

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1035-2021**
 v. :
 :
 KATINA SHARMAINE ROBINSON : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Katina Robinson (Defendant) was charged with five (5) counts of Possession with Intent to Deliver¹, four (4) counts of Possession of a Controlled Substance², and one (1) count of Possession of Drug Paraphernalia³. The charges arise from an incident that occurred on July 26, 2021. Defendant filed this Omnibus Pretrial Motion on October 12, 2021. This Court held a hearing on the motion on January 24, 2022. In her Omnibus motion, Defendant first argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden on the counts of Possession of a Controlled Substance as well as the count of Possession of Drug Paraphernalia and those charges should be dismissed. Secondly, Defendant argues that the search of the home by parole agents was not supported by reasonable suspicion and the evidence seized as a result must be suppressed. Defendant files a motion to disclose any promises of leniency or immunity. Lastly, Defendant included a motion to reserve the right to file additional pretrial motions if necessary. Following the receipt of the transcript of the hearings on this motion, counsel for both parties were instructed to file briefs.

Background and Testimony

At the preliminary hearing, Sergeant Brian McGee (McGee) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. McGee testified that he was dispatched to

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).

830 High Street in the city of Williamsport to assist state parole agents. N.T. 8/5/2021, at 3.

The parole agents had been called to the home by a woman named Holly Pallone (Pallone) who was on state parole. Id. at 10. Pallone and Defendant were at the residence together the morning in question. Id. Pallone resided at the home but Defendant did not. Id. McGee further testified that he is the handler for a narcotics canine for the police department. Id. at 3. McGee was called out to High Street because the state parole agents believed that they found narcotics and drug packaging materials. Id. at 4.

When he arrived, the parole agents escorted him to the rear of the residence, through a dining room and kitchen to the back porch area. Id. A parole agent had taken the contents of a black backpack and dumped them onto a car seat during a search of the residence. Id. The backpack had been found inside the residence in a laundry basket. Id. at 8. On top of the car seat McGee immediately recognized packaging material for narcotics. Id. at 4. McGee saw “green vials, small light blue vials as well as what I immediately believed to be cocaine in a plastic bag, it was a white powdery substance.” Id. Also found in the car seat was a red Ziploc bag that McGee testified is commonly used to package crack cocaine. Id. Additionally, razor blades and a scale were also found on the back porch. Id. The backpack contained a receipt from the Valley Forge Resort Casino with Defendant’s name on it. Id. at 4-5.

At this point, Defendant was informed she was under arrest. Id. at 5. McGee asked Defendant if she had any standing in the residence and she informed him that she did not have anything in the home except for the clothes on her back. Id. Defendant was escorted out of the house and McGee asked Pallone for consent to continue the search of the residence. Id. Pallone agreed and McGee continued to search. Id. In one of the bedrooms, McGee indicated that he found a green Crown Royal bag and inside the bag was a green vial similar to the ones on the

car seat. Id. The vials contained a green, leafy substance that McGee recognized as marijuana. Id. McGee also found blue vials similar to the ones on the car seat that contained a white substance McGee suspected to be cocaine. Id. Inside the Crown Royal bag was a red Ziploc bag like the one on the car seat. Id. at 6. McGee also discovered “45 Alprazolam pills, two milligrams, I believe, and then three of the same one milligram pills as well as five circular round unmarked pills, which were intermixed with the Alprazolam pills as well as additional unused packaging material for the controlled substances.” Id. McGee believed all these items were connected to Defendant because the packaging materials in the Crown Royal bag were the same as the ones found in the car seat. Id. McGee indicated that Defendant told Detective Caschera that the Crown Royal bag belonged to her. Id. at 8. However, McGee noted that Defendant was not asked how the receipt got into the backpack and no wallet was located inside the backpack. Id. at 11. McGee believed that the Alprazolam was packaged to be delivered because they were not in a prescription container. Id. at 14.

At the hearing on this motion, McGee testified similarly as to the events of the day in question. The Commonwealth presented several photographs of the evidence seized, marked as Commonwealth’s Exhibit 2 through Exhibit 4. Defense counsel also presented photographs, marked as Defendant’s Exhibits 1 through 4. Detective Michael Caschera (Caschera) of the Narcotics Enforcement Unit (NEU) also testified on behalf of the Commonwealth at this hearing. On July 26, 2021, Caschera was summoned to City Hall after being notified that McGee had someone in custody following the discovery of illegal narcotics. N.T. 1/24/2022, at 38. When Caschera arrived, all the seized evidence was displayed on a table. Id. at 37. Caschera reviewed what was seized and suspected that the substances included cocaine, marijuana, Xanax, and Percocet or Oxycontin. Id. at 36-38. Caschera did not see any

prescription pill bottles amongst the drug paraphernalia and narcotics. Id. at 39. Caschera also noticed a casino receipt with Defendant's name on it. Id. 37. Based on his experience and training, Caschera believed that all of the suspected drugs seized were possessed with the intent to deliver based on the way they were packaged. Id. at 39-40.

