

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

MATTHEW HAMMEL,
Defendant

:
:
:
:
:
:

No. CR-1185-2019

Seth E. Miller, Esquire
Assistant District Attorney

Counsel for the Commonwealth

Eric Wilttrout, Esquire
Assistant Public Defender

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 11, 2020

Matthew Hammel (hereinafter "the Defendant"), has been charged with one count of Robbery- Threat of Immediate Serious Injury (18 Pa. C.S.A. § 3701(a)(1)(ii)); Theft by Unlawful Taking- Movable Property (18 Pa. C.S.A. § 3921(a)); Receiving Stolen Property (18 Pa. C.S.A. § 3925(a)); and Recklessly Endangering Another Person (18 Pa. C.S.A. § 2705). Presently before this Court is Defendant's "Omnibus Pre-Trial Motion," in which he challenges his arrest and the search of his residence. Based on the testimony presented before the undersigned, the post-hearing briefs submitted by counsel, and for the reasons which follow, we will deny the Defendant's motion.

FINDINGS OF FACT

On October 1, 2019, at approximately 12:30 a.m., Mandy Hamm, in her capacity as a Domino's Pizza employee, left the Domino's restaurant, located at 182 South Sargent Stanley Hoffman Boulevard, Lehigh, Pennsylvania, with a delivery driver to take a nightly cash deposit to Community Bank. The delivery driver, who was to accompany her to the bank, had already entered his vehicle, which was facing Ms. Hamm's vehicle. Ms. Hamm had attempted to enter her vehicle when a masked man holding a gun forcibly grabbed her car door and demanded that she turn over the money while waving the gun in her face. Ms. Hamm immediately threw the deposit bag out of the vehicle and closed her door while the gunman ran to retrieve the bag.

After the man had fled, Ms. Hamm summoned police to the scene. Patrolman Joel Gulla (hereinafter "Officer Gulla") of the Lehigh Borough Police Department responded five to ten minutes later. He spoke to Ms. Hamm about the events that had transpired. She was able to describe the person who had robbed her as a man, because of his deep voice. She also remembered that he had been wearing a black sweatshirt as well as a clear "Halloween-type" mask. Ms. Hamm further relayed the direction in which the robber had fled, which was toward 146 Bankway Street in Lehigh, where the Defendant resides.

After Officer Gulla finished speaking with Ms. Hamm, Ashley Gery, a Domino's district manager, arrived on scene. Officer Gulla spoke with Ms. Gery and the delivery driver, who had observed the robbery. Ashley Gery had indicated that she believed the robber to be the Defendant, who was a former Domino's employee and had knowledge of the bank deposit schedule. Additionally, Officer Gulla suspected that a former employee could be involved based on the timing of the incident.

After reviewing the surveillance video, Officer Gulla proceeded in the direction that Ms. Hamm had seen the robber flee. It was discovered that the path in that direction led to the Defendant's residence. While following the path, Officer Gulla was informed that Officer Michael Fedor (hereinafter "Officer Fedor") of the Franklin Township Police Department, had found a hat in a field near the Defendant's residence. The hat was unusually dry, considering that it had rained earlier in the day. Officer Gulla arrived at Officer Fedor's location and took the hat into evidence. While continuing in the direction suggested by Ms. Hamm, the officers located a set of footprints on the wet ground. The tracks led to the end of the field that was directly across from the Defendant's residence. It was in this area that the officers recovered a mask and a black hooded sweatshirt consistent with the items described by the witnesses as having been worn by the robber. The sweatshirt was wet, but

"not soaked" and contained traces of mud and dog hair. Officer Gulla knew from previous encounters with the Defendant that he owned a dog. The mask contained traces of blood.

Officer Gulla then called for backup police units before making contact with the Defendant. Officer Gulla was ultimately able to approach the door of the Defendant's residence accompanied by two other officers. Two officers, including Officer Fedor, were stationed in the back of the residence to prevent the Defendant from escaping.

While approaching the door, Officer Gulla noticed some activity in the kitchen of the residence. The door swung open when Officer Gulla knocked. He pulled the door back but noticed the Defendant looking around the corner. Officer Gulla called the Defendant to the door. When the Defendant complied, Officer Gulla immediately noticed that the he was sweaty and had blood running down his arm. Due to the nature of the offense, the Defendant was detained and patted down for officer safety.

Officer Gulla explained to the Defendant that he would be transported to the police station for questioning. He asked the Defendant about other occupants of the house. The Defendant mentioned that his girlfriend, Lindsey Moore, was inside with the children, who were sleeping. Officer Gulla asked the Defendant if he could speak with Ms. Moore for purposes of the children's safety. The Defendant agreed. While speaking with

Ms. Moore, Officer Gulla asked for her permission to search the residence for the stolen items. Ms. Moore gave the officers consent to search the house. Officer Gulla found two hundred sixteen dollars (\$216) in United States currency as a result of that search. Later that morning, Officer Fedor returned to the residence and, after again obtaining Ms. Moore's consent, found a Community Bank deposit bag. Officer Fedor testified that Ms. Moore resided at the house.

