

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1400-2024
	:
vs.	: Opinion and Order re Omnibus
	: Pre-Trial Motion, Motion to Dismiss,
TYREE TAQUAN MOY,	: and Brady Sanctions
Defendant	:

OPINION AND ORDER

This matter came before the court on March 4, 2025, April 15, 2025, and July 14, 2025 for hearings on Moy's motions, including his omnibus pre-trial motion (OPTM). The court issued orders on May 16, 2025 addressing the discovery motion and the request for habeas relief contained in the OPTM. This Opinion and Order will address the remaining issues in the OPTM, which consist of a motion to suppress evidence, a challenge to the veracity of statements in the affidavit of probable cause, and a *Barker* motion to dismiss.

By way of background, on or about September 9, 2024, the Commonwealth charged Moy with delivery of a controlled substance (cocaine), an ungraded felony, and criminal use of a communication facility for arranging via cell phone a delivery of cocaine to a confidential informant (CI) on June 6, 2024. Detectives with the Lycoming County Narcotics Enforcement Unit (LCNEU) provided the CI with a consensual video recording device to use during the controlled buy. Detectives also set up surveillance details to monitor Moy's movements and requested video surveillance from cameras at the EconoLodge and Sheetz on East Third Street in Loyalsock Township. Detective Kevin Dent also used a video recorder to capture an image of Moy exiting the Sheetz.

In his motion to suppress and his brief, Moy contends that the all of the videos must be suppressed. He contends that the video from the recording device used by the CI must be

suppressed because the Wiretap Act was violated. He contends that video from Sheetz must be suppressed because the detectives did not get a warrant to obtain it. He contends that the video of him leaving Sheetz taken by Detective Dent must be suppressed because there was no warrant and he has an expectation of privacy in his image despite being in a public place.

The Commonwealth asserts that Moy is not entitled to suppress. The Commonwealth argues that the Wiretap Act does not apply because there was no audio on the recording made by the CI and that even if the Wiretap Act applied, the Commonwealth satisfied the exception contained in 18 Pa.C.S.A. §5704(2)(ii). The Commonwealth contends that consent is an exception to the warrant requirement and it requested the video from Sheetz and it was voluntarily provided. The Commonwealth also asserts that Moy has no reasonable expectation of privacy in his image or the activities that he engages in a public place.

In his challenge to the veracity of the statements in the affidavit of probable cause, Moy contends that the affidavit failed to disclose that the surveillance video and the video or photograph of him were obtained illegally. The Commonwealth contends this argument lacks merit because the surveillance video was obtained via consent from Sheetz and Moy did not have a reasonable expectation of privacy in his image as he was exiting the Sheetz.

In his *Barker* motion, Moy contends that there were 395 days between the filing of the complaint and his arrest and due to the delay, he is entitled to dismissal of the charges. The Commonwealth contends that Moy's assertions are belied by the record and that the delay in this case was as a result of Moy's motions and he has not shown prejudice.

DISCUSSION

A. Suppression Motion

1. Wiretap Act

Moy first asserts that the recording made by the CI must be suppressed because the Commonwealth did not comply with the Wiretap Act. The court cannot agree.

The Wiretap Act states:

Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he:

- (1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;
- (2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or
- (3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

18 Pa. C.S.A. §5703. The terms wire communication, electronic communication and oral communication are specifically defined as follows:

“Electronic communication.” Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system, except:

- (1) Deleted.
- (2) Any wire or oral communication.
- (3) Any communication made through a tone-only paging device.
- (4) Any communication from a tracking device (as defined in this section).

“Oral communication.” Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation.

“Wire communication.” Any aural transfer made in whole or in part through the use of facilities for the transmission of communication by wire, cable or other like connection between the point of origin and the point of reception, including the use of such a connection in a switching station, furnished or operated by a telephone, telegraph or radio company for hire as a communication common carrier.

See 18 Pa. C.S.A. 5702.¹ The court acknowledges that section 5708 generally requires a court order to lawfully intercept wire, electronic or oral communications. However, if the activity does not meet the definition of a wire, electronic or oral communication, Section 5708 does not apply. Detective Robert Anderson testified that the recording was only video; there was no audio. Therefore, what was captured on the video recording device by the CI does not meet the definition of wire, electronic or oral communication.

