

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1893-2018**
 v. :
 :
 RONALD DOTSON, : **MOTION TO SUPPRESS**
 Defendant :

OPINION AND ORDER

Ronald Dotson (Defendant) was arrested by the Lycoming County Narcotics Enforcement Unit (NEU) on August 17, 2018. Defendant was arrested for Possession of a Controlled Substance with the Intent to Deliver,¹ Possession of a Controlled Substance,² and Persons Not to Possess a Firearm.³ The charges arise from police conducting a search warrant on 1217 Park Ave., Williamsport, PA in Lycoming County. Defendant filed a Motion to Suppress *Nunc Pro Tunc* on July 25, 2019 requesting suppression of the evidence yielded as a result of the search of the residence and search of red Nissan parked out front of the residence. Defendant's request to proceed *nunc pro tunc* was granted on July 29, 2019 and a hearing on the motion was conducted by this Court on December 13, 2019. In his motion, Defendant raises two issues: whether consent to search the vehicle parked out front of the residence was voluntary and whether the search warrant established a fair probability that drugs would be found at the address. For the subsequent reasons Defendant's Motion to Suppress *Nunc Pro Tunc* is denied.

Background and Testimony

At the hearing on December 13, 2019, Pennsylvania State Trooper Tyler Morse (Morse) and Michelle Dobbs (Dobbs) testified. Additionally, the search warrant was entered as

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 18 Pa. C.S. § 6105(a)(1).

Commonwealth's Exhibit #1. Morse testified that he was present for the execution of the search warrant conducted on 1217 Park Ave. When Morse saw Dobbs she was sitting on a chair on the front porch, unrestrained. Dobbs was speaking with Detective Curtis Loudenslager, who was asking for her consent to search her vehicles. Officers did not raise their voices while asking for consent. Morse testified that he would have remembered if anyone got loud, angry, or boisterous with Dobbs, but Morse was unsure if officers took off their masks while speaking with her. Dobbs told officers where her keys were, but she was not allowed back in the house to get her keys because of the ongoing execution of the search warrant. Dobbs had numerous vehicles and at least two of them were searched. Two of her vehicles were on the south side of Park Ave. and the vehicle at issue, the red Nissan, was parked on the north side of Park Ave. Dobbs told officers that all of the vehicles were hers.

Dobbs testified that she has lived at 1217 Park Ave. for four years. Defendant is her husband and she has known him for fifteen years. Dobbs was getting ready for work shortly after 5:00 a.m. on August 17, 2018 when she heard commotion and a knock at the door. When she came downstairs she saw SWAT with their guns drawn. A canine was accompanying the officers. Dobbs testified that she was scared and did not want to get hurt. She walked backwards towards the officers and was handcuffed and taken outside. She was asked whether she knew where the drugs were and testified that the officers kept their masks on while talking to her. Dobbs was asked if she minded the officers searching her vehicles, which she agreed and told them the keys were on a post in the living room. All of the vehicles were in Dobbs's name the white jeep being the vehicle she drove. Dobbs testified she just wanted the encounter over with and she was scared of the canine. The encounter lasted only a few minutes and she testified that no one made her stay on the porch or at the residence while the search warrant was

being executed. Dobbs testified that the way the officers entered the house she felt they had full reign.

The affidavit of probable cause for the search warrant detailed three controlled buys that occurred between the confidential informant (CI) and Defendant. Search Warrant 8/16/18, at 4-6. On July 11, 2018, CI called Defendant and arranged to purchase heroin. *Id.* at 5. After completing the hand to hand transaction “[Defendant] le[ft] the area and return[ed] back to 1217 Park Avenue.” *Id.* CI then relinquished the suspected heroin to the officers. *Id.* On July 25, 2018, CI called Defendant to arrange another purchase of heroin and was told to meet Defendant in the same area. *Id.* After the hand to hand transaction, “[Defendant] le[ft] the area and return[ed] back to 1217 Park Avenue.” *Id.* CI then relinquished the suspected heroin to the officers. *Id.* On August 15, 2018, CI called Defendant to arrange another buy of heroin and was told to meet Defendant in the same area. *Id.* “Members of the NEU observ[ed] [Defendant] leave 1217 Park Avenue and” travel to the buy location. *Id.* at 6. After the hand to hand transaction, “[Defendant] le[ft] the area and return[ed] back to 1217 Park Avenue.” *Id.* CI then relinquished the suspected heroin to the officers. *Id.* Based on this information, officers reached the conclusion that Defendant was “keeping quantities of heroin inside 1217 Park Ave Williamsport, PA, 11701. [Defendant was] using the address/his residence as a stash house for his illegal drug enterprise, that being the sale and distribution of heroin.” *Id.*