Caschera further testified that he interacted with Defendant on the day in question. Id. at 41. Shortly after introducing himself to Defendant, Caschera advised Defendant of her Miranda rights. Id. Defendant invoked her right to counsel and Caschera told Defendant he would no longer ask her questions directly related to the case. Id. at 41-42. However, Caschera continued to ask Defendant about her basic demographic information. Id. at 42. At one point during these questions, Defendant claimed ownership of the Crown Royal bag seized from Pallone's apartment. Id. Caschera indicated that Defendant could not see the evidence table, Caschera made no reference to the bag, and he did not have the bag with him while asking Defendant her identification information. Id. Caschera also stated that he did not ask Defendant any questions about the Crown Royal bag. Id. Caschera testified that Defendant claimed ownership of the Crown Royal bag after he asked her where she was living at the time. Id. at 43. Defendant told Caschera that her girlfriend resided at the residence in question. Id. at 51.

At the second hearing on this motion, Agent Jonathan Lehr (Lehr) of the Pennsylvania Board of Probation and Parole also testified on behalf of the Commonwealth. Lehr testified that his job is to supervise individuals that have been released from prison. N.T. 1/24/2022, at 3. On Monday, July 26, 2021, Lehr was summoned to 830 High Street in the city of Williamsport. Id. at 4. Lehr was instructed by his supervisor to search Pallone's residence for possible parole violations of drug use and a potential drug selling operation. Id. When Lehr arrived at the residence with Agent Kusnerick, he encountered Defendant and Pallone. Id. The residence was

approved for Pallone and a woman named Melissa McMannus. Id. at 5. Lehr indicated that they took the adults into custody for agent safety and began their search of the home. Id. On the back porch under a car seat, Lehr found a black bag with suspected drugs, drug packaging, and a scale. Id. Also inside was a casino receipt with Defendant's name. Id. at 6. At this point, the search was stopped and Agent Kusnerick called the police. Id. The police arrived at approximately 10 a.m. and the police questioned both women and took Defendant into custody. Id. Lehr further testified that Pallone was to remain at the house and the agents continued their search for more parole violations. Id. A second search was conducted, which Lehr testified was a good practice to ensure that the home had no additional violations. Id. at 7. A Crown Royal bag was located in one of the bedrooms that smelled like marijuana. Id. The bag was opened and suspected marijuana was found inside. Id. Lehr noted that neither of the individuals had a prescription for medical marijuana and the suspected drugs were not packaged properly. Id. Lehr notified McGee what was discovered in the home and concluded his search. Id. at 8. It was determined between searches that Defendant was on state parole and the High Street residence was not approved for her. Id.

Discussion

Habeas Corpus Motion

This Court will first consider Defendant's contention with the Commonwealth's evidence presented at the preliminary hearing for several of the charges brought against her. 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).

Defendant challenges the sufficiency of the Commonwealth’s evidence on all the possession charges against her, specifically the Possession with Intent to Deliver a Controlled Substance charges, Possession of a Controlled Substance charges, and the Possession of Drug Paraphernalia. Defendant’s position is that the Commonwealth has failed to present evidence sufficient to establish a *prima facie* case that Defendant had constructive possession of the narcotics discovered on the day in question. 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). Constructive possession can be established in one or more actors where the item at issue is in an area of equal access. Commonwealth v. Murdrick, 507 A.2d 1212, 1214 (Pa. 1986).

Defendant’s primary contention is that the only connection between Defendant and the controlled substances was a casino receipt with her name on it. The residence in which the drugs were found was not an approved residence for Defendant, but was the approved residence for Pallone and McManus. Defendant believes that the Commonwealth did not show any indicia of ownership to establish Defendant had control and dominion over the black bag. Additionally, Defendant takes issue with the assertion that she was in constructive possession of the Crown Royal bag. Defendant asserts that none of the officers or parole agents discussed finding the Crown Royal bag with her or in front of Defendant. Defense counsel contends that Defendant’s sudden claim of ownership of the bag after asserting her right to counsel is fantastical. Defendant argues that the Commonwealth has not demonstrated that Defendant had any knowledge of the contents of the Crown Royal bag discovered in what was believed to be Pallone’s bedroom.

