFFREY PAULHAMUS,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Jeffrey Paulhamus (Defendant) was arrested by the Williamsport Bureau of Police on May 24, 2017, on one count of Driving under the Influence, Incapable of Safe Driving¹ and one count of Accident Involving Damage to Attended Vehicle/Property.² The charges arise from police responding to a report of a hit and run at 601 Berger Street, Williamsport, PA. Defendant filed a Motion to Suppress Nunc Pro Tunc on August 20, 2018. Defendant and the Commonwealth were given an opportunity to submit briefs and/or supporting case law prior to the hearing. Neither side submitted additional briefs and/or case law and both sides rested on their arguments presented at the hearing conducted by this Court on December 6, 2018.

In his Motion to Suppress, Defendant challenges the entry into his residence, claiming consent from his girlfriend, Brooke Sechrist (Sechrist), was not freely and voluntarily given. As a result of their illegal entry, any evidence unlawfully obtained and should be suppressed.³

Testimony

Officer Tyson Minier (Minier) of the Williamsport Bureau of Police testified on behalf of the Commonwealth and Sechrist testified on behalf of Defendant. On May 24, 2017, Kathy

¹ 75 Pa. C.S. § 3802(a)(1).

² 75 Pa. C.S. § 3743(a).

³ Defendant claims that if the evidence is suppressed a Petition for Writ of Habeas Corpus must also be granted.

Biichle observed a vehicle back into a neighboring yard and when the driver got out of the truck he appeared to be visibly intoxicated. When he got back into the vehicle and attempted to leave he struck the business/apartments at 601 Berger St. with the passenger side of his vehicle before leaving. Ms. Biichle called the police and managed to obtain his vehicle's registration. Minier first arrived to the scene and received the description of the driver and his vehicle's registration. Upon running the registration, he learned that the truck was registered to Defendant, whom Minier was acquainted with as a former Williamsport Bureau of Police officer. He then proceeded to his residence. When Minier arrived he observed the damage to Defendant's truck which was parked in the driveway and that the vehicle had struck the garage. He then went to the back door and knocked, but received no answer. Minier, who was also friends with Sechrist through Defendant, attempted to call Sechrist at her place of work. He was unsuccessful, but finally reached her at another number. Minier stated that when calling Sechrist he explained: "We believe Jeff crashed his truck into a building' and asked her to come over if she had a key." Sechrist stated she did in fact live with Defendant and that she spoke with Minier first upon arrival. She was informed that there was an accident and that they needed to check on Defendant. She was informed that she could not enter the residence and by the time of entry there were approximately six to eight officers and five to seven police cars with their lights on at the residence. Between Minier's arrival and the time of entrance approximately thirty-five to forty-five minutes had passed, Sechrist was on site for approximately twenty to thirty-five minutes. After Captain Miller of the Williamsport Bureau of Police had arrived, they entered using shields and possibly a long rifle.⁴ Minier stated these precautions, as well as not allowing Sechrist to enter the residence was based in safety due to

⁴ Neither Minier nor Sechrist remembers specifically if a long rifle was used, but based on the circumstances Minier stated its use was likely implemented.

Defendant's training and experience as an ex-police officer. Minier testified that Sechrist unlocked the door, went in to the building, stated he was on the couch, and then they made entry. Sechrist testified that she was instructed to walk to the door, unlock it, and step out of the way so that they could enter. Sechrist was not told of her option to refuse the police entry into the residence and no written consent form was signed. Sechrist testified that she believed she did not have a choice, but to let the officers in and that she was not free to leave. Both Sechrist and Minier's testimony were seemingly credible and matched in most aspects, with the exception of whether Sechrist entered the residence before the officers.

Was Sechrist's Consent Voluntary as to the Entry and Search of the Residence

Defendant does not dispute Sechrist had authority to give the officer third-party consent to search the residence, but only whether that consent was freely and voluntarily provided under the circumstances. *See* Defendant's Motion to Suppress Nunc Pro Tunc, 8/20/18 at 3. The burden to demonstrate the existence of voluntary consent rests upon the Commonwealth. *Commonwealth v. Mack*, 796 A.2d 967, 970-71 (Pa. 2002) (citing *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968)). In essence the Commonwealth must prove that the "consent is the product of an essentially free and unconstrained choice-not the result of duress or coercion, express or implied, or a will overborne-under the totality of the circumstances." *Commonwealth v. Strickler*, 757 A.2d 884, 901 (Pa. 2000). Consent must be "freely, specifically, unequivocally, and voluntarily given." *Commonwealth v. Stapinski*, 431 A.2d 260, 261 (Pa. 1981). The following factors are a non-exclusive list to be used in determining voluntariness of consent:

- 1) the presence or absence of police excesses; 2) whether there was physical contact; 3) whether police directed the citizen's movements; 4) police demeanor and manner of expression; 5) the location of the interdiction; 6) the content of the questions and statements; 7) the existence and character of the initial

investigative detention, including the degree of coerciveness; 8) whether the person has been told that he is free to leave; and 9) whether the citizen has been informed that he is not required to consent to the search.

Commonwealth v. Powell, 994 A.2d 1096, 1101-02 (Pa. Super. 2010) (citing *Commonwealth v. Kemp*, 961 A.2d 1247, 1261 (Pa. Super. 2008)).

