

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 176 - 2023
vs.	:
	: CRIMINAL DIVISION
	:
JALLIL ELLMAN,	:
Defendant	: Post Sentence Motion

OPINION and ORDER

Before the Court is Defendant's Post-Sentence Motion, filed on November 6th, 2023. Argument was held on November 21st, 2023. After a jury trial on June 8th, 2023, the Defendant was convicted of Possession with Intent to Deliver a Controlled Substance – Methamphetamine, and Possession of Methamphetamine. The Defendant was then sentenced by the undersigned on October 19th, 2023.

In his motion for a new trial the Defendant alleges that the Court erred in allowing the Commonwealth to present a video call in which the Defendant is seen packaging marijuana and that said video was improperly authenticated. Further, the Defendant argues in his motion to arrest judgement that the Court erred in denying counsel's oral motion to suppress the videos mention above.

Background and Testimony

By way of background the Defendant was on State Parole for an offense that took place prior to the events in this case. On September 28th, 2022 Detective Caschera received information from a State Parole Agent Lamay related to the Defendant. The information was that the Defendant was identified on a recording of a video call with an inmate at a state correctional facility packaging a substance that resembled marijuana. The videos referenced were from September 12th, 2022 and September 15th, 2023.

After Agent Lamay reviewed the information he received and conducted a search of the Defendant's residence based on the conditions of state probation and the probable cause established by the videos they had obtained. As a result of that search, Agent Lamay notified the Lycoming County Narcotics Enforcement Unit and Detective Caschera was notified and they conducted a search of the residence. That search resulted in the agents finding a jar containing numerous methamphetamine pills, approximately 30, a roll of fake Prescription labels, a sandwich bag of marijuana, a digital scale with marijuana residue and 9 individually packed bags of marijuana.

At the time of trial Agent Robert Marzzacco testified for the Commonwealth. Agent Marzzacco stated that he had received a screenshots of a videotaped FaceTime call via email from the Department of Corrections. Those screenshots of the video showed the Defendant packaging marijuana. The Defense objected to the video evidence being admitted on the grounds that any probative value was outweighed by its prejudicial effect. Defense further objected that the video was not properly authenticated and therefore should not have been presented to the jury.

Lastly, the Court held a suppression hearing at the time of trial in relation to the videos. The argument of the Defense was that the videos were stale at the time of the parole search and thus any evidence obtained as a result of that search should be suppressed.

Motion for a New Trial

The first motion the Court will consider is the Defense's motion for a new trial. The argument presented is that the probative value of the videos presented at trial was far outweighed by their prejudicial effect.

Although the video evidence of the Defendant packaging marijuana prejudicial to the Defendant the probative value outweighs the prejudicial effect. The video is intertwined in the development of the case. Without the video there is no search of the Defendant's residence and ultimately no arrest. The Supreme Court of Pennsylvania has ruled that Courts are not, "required to sanitize the trial to eliminate all unpleasant facts from the jury's consideration where those facts are relevant to the issues at hand and form part of the history and natural development of the events and offenses for which the defendant is charged. *Commonwealth v. Lark*, 518 Pa. 290, 543.

Here, the video evidence is obviously unpleasant to the Defendant, but the video is so relevant to the case its probative value outweighs the prejudicial effect. We note the Defendant's packaging of marijuana on tape is what lead to the search of the Defendant's residence and ultimately discovery of the methamphetamines. This evidence is inherent to the story of the case and has relevance to the intent of the defendant.

The Defendant also argues that the videos were not properly authenticated as no employee from the Pennsylvania Department of Corrections was called as a witness and there was no testimony by the Department of Corrections regarding the procedure for preservation of such videos.

The requirement of authentication will be satisfied if there is evidence presented to support a finding that the item is what the proponent claims it is. Pennsylvania Rules of Evidence Rule 901(a). Rule 901(11)(B) of the Pennsylvania Rules of Evidence states that Digital Evidence may be authenticated by circumstantial evidence such as: "(i) identifying content, or (ii) proof of ownership, possession, control, or access to a device or account at the relevant time when corroborated by circumstances indicating authorship.

Here, Agent Mazzacco testified to the content of the videos. He specifically identified the Defendant and the individual incarcerated.¹ He also testified as to how he obtained the video. He obtained the videos through an email account associated with the State Parole's intelligence agency a, .gov, email address.²

This Court believes that the circumstance evidence testified to by Agent Mazzacco satisfies the authentication requirement of the Rules of Evidence.

Motion to Arrest Judgement

In his Motion to Arrest Judgement the Defendant argues that this Court erred when it denied its motion for suppression based upon the evidence captured in the videos presented at trial was stale, and therefore, anything found after the search of the Defendant's home by State Parole would be considered fruit of the poisonous tree.

State Parole Agents under PA ST 61 Pa C.S.A. § 6182(d)(2) have the power to search the resident of a supervised offender 'if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the department-supervised offender contains contraband or other evidence of violations of the conditions of supervision'. There is no question that the State Parole Agent had reasonable suspicion to conduct a search of the Defendant's residence.

At the time of trial Agent Mazzacco testified that his Office had received the email containing the screenshots of the video at issue here on the 25th of September, 2022.³ The search of the Defendant's residence happened on the 28th. The Agent further testified that the reason the search did not happen until the 28th was because they needed to coordinate with a K9 unit as

¹ Trial Transcript pg. 38

² Id., pg. 95

³ Id., pg. 91

required by their procedure to be at the search. Nonetheless the search was conducted only three (3) days after the State Parole Agents received the information.

This Court believes the Agents conducted a search in a reasonable time under the circumstances in this case, and therefore the search was not stale.

ORDER

AND NOW, this day of December 2023, the Defendant's motion for a new trial and motion to arrest judgement is DENIED.

BY THE COURT

Kenneth D. Brown, Senior Judge

KDB/kbc

cc: DA
 Tyler Calkins, Esq
 Gary Weber, Esq.