

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1542-2018
 :
 JERRY JENNINGS, : Opinion and Order re Defendant's
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

This matter came before the court on Defendant's Omnibus Pretrial Motion.

On September 19, 2018 at approximately 8:30 p.m., Officer Nicki Bonnell and Officer Joshua Bell of the Williamsport Bureau of Police were on duty in full uniform but in an unmarked vehicle. They went to the area of 671 Ames Place, a multi-unit apartment building, because Officer Bell "had learned" that the building and an occupant, Myra Teasley, were involved in suspected drug activity. When the officers arrived at 671 Ames Place, they observed a parked car with its windows "all fogged up." The officers approached the vehicle and asked the occupant, Lynnaya Dixon, what she was doing there. She said she was waiting for a friend to give her a ride. Officer Bell asked if she was waiting for someone who was inside the residence. Ms. Dixon, whose vehicle was parked closest to the door to Ms. Teasley's apartment, said yes and looked back or motioned toward the door.

Officer Bonnell stayed at the vehicle with Ms. Dixon while Officer Bell went to the closest apartment and knocked on the door. Ms. Teasley opened the door. Officer Bell spoke with Ms. Teasley, and asked her if she knew the person in the vehicle as he pointed at Ms. Dixon's vehicle which was parked about 50 feet away. Ms. Teasley and Ms. Dixon

began yelling back and forth to each other. Ms. Teasley told Officer Bell she knew Ms. Dixon as "Erica or some other name." Officer Bell suspected that Ms. Dixon was there to pick up Ms. Teasley.

Officer Bell motioned for Officer Bonnell to come to the door of Ms. Teasley's residence. Officer Bell asked Ms. Teasley if they could come inside the residence to talk to her. Ms. Teasley said "sure", opened the door all the way and waved them inside. When they entered, Officer Bell asked Ms. Teasley if anyone else was inside the residence. Ms. Teasley said no. Officer Bell began to tell Ms. Teasley about the things that had been reported and suspected about her residence being involved with narcotics. As Officer Bell spoke with Ms. Teasley, he noticed through the doorway into the living area, a set of legs and feet. He immediately realized, contrary to Ms. Teasley's statements, that there was someone else in the apartment. Defendant then leaned forward and walked out of the living area into the kitchen. Defendant had a small black rubber band on one of his fingers.

Officer Bell immediately recognized Defendant from prior narcotics investigations. Officer Bell previously "had learned" that Defendant's associates were involved in a firearms or "shots fired" incident on Park Avenue. Officer Bell did a quick pat down of Defendant and felt a wad of cash in one of his jeans pockets but did not seize it at that time.

As Officer Bell finished the pat down of Defendant, Ms. Teasley went behind him and darted into the bathroom but did not shut the door. Officer Bell followed Ms. Teasley into the bathroom to see if anyone else was in there. On a shelf to the right of the

shower. Officer Bell observed a piece of glass mirror, a piece of suspected cocaine, a razor blade and a short piece of a straw. Ms. Teasley stopped and came back to the kitchen area where Officer Bell and Ms. Teasley resumed their conversation about the activities going on in the residence. Officer Bell told Ms. Teasley that he would like to search the apartment and asked for her consent. He explained that she was not obligated to consent and if she said no, he would have to apply for a search warrant.

She agreed to allow the officers to search the apartment. Defendant also indicated his agreement to the search by saying either “go ahead and search” or “go ahead and let them search.” Officer Bell then had another officer retrieve a consent to search form out of his bag. He checked the box marked “premises” and wrote the address 671 Ames Place. He told Ms. Teasley that by signing the form, she was giving her consent for them to search the apartment. Again, Officer Bell told Ms. Teasley that she was not required to sign the form or to give consent. Ms. Teasley gave consent and signed the form.

Officer Bell, Officer Bonnell and two other officers searched the apartment. In the living room area, the officers found a bag containing suspected cocaine under the mattress on the bed where Defendant initially was seated or lying when the officers entered the residence. Other officers found bags of cocaine above the ceiling tiles in the bathroom and kitchen areas. The officers also found cash, three counterfeit \$20 bills, scales commonly used to measure out narcotics and other paraphernalia. No drugs were found on Defendant’s person.

Defendant first asserts that the officers’ entry into the apartment was illegal;

therefore, all of the evidence must be suppressed. The court cannot agree. The record establishes that Ms. Teasley consented to the officers entering her residence. Officer Bell's testimony established that he asked Ms. Teasley if they could enter, Ms. Teasley said "sure", she opened the door all the way and waved Officer Bell and Officer Bonnell into the residence.

Defendant next asserts that Officer Bell exceeded the scope of any consent when he moved about the residence beyond the kitchen. Again, the court cannot agree. Both officers testified that Ms. Teasley never limited or revoked her consent. Officer Bell temporarily stopped talking with Ms. Teasley when Defendant came out of the living area and into the kitchen. He patted Defendant down and then turned and followed Ms. Teasley because she darted behind him. They immediately came back out to the kitchen area and resumed their conversation.

