

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-631-2018  
vs. :  
 : CRIMINAL DIVISION  
 :  
 :  
 :  
 :  
 : 1925(a) Opinion  
AMY MORGRET,  
Appellant

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order which granted the motion to suppress filed by Appellee Amy Morgret.

By way of background, Ms. Morgret was charged with several counts of possession with intent to deliver controlled substances (PWID) and related offenses. On July 18, 2018, Ms. Morgret filed a motion for writ of habeas corpus and a motion to suppress physical evidence. The motion to suppress was based on assertions that parole agents made an illegal entry into her home. Appellee asserted that the entry into her home was a ruse to search for another individual, Quran Geddy.<sup>1</sup>

The court held a hearing and argument on Ms. Morgret's motion on September 20, 2018. In an Opinion and Order entered on December 3, 2018, the court denied the petition for writ of habeas corpus, but granted the motion to suppress. The court found that the parole agents lacked reasonable suspicion to conduct a parole search of Ms.

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<sup>1</sup> The individual is referred to as Quran Getty in the motion, Caran Getty in the Opinion, and Coron Getty in the transcript. The court believes the correct spelling of the individual's name is Quran Geddy. See CP-41-CR-0000164-2018.

Morgret's residence.

The Commonwealth filed a notice of appeal.

The Commonwealth asserts two issues on appeal. First, the Commonwealth contends the court erred in granting the suppression motion by finding that the search conducted by parole agents was without reasonable suspicion and therefore the entry into the residence of the probationer, Ms. Morgret, was illegal. The court would rely on the Opinion accompanying that Order with the following additions.

While the entry into the home was not a ruse to search for Mr. Geddy, it was a ruse to search for Mr. Geddy's drugs without obtaining a search warrant. The court agreed with defense counsel that the parole search was a "scam." The parole agents were not searching for evidence of Ms. Morgret's purported violation of her parole conditions related to associating with persons who sell or use drugs outside of a treatment setting or possess drug paraphernalia. To the extent the parole agents testified that was the basis for their search, that testimony was rejected by the court.

The parole agents were not searching for evidence of Ms. Morgret having contact or associating with Mr. Geddy. The parole agents were not searching for messages between Ms. Morgret and Mr. Geddy or messages from Ms. Morgret trying to relay messages to Mr. Geddy through third parties. The agents weren't searching for photographs of Ms. Morgret and Mr. Geddy together. They were not looking for any evidence related to Ms. Morgret's alleged parole violation; they were looking for evidence of Mr. Geddy's criminal activities.

The parole agents believed that Mr. Geddy was a drug dealer. When they arrested him a couple of days prior to the search of Ms. Morgret's residence, he didn't have a

sufficient quantity of drugs to be charged with delivery or possession with intent to deliver. See N.T., 9/20/2018, at 15-16 (Agent Lamay testified that he was not searching Ms. Morgret's residence for Mr. Geddy, because he had arrested Mr. Geddy on October 25, 2017 and Mr. Geddy was incarcerated on parole violations as well as new criminal charges for possession of drugs and paraphernalia).<sup>2</sup>

Ms. Morgret's parole agent, Joshua Kriger, did not conduct the parole search; Mr. Geddy's parole agent, Jason Lamay, did. In fact, from Agent Lamay's testimony, it appears that Agent Kriger was not even present for the search of his parolee or probationer's residence. See N.T., 9/20/2018, at 24, 26. The **only** items the parole agents were searching for were Mr. Geddy's drugs and paraphernalia. In fact, the following exchange took place between the prosecutor and Agent Lamay:

Q. So when you went to the defendant's residence[,] what specifically was it that you were doing there?

A. I was specifically looking for any kind of contraband in relation to Mr. [Geddy], whether it be drugs, paraphernalia.

N.T., 9/20/2018, at 16. Agent Lamay also testified on cross-examination that he when he went to Ms. Morgret's apartment, he "let Miss Morgret know that Mr. [Geddy] was believed to be a drug dealer at that period of time, and had recently been arrested, and that he ha[d] a habit of leaving drugs in other people's homes, specifically girlfriend[']s, and I came there to look for said objects." N.T., 9/20/2018, at 20-21.

Furthermore, Agent Lamay did not have any evidence or indication that Ms. Morgret was aware that Mr. Geddy was involved in any kind of drug activity. Specifically,

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<sup>2</sup>The docket from Mr. Geddy's case, however, indicates that he was only charged with possession of drug paraphernalia. See CP-41-CR-0000164-2018. That charge was filed on November 1, 2017, after the parole agents searched Ms. Morgret's residence. See MJ-29101-CR-0000455-2017.

the following exchange took place on cross-examination:

Q. So the fact that her daughter is having a relationship with this gentleman and he may have been there once, how would she know he's involved in any kind of drug activity?

A. I don't know that she would have known.

N.T., 9/20/2018, at 21.

The fact that Ms. Morgret signed a consent form giving parole agents permission to conduct warrantless searches of her person, property, and residence does not help the Commonwealth in this case. Even when a parolee or probationer has signed a consent form, the consent form does not act as a waiver of all of the individual's rights.

Rather, the parolee's signature acts as acknowledgement that the parole officer has a right to conduct reasonable searches of his residence listed on the parole agreement without a warrant. A search will be deemed reasonable if the totality of the evidence demonstrates: (1) that the parole officer had a reasonable suspicion that the parolee had committed a parole violation, and (2) that the search was reasonably related to the parole officer's duty.