In their brief, the Commonwealth concedes that Count 4 and Count 9 should be dismissed following the receipt of the lab results conducted on the seized substances. However, the Commonwealth asserted that possession with the intent to deliver can be “inferred from

possession of a large quantity of controlled substance.” Commonwealth v. Roberts, 133 A.3d 759 (Pa. Super. 2016). The Commonwealth also stated that the Court can consider other factors, “including the manner in which the controlled substance was packaged, the behavior of the Defendant, and expert testimony.” Id. The Commonwealth believes that they have established their *prima facie* burden on all contested possession with intent to deliver counts because of testimony from McGee that indicated parole agents were notified by Pallone that Defendant was at her house recently selling narcotics. Testimony from McGee and parole agents confirmed that after receiving the tip, controlled substances were discovered at the home and Defendant was present at the time the drugs were located.

The Commonwealth also points to the casino receipt containing Defendant’s name that was found inside the black bag along with a significant amount of drugs, a scale, package vials, a razor blade, and baggies used for packaging. The Commonwealth reiterates that Defendant took ownership of the green Crown Royal bag that also contained numerous controlled substances and drug packaging material. Additionally, the Commonwealth contends that they have established Defendant’s constructive possession of these items because Defendant was at the residence where the narcotics were discovered, the casino receipt, and the amount of drugs present at the scene. The Commonwealth asserts that Defendant had constructive possession because she had access to these items because of her presence at the home and had the power and intent to exercise dominion and control over them.

In considering the totality of the circumstances and viewing the evidence in the light most favorable to the Commonwealth as is required, this Court finds that the Commonwealth established a *prima facie* burden and Defendant’s constructive possession. For the reasons articulated above, this Court believes that Defendant had the power and intent to exercise

dominion and control over the drugs and the drug paraphernalia and packaging. Therefore, the Defendant's motion to dismiss Counts 1-3, Counts 5-8, and Counts 10-11 is denied.

Suppression Motion

Defendant challenges the legality of the search conducted by the parole agents and argues that all evidence should be suppressed. However, the Commonwealth contends that Defendant does not have standing to challenge the seizure of evidence from the residence. It is generally held that "a casual visitor who is merely present in another person's home does not have a legitimate expectation of privacy to contest an illegal entry by police into that home." Id.; see also Commonwealth v. Tann, 459 A.2d 322, 325 (Pa. 1983); Commonwealth v. Ferretti, 577 A.2d 1375 (Pa. Super. 1990).

An expectation of privacy will be found to exist when the individual exhibits an actual or subjective expectation of privacy and that expectation is one that society is prepared to recognize as reasonable. In determining whether a person's expectation of privacy is legitimate or reasonable, the totality of the circumstances must be considered and the determination will ultimately rest upon a balancing of the societal interests involved." The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances.

Commonwealth v. Viall, 890 A.2d 419, 422 (Pa. Super. 2005) (internal quotations omitted.) However, the "Fourth Amendment does not shield only those who have title to the searched premises." Commonwealth v. Ferretti, 577 A.2d 1375, 1377 (Pa. Super. 1990). As a result, "a defendant who is more than a casual visitor to the...dwelling in which illegal drugs have been seized has the right under the Fourth Amendment...to challenge the search and seizure of the illegal drugs which he is accused of possessing." Commonwealth v. Rodriguez, 679 A.2d 1320, 1325 (Pa. Super. 1996).

The factors to consider in determining whether a defendant has a legitimate expectation of privacy in another's home are: "(1) possession of a key to the premises; (2) having unlimited access to the premises; (3) storing of clothing or other possessions on the premises; (4) involvement in illegal activities conducted on the premises; (5) ability to exclude other persons from the premises; and (6) expression of a subjective expectation of privacy in the premises." Commonwealth v. Govens, 632 A.2d 1316, 1319 (Pa. Super. 1993). The Fifth Circuit has held that a guest who did not possess a key to the home, did not leave any personal belongings there, and did not have unencumbered access to the property did not have a legitimate expectation of privacy. United States v. Meyer, 656 F.2d 979, 981-82 (5th Cir. 1981).

The Commonwealth asserts that testimony at the hearing on this motion confirms that Defendant does not have a reasonable expectation of privacy and therefore cannot challenge law enforcement's entry into the residence or the seizure of narcotics. Defendant is of the position that she has automatic standing to challenge the admissibility of evidence based on her situation as a defendant charged with a possessory offense. *See* Commonwealth v. Sell, 470 A.2d 457 (Pa. 1983). The Commonwealth agrees with Defendant's assertion that an individual charged with a possessory offense automatically has standing to challenge the admissibility of evidence. However, the Commonwealth also contends that the analysis is still required to shift to whether the defendant had a reasonable expectation of privacy.