Defendant also alleges that Officer Bell's pat down of him lacked any reasonable suspicion that he was armed and dangerous. While Officer Bell "heard" that Defendant's associates were involved in a firearm incident, there is nothing in the record to indicate what Defendant's involvement in that incident was, if any. Furthermore, it appears that this incident occurred about one and one-half months earlier. That night, however, neither Officer Bell nor Officer Bonnell saw anything on or about Defendant to think he was armed. They did not see any bulges or any configurations of a weapon. Based on this record, the court finds that the officers did not have reasonable suspicion to believe that Defendant was armed and dangerous. No evidence, however, is subject to suppression as a result. The

officers did not seize any evidence as a result of the pat down. Nothing was taken from Defendant's person until after he was placed under arrest.

Defendant next asserts that the charges should be dismissed as the evidence was insufficient to establish Defendant's possession, either actual or constructive, of the controlled substances or the paraphernalia. The court cannot agree.

Constructive possession of a controlled substance is demonstrated by the ability to exercise a conscious dominion over the illegal substance: the power to control the [illegal substance] and the intent to exercise that control. An intent to maintain a conscious dominion and control may be inferred from the totality of the circumstances. Thus, circumstantial evidence may be used to establish constructive possession of an illegal substance. Additionally, our Court has recognized that '[c]onstructive possession may be found in one or more actors where the item in issue is in an area of joint control and equal access.'

Commonwealth v. Colon-Plaza, 136 A.3d 521, 528 (Pa. Super. 2016)(citations omitted).

At the preliminary hearing, Officer Bell testified that, following the search, Ms. Teasley was transported to City Hall, read her Miranda warnings, waived them and gave a recorded statement. In her statement, Ms. Teasley indicated that Defendant had been staying with her for about a month. During that time, Defendant was traveling back and forth between Philadelphia and Williamsport. Defendant would bring cocaine from Philadelphia to her residence, package it up for distribution and arrange narcotics sales. Ms. Teasley would deliver some of the cocaine to Defendant's purchasers. In exchange, she would receive either money toward her rent or things of that nature or some crack cocaine. The night before the police arrived at her door, Defendant had returned from Philly and brought drugs.

Some of the cocaine was found under the mattress on the bed where

Defendant had been sitting or lying when the police arrived at the residence. It consisted of a six inch distribution bag that contained about ten individual rocks of suspected cocaine broken down by bag and weight for distribution. The field test results were positive for cocaine.

During the search of the residence, the police also observed men's clothing consistent with Defendant's size, which tended to corroborate Ms. Teasley's statements that Defendant was staying there.

Contrary to Defendant's arguments, the totality of the circumstances, including Ms. Teasley's statements, show that Defendant had both the power to control and the intent to control the cocaine.

In the alternative, Ms. Teasley and Defendant were co-conspirators and/or Ms. Teasley was Defendant's accomplice, which would render him liable for her actions.

Defendant's omnibus motion also contains a motion to compel discovery. Defendant alleges that discovery is incomplete. He asserts that he has not been provided a copy of Ms. Teasley's interview or any lab reports of the suspected cocaine. The court will grant Defendant's motion to compel discovery and direct the Commonwealth to provide these items within 30 days or by the time of the pretrial conference, whichever shall first occur.

Defendant also seeks to compel the Commonwealth to disclose the existence of and substance of promises of immunity, leniency or preferential treatment and criminal history of the witnesses it intends to call at trial. The court will also grant this motion and

direct the Commonwealth to provide this information within 30 days or by the time of the pretrial, whichever shall first occur.

Count V of the omnibus pretrial motion is a motion for disclosure of other crimes, wrongs or acts pursuant to Pa. R. Evid. 404(b). Defendant, however, seeks more detailed information than provided for in the Rule. Therefore, the court will grant this motion in part. Consistent with Pa. R. Evid 404(b)(3) and the court's prior practice, the Commonwealth must provide reasonable notice of the general nature of any such evidence it intends to utilize at trial. The Commonwealth must provide this notice by the date of the next pretrial unless such information was discovered afterwards.

Defendant's final motion is a motion to reserve the right to make additional pretrial motions as there is additional discovery that has not been produced and additional investigation and preparation that is necessary for this case. The court will grant this motion to the extent that any additional pretrial motions must be based on new discovery or information.

ORDER

AND NOW, this 12 day of September 2019, upon consideration of Defendant's omnibus pretrial motion:

1. The court DENIES Defendant's motion to suppress.
2. The court DENIES Defendant's petition for writ of habeas corpus.
3. The court GRANTS Defendant's motion to compel discovery. The

Commonwealth shall provide a copy of Ms. Teasley's recorded statement and any lab reports within 30 days or prior to the pretrial conference, whichever shall first occur.

4. The court GRANTS Defendant's motion to compel disclosure of the existence of and substance of promises of immunity, leniency or preferential treatment and criminal history of the witnesses the Commonwealth intends to call at trial. The Commonwealth shall provide this information to defense counsel within 30 days or by the date of the pretrial conference, whichever shall first occur.

5. The court GRANTS Defendant's motion for disclosure of other crimes, wrongs or acts pursuant to Pa. R. Evid. 404(b). The Commonwealth must provide reasonable notice of the general nature of any such evidence it intends at trial. The Commonwealth must provide this notice by the date of the next pretrial unless such information was discovered afterwards.

6. The court grants Defendant's motion to reserve right and permits Defendant to file additional pretrial motions provided the motions are based on new or additional discovery or information.

By The Court,


Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Edward J. Rymsza, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File