

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No's. CR-1449-2017; CR-1504-2017
 :
 STEVEN REID, :
 :
 Defendant : Motion to Suppress

OPINION AND ORDER

By Order of April 5, 2018 via stipulation of the parties, the above Informations were consolidated for trial. Under 1449-2017, Defendant is charged with possession with intent to deliver, conspiracy to possess with intent to deliver, delivery of a controlled substance and related charges. Under 1504-2017, Defendant is charged with aggravated assault, terroristic threats, recklessly endangering another person and firearms not to be carried without a license.

Under 1449-2017, the charges are based in part upon evidence seized by law enforcement from 642 Fifth Avenue on June 15, 2017. Defendant filed a motion to suppress on June 22, 2018 requesting that the court suppress “any and all items recovered” as a result of said search as well as “any and all statements made by individuals arrested on the scene related to the [seized] items.”

A hearing on the motion was held on December 11, 2018 after being continued once by each party. Defendant argues that suppression is warranted because the state parole agent who searched and seized the evidence were acting as “stalking horses” for the Williamsport Bureau of Police. Alternatively, Defendant argues that there was insufficient reasonable suspicion for the search by the agents.

Kaitlin Holmes is employed by the Pennsylvania Board of Probation and Parole as an agent. She was supervising Danielle Scott in June of 2017 for a probation violation. She first met with Ms. Scott on June 1, 2017 at Ms. Scott's approved residence of 642 Fifth Avenue in Williamsport. Ms. Scott had a history of substance abuse issues but tested clean. Among other things they discussed were a police contact that occurred twice on May 28, 2017. Ms. Scott explained that it was just "her children fighting with other children." They also discussed Ms. Scott's children and the fact that, according to Ms. Scott, their father causes "issues" and that Parole Agent Holmes should expect calls from him.

On June 14, 2017, Parole Agent Holmes was contacted by Travis McCloe, the father of Ms. Scott's three children. He stated that he traveled to Williamsport, accompanied by the police and sheriff's deputies, to take the children back to Luzerne County. He related to Parole Agent Holmes that he believed there were drugs and guns in Ms. Scott's house.

He told Parole Agent Holmes that he received a text from his one older child that attached a photograph of a gun. Mr. McCloe did not say that he personally saw any gun. Parole Agent Holmes was not aware of exactly when Mr. McCloe went to the residence. Mr. McCloe did not specify the type or amount of drugs or relate any specifics regarding the gun. As a result of this conversation, Parole Agent Holmes advised two of her supervisors and the following day, the District Director. She explained Mr. McCloe's concerns and they approved a search of the home by parole agents for any probation violations.

On June 15, 2017, at approximately 10:15 a.m., Parole Agent Holmes along with Parole Agents Kieski, Krieger and Gross, as well as Marshall Persun, went to Ms.

Scott's approved residence of 654 Fifth Avenue to conduct a search for any probation violations. Upon knocking on the front door, Ms. Scott answered. In response to questions, Ms. Scott explained that Defendant and a roommate, Cassie Newcomer, were upstairs. Ms. Scott called for them to come downstairs. They did and all three were told to sit on the couch in the front room and were advised that the agents were there to conduct a search.

Prior to going to the residence, Parole Agent Holmes contacted Agent Jason Bolt of the Williamsport Bureau of Police and advised him of the intended search and that she might request assistance if she found anything criminal in nature. Parole Agent Holmes had previously spoke with Agent Bolt on approximately June 12, 2017, in response to a request by the Williamsport Bureau of Police for any information regarding the prior shooting. Parole Agent Holmes called Agent Bolt to inform him that he should contact Ms. Scott because it was one of her children that had gotten shot.

According to Parole Agent Holmes, there was no further contact between her and any other law enforcement officer prior to the search. The search was not conducted at the request or directive of any law enforcement officer. Prior to the search, Parole Agent Holmes had no information whatsoever regarding any alleged criminal activity by Defendant.

As agents were searching the residence, they detected a smell of raw marijuana upon opening the door to Ms. Scott's bedroom. An agent opened a backpack

found in an entranceway to the bedroom, and observed a handgun, magazine, ammunition and suspected marijuana. Police were called. Parole Agent Holmes did not recall

personally calling Agent Bolt after the contraband was discovered but did recall seeing him at the scene. The police arrived and took all three occupants back to City Hall at approximately 11:45 a.m. The Board search was stopped prior to the police being called but the scene was secured. Some Board agents remained on the scene to continue to secure the residence until the search warrant was issued and executed.

Agent Jason Bolt has been employed by the Williamsport Bureau of Police for nearly 15 years. On June 10, 2017, he was called to investigate a shooting at the 1000 block of Park Avenue. He spoke with different individuals at the scene but no one could conclusively identify the shooter. He visited the hospital to talk with the victim who was a juvenile. At the hospital, he came in contact with both Defendant and Ms. Scott. Based on the juvenile's "rough description" of the shooter, he suspected Defendant as actually being the shooter. A photo array was provided to a witness. The array included a picture of Defendant but he was not identified by the witness.

