

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CP-41-CR-21-2021**
 : **CP-41-CR-67-2021**
 v. :
 :
 :
 NIGEL STATEN-CHAMBERS, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Nigel Staten-Chambers (Defendant) was charged on December 30, 2020 in docket CR-21-2021 with the following: Criminal Attempt to Commit Homicide¹, Aggravated Assault by Attempting to Cause Serious Bodily Injury², Robbery, Threat of Immediate Serious Injury³, Criminal Attempt Robbery⁴, Aggravated Assault with a Deadly Weapon⁵, Possession of a Firearm by a Minor⁶, Receiving Stolen Property⁷, Firearms not to be Carried without a License⁸, Possession of an Instrument of Crime⁹, Recklessly Endangering Another Person¹⁰, Criminal Mischief¹¹, and Propelling Missiles onto Occupied Vehicles¹². The charges arise from the shooting of a pizza delivery person on November 21, 2020, on the 900 block of Market Street in the city of Williamsport, Pennsylvania. A preliminary hearing was held on January 8, 2021, before Magisterial District Judge Aaron Biichle at which time he bound the case over against Defendant on all of the charges filed. Defendant filed his timely Omnibus Pretrial Motion on January 26, 2021.

¹ 18 Pa. C.S.A. § 901(a).

² 18 Pa. C.S.A. § 2702(a)(1).

³ 18 Pa. C.S.A. § 3701(a)(1)(ii).

⁴ 18 Pa. C.S.A. § 901(a).

⁵ 18 Pa. C.S.A. § 2702(a)(4).

⁶ 18 Pa. C.S.A. § 6110.1(A).

⁷ 18 Pa. C.S.A. § 3925(a).

⁸ 18 Pa. C.S.A. § 6106(A)(1).

⁹ 18 Pa. C.S.A. § 907(b).

¹⁰ 18 Pa. C.S.A. § 2705.

¹¹ 18 Pa. C.S.A. § 3304(a)(1).

¹² 18 Pa. C.S.A. § 2707(A).

Defendant was also charged under docket CR-67-2021 with the following: Criminal Attempt to Commit Homicide¹³, two (2) counts of Aggravated Assault by Attempting to Cause Serious Bodily Injury¹⁴, two (2) counts of Aggravated Assault with a Deadly Weapon¹⁵, three (3) counts of Simple Assault¹⁶, seven (7) counts of Recklessly Endangering Another Person¹⁷, four (4) counts of Discharge of a Firearm into an Occupied Structure¹⁸, Criminal Mischief¹⁹, Possession of a Firearm by a Minor²⁰, Firearms not to be Carried without a License²¹, and Possession of a Weapon²². These charges arise from a shooting that occurred on November 23, 2020 at 941 Penn Street, Williamsport, Pennsylvania. On January 15, 2021, a preliminary hearing was held before MDJ Biichle. Following the hearing, MDJ Biichle held all of the charges except for two (2) counts of Recklessly Endangering Another Person, one (1) count of Firearms not to be Carried without a License, and one (1) count of Possession of a Firearm by a Prohibited Person. Defendant filed a timely Omnibus Pretrial Motion under this docket on February 12, 2021.

A hearing for both dockets was scheduled for April 19, 2021, before this Court. However, the Court was also requested to take the testimony of Agent Brittany Alexander on March 29, 2021, as she would be unavailable at the time for the hearing scheduled in April. Defendant also filed an Additional Motion to Suppress on March 15, 2021 under the CR-21-2021 docket. In his additional suppression motion, defense counsel argues that the statements

¹³ 18 Pa.C.S. § 901(a).

¹⁴ 18 Pa.C.S. § 2702(a)(1)

¹⁵ 18 Pa.C.S. § 2702(a)(4).

¹⁶ 18 Pa.C.S. § 2701(a)(1); 18 Pa.C.S. § 2701(a)(2).

¹⁷ 18 Pa.C.S. § 2705.

¹⁸ 18 Pa.C.S. § 2707.1(a).

¹⁹ 18 Pa.C.S. § 3304(a)(5).

²⁰ 18 Pa.C.S. § 6110.1(a).