The recording is not a wire communication or an oral communication because there was no sound or audio on the recording. Oral means by word of mouth or spoken rather than written. Aural means relating to the ear or the sense of hearing.

The recording does not meet the definition of an electronic communication because there was no evidence that the images and/or data on the recording were transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system. Instead, the testimony presented at the hearing was that the recording was not transmitted at all. It was merely saved on the device (which Moy refers to as a converter box).²

Furthermore, to prevail on a suppression motion, an individual must have a reasonable expectation of privacy in the place invaded or the item seized. *See Commonwealth*

¹ There are several exceptions to the definition of an oral communication, which are not relevant for purposes of this decision.

² The court rejects the Commonwealth's argument that it met the exception contained in 18 Pa. C.S.A. 5704(2)(ii), because the Commonwealth did not present any evidence that the district attorney (or an assistant district attorney designated in writing by the district attorney) reviewed the facts of this particular case and was satisfied that Perry's consent to being recorded or using the recording device was voluntary. The law enforcement officers, in this case the LCNEU detectives, do not establish voluntary consent. Rather, the district attorney or his or her designee does.

v. Enimpah, 630 Pa. 357, 106 A.3d 695, 699 (2014)(“The expectation of privacy is an inquiry into the validity of the search or seizure itself; if the defendant has no protected privacy interest, neither the Fourth Amendment nor Article I, § 8 is implicated.”). An individual generally does not have a reasonable expectation of privacy in the vehicle or home of another. *See Commonwealth v. Moore*, 310 A.3d 802, 808-09 (Pa. Super. 2024)(appellant did not have a reasonable expectation of privacy in a vehicle which he did not own, that was not registered to him, and for he had not shown the authority to operate); *Commonwealth v. Viall*, 890 A.2d 419, 423 (Pa. Super. 2005)(an ordinary passenger in an automobile does not by his mere presence have a legitimate expectation of privacy in the entire passenger compartment of a vehicle); *Commonwealth v. Mechalski*, 707 A.2d 528 (Pa. Super. 1998)(*Brion* does not require suppression when the appellant was not in his own home but that of another; the expectation of privacy is only reasonable and legitimate when one enters one's own house).

The testimony presented showed that the CI had the recording device inside his vehicle. Moy got into the CI’s vehicle to conduct the drug transaction. Moy did not have a reasonable expectation of privacy in the CI’s vehicle.

Additionally, Detective Anderson testified that he did not believe that Moy was captured on the video.

For the foregoing reasons, the court rejects Moy’s claim that he is entitled to suppression of the video recording made by the CI.

2. Lack of Warrant For surveillance videos and still photographs

Moy next contends that the surveillance videos from Sheetz and the still photograph from the EconoLodge surveillance as well as the video taken by Detective Dent of Moy exiting Sheetz

must be suppressed because the LCNEU did not obtain warrants for these items. Again, the court cannot agree.

There are several recognized exceptions to the warrant requirement. One such exception is consent. *See Fernandez v. California*, 571 U.S. 292, 298, 134 S.Ct. 1126, 1132 (2014)(consent searches are constitutionally permissible and wholly legitimate aspect of effective police activity); *Commonwealth v. Strickler*, 563 Pa 47, 56, 757 A.2d 884, 888 (2000).

Detective Anderson testified that he contacted the manager of Sheetz and gave that individual the dates and times of the footage he was seeking and the case (incident) number. He indicated that with that information, Sheetz voluntarily consented to providing the requested information to him and provided it to him via email. If Sheetz had not consented, then he would have sought a search warrant. Similarly, he contacted the EconoLodge and asked them for a still photograph from their screen and they provided it to him.

Lisa Lilly, an employee at Sheetz, also testified. She stated that when she gets a request for video, she sends it to the corporate office. If Sheetz receives a subpoena or an open case number, Sheetz cooperates and the corporate office provides the requested video footage. She believed that she received a subpoena and faxed it to the corporate office. There also is a sign posted in Sheetz to notify the customers and employees that they are being recorded.