Whether Dobbs’s Consent to Search the Vehicles Was Voluntary

For a search of an individual’s home, person, and/or possessions to satisfy the requirements of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, “police must first obtain a warrant, supported by probable cause, from a neutral and detached magistrate. A search conducted without a warrant is deemed

to be unreasonable and therefore constitutionally impermissible, unless an established exception applies.” *Commonwealth v. Valdivia*, 195 A.3d 855, 861 (Pa. 2018). One such exception is voluntary consent given during a lawful police interaction. *Id.* In addition to consent being voluntary, it must also be given knowingly and intelligently, such that a reasonable defendant would “possess at least a minimal sense of awareness of what was going on . . . such a minimal sense of awareness would undoubtedly include an apprehension of some relatedness to a criminal investigation.” *Commonwealth v. Smith*, 77 A.3d 562, 569 (Pa. Super. 2013) (internal citation omitted). Whether consent is voluntarily, knowingly, and intelligently given is based on a totality of the circumstances. *Commonwealth v. Danforth*, 576 A.2d 1013, 1022 (Pa. Super. 1990). The factors to consider when evaluating voluntariness are:

(1) the presence or absence of police excesses; (2) whether there was physical contact; (3) whether police directed the citizen's movements; (4) police demeanor and manner of expression; (5) the location and time of the interdiction; (6) the content of the questions and statements; (7) the existence and character of the initial investigative detention, including its degree of coerciveness; (8) the degree to which the transition between the traffic stop/investigative detention and the subsequent encounter can be viewed as seamless, thus suggesting to a citizen that his movements may remain subject to police restraint, and (9) whether there was an express admonition to the effect that the citizen-subject is free to depart, which is a potent, objective factor.

Commonwealth v. Caban, 60 A.3d 120, 127-28 (Pa. Super. 2012) (citing *Strickler*, 757 A.2d 884, 898-99) (internal quotations omitted).

“No one factor in the voluntariness inquiry is controlling.” *Id.* at 131. The test utilizes an objective reasonable person standard and presupposes an individual’s innocence. *Id.* at 130.

Defendant argues that Dobbs’s consent was not voluntary based on the totality of the circumstances. There were a number of officers present to conduct the search warrant and at least one canine, when entering Defendant and Dobbs’s residence. Although there were a number of officers who executed the search warrant and entered the house, only one or two

remained on the porch with Dobbs's while the majority of officers would have been searching the residence. Therefore this factor weighs in favor of voluntariness. Physical contact was initiated by police and Dobbs was directed outside the residence and onto the porch, but once outside Dobbs was not kept on the porch, as indicated by her own testimony, officers did not stand over her while speaking with her, and her handcuffs were removed. This factor also weighs in favor of voluntariness. Morse testified that during their interactions with Dobbs none of the officers raised their voices or were confrontational, which Dobbs does not deny. Nor was there any testimony that the officers' guns were displayed to her once she was on the porch. The testimony was unclear as to whether officers took off their masks when speaking with Dobbs and she testified that she was fearful, especially of the canine. Although Dobbs expressed her fears, this Court finds that they arose from the initial entrance into the house and were sufficiently alleviated by time she was on the porch and was calmly speaking with the officers. The search warrant was served shortly after 5:00 a.m. on Dobbs's residence while she was up getting ready for work, which neither weighs in favor or against voluntariness of consent. As it pertains to the last three factors, it is clear that once Defendant was removed from the house, her movements were not restricted and she was aware she did not have to remain there. Based on the totality of the circumstances this Court finds Dobbs voluntarily gave her consent to search her vehicles.

Whether the Search Warrant Established Drugs Would be Found at the Residence

When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-

technical manner.” *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a “totality of the circumstances.” *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985) (adopting *U.S. v. Gates*, 462 U.S. 213 (1983)). The Court “must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause.” *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. 2013). It is “not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.” *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Commonwealth v. Manuel*, 194 A.3 1076, 1081 (Pa. Super. 2018).

Defendant asserts the search warrant does not contain enough information to demonstrate a fair probability that drugs would be found within the residence. This Court disagrees. In a span of a little more than a month, the CI performed three controlled buys from Defendant. On the first two controlled buys, Defendant showed up at a predetermined location provided the CI with heroin and then returned to 1217 Park Ave. On the last controlled buy, officers witnessed Defendant leave 1217 Park Ave., he then proceeded to the same predetermined location, provided the CI the heroin and returned to 1217 Park Ave., as he did on the previous two buys. Based on this information, a search warrant was obtained. Although Defendant was only observed leaving the residence on the one occasion, it does not disturb the magistrate’s finding of probable cause. Defendant returned the residence on all three buys. On the last buy, Defendant was seen leaving the residence and went straight to the predetermined

location and provided the CI with heroin. Additionally the last buy when Defendant was seen leaving the residence prior to the controlled buy, was only forty-eight hours prior to the execution of the search warrant. Therefore this Court finds the search warrant demonstrated a fair probability that heroin would be found in 1217 Park Ave.

Conclusion

Dobbs consent to search her vehicles was voluntary under the totality of circumstances. Additionally, the search warrant applied for and obtained by officers was valid and demonstrated probable cause to search 1217 Park Ave. for contraband. Therefore Defendant's Motion to Suppress Nunc Pro Tunc is denied.

ORDER

AND NOW, this 3rd day of January, 2020, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence Nunc Pro Tunc is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Matthew Welickovitch, Esquire

NLB/kp