

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-788-2020**
v. :
 :
MALIKAAH ALWAN-JOHNSON, : **OMNIBUS MOTION**
Defendant :

OPINION AND ORDER

Malikaah Alwan-Johnson (Defendant) was charged with two counts of Delivery of a Controlled Substance¹, two counts of Possession of a Controlled Substance², Criminal Use of a Communication Facility³, and Possession with Intent to Deliver⁴. The charges arise from an undercover buy and a controlled buy of suspected heroin between an unwitting or confidential informant and Defendant. Defendant filed this timely Omnibus Pre-trial Motion on February 5, 2021. This Court held a hearing on the motion on July 9, 2021.

In his Motion, Defendant raises three issues. The first issue Defendant asserts is that his arrest was a violation of his constitutional rights⁵. Defendant's second issue is that the Commonwealth lacked probable cause to search his vehicle and that any evidence found pursuant to the search should be suppressed. Lastly, Defendant argues that the search warrant obtained for his hotel room contained false and misleading information and therefore must be rendered invalid. Defendant believes all evidence found because of this search warrant should also be suppressed.

Background and Testimony

¹ 35 Pa.C.S. § 780-113(a)(30).

² 35 Pa.C.S. § 780-113(a)(16).

³ 18 Pa.C.S. § 7512(a).

⁴ 35 Pa.C.S. § 780-113(a)(30).

⁵ At the hearing on this motion, defense counsel indicated that Defendant would not be proceeding on this particular issue. This opinion will only discuss the remaining two issues.

Detective Tyson Havens (Havens) of the Lycoming County Narcotics Enforcement Unit (NEU) testified on behalf of the Commonwealth. On June 17, 2020, an undercover officer and two (2) unwitting informants set up a purchase of heroin from Defendant. Following this deal, Havens' role on that day was to conduct a traffic stop on the unwitting informants. When Havens pulled them over, they admitted to purchasing heroin from Defendant in the parking lot of the Best Western in Loyalsock Township, Lycoming County. A controlled buy was arranged for a confidential informant (CI) to go back to Defendant on the same day to buy more heroin. Havens testified that the plan was to arrest Defendant before the drug transaction could be completed in the Best Western parking lot. Havens was to participate in Defendant's arrest. Havens was advised that Defendant came out of hotel room 116 at the Best Western so Havens parked his vehicle a short distance away. Havens was also informed that Defendant opened the hood of his car and was fiddling with something underneath it. Havens was able to see Defendant manipulating the air filter. Havens exited his vehicle and was able to get within five (5) feet of Defendant before Defendant noticed him and ran.

A foot chase ensued and Defendant was apprehended at Milk Place approximately one hundred (100) yards away. Havens did not give chase because of a foot injury so he went back to Defendant's car. Officer Gardner had taken Defendant into custody and put him in Havens' vehicle. Havens noticed that parts of the air filter were loose or moved. Havens lifted the air filter box and saw a bag of suspected heroin. A photo of this was submitted by Defendant and marked as Defendant's Exhibit 1. Havens removed the heroin from the vehicle and acknowledged he could not see any drugs without manipulating the parts of the air filter. Havens also performed a cursory inventory search of the car and found a first aid kit in the glove compartment containing rubber bands consistent with packaging heroin. Additionally,

Havens discovered marijuana in the car. Following the search, Havens reattached the filter and closed the car's hood before the vehicle was towed in compliance with proper towing procedures. Havens testified that the supplemental report indicated Havens conducted an inventory search of Defendant's car, however, Havens admitted that this type of search no longer exists. A search warrant for Defendant's hotel room was granted on June 17th. The application for the search warrant was submitted into evidence and marked as Commonwealth's Exhibit 1. The search of the hotel room occurred on June 17th but Havens was unsure when this occurred because his duty that day was to arrest Defendant. Following the search of the hotel room, police discovered a large amount of United States currency in plain view.

Analysis

Vehicle Search

The first issue Defendant raises is whether law enforcement had probable cause to search the vehicle following his arrest. Defendant believes this warrantless search was not supported by exigent circumstances or probable cause and was therefore a violation of his rights. The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; P.A. Const. art. 1, § 8. Warrantless searches are unreasonable per se, "subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). One such exception in existence at the time of the search in question was an inventory search. The Pennsylvania Supreme Court held,

it is reasonable for police to search the personal effects of a person under lawful arrest as part of the routine administrative procedure at a police station house incident to booking and jailing the suspect. The justification

for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search.

Commonwealth v. Nace, 571 A.2d 1289, (Pa. 1990). *See* South Dakota v. Opperman, 428 U.S. 364 (1976). The purpose of an inventory search is not to discover evidence but “to safeguard the seized items in order to benefit both the police and the defendant.” Commonwealth v. Daniels 377 A.2d 1376 (Pa. 1977). The Pennsylvania Supreme Court held that four goals support this type of warrantless search: (1) protect the defendant’s property while they are in custody, (2) protect police against claims of theft when property is returned to defendants upon their release, (3) protect the police from physical harm as a result of hidden weapons, and (4) assist the police in ascertaining the identity of the defendant when necessary. Nace, 571 A.2d at 1391. “As long as the search is pursuant to the caretaking functions of the police department, the conduct of the police will not be viewed as unreasonable under the Constitution.” Id. “The Commonwealth must show that the vehicle in question was lawfully within the custody of the police, and that the search was in fact an inventory search pursuant to the objectives laid down in Opperman.” Commonwealth v. Germann, 621 A.2d 589 (Pa. Super. 1993). The Superior Court held that “motive is the sole factor which distinguishes a criminal investigatory search from a noncriminal inventory search of an automobile.” Id. at 595.