²¹ 18 Pa.C.S. § 6106(a)(1).

²² 18 Pa.C.S. § 6105(a)(1).

Defendant said in an interview conducted on December 1, 2020, while he was in custody after requesting an attorney were a violation of his rights and should be suppressed. The Commonwealth has conceded that the statements in question from the interview should be suppressed. Therefore, the Court looks to address the other issues in the Omnibus motions filed by Defendant in both the above captioned dockets. The two (2) motions filed spanning both dockets deal with the same issues. In those motions, Defendant argues that the police violated the Pennsylvania and U.S. Constitution by conducting a warrantless search of the premises located at 966 Market Street in Williamsport. Following the suppression of the statements made by Defendant as agreed by the parties, the only issue for the Court is the determination of whether or not the protective sweep and subsequent search police conducted of Defendant's residence are supported by law.

Background and Testimony

Officer Joshua Bell (Bell) of the Williamsport Bureau of Police testified first on behalf of the Commonwealth. His testimony established the following. On December 1, 2020, he was acting as a liaison between the city and the Narcotics Enforcement Unit (NEU) to assist the city in locating the Defendant, who was a suspect in several different incidents, and conduct surveillance in multiple locations within the city of Williamsport to track Defendant's whereabouts. The NEU also asked him to assist the city in looking for Melissa Baney (Baney) and Aubrey Guthrie (Guthrie). The NEU was searching for a black Ford Fusion in the area of 966 Market Street, which they believed was owned by Guthrie and had been operated by Defendant in the past. On December 1st, Bell described that Guthrie, Defendant, and Baney got into the Fusion around lunchtime and headed towards City Hall. Bell followed them and saw Guthrie exit the vehicle at Government Place. The occupants of the vehicle, including the

Defendant, were only out of the Market Street property for approximately twenty (20) minutes. Bell saw Defendant sitting in the back of the car and relayed this information to a city police supervisor on the phone, also noting where the vehicle was and who the occupants were. Lieutenant Miller instructed the officers to take Defendant into custody after he exited the car. Bell saw Guthrie get back into the vehicle and the group traveled northbound in the direction of the Market Street location.

The Defendant was detained shortly after he returned to 966 Market Street. Bell spoke with Baney about the ongoing investigation by the city police and informed her the Fusion was going to be impounded. He notified Baney to contact Lieutenant Miller if she had any questions. Bell then heard Baney tell the city police that there were only two (2) people inside the Market Street location: her son and daughter. Bell testified that he did not remember asking Baney or hearing anyone else ask her about getting permission to search the residence. He observed the NEU approach the house to identify the son and daughter and watched NEU members, Detective Havens and Detective Rachael, go inside to retrieve them. Bell was situated on the sidewalk and although Baney claimed only her two (2) children were inside the house, he observed an additional person coming out of the residence. This unidentified person exiting the home lead Bell to believe the situation on scene was problematic. Bell then observed the officers go back in to perform a safety sweep of the home while the Defendant remained outside in custody. Once the Defendant was placed under arrest, he made no attempts to go back inside the residence.

Detective Tyson Havens (Havens) of the NEU testified on behalf of the Commonwealth. He stated that he was also assisting the city police on December 1, 2020 in their investigation of Defendant. He described that he had provided surveillance in plain clothes

either by vehicle or on foot at six (6) different locations searching for the Defendant and he was working without a partner on the day in question. Havens testified that he was also there in the hopes he could identify people with whom the Defendant may be associating. Havens was part of the surveillance team for 966 Market Street when he observed Baney, Guthrie, and Defendant enter a black Ford Fusion and travel to a location just southeast of City Hall. He observed Guthrie exit the vehicle, leaving Baney and the other passenger in the vehicle. At this point, Havens was told to stand by. Once Guthrie returned to the vehicle Havens followed them back to the Market Street house. Havens testified that the police were concerned that Defendant was armed as he was a suspect in a number of criminal offenses involving a firearm. Havens testified that Bell told him that the city police were getting a search warrant for the property. Havens estimated approximately six (6) to (7) law enforcement officers at the scene during Defendant's arrest. He then testified that Baney approached him and asked him if he would go inside and get her daughter who was still inside the house.

