

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

: No. CP-41-CR-0001085-2018

:

vs.

:

: Opinion and Order re:

MIGUEL KNIGHT

: Defendant's Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on July 27, 2018 with two counts of conspiracy to possess with intent to deliver controlled substances, two counts of possession with intent to deliver controlled substances, two counts of possession of controlled substances and one count of possession of drug paraphernalia. Defendant was arrested on these charges and incarcerated on June 29, 2018. The charges relate to alleged heroin and cocaine, as well as assorted paraphernalia, being found in a lunch box at 762 Second Street in Williamsport on or about June 29, 2018.

Counsel entered his appearance for Defendant on November 7, 2018 and subsequently obtained an extension of time to file an omnibus pretrial motion on Defendant's behalf. Defendant filed his omnibus pretrial motion on December 4, 2018. The omnibus pretrial motion consists of a motion to suppress all evidence seized from the residence, a motion to suppress statements allegedly made by Defendant, a motion to disclose the existence of leniency, a motion for Rule 404 (b) evidence, a petition for habeas corpus, a motion to compel discovery, and a motion to reserve right.

At the hearing on Defendant's motion, the Commonwealth presented the testimony of Officer Joshua Bell and Officer Clinton Gardner, both of the Williamsport Bureau of Police.

The credible testimony adduced at the hearing established the following facts. Officer Bell was working and on duty on June 29, 2018. At around 6:47 p.m., he was dispatched to a “domestic disturbance” first at 758 Second Street but then soon changed to 762 Second Street. He recalled no other details regarding the dispatch.

When Officer Bell arrived at the residence, he observed Officer Gardner speaking with Jerry Grow, an adult male and the purported owner of the residence. They were outside of the residence on the front porch. Corporal McGee and Officer Cole, both employed by the Williamsport Bureau of Police and on bike patrol at the time, had arrived at the scene shortly before Officer Bell. Upon Officer Bell’s arrival, Officer Gardner briefed Officer Bell by relating to him, among other things, that Mr. Grow had yelled something to someone in the house while they were outside talking and that Officer Gardner heard someone moving inside the house.

Immediately after this “briefing”, both Officer Bell and Officer Gardner entered the residence “to conduct a safety sweep.” Entry was made into the residence to make contact with any other parties that may have been involved in the disturbance and to ensure that no one was injured.

Upon entering the residence, Officer Bell first walked into the kitchen. He observed two individuals sitting at a kitchen table. Defendant was sitting with his back to the wall facing the officers while Justin Baity was sitting on the other side of the table. Officer Bell noticed a knife either on the kitchen table where Defendant was sitting or on a kitchen counter near Defendant. He also observed white residue on a kitchen counter. The white residue appeared to resemble cocaine. He also observed on the kitchen floor close to Defendant a torn

portion of a knotted plastic baggie as well as additional torn baggies which were consistent with baggies utilized to package cocaine.

Believing that Defendant was armed and dangerous, Officer Bell conducted a brief pat down or frisk of Defendant. Officer Bell's belief was based on the following: he was responding to a domestic disturbance, he did not know who was involved, he was in a small kitchen area, there was a knife near Defendant and because he saw what he believed to be drugs and drug paraphernalia, Defendant "could be armed and dangerous." Officer Bell wanted to mitigate any "risk to officers."

Defendant remained detained. Officer Bell then made contact with Mr. Grow and enquired as to why Defendant and Mr. Baity were "there." At the time they were talking, Mr. Grow was not in handcuffs, was standing on the porch and smoking a cigarette. Officer Bell asked Mr. Grow for consent to search the premises. Officer Bell explained to Mr. Grow that he was not obligated to give consent. In response, Mr. Grow stated "you can ransack my whole house if you like." Officer Bell's police report noted that Grow "indicated" that the officers were "authorized to search his residence."

Based on the consent of Mr. Grow, officers conducted a search and located a red and white lunchbox/cooler immediately behind where Mr. Baity was sitting. Contained within the cooler were 24 individually packed bags of cocaine base and four individually packaged bags of heroin. These "substances" were found in two sandwich style distribution bags that were knotted at the top.

Officer Bell opined as an expert in the field of narcotics that the controlled substances were possessed with the intent to deliver. His opinion was based on the manner in which the controlled substances were packaged, being "typical for sale", the amount of cocaine

bags, the absence of ingestion paraphernalia, the presence of a distribution bag and Mr. Grow eventually admitting to law enforcement that he contacted Mr. Baity to “order” controlled substances and that Mr. Baity was there to deliver such to him. Following the seizure and search of the cooler, Mr. Grow told officers that after he contacted Mr. Baity to obtain the drugs, Mr. Baity arrived “carrying the cooler.”