Defendant argues that Havens’ testimony showed an unconfirmed belief of the presence of drugs until the unlawful search of the vehicle confirmed that belief. Defendant believes that, particularly since several officers were on scene at the time, the search was conducted illegally without a warrant, consent, or exigent circumstances. The Commonwealth argues that the evidence found in the car was inevitably going to be discovered by police due to the requirements to prepare the car for safe towing. The Commonwealth argues that, the proper

procedure under Commonwealth v. Alexander⁶ at the time was to tow the vehicle and then search it. In order to tow the car, the police had to re-assemble the air filter and close the hood so the drugs and paraphernalia would have been discovered anyway. The Defendant disagrees, arguing that police used an inventory search as an excuse to investigate because they had to open the air filter before they could see any narcotics.

This Court agrees with the Commonwealth on this issue for the reasons previously stated. The Defendant and his vehicle were under the control of law enforcement at the time the suspected heroin was found. Defendant had been observed fiddling with the air filter under the hood and this fact was also confirmed when Havens noticed the air filter parts were loose or relocated. The air filter needed to be re-assembled and the car's hood had to be closed before the vehicle could be towed safely, so the inventory search that would have happened at the police station had to occur sooner to allow for transport. Furthermore, Defendant abandoned his vehicle when he attempted to flee from police. The police had reasonable suspicion or probable cause to believe that a crime was being committed because of Defendant's furtive activity and Defendant's endeavor to run from the scene in order to distance himself from the narcotics. The Defendant's motion makes no mention of the rubber bands or the marijuana found and only challenges the heroin discovered in the air filter. This Court agrees that the discovery of the heroin was inevitable and was permissible under the controlling law at the time. Therefore, the evidence seized from Defendant's vehicle will not be suppressed.

Hotel Room Warrant

Defendant takes issue with the search warrant for his hotel room claiming that the search warrant application failed to establish probable cause because it contained information that was obtained in violation of Defendant's rights and included false or misleading

⁶ Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020).

information. 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).

The search warrant, entered as Commonwealth's Exhibit 1, was obtained by law enforcement and executed on June 17, 2020. It was the result of a controlled purchase of suspected heroin between a confidential informant and Defendant and observation of Defendant conducting a separate drug deal with an unwitting informant earlier that same day. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 6/17/2020, a controlled purchase of suspected heroin was set up from a confidential informant with a black male known to the CI as JAMAL. CI

contacted Jamal who agreed to the sale of heroin. Jamal was observed exiting room 116 and approaching a vehicle which he was observed selling heroin out of earlier this day. JAMAL opened the hood of the vehicle and retrieved heroin from the air filter. JAMAL was then taken into custody. Incident to arrest a large amount of heroin—bulk and packaged for sale was found inside the air filter of the vehicle. As well as, pills believed to be suspected ecstasy and suboxone. For exigency circumstances room 116 was secured. Inside room 116 there was a strong odor of marijuana and a large amount of US currency in plain view. Two other individuals were located inside room 116—one which is a known drug dealer.

Commonwealth's Exhibit 1, at 3.

Defendant argues that the information in the warrant was false and believes that once the false information is removed from the warrant, no exigent circumstances provide justification for a search of the hotel room. Defendant contends that no allegations were made that Defendant had drugs in the room or that Defendant was the one who rented the room at Best Western. Instead, Defendant argues that the police only showed a singular instance of Defendant leaving room 116. The Commonwealth articulates that, even if the exigent circumstances language is removed, the four corners of the affidavit still justify the search warrant for the hotel room. Defendant was seen conducting a sale of heroin earlier that day, Defendant exited room 116 following the setup with the CI to meet them as agreed, and the hotel room smelled like marijuana and contained a significant amount of cash. For those reasons, the Commonwealth believes the affidavit in the search warrant application supports the issuance of the search warrant. This Court agrees with the Commonwealth that the affidavit justifies a search warrant for the room Defendant was seen exiting in order to execute a controlled purchase of heroin arranged by a CI by direction from law enforcement. Defendant makes bare assertions that the information provided in the affidavit is false and misleading, which is insufficient to establish this claim. Therefore, the four corners of the affidavit establish

probable cause for the issuance of a proper search warrant and the evidence seized from room 116 shall not be suppressed.

Conclusion

The Court finds that the search of the vehicle was a lawful inventory search and the evidence found in the car shall not be suppressed. The Court also finds that the affidavit of probable cause for the search warrant of Defendant's Best Western hotel room 116 provided sufficient evidence to establish probable cause for law enforcement to search the room pursuant to the warrant.

ORDER

AND NOW, this 9th day of September, 2021, based upon the foregoing Opinion, Defendant's Motion to Suppress is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
Michael C. Morrone, Esq.
Law Clerk (JH)