

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1497-2021**
 v. :
 :
 EVAN A. BRYANT, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Evan Bryant (Defendant) was charged with Possession with Intent to Deliver¹, Possession of a Controlled Substance², and Possession of Drug Paraphernalia³. The charges arise from a routine visit from probation officers to Defendant's residence on November 8, 2021. Defendant filed this timely Omnibus Pre-trial Motion on April 7, 2022. This Court held a hearing on the motion on May 17, 2022.

In his Motion, Defendant raises three issues. The first issue Defendant asserts is that the search of the home by probation officers was not supported by reasonable suspicion and the evidence seized as a result must be suppressed. Defendant's second issue is a motion to compel discovery⁴. Lastly, Defendant files a motion to reserve the right to file addition pre-trial motions if necessary.

Background and Testimony

Officer Jessica Mazzante (Mazzante) of the Lycoming County Adult Probation Office (APO) testified on behalf of the Commonwealth. Mazzante testified that she was supervising a woman named Adrienne Blaker (Blaker) for drug delivery and endangering the welfare of children charges. Blaker resided at 409 Hawthorne Avenue in the city of Williamsport as her

¹ 35 Pa.C.S. § 780-113(a)(30).

² 35 Pa.C.S. § 780-113(a)(16).

³ 35 Pa.C.S. § 780-113(a)(32).

⁴ This Court issued a separate order on the discovery issues raised at the hearing on this motion.

residence approved by APO. On November 8, 2021, Mazzante went to Blaker's home to conduct a routine visit. A routine visit includes a plain view search of the residence to determine if Blaker was abiding by the terms of supervision. Mazzante noted that APO had prior issues with finding drugs in this home and had located marijuana paraphernalia a month beforehand. Agent David Poretta (Poretta) also accompanied Mazzante on this routine home visit.

The officers arrived at the residence at approximately 9:45 a.m. and Blaker answered the door. Mazzante asked Blaker who was present in the home and Blaker responded that her children and her boyfriend, Defendant, were at home on that day. Blaker told the officers that Defendant was upstairs. Mazzante indicated that she stayed with Blaker while Poretta went upstairs to locate Defendant and any other potential individuals inside the residence. Eventually, Defendant came downstairs. Poretta also came downstairs and informed Mazzante that both Blaker and Defendant needed to be detained because Poretta located a gun. Mazzante stated that this was a safety issue and standard protocol to detain them after the discovery of a firearm. Mazzante defined detainment as placing the individuals in handcuffs. Mazzante indicated that she did not advise anyone of their *Miranda* rights, did not try to interview anyone, and did not participate in the search. Mazzante said that they called the Williamsport Police Department following the discovery of the firearm. Blaker was drug tested but Mazzante stated that Blaker would usually admit before being tested if she had consumed any narcotics. However, following her drug test, Blaker tested positive for fentanyl.

Mazzante further testified that Defendant's mother, Nadine, rents the home in question and Defendant and Blaker have a joint bedroom in the residence. Sergeant McGee (McGee) called Nadine and she consented to have the Williamsport Police conduct a search of the house.

Mazzante remained downstairs with Defendant and Blaker while the search took place. McGee took custody of the evidence found in the home and took it to the police station. On November 12, 2021, a supervision report on Blaker was filed noting narcotics and the firearm located in the residence.

Mazzante also testified that probation conditions pertained to Blaker, not Defendant since he was not on probation at that time. Nevertheless, Mazzante stated that Condition 2 of the conditions of supervision allow for warrantless searches by APO. Condition 7 prohibits the possession or consumption of alcohol or illegal drugs and Condition 8 prohibits individuals on probation from owning a gun. Mazzante said that, regardless of who is on probation in the home, no firearms are permitted to be in the residence. Mazzante looked up Defendant's criminal history and believed that Defendant had a previous contraband charge and thought he may be a person who is not permitted to own a firearm. Mazzante informed McGee of this information.

Mazzante further stated that Poretta located 1,081 pills inside the home that they believed to be Percocet. However, Mazzante was under the impression that the pills actually came back as fentanyl. Mazzante testified that she had been supervising Blaker since 2019 and Blaker was well aware of the significance of permission for people to live with her while on probation. Mazzante did not speak with Nadine about Blaker living at the residence, but did speak with Blaker about the conditions of probation and what a plain view search is approximately one (1) year ago. At the start of the visit, only Baker's room was subjected to a plain view search.

Agent David Poretta (Poretta) of APO also testified on behalf of the Commonwealth. Poretta testified that during a probation violation search, it is standard procedure for one

probation officer to remain with anyone inside the home while one officer walks through the residence. This type of search is limited to what is available to the officer without manipulating anything. Poretta testified that a probation violation search was conducted at 409 Hawthorne Avenue. Blaker met the officers at the door and said that her boyfriend and children were home. Poretta went upstairs to locate the people inside the residence. At the top of the steps, he turned right and saw Defendant manipulating items inside a bedroom. Poretta asked Defendant to stop and Defendant complied. Poretta directed Defendant to go downstairs and Defendant obliged. Poretta indicated that Defendant was not detained at this time. Poretta went into the bedroom and saw several twenty (20) dollar bills, a cut straw, a credit card, and white residue in the spot where Defendant had been touching things. Poretta believed these items to be drug paraphernalia used to ingest narcotics and thought the white powder resembled fentanyl. Poretta further testified that possession of these paraphernalia items is a violation of probation as well as a crime. Poretta stated that it is a violation of supervision to have drugs in the home regardless of who possesses them. The Commonwealth introduced a photograph of the paraphernalia, marked as Commonwealth's Exhibit 2.

