

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-893-2020**
v. :
 :
TERRANCE CEASEAR, : **OMNIBUS MOTION**
Defendant :

OPINION AND ORDER

Terrance Ceasear (Defendant) was charged on June 12, 2020, with Persons Not to Possess a Firearm¹. The charges arise from a protective sweep conducted in Defendant’s residence during his arrest. Defendant is charged under a separate docket for various drug related offenses. Defendant filed his Omnibus Pretrial Motion on November 30, 2020. A hearing was held on the Defendant's motion on July 9, 2021. In his Omnibus Pretrial Motion, Defendant raises three issues. First, Defendant argues that the police lacked the proper reasonable belief to conduct a protective sweep of the residence. Defendant further argues that the protective sweep exceeded its lawful parameters and was more consistent with a true search. Defendant also contends that the conduct of police on that day does not fall within the proper boundaries of a search incident to arrest. Lastly, Defendant believes the information in the search warrant is insufficient to establish probable cause to search the residence. Defendant asks this Court to hold the search warrant and alleged protective sweep unlawful and suppress all evidence found in the residence as a result of the search warrant and the protective sweep.

Background and Testimony

Trooper Daniel DeNucci (DeNucci) of the Pennsylvania State Police testified on behalf of the Commonwealth. On November 6, 2019, around 8:40 a.m., DeNucci served an arrest warrant on Defendant at 811 Meade Street in the city of Williamsport. DeNucci arrived with

¹ 18 Pa.C.S. § 6105(a)(1).

six other people on the arrest team and established a perimeter around the house. Police knocked on the door and announced their presence but there was no immediate response to law enforcement. However, DeNucci testified that he could hear movement inside the house. Approximately three (3) minutes later, a woman, Daletha Waters (Waters), answered the door and DeNucci asked for Defendant and informed her they had a warrant for his arrest. Waters replied that Defendant was upstairs. The police entered the residence and called out for Defendant by name to announce himself. After two (2) minutes, Defendant had not answered so DeNucci went up the staircase to find him and saw Defendant in the hallway standing between a bathroom and a bedroom. DeNucci told Defendant to keep his hands up and then DeNucci took Defendant into custody in the hallway.

DeNucci and other officers went into the bedroom Defendant had been standing in front of to conduct a protective sweep, primarily to ensure no one was hiding in that room that could pose a danger to law enforcement. While performing the sweep, officers found pills scattered on the floor to the left of the bed. A protective sweep of the bathroom near where Defendant had been taken into custody was also conducted as well as a sweep of the kitchen because of Waters' proximity to that room of the house at the time of Defendant's arrest. DeNucci testified that the protective sweep was limited to places large enough for a person to hide to ensure officer safety during the execution of Defendant's arrest and lasted no more than ninety (90) seconds. DeNucci also stated that the arrest force was unsure how many other people were inside the home on the day in question. After the protective sweep of the bedroom, DeNucci went back downstairs. Defendant and Waters were not fully dressed. Waters asked for a jacket and indicated which jacket she was requesting. DeNucci grabbed the jacket to give to her but could feel something inside of it. When DeNucci reached in the pockets, he found a scale and

pills, which Waters identified as ecstasy pills. DeNucci testified that he searched the jacket to make sure there were no weapons in it before handing it to Waters to keep the officers on scene safe. A search warrant was obtained for the house and upon executing the search, police found a firearm in an air mattress box in a closet. DeNucci admitted that an official report was not created for this incident and claimed the failure to write a report was because PSP was switching from written to electronic reports at that time.

The Defendant testified on his own behalf at the hearing on this motion. Defendant indicated that he was on state parole on the day in question and resided at 811 Meade Street, which was his approved residence. At the time the police arrived, Defendant testified that he was sleeping in the back bedroom and Waters woke him. Defendant stated Waters got out of bed, went to the front bedroom and looked out the window to see what had woken them up. She saw the police and went downstairs to open the door. Defendant testified that DeNucci told him he had missed a meeting at Crossroads, which violated a condition of his parole. Defendant claims he had already spoken to his counselor about this issue because Defendant had to miss the meeting to go to the hospital. Then, DeNucci told Defendant about the arrest warrant and handcuffed him halfway down the stairway. DeNucci lead Defendant to the front door that had been left open. Waters was standing in a corner away from the door. Defendant noted that he stood at the door for approximately twenty-five (25) minutes while the police conducted a search upstairs for about fifteen (15) minutes. Defendant testified that the police asked if the house had an attic or basement, to which Defendant replied no. The house had a cellar entrance from the outside and Defendant stated that the police also searched the cellar for an estimated ten (10) minutes. Defendant further testified that his counsel did not coach him to say how long the search lasted.

