

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-495-2021**
v. :
 :
JAHMERE JOHNSON, : **OMNIBUS MOTION**
Defendant :

OPINION AND ORDER

Jahmere Johnson (Defendant) was charged on April 15, 2021 with Persons not to Possess a Firearm¹. The charge arises from a probation field visit to Defendant’s residence. Defendant filed this timely Omnibus Pre-trial Motion on May 20, 2021. This Court held a hearing on the motion on August 26, 2021. In his Motion, Defendant first challenges the probation officers’ search of his bedroom as unconstitutional and believes the firearm seized pursuant to the search should be suppressed. Defendant also argues that the Commonwealth failed to satisfy their *prima facie* burden at the preliminary hearing and therefore, Defendant requests the charge against him be dismissed.

Background and Testimony

Officer David Poretta (Poretta) and Officer James Schriener (Schriener) of the Lycoming County Adult Probation Office testified on behalf of the Commonwealth. Poretta testified that he was Defendant’s probation officer. On February 3, 2021, Poretta and Schriener conducted a field visit at Defendant’s approved residence, located at 424 Pearson Avenue, Apartment 1 in Loyalsock Township. Defendant lived in this residence with his girlfriend, Erica Henry (Henry). Poretta testified the purpose of the visit was to conduct a plain view tour of the home and ascertain if Defendant had obtained a job. Poretta further testified that the field visit occurred during business hours and while both officers were in uniform. After Poretta and

¹ 18 Pa.C.S. § 6105(a)(1).

Schriner approached the front door, Henry answered and indicated that Defendant was home. Poretta stated that he saw Defendant getting out of bed and putting on clothes. During the plain view tour of the home, Defendant told Schriner and Poretta that there was alcohol in the refrigerator. A check of the refrigerator confirmed that alcohol was present at the residence. Defendant said he had not been drinking and Henry claimed ownership of the alcohol. Poretta said this was not a big deal and gave a verbal reminder that Defendant is not permitted to consume alcohol. Defendant was asked to submit to a urine test, which he agreed to. Defendant told the officers that nothing impermissible would come up on the urine test and that nothing would be found in the house. Ultimately, Defendant tested negative for alcohol but tested positive for marijuana. Defendant admitted to smoking marijuana because he was experiencing trouble sleeping. Poretta stated that because of the alcohol, the marijuana, and Defendant lying to the probation officers, Poretta believed that they had reasonable suspicion to expand the search.

Poretta asked Defendant if any other contraband was in the house and Defendant responded no. Poretta stayed with Defendant and Henry while Schriner continued the search of the house. Schriner went to search the bedroom and found a Crown Royal bag in the bottom of a nightstand next to Defendant's bed that contained an unlabeled pill bottle with one (1) pill and a plastic bag containing a powdery substance suspected to be cocaine. Defendant and Henry were advised of their *Miranda* rights. Henry stated that the bag and the pill bottle belonged to her. Henry claimed that the unidentified pill was Adderall. Defendant denied having anything else in the house. Poretta testified that he and Schriner did not call the police at this time and that their general protocol is to confiscate and destroy any items that they find.

Poretta and Schriner testified consistently that Schriner went back into the bedroom to continue searching and discovered an AR-15 style rifle under the bed. Defendant and Henry were once again informed of their *Miranda* rights and reminded that they were not required to talk to either officer. The officers asked who the gun belonged to and Defendant replied it was not Henry's, and that it was a "family gun". Poretta testified that Defendant was not forthcoming with answers to questions so he stopped questioning him any further. Poretta then stated that they called the Pennsylvania State Police (PSP) to inform them what was found in Defendant's house. Poretta conceded that PSP questioned why the probation officers continued to search the home. Schriner testified that if they had found a larger quantity of drugs, they would have called PSP earlier, but because it was a small amount, he did not think it was necessary. The Commonwealth presented the conditions of Defendant's probation, which was signed by Defendant, and marked as Commonwealth's Exhibit 1.