Both Defendant and Mr. Baity were taken into custody and transported to police headquarters. Officer Gardner transported Defendant while Officer Bell transported Mr. Baity. Upon arriving at headquarters, Defendant was seated and handcuffed to a bench in a hallway.

As Officer Gardner was walking by, Defendant asked where “Mr. Baity was.” Officer Gardner replied that Mr. Baity was in custody in another room. Defendant stated that he did not understand why Baity was in custody because the “stuff was his.”

After being preliminarily arraigned, both Mr. Baity and Defendant were being transported by both officers to the Lycoming County prison. During the transport, Defendant was overheard stating to Mr. Baity: “I don’t know why you’re here, I told them (or I told Officer Gardner) that the stuff was mine.”

Defendant first asserts that the police unlawfully entered the residence; therefore, all evidence discovered as a result thereof must be suppressed. The Commonwealth contends that the entry was lawful but, in any event, Defendant does not have a legitimate expectation of privacy in the residence to be entitled to the suppression of any evidence.

Although a defendant charged with possessory crimes has automatic standing to litigate a suppression motion, the evidence must establish that the defendant had a legitimate and reasonable expectation of privacy in the place searched for the defendant to be entitled to any relief. *Commonwealth v. Enimpah*, 630 Pa. 357, 106 A.3d 695, 699 (2014). Generally, a

casual visitor who is merely present in another person's home does not have a legitimate expectation of privacy to contest an illegal entry by police into that home. *Commonwealth v. Viall*, 890 A.2d 419, 423 (Pa. Super. 2005); *Commonwealth v. Govens*, 632 A.2d 1316, 1319 (Pa. Super. 1993); *Commonwealth v. Ferretti*, 577 A.2d 1375, 1381 (Pa. Super. 1990). "Thus, an occupant other than the owner or lessee of an apartment must demonstrate a significant and current interest in the searched premises in order to establish an expectation of privacy." *Govens*, *id.* (internal quotations omitted).

Factors to be considered in determining whether a defendant has a legitimate expectation of privacy in another person's home include: (1) possession of a key to the premises; (2) having unlimited access to the premises; (3) storing of clothing or other possessions on the premises; (4) involvement in illegal activities conducted on the premises; (5) ability to exclude other persons from the premises; and (6) expression of a subjective expectation of privacy in the premises.

Id.

The court finds that Defendant did not have a legitimate expectation of privacy in Mr. Grow's residence. Mr. Grow called Mr. Baity for the purpose of purchasing controlled substances. There is nothing in the record to show that Defendant was an invited or social guest of Mr. Grow's. Even if Defendant had been specifically invited to the residence, Defendant would have to show that he was **more** than just a casual visitor. There is nothing in the record to show that Defendant had a key to the premises, that he stored his clothing or other possessions there, that he had unlimited access, or that he had the ability to exclude other persons. Defendant also did not make any statements expressing a subjective expectation of privacy in the premises. Defendant may have been involved in illegal activity on the date in question – that will be the ultimate issue at trial – but the court does not believe that a person's involvement in a single drug delivery at another's residence is sufficient to give that person a

reasonable expectation of privacy in the buyer's residence. As Defendant has not established a reasonable expectation of privacy in the premises, the court need not address whether the officers' entry into the residence and the search thereof was lawful.

Defendant's next argument relates to the statements allegedly made by the defendant while at police headquarters and while in transport to the Lycoming County Prison.

Defendant argues that he was not Mirandized and that he did not voluntarily make any statements. Both arguments fail.

Miranda warnings are required only where a suspect is "both taken into custody and subjected to interrogation." *Commonwealth v. Coleman*, 204 A.3d 1003, 1007-1008 (Pa. Super. 2019)(quoting *Commonwealth v. Yandamuri*, 159 A.3d 503, 520 (Pa. 2017)). Custodial interrogation is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Commonwealth v. Cooley*, 118 A.3d 370, 376 (Pa. 2015).

While Defendant clearly was in custody, his statements were not in response to or as a result of any questioning whatsoever initiated by law enforcement officers. The privilege against compulsory self-incrimination does not preclude voluntary incriminatory statements. *Commonwealth v. Yandamuri*, 159 A.3d 503, 520 (Pa. 2017)("Statements not made in response to custodial interrogation are classified as gratuitous and not subject to suppression for lack of Miranda warnings."). Defendant's statements both to Officer Gardner and to Mr. Baity were not prompted by any questioning or conduct whatsoever on behalf of police. His statements were clearly unsolicited and voluntary.