Poretta went downstairs and informed Mazzante that he located drug paraphernalia and told Defendant and Blaker that he would be expanding his search of the house beyond plain view. Poretta stated that still no one was detained at this point in time. Poretta returned upstairs and went back into the bedroom. Poretta located BB guns on the balcony, which is another violation of probation. In the bedroom closet, Poretta also discovered a purse on the back door. Without opening the purse, Poretta could see the grip handle of a firearm. Poretta removed the gun from the purse, cleared the ammunition from it, ceased his search and went downstairs to tell Mazzante about the firearm. Poretta indicated that the gun had a loaded magazine and one

(1) bullet in the chamber. The Commonwealth presented a photograph of the firearm located in the purse, marked as Commonwealth's Exhibit 3. According to standard APO procedure, Blaker and Defendant were detained at that point. Since they believed Defendant was a person not to possess a firearm, Poretta read both Defendant and Blaker their *Miranda* rights. Defendant told the officers that the firearm was not his but knew the owner. Defendant said that an individual came over to their house drunk and so he took the gun for safety, put it in the purse, and then forgot about it.

Poretta contacted the Williamsport Police Department after finding the gun and when Sergeant McGee (McGee) arrived at the house, Poretta informed him what happened and told McGee he was concerned the firearm was stolen. McGee used Blaker's phone to call Defendant's mother and received consent from Defendant and Defendant's mother to search the house. Poretta signed the consent form as a witness. Poretta assisted McGee in the search of the residence. They returned to the bedroom and went through the contents of the room together. At one point, they found a softball-sized piece of saran wrap inside a laundry bag full of clothes that contained blue pills they believed to be a controlled substance. The Commonwealth presented a photograph of the location where the pills were discovered, marked as Commonwealth's Exhibit 4. McGee also found a smaller bag of pills in the house. Poretta stated that he and Mazzante took custody of Blaker and the Williamsport police took custody of Defendant. Poretta said that Defendant was not on supervision with APO at that time and Poretta did not have authority to arrest him. The Commonwealth also presented the transcript of the preliminary hearing, marked as Commonwealth's Exhibit 1. Defendant presented the conditions of probation, marked as Defendant's Exhibit 1.

Analysis

Defendant challenges the legality of the search conducted by the probation officers and believes the firearm 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 the probation officers exceeded the scope of their authority and began acting as law enforcement when they arrested him and searched his closet. Defendant asserts that at the time of the search, Defendant was not on probation but was still detained, *Mirandized*, arrested, and interviewed. Defendant contends that anything found from all searches must be suppressed because of APO’s overreaching conduct. The Commonwealth argues that each issue was a direct violation of supervision, totaling three (3) separate violations of the conditions. The Commonwealth asserts that the contraband was in plain view and therefore the probation officers were able to conduct a more in-depth search. The Commonwealth also argues that even though Defendant was not on probation, he lived with someone who was and he needed to adhere to the conditions as well. The Commonwealth further contends that the law does not require APO to stop their plain view search at the first violation and probation officers have discretion to conduct a further search. Additionally, McGee obtained consent for the house to be searched prior to the discovery of the large number of pills.

Defendant’s claim that the search of the residence was not supported by reasonable suspicion that Blaker violated supervision is completely unfounded. It is expressly forbidden in Blaker’s conditions of supervision for her to possess or consume controlled or mind altering

substances. These items were found in the bedroom that she shared with Defendant.

Furthermore, Blaker was subjected to random urine or breathalyzer tests as another condition of supervision and tested positive for fentanyl on the day in question. Regardless of whether Defendant was on probation or not, two (2) blatant violations of the conditions of Blaker's supervision were in plain view of the probation officers. One such violation was when Poretta could clearly see Defendant manipulating items generally associated with ingesting narcotics, such as cash, a credit card, a straw, and leftover white powder residue.

Based on the totality of the circumstances, it is reasonable for Poretta to assume that these materials were drug paraphernalia. Defendant resided with an individual on supervision and the rules that Blaker needed to adhere to prohibit illegal substances, alcohol, and firearms from being in the residence completely. As a result, Defendant was necessarily bound by probation conditions by sharing a residence with someone on supervision. Additionally, this Court does not believe that the temporary detainment of the individuals in the home once the firearm was found was unjustified nor does the Court believe that it was a violation of Defendant's rights. Poretta and Mazzante testified that detaining all individuals in a home following such discoveries is standard protocol. The officers also demonstrated that those on supervision are required to undergo warrantless searches supported by reasonable suspicion. Since Defendant chose to live with someone under those restrictions, he must also abide by those requirements and occasional plain view searches.

In light of the dangerous nature of the firearm and the previous history of officers finding drugs in the home as well as considering the fact that drug paraphernalia and BB guns had already been seen in plain view on the day in question, Defendant's temporary detainment was supported. For these reasons, this Court finds no merit in Defendant's argument and the

evidence seized pursuant to APO and law enforcement's searches shall not be suppressed on these grounds.

Conclusion

The Court finds that the search of the residence was supported by reasonable suspicion that the conditions of supervision were being violated. The Court also finds that Defendant's temporary detainment by APO was not a violation of his rights. As a result, none of the evidence seized pursuant to this search shall be suppressed.

ORDER

AND NOW, this 1st day of July, 2022, based upon the foregoing Opinion, Defendant's Motion to Suppress is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
PD (JL)
Law Clerk (JH)