Suspecting that Defendant was the shooter, Agent Bolt looked into Defendant's background. Prior to doing so, he was not aware that Defendant was actually on state parole as well.

A few days later, approximately June 15, 2017, he received a call from Parole Agent Holmes. He either spoke to her immediately or called her back. According to Agent Bolt, Parole Agent Holmes told him that she was going to conduct a "home visit" at the residence of Danielle Scott. She told Agent Holmes that Defendant was Scott's "baby daddy" and that she lived with Defendant.

Approximately an hour later that day, Parole Agent Holmes called Agent Bolt and told him that agents had gone to the house and that she thought the police would find “stuff” relevant to his investigation. She specified that they found drugs, marijuana and a gun following a search. Agent Bolt denied ever directing any agent of the Board to conduct the search on behalf of the police nor was he aware of the search until Ms. Holmes called him apparently immediately prior to it.

According to the Pennsylvania Supreme Court, “where a motion to suppress has been filed, the burden is on the Commonwealth is to establish by a preponderance of the evidence that the challenged evidence is admissible.” *Commonwealth v. Bryant*, 866 A.2d 1143, 1145 (Pa. Super. 2005) (quoting *Commonwealth v. DeWitt*, 608 A.2d 1030, 1031 (Pa. 1992)); *see also* Pa. R. Crim. P. 581(H).

State parole agents may conduct a warrantless search of an offender’s residence, personal property and person if reasonable suspicion exists to believe that the real or other property in possession or under control of the offender contains contraband or other evidence of violations of the conditions of supervision. 61 Pa. C.S. §6153(d); *Commonwealth v. Murray*, 174 A.3d 1147, 1153-1156 (Pa. Super. 2017). While personal searches require no approval, “prior approval of a supervisor shall be obtained for a property search absent exigent circumstances.” 61 Pa. C.S. §6153(d)(3).

The following factors should be considered when determining if reasonable suspicion exists: the observations of agents, information provided by others, the activities of the offender, information provided by the offender, the experience of the officers with the

offender, the experience of officers in similar circumstances, the prior criminal and supervisor history of the offender, the need to verify compliance with the condition of supervisions. 61 Pa. C. S. § 6153(d)(6).

Courts must also determine whether parole officers “switch hats” and are in essence acting as agents or “stalking horses” of the police when they conduct searches of parolees without a warrant. *See Commonwealth v. Altadonna*, 817 A.2d 1145, 1153 (Pa. Super. 2003).

Defendant argues by inference that because the testimony as to when Agent Holmes and Agent Bolt spoke with each other is different, that they must be deemed not to be credible. The court cannot agree. While they each recalled separate and different conversations, none of those conversations established either direct or circumstantial evidence that the parole agents were conducting the search at the behest of law enforcement. While the testimony indicated that the parole agents and the Williamsport Bureau of Police were aware of different concerns related to either Danielle Scott or Defendant and were willing to share information related to their respective investigations, it is clear that the parole agents acted on their own initiative in conducting the search. This is verified not only by the testimony but by the supporting documentation. In a nutshell, Parole Agent Holmes received the information from Mr. McCloe. Under the circumstances, she was concerned and spoke with two of her supervisors and the one District Director about the situation. They authorized the search, having no contact whatsoever with Agent Bolt and apparently not knowing anything at all about Defendant.

Defendant's stalking horse argument fails.

Defendant's reasonable suspicion argument fails as well. The court finds that Agent Holmes had reasonable suspicion to believe that Ms. Scott was in violation of her supervision by possessing controlled substances and/or weapons. Identified citizens who report their observations to the authorities generally are assumed trustworthy, as they can be charged with false reports if they knowingly provide false information. *See Commonwealth v. Brown*, 996 A.2d 473, 478 (Pa. 2010); *Commonwealth v. Bruner*, 564 A.2d 1277, 1282 (Pa. Super. 1989). Parole Agent Holmes received her information from an identified citizen, Mr. McCloe. This information provided reasonable suspicion that controlled substances and at least one weapon were present in Ms. Scott's residence. Furthermore, the court cannot ignore the apparent exigency of the circumstances in which these items were present along with three minor children. The court cannot and will not ignore the fact that one of the children sent a photograph to his father, Mr. McCloe, which depicted a firearm in plain view in the residence.

ORDER

AND NOW, this ___ day of December 2018 following a hearing, argument and the submission of written materials, the court DENIES Defendant's Motion to Suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Julian Allatt, Esquire
Gary Weber, Esquire (Lycoming Reporter)

Work File
CR-1504-2017