*Commonwealth v. Williams*, 547 Pa. 577, 692 A.2d 1031, 1036 (1997).

Here, the Commonwealth's evidence failed to satisfy either criterion. The parole agents did not have reasonable suspicion that Ms. Morgret was involved in drug activity. They also did not have reasonable suspicion to connect Mr. Geddy's alleged drug activity to Ms. Morgret. They had no information that Ms. Morgret was even aware of Mr. Geddy's alleged drug activities. Furthermore, Mr. Geddy was already incarcerated on parole violations at the time of the search of Ms. Morgret's residence. Therefore, the parole agents were certain that they would not find Ms. Morgret or her daughter associating with Mr. Geddy at the time of the search. Moreover, the parole agents were not searching for

evidence of Ms. Morgret's association with Mr. Geddy. They were searching for Mr. Geddy's drugs and paraphernalia.

The search also was not reasonably related to the parole officer's duty. Agent Lamay's testimony established that the parole agents were searching for Mr. Geddy's contraband (i.e., drugs and paraphernalia), not Ms. Morgret's. Ms. Morgret's apartment was not Mr. Geddy's residence. The parole agents were searching for Mr. Geddy's contraband in Ms. Morgret's residence merely because Mr. Geddy was involved in a relationship with Ms. Morgret's daughter. Ms. Morgret's daughter, however, was not under the supervision of the Pennsylvania Board of Probation and Parole.

The Commonwealth's second issue on appeal is that the court erred in finding that the search of Ms. Morgret's residence by parole agents was illegal as said search was conducted without reasonable suspicion, when that issue was neither raised in the motion to suppress nor asserted in either an oral or written amendment.

The court notes that the Commonwealth did not raise such an argument during the hearing or in a motion for reconsideration. Instead, the Commonwealth is asserting this issue for the first time on appeal. It is well settled that "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa. R.A.P. 302(a).

The court also believes the Commonwealth construes the motion to suppress too narrowly. In the motion Ms. Morgret asserted that the search of her home was not made pursuant to any lawful search warrant or valid consent and that the physical evidence, money and alleged drugs that were obtained were the product of, and tainted by, an illegal entry into Ms. Morgret's home. Motion for Habeas Corpus and Motion to Suppress (hereinafter "Motion"), ¶¶ 20, 21. Ms. Morgret also asserted that the entry into her home was a ruse.

Motion, ¶ 22. While Ms. Morgret may have been mistaken in her belief that the parole agents were searching for Mr. Geddy as opposed to Mr. Geddy's contraband, the error is of no moment because, in either event, the search was not related Ms. Morgret's violation of her probation or parole conditions. This was not an issue raised sua sponte by the court; it was an issue asserted by defense counsel in his arguments at the close of the hearing.

Specifically, defense counsel argued:

In regards to the search, Your Honor, it—it—it appears, and—and I understand that Ms. Morgret was on supervision at the time, but they weren't coming to check on Ms. Morgret, they came to see if this other individual left any drugs there, and whether he did or not I don't know. But, if that was the case, and that's what they were coming for, they should have gotten a search warrant because this was not where the individual lived. This wasn't a place that he resided. It may be a place that he went to, and even if he went there they should have gotten a search warrant. He was already in custody, so they knew where he was, and for that reason, Your Honor, we believe the search was—was a scam and they came in to look for this stuff and then turn it all on Miss Morgret.

N.T., 9/20/2018, at 68-69.

Furthermore, the Commonwealth was fully aware that Ms. Morgret's allegations and arguments that the search was a "ruse" or a "scam" related to whether the agents had reasonable suspicion to believe that Ms. Morgret violated the conditions of her parole and to believe that evidence of such violations would be found in her residence.

Specifically, the prosecutor stated:

We also have to provide reasonable suspicion. The Commonwealth accepts that, and believe[s] parole accepts that as well. In this particular case you heard Agent Lamay indicate the defendant violated her parole conditions by associating with a known individual associated with drugs. Selling them and having them. That is a violation. That individual is known to be in the defendant's home. That is a violation. That individual was known to be in the defendant's home; and in fact you heard it from her daughter's mouth, yes he has been in the home [—] several times he's been there. I think the testimony provided

by both of defense witnesses only corroborated what we told Your Honor through our own witnesses with regards to what was there when.

And in addition to that, Your Honor, I think that the reasonable suspicion was very clearly proved to Your Honor. The only reason they went there was because the known drug dealer, who had been arrested only two days prior by Agent Lamay, they knew he was there. They wanted to search to see if there [were] any potential leftover items there as [Quran Geddy] is know[n] to leave his drugs around other people's homes.

N.T., 9/20/2018, at 70-71.

The record reflects that both defense counsel and the prosecutor recognized that the issues asserted in the motion included an issue regarding the parole agents' reasonable suspicion to search Ms. Morgret's home, and the prosecutor felt that she had met that standard. Since both the parties address the issue in their arguments and the Commonwealth never objected that this issue was not raised in the motion at any time prior to the filing of its concise statement, the court did not err or abuse its discretion by addressing that issue in its decision.

DATE: \_\_\_\_\_

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)  
Michael Rudinski, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)