Havens, accompanied by Rachael, entered the property and identified himself as police with a badge around his neck. Havens was able to locate Baney's daughter coming down the stairs. She told him that her little brother was still in the house. Rachael and Havens reentered the house after bringing Baney's daughter outside and called out for Baney's son to come downstairs. When he did, Havens asked him if anyone else was up there. He replied that no one else was there, but Havens could hear footsteps. At this point, Havens believed it was too dangerous to wait on the porch for a search warrant. Eventually, a male came down the stairs but refused to identify himself to police. He also claimed that no one else was in the house but Havens did not trust him. Havens could still hear what he described as footsteps, so he went further inside to do a protective sweep of the house. As he went up to the next level above the

first floor, he entered a room that had two (2) box springs stacked on top of each other. As he lifted the box springs, a blanket fell and a gun came out from between the box springs. Havens believed that other people were inside the residence based upon the noises he was hearing, so he checked two (2) additional bedrooms for occupants. Havens made his way up to the attic and was given a boost by Rachael so he could look over a wooden divider between the two properties. Once up there, he discovered that the noise he had been hearing was loose window glass rattling in the windowpane. He testified that the day in question was very cold and windy. Following their realization that the wind was causing the window to make noise, Havens and Rachael left the residence, leaving the police to control the site until the search warrant was issued and could be executed.

In their search warrant application, the city police included the information from Havens regarding the firearm falling out of the box spring. Havens acknowledged that Defendant was arrested shortly after pulling up to the front of the house so he never reentered 966 Market Street. Havens testified that Baney told him he could go into 966 Market Street to retrieve her children. He also stated that the city police had the house under surveillance for approximately forty-five (45) minutes, but they were not sure who was inside the house. Havens testified that Assistant Chief Jason Bolt told him the charges for which Defendant was a suspect and that Defendant is considered to be the “ringleader” of several instances of criminal activity, namely the shooting of a pizza delivery person, a burglary of the National Firearms wherein several guns were stolen, and the robbery of a Hobby’s Hoagies delivery person. Havens testified that his belief at that time was the police were justified in doing a protective sweep because of the highly dangerous nature of the charges and Defendant’s

associates regardless of whether Defendant was in custody at the time of the search and unable to enter the residence.

Detective Jonathan Rachael (Rachael), also of the NEU, testified that he was participating in the investigation on December 1, 2020 at 966 Market Street. Rachel was watching the address on Memorial Avenue and observed the Defendant leaving and getting into a Ford Fusion. He kept the vehicle under surveillance and saw it parking at Government Place around the Bullfrog Brewery. Several of the surveillance officers also agreed that the Defendant was in the vehicle. Rachael testified that he went inside 966 Market Street to provide backup for Havens when he escorted Baney's daughter out of the residence. Rachael further testified that a male came down the steps who indicated that no one was left inside the property. However, despite the male's assertion that no one else remained in the house, the officers were able to hear footsteps. As they were looking for other individuals inside the residence Rachael observed Havens flipping a bed and saw a handgun fall out. The pair kept hearing footsteps so they went up to the attic where Rachael assisted by lifting Havens up so he could see over a divider. However, no one was discovered up there and the noise they heard was an attic window rattling.

Defense counsel presented the testimony of Baney who, on December 1, 2020, had been living at 966 Market Street for about a year. She stated that the Defendant had been living with her for approximately three (3) months, beginning just two (2) months prior to this incident. She described that he slept at the residence and that he had taken over her bedroom. Defendant left his clothes, his Xbox, his TV, and his shoes at the residence. At about noon on December 1st, Baney was traveling in a vehicle and as they arrived at 966 Market Street, police officers approached the vehicle and pulled Defendant out of the back seat and placed him into a car.

