IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	
vs.	:	**No. CR 1351-2016**
	:	
NIKOLAS W. TAYLOR,	:	
	:	
Defendant	:	

Michael S. Greek, Esquire	Counsel for Commonwealth Assistant District Attorney
Matthew J. Mottola, Esquire	Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - June 28 , 2017

Before this Court is a Motion to Suppress filed by Defendant, Nikolas W. Taylor. Defendant seeks to suppress all physical evidence seized in this case, as well as his confession. For the reasons stated within this Opinion, upon consideration of Defendant's "SUPPRESSION MOTION," and after a hearing held thereon, and after reviewing Defendant's Brief in Support, as well as the Commonwealth's Brief in Opposition, Defendant's Petition is **DENIED.**

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 11:00 a.m. on September 13, 2016, Chief Jack Soberick of the Lansford Police received a call from one Jennifer Marchorro. She was a tenant of an apartment unit at 135 West Ridge Street, which included a basement. She explained that she was

allowing Nikolas Taylor, Defendant in this case, to stay in her basement temporarily. She claimed she was concerned because Defendant was in possession of a handgun, which she did not want in her house. She stated she had seen the gun, that it was loaded, and that its handle was wrapped with digicam-patterned duct tape. Chief Soberick was familiar with Defendant's criminal history and knew Defendant was precluded from possessing a firearm. He responded to 135 West Ridge Street with Officers Sean Nunemacher, Carl Breiner, and Derek Marouchoc accompanying him. The four officers were granted entry at that address by Ms. Marchorro, who then gave them permission to go into the basement.

The officers entered the basement and noted it was unfinished and not set up for living. It contained a slop sink and storage space, though a makeshift room had been created by cordoning off an area with thin, nearly transparent sheets hung from the rafters. The "room"[1] was brightly lit from within, enabling the officers to see through the sheets. The officers called out to Defendant, who was inside the "room" engaging in sexual intercourse with a female companion. Defendant and his companion exited the "room" and were detained without incident. Officer Nunemacher approached the entrance to the "room"—an opening in the sheets—and yelled back to

[1] The Court will employ the use of quotation marks throughout this Opinion as a reminder that the "room" in question was not a room in the traditional sense, but it was nonetheless meant to function as one. The Court will use "room" to refer only to the area of the basement that was cordoned off by the sheets.

the other officers that there were improvised weapons and ammunition on a table within. Chief Soberick also approached the entrance and called back to then-detained Defendant, asking him where the gun was. Defendant responded that there was no gun. Chief Soberick indicated they could see the ammunition, to which Defendant responded it belonged to a firearm he had owned previously but no longer had.

Chief Soberick and Officers Nunemacher and Breiner entered the "room" and could see on the table homemade weapons wrapped with digicam tape. An open backpack was located near the "bed,"[2] and in plain view within the backpack was a roll of digicam tape. Officer Breiner turned back toward the entrance of the "room" and glimpsed an object wrapped with digicam tape protruding from a space in the floor joists above the "door."[3] He reached up and removed a 9 mm handgun with a loaded magazine and a round in the chamber. At that point in time, the officers exited the "room" and ceased their search. Chief Soberick left to obtain a search warrant. After obtaining one, he returned and the officers resumed searching the rest of the "room." They ultimately found a black gun case, a bottle with pills inside, a notebook containing descriptions of the locations of stolen items, $376.00 in currency,

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[2] *See* n.1; "[H]e had, like, a bed type thing there." 1/20/17 Suppression Hearing Tr. at 12.

[3] *See* n.1; "I don't even know what you want to call it, the top of the door or the top of the door frame?" "Yeah. It would have been, like, the top of the wall for the area we were in." 1/20/17 Suppression Hearing Tr. at 49.

and a black lockbox containing scales, weights, bags, and clear crystal rocks, which later tested positive for methamphetamine.

Defendant was read his Miranda rights and taken into custody. At the police station he gave two voluntary written statements, wherein he admitted purchasing the handgun. He stated the makeshift weapons were for self-defense.

Defendant has been charged with three different drug counts and two weapons counts.[4]

DISCUSSION

Defendant has filed a Suppression Motion arguing that the officers in this case initially entered and searched his "room" in the basement without a search warrant and not under the auspices of a warrant exception. Defendant avers that because the initial search was unconstitutional, the subsequently granted search warrant based upon that search and the evidence gathered as a result, including all the physical evidence as well as Defendant's written statements, were fruits of the poisonous tree.