CONCLUSIONS OF LAW

1. Officer Gulla had probable cause to detain the Defendant at his residence and conduct a warrantless search based on the totality of the circumstances within his knowledge at the time of the encounter.
2. Exigent circumstances existed in this case which justified the officers entering the Defendant's home to detain him and conduct a search of the residence.

DISCUSSION

The Defendant contends in his suppression motion that both the warrantless search of his residence and the seizure of his person were unconstitutional. He further contends that all evidence obtained subsequent to entering the house is likewise unconstitutional under the "fruit of the poisonous tree" doctrine. Therefore, the Defendant requests that this Court suppress the following evidence: the maroon colored Community

Bank deposit bag and two hundred sixteen dollars (\$216) of United States currency found at 146 Bankway Street; all written, audio, or verbal statements made by the Defendant in relation to the incident of October 1, 2019; any written, audio, or verbal statements made by Lindsey Moore to law enforcement officers related to the incident of October 1, 2019; and any observations made by law enforcement officers while inside the residence which the Commonwealth intends to use against the Defendant at trial.

It is uncontested that the officers involved in this case did not obtain a warrant for the seizure of the Defendant or the subsequent search of his residence. In a private residence, "searches and seizures without a warrant are presumptively unreasonable..." Arizona v. Hicks, 480 U.S. 321, 327 (1987). Absent probable cause and exigent circumstances, the entry of a home without a warrant is prohibited under the Fourth Amendment. Payton v. New York, 445 U.S. 573, 583-90 (1980).

A. Officer Gulla had probable cause to detain the Defendant and search his residence based on the totality of the circumstances.

Probable cause, the first part of a two-prong test for warrantless searches and seizures, is determined by a totality of the circumstances test. Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008). While more than mere suspicion is

required to meet the probable cause standard, a police officer can use facts and circumstances within their knowledge.

Commonwealth v. Lechner, 685 A.2d 1014, 1016 (Pa. 1996).

There have been numerous cases in Pennsylvania that have analyzed the issue of probable cause in relation to warrantless searches and seizures. In Commonwealth v. Brogdon, the police were found to have probable cause to make a warrantless public arrest of the defendant where their knowledge of his identity stemmed from an identification by both a co-defendant and a civilian witness, as well as the officers' own suspicions based on past experiences with the defendant. Commonwealth v. Brogdon, 220 A.3d 592, 596 (Pa. Super. 2019). The Superior Court in Brogdon ruled that "[w]hile the [police] must have a reasonable belief in the probability of criminal activity by the person to be arrested, the belief may rest solely in information supplied by another person where there is a 'substantial basis' for crediting that information." Id. at 600 (citing Commonwealth v. Rutigliano, 456 A.2d 654, 657 (Pa. Super. 1986)).

In the case of Commonwealth v. Jones, after an armed robbery of a convenience store, the police received information by radio that the robbers were "'four or five Negro males between the ages of 17 and 21 in dark clothing' and that they had fled eastward." Commonwealth v. Jones, 322 A.2d 119, 122

(Pa. 1974). The suspects were pursued by a civilian witness.
Id.

One officer noticed a male walking down the street at a brisk pace, breathing heavily, perspiring, and frequently looking over his shoulder. Id. The Pennsylvania Supreme Court found that there was sufficient probable cause to arrest the suspect without a warrant because "[t]he crucial test is whether there were facts available at the time of the initial apprehension which would justify a man of reasonable caution in the belief that a crime had been committed and that the individual arrested was the probable perpetrator[.]" Id. at 123 (citing McCray v. Illinois, 386 U.S. 300 (1966); Commonwealth v. DeFlaminque, 299 A.2d 246 (1973)).

Further, the Supreme Court noted that "moments after the incident and the chase that ensued, this appellant was seen approximately two blocks from the point where he alluded [sic] his original pursuers, acting as if he were being chased and having a physical appearance of one who had been running. These facts, coupled with his physical appearance which conformed to the original description, provided [an] adequate basis for the officer to reasonably believe that appellant was one of the perpetrators of the crime." Id. at 123-124.

The Superior Court of Pennsylvania upheld a warrantless arrest in Commonwealth v. Hinkson, where police were called to

the residence of two witnesses who were passengers in a truck driven by a shooting victim earlier that evening. Commonwealth v. Hinkson, 461 A.2d 616, 617 (Pa. Super. 1983). The witnesses stated that the driver was shot in the shoulder just as they had passed the defendant's residence. Both the witnesses and a local police officer stated that the defendant had a reputation for violence towards passing motorists. A witness who was not present at the scene recounted that he'd heard five (5) gunshots fired on the evening of the incident. Officers waited for additional assistance before proceeding to the defendant's residence where they requested, over a public address system, that he exit the house. The defendant eventually complied and was led away from the house, which was searched due to the officers' knowledge that the Defendant had a wife and children living in the house. Id.

The Superior Court concluded that the officers had probable cause to search the defendant's residence without a warrant. The basis for the court's decision was that the shooting occurred in front of the defendant's residence; the defendant's reputation for using a gun; the probability of firearms being found in the home; the fact that there may have been additional shots fired that were unaccounted for; that other family members resided in the residence; and that it was 2:20 a.m. at the time that the defendant was removed from the house. Id. at 618.