The Commonwealth cites to the dissenting opinion in Commonwealth v. Arnold to support their assertion that Defendant is still required to show a reasonable expectation of privacy. Commonwealth v. Arnold, 932 A.2d 143, 153 (Pa. Super. 2007) (Lally-Green, J., dissenting). The dissent includes a procedural history of the law concerning automatic standing pursuant to Article 1, Section 8 of the Pennsylvania Constitution. Id. at 150-153. In the Sell

case, the Pennsylvania Supreme Court held that under Article 1, Section 8 of the Pennsylvania Constitution, a defendant charged with a possessory offense has automatic standing to maintain a challenge to suppress evidence. Commonwealth v. Sell, 470 A.2d 457 (Pa. 1983). This decision created confusion regarding what burden such a defendant had during a suppression hearing in order to be successful. Following the Sell decision, the Superior Court addressed the misunderstanding in this area and held that in order to prevail, a defendant has to show that the challenged police conduct implicated a reasonable expectation of privacy held in the area searched or the item seized.” Arnold, 932 A.2d at 151; *See* Commonwealth v. Peterson, 596 A.2d 172, 174-76 (Pa. Super. 1991).

The Supreme Court explicitly upheld this construction of automatic standing and maintained the requirement of a defendant showing a reasonable expectation of privacy. Commonwealth v. Peterson, 636 A.2d 615, 617-18 (Pa. 1993). Specifically, the Court stated, “having had his standing acknowledged, [defendant] is then required to establish that the challenge he has without question legitimately raised is itself legitimate. In order to do so, he must...demonstrate its merits by a showing of his reasonable and legitimate expectation of privacy in the premises.” Id. at 617-618. As a result, “[i]n the wake of Peterson and its progeny, it is clear that, notwithstanding the *dicta* in Sell criticizing the substantive federal approach to Fourth Amendment claims, under Article 1, Section 8, no less than under the Fourth Amendment, **a defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests.**” Arnold, 932 A.2d at 153 (Lally-Green, J., dissenting) (emphasis in original); *See also* Commonwealth v. Hawkins, 718 A.2d 265, 267 (Pa. 1998) (holding essential effect of automatic standing doctrine is to entitle defendant to adjudication of the merits of a suppression

motion, but to prevail defendant must demonstrate privacy interest and that such interest was reasonable and justifiable); Commonwealth v. Gordon, 683 A.2d 253, 256-59 (Pa. 1996).

The Commonwealth argues that Defendant has not established that she had a reasonable expectation of privacy in Pallone's home, specifically because no evidence of her staying overnight or having a key was presented at either hearing on this motion. Defendant merely asserts that she has automatic standing to challenge the admissibility of this evidence. Unfortunately, following this Court's in-depth research into this doctrine, Defendant's assertion does not encompass the totality of the law as it stands in Pennsylvania on this particular issue. Consequentially, there is little to no evidence that reflects Defendant had a reasonable expectation of privacy in Pallone's residence and that the expectation was societally acceptable. The testimony on record is unclear whether or not Defendant was living at this residence for any length of time and the record lacks testimony or evidence demonstrating Defendant possessed a key to the home, controlled who visited the home, stored clothes or other possessions in the residence, or that Defendant had unfettered access to the property. In fact, the only definitive testimony regarding Defendant's relationship with the home in question is that it was not an approved residence for Defendant. Therefore, this Court cannot conclude that Defendant had a reasonable expectation of privacy in this location and her argument to suppress evidence must be unsuccessful.

However, even assuming that Defendant had proper standing, her argument still fails. "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 parole agents and parolees is found in 61 Pa.C.S.A. § 6182. This Section authorizes agents to conduct a search of the property of a parolee if there is reasonable suspicion to believe that contraband or other evidence of violations of the conditions of supervision will be discovered.

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

61 Pa.C.S.A. § 6182(d)(4). 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).

Information provided from the parolee is one of the factors to consider when determining if reasonable suspicion existed. In this case, Pallone explicitly told parole agents that narcotics were being sold from her home. Since Pallone was the individual under supervision, she had a diminished expectation of privacy in her home and was required to submit to warrantless searches. Additionally, as someone on supervision, Pallone was prohibited by the conditions of her supervision from possessing mind-altering substances or having them in her approved residence. By conveying this information that incriminated her house in a scheme to deliver narcotics and in conjunction with her lessened expectation of privacy, the parole agents had reasonable suspicion to search the home for drugs to confirm Pallone's tip and to establish whether the conditions of her parole were violated by these controlled substances. Additionally, parole agents are not required to conclude their plain view search at the first violation and are permitted to exercise their discretion in conducting an additional search. Therefore, even if Defendant is found to have standing in the home, this Court finds that the searches of Pallone's residence was supported by reasonable suspicion and the evidence seized shall not be suppressed on these grounds.

ORDER

AND NOW, this 19th day of August, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in her

Omnibus Pretrial Motion is hereby **GRANTED in part and DENIED in part**. Upon the concession of the Commonwealth, Counts 4 and 9: Possession with Intent to Deliver a Controlled Substance, are hereby **DISMISSED**. Defendant's motion to dismiss the remaining counts is **DENIED**. The Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Robert Hoffa, Esq.
Law Clerk (JMH)