

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	: No. CR-3-2019
	:
vs.	:
	: Opinion and Order re
	: Defendant's Omnibus Pretrial Motion
JUMICHAEL DRUMMOND,	:
Defendant	:

OPINION AND ORDER

By Information filed on January 10, 2019, Defendant is charged with persons not to possess, possession with intent to deliver, criminal use of a communications facility, possession of a controlled substance and possession of drug paraphernalia.

Before the court is Defendant's pretrial omnibus motion filed on March 18, 2019. The hearing in connection with Defendant's pretrial omnibus motion was held on July 19, 2019.

Officer Joshua Bell of the Williamsport Bureau of Police first testified on behalf of the Commonwealth. He has significant training and experience in narcotics arrests, investigations and prosecutions. Through his training and experience, he has become familiar with the odor of burning marijuana.

On December 15, 2018, he was on duty and partnered with Officer Clinton Gardner. At approximately 5:30 p.m., he was patrolling the 700 block of Penn Street.

Through prior investigations, he became aware of citizen concerns that there was alleged drug activity at 702 Penn Street. He had been made privy to an email from a concerned citizen alleging the drug activity at the residence, specifically noting that the narcotics involved were heroin and cocaine, that there were firearms involved, that Defendant and a Ms. Shearer were involved and that Defendant was on parole. Officer Bell

believes that he was made privy to this email soon after October 13, 2018.

As well, he was aware that Defendant and Ms. Shearer resided at 702 Penn Street. His partner, Officer Gardner previously visited the residence and confirmed that Ms. Shearer and Defendant resided there.

On the date in question, December 15, 2018, Officer Bell was interested in investigating further. While Officer Gardner and another officer remained out of view, Officer Bell knocked on the front door to the residence. He identified himself after which Ms. Shearer answered the door.

The front door as well as the storm door were open and they began a discussion immediately outside of these doors. Officer Bell explained to Ms. Shearer that he was investigating a tip involving drug activity at the residence. He asked if anyone else either frequented the residence or was frequently there. In response, Ms. Shearer indicated that "Mike" was frequently at the residence. He asked her if she meant "JuMichael" to which she responded "yes" but that he was not there at that time.

While standing in the doorway, Officer Bell detected an odor of burnt marijuana. He asked Ms. Shearer if there was anything illegal in the home or other controlled substances or contraband. At first, she said "no" but changed her mind after hesitating a bit. She then admitted that there was "weed" and a "bong" in the house. They had been talking for approximately three to four minutes.

During the conversation, Ms. Shearer was calm, cooperative, conversational. While they were on the porch at the threshold of the doorway and after Ms. Shearer indicated that she was going to get the items of contraband, Officer Bell was concerned that she might destroy the items. He didn't want her to leave his sight and as a result he entered the home

after she indicated she was going to get them. His concern was based on the fact that first she denied there being any controlled substances in the residence.

After he followed her into the residence, he heard her “yell” something upstairs. Defendant appeared at the top of the stairs and then came down the stairs.

Officer Bell became more concerned because he realized that she also lied about Defendant not being present in the residence. He was aware that Defendant was arrested in the past and had been involved in narcotics activity as well as past firearm activity. Although these activities were “years” prior, Officer Bell was still concerned.

When Defendant came down the stairs, he and Ms. Shearer were directed to the living room. As they were being watched by another officer, Officer Bell and another officer conducted a protective sweep of the residence. The other officers had arrived in a matter of minutes to assist Officer Bell.

As he went upstairs, the odor of marijuana became more prevalent. It was extremely strong in what was described as a “prayer room” off of the master bedroom.

The protective sweep resulted in Officer Bell observing cocaine and marijuana in the master bedroom under the bed, a bong in plain view in the bedroom and paraphernalia on a stand in the bedroom.

After conducting the sweep, Officer Bell spoke with Ms. Shearer and informed her that contraband was observed in the residence. He asked to speak with her in the residence but she complained of suffering from a possible panic attack. She appeared to be either breathing heavily or unable to breathe. He sat with her in the kitchen area for a period of time. While admitting that she had anxiety and that is why she smoked marijuana, she declined any further medical treatment.

In the meantime, family members had arrived. Ms. Shearer's children were turned over to the family members and/or friends.

After about five or ten minutes, she calmed down and the conversation was continued. Officer Bell explained to Ms. Shearer that he wanted her consent to search the residence. He explained that she was under no obligation to consent and that there would be no repercussions if she refused. He indicated, however, that if she refused, he would need to get a search warrant and that the search warrant would need to be approved by both the District Attorney's office and the court.

While he was discussing her potential consent, Defendant was in the other room. The conversation was casual and relaxed and conversational. Ms. Shearer's mother was standing either near or in the kitchen at the time. No ultimatums were given to Ms. Shearer. Eventually, she agreed to the consent and signed the consent form.

The consent was marked as Commonwealth's Exhibit 1. A search was then conducted by four different officers. The search resulted in the seizure of two ounces of heroin, a loaded handgun, several small bags containing crack cocaine, 15 grams of cocaine within a knotted plastic sandwich bag, an open safe containing \$2,260.00 in U.S. currency with varying bill denominations but mainly \$20.00 bills, a marijuana bong and small amount of marijuana, a Glock loaded handgun, a nylon pistol holster and other contraband.

The Commonwealth next called Officer Gardner. He too has extensive training and experience with narcotics investigations, arrests and prosecutions. He too is well aware of the odor of burning marijuana.

He confirmed the testimony of Officer Bell. With respect to the email referencing the citizen's tip, he noted that it specifically referenced the defendant and

specifically referenced where contraband could be located in the residence.