Analysis

Motion to Suppress

Defendant challenges the legality of the search conducted by the probation officers and believes the firearm found in his bedroom should be suppressed. "The institution of probation and parole assumes a probationer or parolee is more likely than the ordinary citizen to violate the law." Commonwealth v. Parker, 152 A.2d 309, 316 (Pa. Super. 2016). Consequentially, a probationer has "limited Fourth Amendment rights because of a diminished expectation of privacy." Commonwealth v. Colon, 31 A.3d 309, 315 (Pa. Super. 2011) *quoting* Commonwealth v. Hunter, 963 A.2d 545, 551-52 (Pa. Super. 2008). Probation officers, much like parole officers, have a "supervisory relationship with their offenders." Commonwealth v. Smith, 85 A.3d 530, 536 (Pa. Super. 2014). "The purpose of this supervision is to assist the

offenders in their rehabilitation and re-assimilation into the community and to protect the public...As such, probationers and parolees are subject to general and individual rules of conduct and supervision described at sentencing and/or in the parole agreement.” Id. The statute governing the relationship between probation officers and probationers is found in 42 Pa.C.S.A. § 9912. This Section “authorizes county probation officers to search a probationer’s person or property, if there is reasonable suspicion to believe the probationer possesses contraband or other evidence of violations of the conditions of supervision.” 42 Pa.C.S.A. § 9912(d).

The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following factors, where applicable, may be taken into account:

- (i) The observations of officers.
- (ii) Information provided by others.
- (iii) The activities of the offender.
- (iv) Information provided by the offender.
- (v) The experience of the officers with the offender.
- (vi) The experience of officers in similar circumstances.
- (vii) The prior criminal and supervisory history of the offender.
- (viii) The need to verify compliance with the conditions of supervision.

42 Pa.C.S.A. § 9912(d)(6). The assessment of whether proper reasonable suspicion exists requires an examination of the totality of the circumstances. Commonwealth v. Moore, 805 A.2d 616, 619 (Pa. Super. 2002). “The threshold question in cases such as this is whether the probation officer had a reasonable suspicion of criminal activity or a violation of probation prior to the...search.” In re J.E., 907 A.2d 1114, 1119 (Pa. Super. 2006).

Defendant argues that, following the discovery of the pill and purported cocaine, the probation officers exceeded the permissible scope of the routine field visit and began acting as police officers. Defendant contends that no controlled substances were found in his system

following the urine test aside from the marijuana and Henry had taken ownership of the alcohol and the Crown Royal bag where the illicit substances were found. Defendant believes that the probation officers should have ceased the search upon finding the pill and suspected cocaine and alerted the police to have them conduct further searches of the residence. However, this Court disagrees with Defendant on this issue for the following reasons. The conditions of Defendant's probation as articulated in Commonwealth's Exhibit 1 had already been violated when Defendant admitted to the presence of alcohol in his residence. Following the probation officer's confirmation that alcohol was inside the refrigerator, Defendant was subjected to a urine test. Defendant was untruthful about what the results of that test may look like when he said that nothing impermissible would show up on the results.

Nevertheless, Defendant tested positive for marijuana. Defendant eventually admitted to using marijuana to aid his sleeping habits. The use of any illegal drugs or mind-altering substances is expressly forbidden in Defendant's conditions of probation. Section 9912 permits probation officers to conduct a search based on reasonable suspicion that an individual possesses contraband or has violated the conditions of their probation. In the case *sub judice*, Poretta and Schriener had confirmation that Defendant violated two (2) separate conditions of his probation. Upon beginning their search, the probation officers discovered additional contraband in the home. Although Defendant's girlfriend took ownership of the contents of the Crown Royal bag, the substances were found in the bedroom that Defendant also utilizes. Furthermore, the officers had not yet found the marijuana that Defendant was using in violation of his probation.

