

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1144-2019
:
vs. :
:
: **Opinion and Order re**
TYSHAWN RANSOM, : **Defendant's Omnibus Pretrial Motion**
:
Defendant :

OPINION AND ORDER

Defendant is charged with possession with intent to deliver controlled substances and related offenses. Before the Court is the Defendant's Omnibus Pretrial Motion filed on September 4, 2019 but not heard until March 11, 2020.

Defendant first asserts in a motion to suppress that the items seized from the residence and in particular, the contents of a safe, must be suppressed because they were seized without a warrant and that Defendant's girlfriend did not have the actual or apparent authority to give consent because "the bedroom and the safe...were not common areas."

On May 13, 2019, Williamsport Police Officers Joshua Bell and Clinton Gardner responded to 759 West Fourth Street for a domestic disturbance. As they approached the front door of the residence, they were "waved in" to the residence by Melissa Salgado, an adult female who resided at the residence.

She explained to the police that she resided at the residence with her boyfriend, Defendant. She explained what allegedly occurred between her and Defendant prior to the police arriving. Thereafter, the officers conducted a protective sweep of the residence. Although it contained four different rooms that could be used as bedrooms, only one was being used as a bedroom. The others were used for storage. The room used as the sole bedroom was the only room with a bed and dressers. Ms. Salgado explained that she and

Defendant utilized this room as their bedroom.

During the protective sweep, the officers observed suspected contraband and paraphernalia. After discussing what they observed with Ms. Salgado, she consented to a search of the residence and signed a written consent for the police to conduct “a complete search” of 759 West Fourth Street.

The written consent to search noted that she was informed of her constitutional rights not to have a search of the residence made without a search warrant and of her right to refuse consent to such a search without a warrant. Despite such, she authorized the police to conduct a complete search of the residence. The police were authorized by her to take from the residence any letters, materials or other property that they so desired. She noted that she was giving her written permission voluntarily and without threats or promises of any kind.

The purpose of the search was to recover controlled substances, paraphernalia and/or contraband. In the middle of one of the spare rooms was a safe. Ms. Salgado explained that the safe belonged to both of them and was used by both to keep important items. The police searched the safe and found controlled substances, paraphernalia and contraband. At no time during the search did Ms. Salgado withdraw her consent, ask the police to stop or advise the police that they no longer had any authority to search.

Defendant does not attack the consent by Ms. Salgado. Defendant argues that under the circumstances, a reasonable person would not have considered the consent given by Ms. Salgado to encompass the safe in the spare bedroom.

“Both the Fourth Amendment to the United States Constitution and Article I,

Section 8 of the Pennsylvania Constitution protect individuals, their homes and their possessions from ‘unreasonable searches and seizures.’” *Commonwealth v. Valdivia*, 195 A.3d 855, 861 (Pa. 2018); U.S. Const. Amend. IV; Pa. Const. Art. I, Section 8. “A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies.” *Valdivia, id.* (citing *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000)).

One of the limited exceptions to the warrant requirement is a consensual search. *Id.* The courts have long approved consensual searches because it is reasonable for police to conduct a search once they have been permitted to do so. *Id.*

Because a consent search is in derogation of the Constitution, there are carefully demarked limitations as to what constitutes a valid consent search. *Id.* First, a consent must be voluntarily given during a lawful police interaction. *Id.* at 861-62. Second, if the consent is given voluntarily, the ensuing search must be conducted within the scope of that consent. *Id.* at 862.

The standard for measuring the scope of an individual’s consent is one of “objective reasonableness.” *Id.* The courts do not ascertain the scope of consent from the individual’s subjective belief or the officer’s understanding based on his or her training and experience, but based on what the typical reasonable person would have understood by the exchange between the officer and the suspect. *Id.*

In other words, the determination of the scope of consent given for police to conduct a search requires consideration of what a reasonable person would have believed based on the exchange that occurred between the police and the individual giving consent.

Valdivia, supra.

While the exceptions to the warrant requirement have been “jealously and carefully drawn”, *Jones v. United States*, 357 U.S. 493, 499 (1958), the Fourth Amendment recognizes the validity of searches with the voluntary consent of an individual possessing authority. *Georgia v. Randolph*, 547 U.S. 103, 106 (2006).

In this particular case, and despite Defendant’s arguments to the contrary, a reasonable person in Ms. Salgado’s position would have interpreted her consent as encompassing the entire house and the contents of the safe, which consisted of not only her items but also the items of her boyfriend who shared the entire residence with her.

The consent of one who possesses common authority over premises or effects is valid against the absent, nonconsenting person with whom that authority is shared. *United States v. Matlock*, 415 U.S. 164, 170-71 (1974). Common authority rests not on property law but rather mutual use of the property by persons generally having joint access or control. *Id.* at 171 n.7.

The evidence by the Commonwealth established that Ms. Salgado had common authority over the bedroom and the safe. In the alternative, based on Ms. Salgado’s statements, the police reasonably believed that she had apparent authority to consent to the search.

Contrary to what Defendant argues, the scenario is unlike that in *Commonwealth v. Stork*, 275 A.2d 362 (Pa. 1971) and far more like the scenarios set forth in *Commonwealth v. Hughes*, 836 A.2d 893 (Pa. 2003), *Commonwealth v. Simmen*, 58 A.3d 811 (Pa. Super. 2012), and *Commonwealth v. Basking*, 970 A.2d 1181 (Pa. Super. 2009).

Accordingly, Defendant's Motion to Suppress shall be denied.

As for Defendant's Motion to Disclose Promises and Agreements of Immunity, consistent with this court's past practice, the motion will be granted.

ORDER

AND NOW, this ___ day of March 2020, following a hearing and argument Defendant's Omnibus Pretrial Motion, Defendant's Motion to Suppress is **DENIED**. Defendant's Motion to Disclose Promises and Agreements of Immunity 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. The Commonwealth also has a continuing duty to disclose under Pa. R.Crim.P. 573(D).

By The Court,

Marc F. Lovecchio, Judge

cc: Michael Sullivan, Esquire (ADA)
Jeana Longo, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file