Discussion

Legality of Protective Sweep

Defendant challenges the protective sweep of the residence, arguing that law enforcement did not possess the requisite reasonable belief to conduct the sweep. A protective sweep is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” Commonwealth v. Taylor, 771 A.2d 1267 (Pa. 2001) (citing Maryland v. Buie, 494 U.S. 325, 327, (1990)). Buie sets forth two levels of protective sweeps that are defined here:

[A]s an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.

Id. at 334. In the first level of a protective sweep, even without a showing of reasonable suspicion, police officers may make cursory visual inspections of spaces immediately adjacent to the arrest scene that could conceal a threat to the officers. Id. A second level protective sweep permits a search for assailants further away from the place of arrest, provided that the officer who conducted the sweep is able to articulate specific facts to justify a reasonable fear for his safety and the safety of others. Taylor, 771 A.2d at 1267. Defendant asserts that law enforcement did not possess the requisite reasonable belief to conduct a protective sweep of the residence. He also believes, based on his testimony presented at the hearing on this motion, that the duration of the sweep was more consistent with an actual search than a protective sweep.

This Court disagrees with Defendant on this issue for the following reasons. DeNucci testified that he and the officers comprising the arrest team on the day in question were unsure

how many people were in the residence at the time they took Defendant into custody. DeNucci also testified that the protective sweep after taking Defendant into custody was limited to the bedroom, bathroom, and kitchen where Defendant and Waters were close to at the time. DeNucci also testified that the sweep was only to check for hidden persons in the home to ensure the safety of the officers on scene. This Court recognizes significant disadvantage of the police in situations like this where law enforcement enters a home to execute an arrest but are not aware of the number of people inside. Though Defendant's testimony of the sweep is vastly different than DeNucci's, this Court recognizes that the standard of proof at this stage is merely preponderance of the evidence and Defendant has a vested interest and bias in the outcome of this motion. As it stands, the Court holds that the testimony of the protective sweep DeNucci gave is sufficient at this time to establish reasonable belief that the officers were in danger and therefore the search of the rooms as described by DeNucci was appropriate.

Furthermore, this Court also disagrees with Defendant's contention with the search of the jacket. Defendant argues that the evidence in the pockets would not have been discovered but for the unlawful sweep. However, this Court has already held the testimony DeNucci provided regarding the officers' actions following Defendant's arrest to be within the lawful parameters of a protective sweep. DeNucci was within rightful conduct when he searched the jacket prior to handing it to Waters. Failure to do so could have had detrimental effect to the officers on scene if a firearm or other weapon were located in the pockets. Waters voluntarily requested the jacket and brought it to the attention of the officers. Rather than allowing her to remain uncomfortable, DeNucci took the steps necessary to protect the officers while adhering to Waters' request. Therefore, DeNucci's search of the jacket was prudent to protect officer

safety while in the home to arrest Defendant and any evidence found as a result of the protective sweep shall not be suppressed.

Search Incident to Arrest

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). “A search incident to a lawful arrest is one of the well-recognized exceptions to the warrant requirement.” Commonwealth v. Rickbaugh, 706 A.2d 826, 836 (Pa. Super. 1998). The scope of such a search “extends not only to the arrestee’s person, but also into the area within the arrestee’s immediate control.” Commonwealth v. Taylor, 771 A.2d 1261, 1271 (Pa. 2001). The United States Supreme Court has defined immediate control as “the area from within which [an arrestee] might gain possession of a weapon or destructible evidence.” Chimel v. California, 395 U.S. 752, 763 (1969). “Whether an item has been properly seized pursuant to a search incident to an arrest depends upon the facts of each case. The central question is whether the area searched is one ‘within which (the arrested person) might gain possession of a weapon or destructible evidence.’” Commonwealth v. Bess, 382 A.2d 1212, 1214 (Pa. 1978) (citing Chimel v. California, 395 U.S. 752, 763 (1969)).