As well he noted that a week prior to the incident leading to the search, he went to the residence, knocked on the door claiming that he was investigating a different matter. Ms. Shearer answered the door and he noticed Defendant sitting on the couch in the living room. Prior to going to the residence, he confirmed that Defendant was on parole by running a criminal history check. As well, he pulled up a photo of Defendant in order that he could identify Defendant.

While at the residence on December 15, 2018, he was standing off to the side of the porch. He clearly heard the conversation between Ms. Shearer and Officer Bell. He heard Ms. Shearer denying that there were any drugs in the premises and then changing her mind shortly thereafter and admitting such.

After Officer Bell entered the premises, he followed approximately five to ten feet away. As soon as he entered the residence, he too detected the strong odor of burnt marijuana.

He saw Defendant descend the staircase along with young children.

He was involved in the protective sweep and observed a bong on a dresser in the bedroom, marijuana next to the dresser, cocaine under the bed in the bedroom and a plate with cocaine residue as well as a scale on the nightstand next to the bed.

While he did not involve himself in the conversation with Ms. Shearer in the kitchen, he did confirm that Officer Bell and Ms. Shearer were in the kitchen for approximately 15 to 20 minutes.

He participated in the subsequent search of the residence and found illegal narcotics, firearms and contraband. According to him, it appeared that crack cocaine found

under a pillow was placed there quickly as it was under one of the children's pillow in the children's bedroom. It also appeared that a gun was placed quickly in a sweatshirt found in the residence.

Courtney Shearer testified on behalf of Defendant. She indicated that she rents the residence at 702 Penn Street. She recalled the encounter with Officer Gardner.

On December 15, 2018, she was cleaning. One of her children indicated that the police were at the door. She answered the door, shut the screen door behind her and stepped outside.

She spoke with Officer Bell who informed her that he had received an email alleging drug activity at her residence. Officer Bell asked if he could search the house. He also asked if there was anything in the house which would get her in trouble but that he was not concerned with marijuana. She denied having any items at first but then he kept pressuring at which point she said there was a bong upstairs in the bedroom.

Officer Bell asked her if she wanted to go get it to which she said yes. She opened the door to get it and he immediately followed her inside the residence.

Immediately upon entering, Officer Bell indicated to her that he smelled marijuana. She walked to the steps and saw Defendant. Once she saw Defendant, she panicked and started crying. She had never had any prior criminal interaction with police officers and has suffered from a panic/anxiety disorder since she was 16.

As a result of her symptoms, she sat on the living room couch. She remembered subsequently speaking with Officer Bell in the kitchen listening to him regarding the consent and then signing the consent form. According to her, Officer Bell indicated that either way they were going to search the residence. She indicated that at the

time she signed the consent, she was not clear headed and still suffering from her panic/anxiety. She just wanted “them out of the house.”

She did not recall her being asked if Defendant was in the residence. She did not think that she was asked. She denied that there was the odor of burning marijuana and recalled Defendant saying to the police that he was on state parole and that everything belonged to him. She recalled being directed to the kitchen so that she would not have to discuss the matters in front of her children.

Defendant first argues that the protective safety sweep conducted by the officers was unlawful. Defendant next argues that the entry into the home was not legally justified.

The court will first address the entry into the home as the court believes that that is determinative. The court agrees with Defendant that the entry into the home was illegal.

The Commonwealth attempts to justify the entry claiming that there were exigent circumstances, namely a fear that Ms. Shearer would destroy the evidence.

In determining whether exigent circumstances exist, a number of factors must be considered.

Among the factors to be considered are: (1) the gravity of the offense, (2) whether the suspect is reasonably believed to be armed, (3) whether there is above and beyond a clear showing of probable cause, (4) whether there is strong reason to believe that the suspect is within the premises being entered, (5) whether there is a likelihood that the suspect will escape if not swiftly apprehended, (6) whether the entry was peaceable, and (7) the time of the entry, i.e., whether it was made at night. These factors are to be balanced against one another in determining whether the warrantless intrusion was justified.

Commonwealth v. Roland, 535 Pa. 595, 637 A.2d 269, 270-271 (1994), quoting

Commonwealth v. Wagner, 486 Pa. 548, 557, 406 A.2d 1026, 1031 (1979); see also *Commonwealth v. Gray*, 211 A.3d 1253, 1261 (Pa. Super. 2019).

The offense, if any, was minor, namely the possession of a small amount of marijuana and possession of drug paraphernalia. There was no suspicion whatsoever that Ms. Shearer was armed. There was no evidence whatsoever that Mr. Drummond was actually in the premises at the time. There were at least two or three officers on the scene and there was no likelihood that Ms. Shearer would escape. Ms. Shearer indicated to Officer Bell that she was going to obtain the items. There was nothing to suggest that she would not do so. As explained by Officer Bell, the conversation was calm and Ms. Shearer was completely cooperative. In summary, there is no evidence whatsoever that the evidence would be destroyed if police took time out to obtain a warrant. Therefore, the fear that Ms. Shearer was going to destroy evidence as expressed by Officer Bell was objectively unreasonable. See *Commonwealth v. Duke*, 208 A.2d 465, 470-471 (Pa. Super. 2019)(officers unlawfully followed appellant into his garage where there was no action or conduct from which the officers could infer that appellant intended to do them harm or intended to retrieve a weapon).

Accordingly, the court need not address whether the protective sweep was lawful or whether Ms. Shearer's consent was voluntary. All evidence obtained after the illegal entry into the residence must be suppressed because but for the illegal entry into the residence, there never would have been a protective sweep and never would have been a consent to the search.

ORDER

AND NOW, this ___ day of September 2019, following a hearing and

argument of counsel, Defendant's motion to suppress is GRANTED. All of the evidence obtained following the officer's illegal entry into the residence is suppressed.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Gallogly, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file