She further testified that she spoke with a female officer who indicated that Baney was going to be detained. Baney asked the officers if she could go inside but they declined her request at that time. She testified that her 19-year-old daughter and two sons, an 18-year-old and a 13-year-old, were still in the residence. Baney admitted that she had no particular reason to ask the police to go inside to get her children out of the house. When asked about the handgun that was found in the residence, she described the room in which it was found as the “game room.” Baney stated that this room functioned as her son’s room and everyone had access to this area. She reaffirmed that she did not have any conversations with male officers and instead spoke only to female officers at the scene. Baney was told that her vehicle was going to be towed and that they were waiting for a search warrant, which could take a couple of hours. Later that day, Baney went to the police station and was able to recover her phone from the car. She described her relationship with the Defendant as like a son and said she feels that way to this day.

Agent Brittany Alexander of the Williamsport Bureau of Police testified on behalf of the Commonwealth. She testified that on December 1, 2020 she drafted a search warrant application for 966 Market Street. She prepared the search warrant after the Defendant was taken into custody. She testified that Sergeant Miller of the Williamsport Bureau of Police gave her the information from his arrest warrant and noted that Havens discovered a firearm during a protective sweep. Alexander testified that she knew Baney lived at 966 Market Street and that there were a few other people, including Defendant, staying at the residence but was unsure if they were receiving mail there. Alexander confirmed that all of the information in the search warrant came from the protective sweep that was conducted on December 1st. Alexander attested that the police knew that the Defendant was in possession of a black and silver firearm,

which police became aware of when Defendant posted a picture of this weapon on social media.

Legality of the Protective Sweep of the Residence

Defendant challenges the search of his residence as 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 exception to the warrant requirement is a consent search. *Commonwealth v. Wilmer*, 194 A.3d 564, 568 (Pa. 2018). “The central Fourth Amendment inquiries in consent cases entail assessment of the constitutional validity of the citizen/police encounter giving rise to the consent; and, ultimately, the voluntariness of consent.” *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000). “Where the underlying encounter [between the citizen and the police] is found to be lawful, voluntariness becomes the exclusive focus. *Id.* at 888-889.

The first question for the Court to decide is whether the police were lawfully inside the residence when the Defendant was secured outside in a police cruiser and had been out of the residence for about twenty (20) minutes. The facts and testimony presented demonstrate that Baney was concerned for her children who remained in the residence when the police placed Defendant under arrest. When her request to go inside the house to get them was denied, she asked the police to go inside and get her daughter out safely. Baney acknowledged in her testimony that 966 Market Street is her residence, so she had the authority to give the police permission to enter the property. No facts were presented to cast doubt on the voluntariness of Baney’s consent. In fact, Baney, of her own volition, approached the police to ask them to enter

the residence. Admittedly, this consent was not consent to search the home, but merely to go inside and remove Baney's children from a potentially dangerous situation. However, once inside, Havens stated he heard someone else moving around in the house as he was escorting Baney's children. Havens' belief was confirmed when the additional, unaccounted male came down the steps and was uncooperative with police by refusing to identify himself. Based upon the totality of the evidence, the Court finds that Baney consented to the initial presence of police inside her home.

Defendant also challenges the protective sweep that Havens and Rachael conducted of his residence. 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. Defense argues that the protective sweep of his residence was a violation of his rights for the following reasons.

Defendant had been out of the residence for more than twenty (20) minutes and was taken into custody as he pulled up to the front of the Market Street address without going inside the home. Since Defendant was outside the house at the time of his arrest, Defendant's argument is that no area inside the home could be immediately adjacent to the location of Defendant's arrest and, therefore, the protective sweep has no lawful basis. Defense argues that the protective sweep police initiated within the residence was not incident to a lawful arrest or for officer safety because there is no opportunity to do a protective sweep inside if the Commonwealth has the Defendant in custody outside.

The Commonwealth cites *Commonwealth v. Potts*, 73 A.3d 1275 (Pa. Super. 2013) to justify the search of the residence. In *Potts*, the Superior Court found that the police could make a cursory sweep of an adjacent bedroom after entry to investigate a disturbance even though Potts had not been arrested yet. *Id.* at 1282. They ask the Court to consider the fact that this was a rapidly developing scene and that the officers had a fear that others may be hidden inside the residence and a search was required for officer safety. In *Commonwealth v. Hall*, the Superior Court held that protective sweeps of "immediately adjoining" areas are proper if police can articulate "specific facts to justify a reasonable fear for the safety of police officers or others." *Commonwealth v. Hall*, 199 A.3d 954, 959, (Pa. Super. 2018)(citing *Commonwealth v. Taylor*, 771 A.2d 1267 (Pa. 2001). The police in *Hall* knocked on the residence door for several minutes and while waiting for a response, they heard people moving around inside before anyone acknowledged them. *Id.* at 960. When the door was finally opened, several people were standing in the doorway. *Id.* at 957. Police escorted all of them onto the front lawn and arrested a man there. *Id.* From his lawful vantage point outside the apartment, one of the officers saw a box of ammunition inside the apartment on top of a coffee table. *Id.* This led him to believe

