

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-1098-2021**  
 v. :  
 :  
 :  
 **DUANE ADAMS,** : **MOTION FOR SUPPRESSION**  
 **Defendant** :

**OPINION AND ORDER**

Duane Adams (Defendant) was charged on June 4, 2021 with two counts of Possession with the Intent to Deliver a Controlled Substance<sup>1</sup>, marijuana and fentanyl, and Possession of a Controlled Substance (marijuana)<sup>2</sup>. The charges arise from an unannounced visit by the Pennsylvania Parole Board (Parole Board) to Defendant's home. Defendant filed this Omnibus Pretrial Motion on September 12, 2022. The Court held a hearing on the motion on November 21, 2022. In his Omnibus motion, Defendant raises one issue<sup>3</sup> and alleges that the Parole Board violated his constitutional rights when they entered his home without probable cause or exigent circumstances.

**Testimony**

At the suppression hearing Kaitlin Schaffer (Schaffer) from the Pennsylvania Parole Board testified that during the morning hours of June 4, 2021 she was Defendant's parole agent and had been for approximately 6 months prior. She was working with a fellow agent Robert Marzacco (Marzacco) that day to make the unannounced visit to Defendant's approved residence at 838 Campbell Street, Apartment 3 or 4. Schaeffer was familiar with the residence

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<sup>1</sup> 35 P.S. § 780-113(a)(30).

<sup>2</sup> 35 P.S. § 780-113(a)(16).

<sup>3</sup> Defense Counsel did discuss the need for discovery from the Commonwealth but advised the Court that he had received it from the Public Defender's Office. Defense Counsel was appointed to represent Defendant on March 22, 2022 as the Public Defender's indicated that it had a conflict with the Defendant's case. Defense Counsel also discussed Defendant's wishes that he not be brought back from state prison except for trial. Defendant does not wish to be removed from programs.

and knew that Defendant's apartment was on the third floor. Schaffer described the access to the apartment. She said that there were two exit points: one main rear outdoor exit onto a fire escape and the other down an inside staircase to a secure front door. Schaeffer approached the external upper door, knocked and Defendant responded that he would be there "in a minute." The window to his apartment was open so she could hear him clearly. She said that she had recognized his voice from talking with him a lot. Schaffer waited about one minute, and he did not come to the door. She then yelled to him, and he did not respond. After about 5-7 minutes when she saw that he was not being compliant, she asked her partner to go around the front of the building to the other secured door. Schaffer then called her supervisor, Dave Frederick, to come to the scene. Before he arrived, Schaffer knocked on the front door and a female who identified herself as Jamie Feigles (Feigles) exited upon request. Feigles told them that she was Defendant's children's mother, had just gotten there, and Defendant was not home. Marzacco stated that no one had exited the door while he was standing there. Once Frederick came to the scene, Schaffer went with him inside Defendant's apartment. She had been inside the apartment several times and knew where Defendant's bedroom was located. Schaffer testified that she saw drugs in plain sight in Defendant's room. Immediately, she contacted the Williamsport Bureau of Police, and officers obtained a search warrant for Defendant's residence. While parole was still there on scene, Defendant approached from an adjoining property. Schaffer said that Defendant had not run from her before. When asked to stop and put his hands up, he ran and after an unsuccessful chase, he was ultimately apprehended in Lackawanna County.

## **Discussion**

Home visits by parole agents are not searches within the meaning of the Fourth Amendment. *See Commonwealth v. Smith*, 85 A.3d 530, 536-37 & n.3 (Pa. Super. 2014). The

parole agents went to Defendant's residence for a home visit. Defendant indicated that he would answer the door, but he did not. The agents did not see Defendant leave the residence. Although Feigles told the agents that Defendant was not there, the agents were not required to accept Feigles' representations, particularly when they had heard Defendant inside the residence. They entered the residence to locate Defendant and conduct the home visit. When Schaffer entered Defendant's bedroom, she observed drugs in plain view. Since a home visit is not a search and the drugs were observed in plain view, there was no unlawful search in this case, and Defendant is not entitled to suppression.

Even if the agents' actions amounted to a search, Defendant's conduct gave them reasonable suspicion to enter the home and conduct a parole search.