Ordinarily, Section 9912 requires prior approval of a supervisor to conduct a property search absent exigent circumstances. However, the United States Supreme Court has upheld

the warrantless search of a probationer's home pursuant to a regulation that replaced the probable cause standard with reasonable suspicion "satisfied the demands of the Fourth Amendment because it was carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirements...." Griffin v. Wisconsin, 483 U.S. 868 (1987). The Griffin case also rejected the contention that the search at issue was invalid because it failed to comport with all governing regulations within the statutory framework. Id. at 880. Furthermore, the Pennsylvania Superior Court held that "a warrantless property search conducted pursuant to a constitutional statutory provision authorizing searches based on reasonable suspicion is itself constitutional, even if the probation officer failed to follow a different provision within the statutory framework while carrying out his search." Commonwealth v. Turner, 4 A.3d 677 (Pa. Super. 2010).

Pennsylvania jurisprudence has consistently upheld Section 9912 as constitutional where probation officers conducted a warrantless search following the finding of reasonable suspicion of criminal activity or violation of probation conditions. *See* Commonwealth v. Curry, 900 A.2d 390 (Pa. Super. 2006). Since Section 9912 properly vests probation officers with the authority to act with the lower standard of reasonable suspicion and proper reasonable suspicion existed to support the search, the probation officers were justified in continuing their search resulting in the discovery of the firearm. Defendant has a diminished privacy interest as a probationer and violated at least two (2) of his probation conditions. In consideration of the case law on this particular issue and the totality of the circumstances, this Court finds that Defendant's argument fails and the probation officers were supported in their search that ultimately yielded the firearm.

Habeas Corpus Motion

Defendant challenges the Commonwealth's evidence on the charge against him. At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). "The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence." Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, "inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

A person convicted of an offense articulated in the statute “shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.” 18 Pa.C.S. § 6105(a)(1). When contraband is not found on a defendant's person, the Commonwealth must establish “constructive possession,” that is, the “power to control the contraband and the intent to exercise that control.” Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992); *see also* Commonwealth v. Gutierrez, 969 A.2d 584, 590 (Pa. Super. 2009). As with any other element of a crime, constructive possession may be proven by circumstantial evidence. Commonwealth v. Macolino, 469 A.2d 132, 134-35 (Pa. 1983). The requisite knowledge and intent necessary for constructive possession may be inferred from a totality of the circumstances. Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004).

Defendant argues that the Commonwealth failed to establish his possession of the firearm, and further argues that the Commonwealth did not establish that Defendant was aware of or should have been aware of the presence of the firearm under his bed. Defendant asserts that no DNA evidence was retrieved from the firearm and that this rifle, though a probation violation, does not rise to *prima facie* as required. The Commonwealth retorts that the firearm was discovered in the room in which Defendant was observed in by the probation officers upon their arrival to the residence. Furthermore, the Commonwealth contends that the rifle was under Defendant’s bed despite his status as a person not to possess a firearm. The Commonwealth believes this is enough to satisfy Defendant’s constructive possession of the firearm. Based on the totality of the circumstances, this Court believes that the Commonwealth has established their *prima facie* burden of demonstrating the Defendant’s constructive possession of the firearm. As noted by the Commonwealth, the location of the gun was in a room frequented by

Defendant and in close proximity to Defendant's location when the probation officers arrived to conduct the field visit. The location of the rifle also provided Defendant to have actual possession of the firearm quickly. Looking at the evidence in the light most favorable to the Commonwealth as is required, Defendant's claim fails on this issue and the Commonwealth has satisfied their *prima facie* burden.

Conclusion

The Court finds that the search of Defendant's bedroom was not a violation of his rights. Therefore, the evidence obtained as a result of the search shall not be suppressed. The Court also finds that the Commonwealth satisfied the *prima facie* burden at the preliminary hearing. Therefore, the charge against Defendant shall not be dismissed.

ORDER

AND NOW, this 8th day of December, 2021, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **DENIED**. Defendant's Motion for Writ of Habeas Corpus is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Andrea Pulizzi, Esq.
Law Clerk (JMH)
APO