I. THE WARRANTLESS ENTRY INTO DEFENDANT'S "ROOM"

In a motion to suppress evidence, it is the Commonwealth's burden to establish that the evidence in question was not obtained in violation of the defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979). "The Fourth Amendment of

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[4] 35 P.S. § 780-113 (a)(30), (32), (16); 18 Pa.C.S.A. § 6105 (a)(1), § 908 (a).

the United States Constitution and Article I, Section VIII of the Pennsylvania Constitution guarantee individuals freedom from unreasonable searches and seizures." *Commonwealth v. El*, 933 A.2d 657, 660 (Pa. Super. Ct. 2007). A warrantless search and seizure is presumptively unreasonable unless a few specifically established, well-delineated exceptions apply. *Commonwealth v. McCree*, 924 A.2d 621, 627 (Pa. 2007); *Katz v. United States*, 389 U.S. 347, 357 (1967). However, when a defendant seeks to suppress the evidentiary fruits of a search and seizure, "he must, *as a threshold matter*, establish that he has a legally cognizable expectation of privacy in the premises which were searched." *Commonwealth v. Strickland*, 707 A.2d 531, 534 (Pa. Super. Ct. 1998) (citation omitted). Therefore, prior to addressing whether the police in this case acted under a valid exception to the warrant requirement, it must be determined whether Defendant harbored a legally cognizable expectation of privacy in Ms. Marchorro's apartment.

A. Defendant's Expectation of Privacy in the Searched Premises

In establishing Defendant's standing to challenge the search and seizure in this case, the court must decide whether (1) he exhibited a subjective expectation of privacy, and whether (2) it has been demonstrated that the expectation is one that society is prepared to recognize as reasonable and legitimate. *Commonwealth*

v. Gordon, 683 A.2d 253, 256 (Pa. 1996). It is Defendant's burden to prove "that his subjective expectation of privacy is one that society is willing to recognize as legitimate . . . [he] must establish more than just a subjective expectation of freedom from intrusion." *Id.* at 256.

In this case, Defendant clearly had a subjective expectation of privacy in the makeshift room in the basement. Apart from the fact that he was sleeping there and kept personal items there, he was comfortable enough in his surroundings to engage in sexual intercourse with his companion. The question then becomes whether that subjective expectation of privacy is one that society is prepared to recognize as reasonable. The United States Supreme Court has held that an overnight guest has a reasonable expectation of privacy in the home where s/he is staying. *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990). Ms. Marchorro explained to the police that she was allowing Defendant to stay in her basement temporarily. Thus, Defendant's status as an overnight guest confirms that he had a legally cognizable expectation of privacy in Ms. Marchorro's home. Therefore, Defendant has standing to challenge the warrantless search of the makeshift room, and the analysis next turns to whether the police in this case acted in accordance with a valid exception to the warrant requirement.

B. Consent Exception to the Warrant Requirement

"The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, authority over the area in common with a co-occupant who later objects to the use of evidence so obtained." *Georgia v. Randolph*, 547 U.S. 103, 106 (2006) (citing *Illinois v. Rodriguez*, 497 U.S. 177 (1990); *United States v. Matlock*, 415 U.S. 164 (1974)). "[B]y virtue of living in a residence with other inhabitants, a co-inhabitant assumes the risk that one of the residents may permit the common area to be searched." *Commonwealth v. Hughes*, 836 A.2d 893, 903 (Pa. 2003) (plurality opinion). "[T]he concept of common authority is based on mutual use of the property rather than a mere property interest." *Commonwealth v. Basking*, 970 A.2d 1181, 1188 (Pa. Super. Ct. 2009) (citation and internal quotation marks omitted).

In *Commonwealth v. O'Neal*, 429 A.2d 1189 (Pa. Super. Ct. 1981), a case somewhat similar to the present case, the Pennsylvania Superior Court addressed whether the lessee of a home had the authority to consent to a search of a bedroom used exclusively by a temporary gratuitous house guest. In *O'Neal*, the lessee of a house, Harrison, received information that stolen goods were in his home. *Id.* at 1190. Acting on that information, Harrison went to the police and asked them to search his house, even signing

a consent to search form. *Id.* At the time, the defendant in that case and the defendant's wife were temporary house guests in Harrison's home. *Id.* They shared kitchen and bathroom facilities with Harrison, but were the exclusive occupants of one of the bedrooms. *Id.* When the police searched the home, they searched the defendant's bedroom, even though the bedroom door and closet door within the bedroom were closed prior to the time of the search. *Id.* Stolen property was ultimately found in the defendant's bedroom and he was charged with theft. *Id.* at 1190-91. The Superior Court held that the defendant had a protected, reasonable expectation of privacy in the bedroom, which Harrison could not legally waive by consenting to a warrantless search. *Id.* at 1191. In reaching the conclusion that the defendant's bedroom was not a common area of the house, the Superior Court noted that the defendant and his wife were the exclusive occupants of the bedroom, the door to the bedroom and the closet within were both closed prior to the time of the search, the only connection Harrison had with the bedroom at the time was that he owned the dresser and bed therein, and that the defendant had expected that his use of the bedroom and closet were private. *Id.* at 1190-91.