61 Pa.C.S.A. § 6153<sup>4</sup>, pertaining to the supervisory relationship of State parole agents to offenders, provides, in relevant part:

(b) Searches and seizures authorized.—

(1) Agents may search the person and property of offenders in accordance with the provisions of this section.

\* \* \*

(d)

(2) A property search may be conducted by an agent if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.

\* \* \*

(6) 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 offender.
- (iv) Information provided by the offender.
- (v) The experience of agents with the offender.
- (vi) The experience of agents in similar circumstances.
- (vii) The prior criminal and supervisory history of the offender.

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<sup>4</sup> 61 Pa.C.S.A. §§ 6152 and 6153, in effect at the time of the search of Defendant's apartment, were repealed and replaced by 61 Pa.C.S.A. §§ 6181 and 6182. The former and current statutes are materially identical as applied to this case.

(viii) The need to verify compliance with the conditions of supervision.

61 Pa.C.S.A. § 6153 (emphasis added). See also *Commonwealth v. Williams*, 692 A.2d 1031, 1035 (Pa. 1997) (internal citations omitted) (“A parolee and a probationer have 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) (“Because the very assumption of the institution of parole is that the parolee is more likely than the ordinary citizen to violate the law, the agents need not have probable cause to search a parolee or his property; instead, reasonable suspicion is sufficient.”) (citations omitted).

Applying these statutes to warrantless searches of parolees, the Superior Court has explained that: “[P]arolees agree to ‘endure warrantless searches’ based only on reasonable suspicion in exchange for their early release from prison.” *Commonwealth v. Curry*, 900 A.2d 390, 394 (Pa. Super. 2006) (quoting *Commonwealth v. Appleby*, 856 A.2d 191, 195 (Pa. Super. 2004)). “[Parole] agents need not have probable cause to search a parolee or his property; instead, reasonable suspicion is sufficient to authorize a search.” *Id.* A search will be deemed reasonable “if the totality of the evidence demonstrates: (1) that the parole officer had a reasonable suspicion that the parolee had committed a parole violation, and (2) that the search was reasonably related to the parole officer's duty.” *Commonwealth v. Gould*, 187 A.3d 927, 935 (Pa. Super. 2018). See 61 Pa.C.S. § 6153(d)(2) (grounds for state parole agent's property search exist “if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.”).

Parole officers may form reasonable suspicion based on personal observations and third-party information. *Commonwealth v. Colon*, 31 A.3d 309, 315–16 (Pa. Super. 2011). *Commonwealth v. Wright*, 255 A.3d 542, 549–50 (Pa. Super. 2021) (citation formatting altered). Whether a parole agent has reasonable suspicion to search is an objective inquiry based on the totality of the circumstances “at the moment of the intrusion.” *Commonwealth v. Moore*, 805 A.2d 616, 619–20 (Pa. Super. 2002) (brackets and citations omitted). *Commonwealth v. Jones*, 283 A.3d 360 (Pa. Super. Ct. 2022), *appeal denied*, No. 339 MAL 2022, 2023 WL 1429488 (Pa. Feb. 1, 2023).

The Court finds that the totality of the circumstances clearly led Schaffer to believe that Defendant was violating his conditions of parole. When Defendant failed to come to the door, it was clear to the agent based on her years of experience that if Defendant didn't come to the door within a reasonable amount of time, he must be hiding something. About 15 minutes after they were on scene, they made contact with Defendant's girlfriend who was not cooperative. After Defendant failed to comply with verbal requests of his probation officer, Schaffer developed reasonable suspicion to believe that Defendant was engaged in illegal activity. A reasonable inference from Defendant's behavior is that he didn't want his parole agent to come into his apartment because it contained contraband or evidence of a crime. By his actions, he clearly wanted to distance himself from his apartment. The Court finds that the totality of the circumstances clearly led Schaffer to believe that Defendant was violating his conditions of parole justifying the parole agents' entry into his apartment.

**ORDER**

**AND NOW**, this 4th day of April, 2023, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion for Suppression is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA(KG)  
Timothy A.B. Reitz, Esq.  
Jerri Rook  
Gary Weber, Esq.