Incidentally, Defendant also objected to the fact that he was frisked. It did not appear to the court that any items of evidentiary significance were obtained as a result of the

frisk of Defendant. If, however, the court is mistaken, it concludes that such evidence must be suppressed. There was no evidence to conclude that Defendant was armed and dangerous. Officer Bell's conclusion that the presence of suspected controlled substances and paraphernalia justifies the conclusion that one may be armed or dangerous, is belied by the law and facts. There was no evidence that the officers observed any bulges on D's person consistent with a weapon and no evidence that the "domestic" call involved violence as opposed to a loud verbal disagreement. Furthermore, a pat down cannot be premised solely upon an assumption or presumption that guns follow drugs; it must be based upon the totality of facts and circumstances of the particular case. *See Commonwealth v. Zhahir*, 561 Pa. 545, 751 A.2d 1153, 1162 (2000).

Defendant also sought habeas corpus relief. Defendant alleged that, apart from his mere presence at the residence, there was no evidence that he knew of the drugs, much less possessed them. Defendant also asserted that the amount of the drugs found were insignificant; therefore, the evidence was insufficient to support the charges of possession with intent to deliver a controlled substance (PWID) and conspiracy to commit possession with intent to deliver a controlled substance (Conspiracy-PWID). The court cannot agree.

In addition to being in close proximity to the drugs, Defendant made statements that the drugs were his, which showed that he knew what was contained in the cooler and that he had the intent and ability to control the controlled substances.

The evidence was also sufficient for prima facie purposes to establish PWID and Conspiracy-PWID. Grow called Baity to place an "order" for drugs. After Grow contacted Baity, Baity and Defendant arrived at Grow's residence. While Baity may have brought the cooler to the residence, Defendant made statements that the drugs were his. The

police found 24 bags of cocaine and 4 bags of heroin inside the cooler. The bags of cocaine and the bags of heroin were contained in separate “distribution” bags. Additionally, Officer Bell provided testimony that the drugs were possessed with the intent to deliver them. The totality of this evidence is sufficient for prima facie purposes to show that the drugs were jointly possessed by Baity and Defendant and that they intended to deliver at least some of the drugs to Grow. Furthermore, from these facts and circumstances a jury could infer that Baity and Defendant conspired to deliver controlled substances to Grow. Therefore, the court will deny Defendant’s petition for writ of habeas corpus.

Consistent with this Court’s prior rulings, the court will grant Defendant’s motion to disclose and motion for Rule 404 (b) evidence. The court also grants Defendant’s motion to compel discovery and motion to reserve right.

ORDER

AND NOW, this 5 day of September 2019, following a hearing and argument:

1. Defendant’s motion to suppress physical evidence is **DENIED** with respect to all evidence except any evidence seized as a result of the pat down of Defendant.
2. Defendant’s motion to suppress statements is **DENIED**.
3. Defendant’s motion to disclose the existence and substance of any promises of immunity, leniency or preferential treatment and complete criminal history is **GRANTED**. If the Commonwealth has not already provided this information to defense counsel, it shall do so within 30 days or before the next pretrial conference whichever shall first occur.


4. Defendant's motion for disclosure of Rule 404 (b) evidence is **GRANTED**.

Prior to the pretrial conference, the Commonwealth shall provide reasonable notice to defense counsel of the general nature of any such evidence that it intends to introduce at trial.

5. Defendant's petition for writ of habeas corpus is **DENIED**.

6. Defendant's motion to compel discovery is **GRANTED** as follows. Within 30 days of the date of this order or prior to the pretrial conference whichever shall first occur, the Commonwealth shall provide to defense counsel the results and/or a report regarding the search and/or forensic testing conducted on Defendant's cell phone. If the Commonwealth intends to utilize a PWID expert witness other than Officer Bell, the Commonwealth shall disclose the name and title of the expert and a summary of the expert's opinions and the facts and grounds for each opinion.

7. The court **GRANTS** the defendant's motion to reserve the right to file additional pretrial motions. The defendant may file additional pretrial motions only if he pleads facts in the motion to show that the opportunity to file the motion did not previously exist, the defendant or his attorney were not aware of the grounds for the motion, or the interests of justice require the court to hear the motion.

~~By The Court,~~


Marc F. Lovecchio, Judge

cc: Edward J. Rymza, Esquire
District Attorney
Gary Weber, Lycoming Reporter
Work File