Defendant relies on the holding of *O'Neal* to support his argument that Ms. Marchorro did not have the authority to consent

to the search of his makeshift room in the basement.[5] He argues that the two cases are factually analogous, with the sole difference being that the *O'Neal* defendant had his bedroom door closed, while Defendant here did not have a bedroom door to speak of.[6] Nonetheless, Defendant contends this fact is not dispositive and does not invalidate his privacy expectation in the sheeted area.[7] This Court does not agree with this characterization of the facts.

It should first be clarified that Defendant has not argued he had sole dominion over the entire basement in this case—rather, he merely asserts that his private and exclusive "space" was the corner of the basement that was cordoned off by the sheets. In fact, Defendant stipulated that Ms. Marchorro had given the police consent to enter the basement.[8] Further, the basement was described as a storage area with a slop sink, not set up for living, and containing the apartment's heating unit and other general housing mechanisms.[9] The basement itself was inarguably a common area, as it was used for storage and based on the fact that any necessary maintenance of the apartment's mechanisms would require general access to the basement. Defendant does not argue otherwise.

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[5] Def.'s Br. at 15-16.
[6] *Id.* at 15.
[7] *Id.* at 15-16.
[8] 1/20/17 Suppression Hearing Tr. at 10-11.
[9] *Id.* at 12.

As the basement on the whole was a common area, it is illogical to conclude that while the police could be granted consent to be present in and search one half of the basement, that consent would not extend to Defendant's makeshift room in these circumstances. The testimony established that the sheets were the only thing separating the one area from the other, and that these did not even virtually serve that purpose, as they were essentially transparent. Defendant maintains that the sole distinction between this case and *O'Neal* is the absence of a closed door, but it is more accurate to say that, in addition to no door, Defendant lacked even the illusion of walls. A room with no walls is no room at all, and any subjective expectation of privacy in such a space amidst a common area is not a reasonable one. In practice, Defendant's "room" in this case was more akin to a pillow fort a child might construct in his parents' living room than the bedroom in question in *O'Neal*. Chief Soberick made such a comparison during his testimony.[10] Truthfully, even a pillow fort would afford a greater expectation of privacy, as the "walls" would at least be opaque. Therefore, much like pillows and couch cushions in a living room would not provide a protected, reasonable expectation of

[10] 1/20/17 Suppression Hearing Tr. at 12 ("He had it set up . . . like kids set up like a little bunk house when they're, you know, making a hut in the house or whatever.").

privacy, neither does Defendant's sheet. He is sheet out of luck, as it were.

As such, the police properly acted under the consent exception to the warrant requirement in this case when they searched the area of the basement where Defendant was staying.

II. OFFICER BREINER'S JUSTIFICATION IN MOVING THE ITEM HE SAW IN THE CEILING

The Court need not delve into this argument beyond drawing the following conclusions: (1) Ms. Marchorro had stated to the police that she had seen the handgun and described its handle as being wrapped in digicam-patterned duct tape, (2) she explicitly gave the police consent to search the basement for that handgun, (3) Officer Breiner testified he saw an item tucked away in a space in the floor joists above his head that was wrapped in digicam-patterned duct tape,[11] and thus (4) Officer Breiner had probable cause to inspect that item to determine if it was the handgun in question.

III. THE TAINTING OF EVIDENCE SUBSEQUENT TO THE INITIAL SEARCH

Having concluded that the initial entry into and searching of Defendant's makeshift room and the seizure of the weapons therein were lawful, Defendant's third argument is moot and need not be addressed.

Accordingly, the Court enters the following order:

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[11] 1/20/17 Suppression Hearing Tr. at 48-50.

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Michael S. Greek, Esquire — Counsel for Commonwealth
Assistant District Attorney
Matthew J. Mottola, Esquire — Counsel for Defendant

ORDER OF COURT

AND NOW, this 28TH day of June, 2017, upon consideration of Defendant's "SUPPRESSION MOTION," and after a hearing held thereon, and after reviewing Defendant's Brief in Support, as well as the Commonwealth's Brief in Opposition, it is hereby **ORDERED** and **DECREED** that Defendant's Suppression Motion is **DENIED**.

BY THE COURT:

Joseph J. Matika, J.