First the presence or absence of police excesses will be evaluated. There was a large police presence at Defendant's residence on May 24, 2017. This must be viewed in light of the crimes, which Defendant was believed to be guilty of at the time. *See Commonwealth v. Roland*, 637 A.2d 269, 271 (Pa. 1994). Police at the time were reacting to a hit and run, involving no bodily injury, and potentially driving under the influence. Driving under the influence does constitute a serious offense, which this Court will not undermine, but at the time of Minier's arrival at Defendant's residence the ongoing threat had been extinguished. Defendant was believed to be inside and the truck was parked, shortly thereafter it was determined his girlfriend that lived with him was not home either, which indicated there was not a safety issue within the residence. Testimony provided that six to eight police officers, including two Captains, were present on scene. This included five to seven vehicles with their lights on. Officers initially surrounded the entire residence and entered the house using ballistic shields and likely a long rifle. Minier testified that this was due to a concern of officer safety based upon Defendant's training and experience, but the factor of police excesses weighs into the totality of the circumstances evaluation based on how it affected Sechrist's ability to give voluntary consent. Based on the overwhelming police presence and the way entry was conducted this factor weighs in favor of involuntariness. In that same vein, although there was a large police presence and show of force in entry, the demeanor and manner of expression of the officers weighs in favor of voluntariness, as there is no testimony showing the officers were anything, but courteous and friendly with Sechrist who knew most of the officers on the scene.

There also was no testimony presented that showed any physical contact between Sechrist and the officers. Although no physical contact occurred it was testified to that Sechrist was not allowed to go into the residence. Additionally, she was instructed how and when she may proceed to the door and how she should go on opening it, showing her actions were being heavily directed. The location also leans towards involuntariness of consent. In this situation, Sechrist was asked to come to residence to check on Defendant and then barred from entering her own residence. From the testimony there does not seem to be any direct or intentional coerciveness by officers, which weighs in favor of voluntariness. But it is clear from the testimony that Sechrist was not informed that she was free to leave, that she did not have to allow the officers into the residence, or was given a written waiver to sign, which weighs in favor of involuntariness. Although not one of these factors is dispositive, they weigh into the evaluation of voluntariness based on a totality of the circumstances. *See Commonwealth v. Cleckley*, 738 A.2d 427 (Pa. 1999).

One of the more concerning issues is whether the consent was freely, specifically, unequivocally, and voluntarily given. *Stapinski*, 431 A.2d at 261. In *Powell*, the Court found the defendant muttering something and motioning toward the vehicle to be searched “was not unequivocal, specific, and voluntary.” *Powell*, 994 A.2d at 1103. In none of the testimony provided was it ever stated that any of the officers asked Sechrist if they could enter or search the residence. Instead Minier testified that he asked her to come if she had a key, he explained to her the Defendant hit something with his truck, and that Sechrist used the key entered the residence said Defendant was on the couch and then the officers entered with their shields. Sechrist testified that Minier called her stating they needed her to come home to check on Defendant, she was informed Defendant hit something with his truck, she had to wait till

Captain Miller arrived, and she could not go inside. She also affirmatively testified no one directly asked her if they could go into the residence and finally she was directed to walk to the door, unlock it, and then step out of the way. Lastly the Affidavit of Probable Cause states: “I spoke with [Sechrist] and explained the current situation. She responded to the scene and unlocked the door to the residence.”

The Court finds in this situation consent was not freely, specifically, unequivocally, and voluntarily given. Sechrist arrived on the scene after receiving a phone call from Minier, her and Defendant’s friend, that Defendant hit something with his vehicle, that he was not answering the door, and asking her to come if she had a key. At this point specific, unequivocal, and voluntary consent was not given or asked for. Upon arriving she was directed that she may not enter the residence as she waited there for approximately thirty minutes. At no time prior to entrance was there testimony that she was asked if officers could enter, that she was informed she could not let them enter, or that she could leave the scene. At the time when she is supposedly giving her voluntary consent by opening the door with her key, there were six to eight officers on the scene with their lights on. Through the whole process, she was entirely directed to approach, unlock the door, and then step away as officers entered with full ballistic shields.⁵ Sechrist testified to how she felt scared for Defendant and overwhelmed and as though she could not leave. At the time of entry there is no implied voluntary consent, but merely acquiescence to a command of authority, which does not satisfy the Commonwealth’s burden of free, specific, unequivocal, and voluntary consent. *See Commonwealth v. Melendez*, 676 A.2d 226, 230 (Pa. 1996); *Commonwealth v. Davenport*, 308 A.2d 85, 88 (Pa. 1973).

⁵ Minier testimony states that Sechrist entered, stated Defendant was on the couch and then officers went in. But based on the safety concerns testified to and the use of ballistic shields it is more likely the officers would have not allowed Sechrist to enter first, as she testified.

Therefore, the police did violate Defendant's constitutional rights under the Fourth Amendment of the United States Constitution and Article I Section 8 of the Pennsylvania Constitution.

As for Defendant's Petition for Writ of Habeas Corpus, the Court cannot determine that issue at this time. *See Commonwealth v. Micklos*, 672 A.2d 796, 801 (Pa. Super. 1996); *see also Commonwealth v. Jackson*, 2015 WL 7282742 at *9 (Pa. Super. 2015) (non-precedential, but persuasive on the issue).

ORDER

AND NOW, this _____ day of December, 2018, based upon the foregoing Opinion, Defendant's Motion to Suppress Nunc Pro Tunc is GRANTED in part and DENIED in part. Defendant's Motion to Suppress is GRANTED and his Petition for Writ of Habeas Corpus will not be determined at this time.

By the Court,

Nancy L. Butts, President Judge

cc: Joseph Ruby, Esquire, ADA
Matthew Welickovitch, Esquire