Defendant is of the opinion that the search resulting in the discovery of the unidentified pills on the bedroom floor was outside the immediate vicinity of his arrest. As previously stated, Defendant testified that he was apprehended halfway down the staircase away from the rooms on the upper floor. Defendant believes, therefore, that the search of the bedroom was an

impermissible search incident to arrest. However, as this Court has already addressed Defendant's personal motivation in testifying, DeNucci's testimony that a quick sweep of the bedroom occurred and that Defendant was taken into custody on the upper floor between a bedroom and a bathroom satisfies the Court at this time. It is reasonable to believe that in the location of his arrest as testified to by DeNucci, if Defendant had managed to evade officers in their attempt to arrest him or had been able to escape their control, Defendant could have retreated into the bedroom to obtain a weapon or an object that would aid his escape. This Court believes that the search of the bedroom where the pills were found is more consistent with a protective sweep. In fact, this Court is inclined to categorize the pills as discovered under the warrant exception of plain view because the officers observed the pills on the floor of the bedroom immediately adjacent to where Defendant was being taken into custody while they were in the home to arrest Defendant. However, DeNucci's testimony of how the search of the bedroom was conducted is not contrary to a search incident to arrest. Defendant was arrested immediately outside the bedroom that he could have accessed if something had gone amiss during the course of his arrest. A quick view of the bedroom immediately next to where Defendant was arrested is within the bounds of a search incident to arrest. Therefore, the evidence found as a result shall not be suppressed.

Search Warrant

Defendant challenges the issuance of the search warrant for Defendant's residence, claiming that the evidence seized pursuant to the warrant should be suppressed because the affidavit of probable cause in the warrant application did not allege sufficient facts to establish probable cause. 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).

At the hearing on this motion, the Commonwealth presented an affidavit of probable cause and was entered as Commonwealth’s Exhibit 1. The Court takes judicial notice that Commonwealth’s Exhibit 1 is in fact an earlier version of the affidavit of probable cause that does not contain factual additions that are incorporated into the final search warrant application. The appropriate document was provided to the court by Magisterial District Judge Aaron S. Bichle’s office. The correct search warrant was obtained by Trooper Jason Miller on November 6, 2019, and signed by Senior Judge Allen Page. The affidavit of probable cause is several pages in length and describes three controlled buys of suspected heroin from Defendant

between July 27, 2019 and October 22, 2019. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 11/05/19 a warrant was issued for the arrest of Terrance CEASEAR who is currently on state parole. I contacted Tpr. Daniel DENUCCI of the US Marshals Fugitive Unit Task Force and informed him I had an arrest warrant for CEASEAR. On 11/06/19 CEASEAR was taken into custody at 811 Meade St in Williamsport City. While CEASEAR was taken into custody in plain view was numerous unknown blue pill like substances on the bedroom floor. The female that was in the residence with CEASEAR was identified as Daletha WATERS of Massachusetts. She requested her coat that was hanging on the coat rack at the base of the stairs. She identified her coat and while it was checked for weapons prior to giving it to her in the left front coat pocket was 10 ecstasy pills and a scale.

Affidavit of Probable Cause, at 4.

Defendant asserts the evidence seized prior to the issuance of the search warrant is impermissibly tainted and such a taint cannot be removed because of the unlawful protective sweep. Defendant argues that upon the removal of the tainted evidence from the warrant application, the affidavit of probable cause contains insufficient information for a warrant to be issued for 811 Meade Street. More specifically, if the unidentified pills, scale, and purported ecstasy are removed from the warrant application, Defendant believes the controlled buys fail to establish probable cause because they do not allege any information regarding 811 Meade Street. However, this Court has determined that the protective sweep of Defendant's residence was lawful and conducted inside the legal bounds of such conduct by police. Therefore, the information in the affidavit discussing Defendant's involvement in selling illegal narcotics and additional illicit substances in Defendant's approved residence establishes probable cause that additional evidence of drugs or drug trafficking would be found in the place where he resides. Therefore, the search warrant contains sufficient information to establish probable cause and the firearm seized pursuant to the search warrant shall not be suppressed.

Conclusion

This Court finds that law enforcement did not exceed the legal parameters of a protective sweep. The Court also finds that the police conducted a lawful search incident to arrest. This Court further finds that the information in the search warrant is sufficient to establish probable cause to support the issuance of a search warrant for Defendant's residence.

ORDER

AND NOW, this 21st day of September, 2021, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
PD (MW)
Law Clerk (JMH)

NLB/jmh