The evidence showed that Sheetz and the EconoLodge voluntarily provided the requested items to the LCNEU. Therefore, a search warrant was not required.

With respect to the video taken by Detective Dent, he testified that he used a video recorder to capture Moy as he exited Sheetz. He did not record Moy's voice, but only his

image. Detective Dent also testified that he is trained on the Wiretap Act and he did not need a warrant or other paperwork to video record Moy as part of this criminal investigation. Contrary to Moy's arguments, he did not have a reasonable expectation of privacy in his image as he exited Sheetz. As the United States Supreme Court has stated: "What a person knowingly exposes to the public, even in his own home or office, is not subject to Fourth Amendment protection. *California v. Ciraolo*, 476 U.S. 207, 213, 106 S.Ct. 1809, 1813 (1986), quoting *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511 (1967).

Moy contends that a warrant was required in *Katz*; therefore, a warrant is required here. Moy's reliance on *Katz* is misplaced. In *Katz*, the government was using a recording device attached to the outside of a telephone booth to listen to and record the conversations Katz was having while on the telephone inside the phone booth. Here, Detective Dent did not record any conversations or other audio of Moy; he only made a video recording of Moy. Furthermore, Moy was not inside the privacy of a telephone booth. He was exiting a business that was open to the public.

For the foregoing reasons, the court will deny Moy's motion to suppress the video surveillance from Sheetz, the still photograph from the EconoLodge and the video recording made by Detective Dent.

B. Veracity of Statements in Affidavit of Probable Cause

Moy contends that affidavit of probable cause was defective because it failed to include information regarding the illegality of obtaining the surveillance video and still photograph without a warrant. As the court has found that these items were lawfully acquired without a warrant with the consent of Sheetz and the EconoLodge, the court will also deny this claim, as well as Moy's separate motion to dismiss the charges based on this

argument.

C. Barker motion to dismiss

Moy next contends that he is entitled to dismissal pursuant to *Barker*³ for a violation of his speedy trial rights. Moy asserts that there were 395 days between the filing of the complaint and his arrest. This factual assertion is belied by the record.

The offense in this case on June 6, 2024. The criminal complaint was filed on September 9, 2024 and Moy's preliminary arraignment was held on September 18, 2024. Therefore, there was at most nine days between the filing of the complaint and his arrest. Moy filed his *Barker* motion approximately three months after the charges were filed.

Barker sets forth a four-factor balancing test to determine whether charges should be dismissed due to delay: (1) the length of the delay and whether it is sufficient to trigger further inquiry; (2) the reasons for the delay; (3) a defendant's assertion of his right; and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530; *Commonwealth v. Miskovitch*, 64 A.3d 672, 679 (Pa. Super. 2013).

The court rejects Moy's claim. Firstly, the delay was not sufficient to trigger further inquiry. Moy asserted his claim a mere 85 days after the complaint was filed. Secondly, the delay was caused by Moy, his motions, and his failure to accurately and completely understand the law. It was not caused by the Commonwealth. Finally, Moy has not shown any actual prejudice from the delay.

In his motion for *Brady* sanctions and the remaining part of his motion to dismiss, Moy asserts that the charges against him must be dismissed because the Commonwealth has failed to provide any paperwork for Thomas Perry to be used as a confidential informant.

The court cannot agree. The Commonwealth and the court have told Moy numerous times that the *Brady* information that he contends exist which predominantly is warrants or paperwork for Thomas Perry, the video recording device he used, the surveillance videos and photographs from Sheetz and the EconoLodge, and for the video of him leaving Sheetz taken by Detective Dent does not exist. The police did not need warrants or other paperwork to obtain these items, use Thomas Perry as a CI, or conduct a criminal investigation of his drug activities.

ORDER

AND NOW, this 6th day of October 2025, the court denies the remainder of Moy's Omnibus Pre-Trial Motion, his Motion to Dismiss and his Motion for *Brady* sanctions.

By The Court,

Nancy L. Butts, President Judge

cc: Lindsay Sweeley, Esquire (ADA)
Tyree Moy, c/o Lycoming County Prison
Taylor Paulhamus, Esquire (standby counsel)

³ *Barker v. Wingo*, 407 U.S. 514 (1972).