In the instant matter, the victim's description of the perpetrator was vague, just as it was in Jones. However, after speaking with the victim, Officer Gulla and Officer Fedor found various items of clothing that matched the description given by the victim, which were not wet from the rain, and which were scattered in a trail between the crime scene and the Defendant's residence. The officers also noticed footprints in the mud that led in the exact direction of the Defendant's residence. Additionally, the mask that was found on the trail contained visible traces of blood, which was consistent with the Defendant's bleeding arm. Officer Gulla also discovered dog hair on the clothing, which was consistent with Officer Gulla's knowledge that the Defendant owned a dog. Lastly, the Defendant appeared to have been recently running.

Despite the Defendant's argument that he was not identified by eye-witnesses, probable cause has nonetheless been established. In addition to the aforementioned circumstances, Ms. Gery and Officer Gulla had suspicions that the robber likely knew the Domino's nightly deposit schedule. The Superior Court decided in Hinkson that probable cause existed based on the facts and circumstances surrounding the incident, notwithstanding the fact that no witnesses had provided a description of the suspect.

Similar to Hinkson, the instant case involves an incident that took place in the early morning hours, the officers believed that the firearm used in the crime would be located in the residence, and the officers knew prior to searching the residence that there were children present. Therefore, based upon the totality of the circumstances relative to the facts that were known to Officer Gulla and Officer Fedor at the time of the arrest and search, we find that the officers had probable cause to arrest the Defendant and search the residence without obtaining a warrant.

B. Exigent circumstances existed to justify the warrantless entry of the Defendant's home due to the officers' safety concerns.

Once probable cause is established, the Court must then turn to the issue of whether exigent circumstances existed to justify the warrantless entry of a private residence. The Court should consider a number of factors in making this determination, including: (1) the gravity of the offense; (2) whether the suspect is reasonably believed to be armed; (3) whether there is a showing of probable cause; (4) whether there is a strong reason to believe that the suspect is within the premises being entered; (5) whether there is a likelihood that the suspect will escape if not swiftly apprehended; (6) whether

the entry was peaceable; and (7) the time of entry.

Commonwealth v. Roland, 637 A.2d 269, 270-271 (Pa.1994).

In addition to the factors listed hereinabove, the Court may also consider other factors in determining whether exigent circumstances existed, including, but not limited to, "the hot pursuit of a fleeing felon, a likelihood that evidence will be destroyed if police take time to obtain a warrant, or danger to police or other persons inside or outside of the dwelling." Id. at 271. However, "police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests." Id.

The Pennsylvania Superior Court found that exigent circumstances existed in Hickson, which justified a warrantless search of the Defendant's residence. Hinkson, 461 A.2d at 618. The officer in Hinkson admitted that he was not convinced that it was the defendant who fired the shots at the time that he confronted him. However, he had concerns that the defendant could be holding additional injured persons hostage and that public safety could be at risk if he waited for a warrant. Id. at 619. The Superior Court found that the police acted properly in light of the aforementioned concerns.

In the instant matter, it is undisputed that the Defendant was suspected of having committed armed robbery at the time of the warrantless arrest and search. Additionally, the officers

knew that the crime involved a firearm, which they believed was in the Defendant's possession during their interaction with him. As we have previously determined, the officers had probable cause to arrest the Defendant and conduct a search of his residence. Additionally, the officers were aware that the Defendant was inside of the residence, but made no attempt to forcibly enter. Lastly, we again note that the events in this case took place in the early morning hours.

With regard to the evidence seized by the police during their search of the Defendant's residence, we recognize that such evidence could have been destroyed or relocated had the officers waited to obtain a search warrant. The Defendant had admitted to police that he had already spent some of the money that was taken from the victim.

Finally, because the crime involved a firearm and children were present in the residence, we find that the officers had a legitimate concern for public safety. We find that the facts in this case are akin to Hinkson regarding the officers' motivations for conducting a warrantless search. We further find that Officer Gulla and Officer Fedor have met the heavy burden of demonstrating an urgent need to perform a warrantless arrest and search.

CONCLUSION

For the reasons set forth hereinabove, the Defendant's "Omnibus Pre-Trial Motion" will be denied and we will enter the following

COMMONWEALTH OF PENNSYLVANIA

vs.

MATTHEW HAMMEL,
Defendant

Seth E. Miller, Esquire
Assistant District Attorney

Eric Wilttrout, Esquire
Assistant Public Defender

:
:
:
:
:
:

No. CR-1185-2019

Counsel for the Commonwealth

Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 11th day of December, 2020, upon consideration of Defendant's "Omnibus Pre-Trial Motion," and the hearing held thereon, and following our review of the post-hearing briefs filed by counsel, and in accordance with our memorandum opinion bearing even date herewith, it is hereby

ORDERED and DECREED that the Defendant's "Omnibus Pre-Trial Motion" is DENIED.

IT IS FURTHER ORDERED and DECREED that the parties shall appear for a Guilty Plea Hearing at 1:15 p.m. on February 16, 2021 in Courtroom No. 3 of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:



Steven R. Serfass, J.