that someone else was still inside and posed a safety risk. *Id.* To ensure officer safety on scene, a protective sweep of the home was conducted, which yielded evidence for a subsequent search warrant. *Id.* The Court in *Hall* held that the officers were justified in performing a protective sweep because the “information available to police at the time they performed the sweep gave rise to a ‘reasonable fear’ that a person secreted in the apartment could be armed and dangerous.” *Id.* at 960. Since the Court already determined that Baney gave consent for the police to go inside the house, it is reasonable to infer that the police were in a lawful position at the time additional information became available to them that prompted them to conduct a protective sweep. The question for this Court now becomes whether “a reasonably prudent officer” would be able to point to articulable facts justifying the protective sweep of Defendant’s residence to ensure their safety.

For the following reasons, this Court agrees with the Commonwealth on this issue. The police were told that there were only two children inside the residence. As the police were escorting Baney’s teenaged children outside, an unknown adult male was discovered in the home. Havens also testified he heard a noise within which made him believe that there was still someone hiding on an upper floor. Defendant is charged with violent crimes, specifically those involving the use of firearms and theft of firearms. Havens was warned prior to arresting Defendant that the police believed Defendant was armed and potentially dangerous. Similar to the facts in *Hall*, the Defendant was arrested outside his residence but the officers were able to see suspicious activity that caused concern for the safety of everyone involved. Therefore, the combination of the alleged dangerousness of the Defendant, the false statement that two children were the only people remaining in the building, the unidentified, uncooperative male and what sounded like footsteps from the upper floor within the residence properly caused

Havens and Rachael to believe that another person may be hidden in 966 Market Street with a weapon. Therefore, the Court finds that a protective sweep for officer safety was justified.

Defendant also claims that the police did not have permission to enter the property and so the information given to Alexander to obtain the search warrant was unlawfully obtained and necessarily renders the search warrant invalid. Defendant relies on *Commonwealth v. Taylor*, 771 A2d. 1261 (Pa. 2001) to justify his position that the police unlawfully gained access to the Defendant's residence and since the evidence which formed the basis of the search warrant was gathered illegally, the evidence found through the execution of the search warrant should be suppressed. However, since this Court has already determined that Baney gave her consent for law enforcement to enter the home, the officers were lawfully present in the house when they became increasingly worried about the danger of the developing scene of arrest. *See Commonwealth v. Hall*, 199 A.3d 954 (Pa. Super. 2018). Therefore, Defendant's argument is without merit and the evidence found as a result of the search warrant shall not be suppressed.

Conclusion

The Court finds that, upon agreement of the parties, Defendant's statements made in an interview with police on December 1, 2020 following his request for an attorney shall be suppressed. The Court also finds that law enforcement were justified in their belief that the officers present at the scene of Defendant's arrest were in an increasing amount of danger and the protective sweep of the home was warranted. Lastly, the Court finds that the evidence found as a result of the protective sweep was not discovered illegally and therefore its use in the application for a search warrant of 966 Market Street was lawful and the evidence found pursuant to the search warrant shall not be suppressed.

ORDER

AND NOW, this 30th day of July, 2021, based upon the foregoing Opinion, it is **ORDERED** and **DIRECTED** that Defendant's Omnibus Pretrial Motion challenging the entry of the police into 966 Market Street is hereby **DENIED**. The Defendant's statements made to police during the interview conducted on December 1, 2020 are hereby **SUPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Donald Martino, Esq.
Joy R. McCoy, Judge
Law Clerk (JMH)