

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

COMMONWEALTH OF PENNSYLVANIA, :

v. : No. CR-1523-2017

ROBERT HENRY FREEMAN, JR., :
Defendant :

Cynthia Dyrda-Hatton, Esquire Counsel for the Commonwealth
First Assistant District Attorney

Robert A. Saurman, Esquire Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 1, 2020

Robert Henry Freeman, Jr. (hereinafter "the Defendant") is charged with Manufacture, Delivery, or Possession with the Intent to Manufacture or Deliver (35 P.S. § 780-113(a)(30)); Intentional Possession of a Controlled Substance by a Person Not Registered (35 P.S. § 780-113(a)(16)); Possession of a Small Amount of Marijuana for Personal Use (35 P.S. § 780-113(a)(31)(i)); and Use/Possession of Drug Paraphernalia (35 P.S. § 780-113(a)(32)). The Defendant's counsel has filed an "Omnibus Pre-Trial Motion to Suppress" based on challenges of the search of the Defendant's vehicle as well as the validity of the Defendant's mother's consent to the search of his bedroom. Based upon the evidence presented during a suppression hearing before the undersigned and for the

reasons set forth hereinafter, the Defendant's motion will be denied.

FACTUAL AND PROCEDURAL BACKGROUND

On September 10, 2017, Trooper Tristan Bennett (hereinafter "Trooper Bennett") of the Pennsylvania State Police was called to 34 Pocahontas Lane in Penn Forest Township, Carbon County, Pennsylvania for a reported home invasion. Upon arrival, Trooper Bennett made contact with the Defendant, Defendant's mother, Ethel Freeman, and Defendant's father, Robert Henry Freeman, Sr. From their recount of the events, Trooper Bennett learned that they had been the victims of the home invasion.

The Defendant's mother and father had just returned home from an event and were getting ready for bed when they heard a commotion outside. The Defendant, who lived with his parents, had been on his way out for the night when he was approached by two black males near his vehicle. The robbers led the Defendant back into his residence. The Defendant's mother observed the robbers hitting the Defendant with a gun before they pushed their way inside the residence. One of the robbers held a gun to Ethel Freeman's head and pushed her backwards. She was led to the kitchen where her husband (the Defendant's father) had already been sitting. One of the robbers continued to hold Ethel Freeman at gunpoint and told her husband not to move.

The Defendant was with the second robber in the living room, which was not visible from the kitchen. The Defendant's mother heard the robber tell the Defendant to take him to the attic for the money and that he would shoot his mother if he refused.

Eventually, a struggle between the Defendant and the robber in the living room ensued. The Defendant's mother heard the robber in the living room yell for help. The robber holding Ethel Freeman pushed her and left the kitchen, presumably to help the other robber. Mrs. Freeman then escaped to the neighbor's house to call the police. The Defendant's father joined Mrs. Freeman at the neighbor's house not long after she had escaped. The Defendant's mother later learned from his father that the robbers left the residence shortly after she had escaped.

It was unclear from Trooper Bennett's testimony with whom he first made contact on scene. However, when speaking with the Defendant outside of the residence, Trooper Bennett noted that he was uncooperative. Trooper Bennett then noticed a Ziplock bag of suspected marijuana near the Defendant's silver Nissan Altima. Additionally, Trooper Bennett could see drug paraphernalia in plain view inside of the vehicle.

Trooper Bennett testified that he would have needed to search the Defendant's vehicle regardless of seeing the paraphernalia due to the incident occurring near the vehicle. Additionally, the Defendant said that his girlfriend would be taking the car shortly.

Trooper Bennett found suspected marijuana inside of the center console of the vehicle. It was later reported that the suspected marijuana outside of the vehicle weighed 33.7 grams and the marijuana inside of the vehicle weighed 30.5 grams.

At some point, Trooper Bennett told the Defendant that the house would be searched. The Defendant then became cooperative and told Trooper Bennett that he was involved with drug activity, and that he had attempted to cut ties with his supplier. The Defendant knew the two men who had attacked him. The Defendant then confessed to Trooper Bennett that there was more marijuana and United States currency in the attic of the residence, which he used as a bedroom.

At some point during the investigation, Trooper Bennett also spoke with the Defendant's mother and father, who were still at the neighbor's house. During his interaction with the Defendant's mother, Trooper Bennett stepped outside onto the porch and asked her to sign a consent to search form. Trooper Bennett explained that he wanted to search the entire residence to look for evidence and to make sure that there were no persons remaining inside. Ethel Freeman asked what would happen if she refused to sign the form. Trooper Bennett stated that he would obtain a search warrant and that she would not be permitted to enter the residence until it was searched. Ethel Freeman then decided to sign the consent to search form, though she claims that it was too dark to read it.

However, her signature can be seen on the form as being placed perfectly on the signature line.

Inside the attic, Trooper Bennett recovered one hundred and five (105) one hundred dollar (\$100.00) bills; seventy-five (75) fifty dollar (\$50.00) bills; an unknown number of small bags that are consistent with drug packaging; thirty-one (31) grams of suspected marijuana; and two (2) cellular telephones (one red iPhone plus and one silver galaxy). Additionally, Trooper Bennett found a scale at some point during the incident but is unsure of where he found it. The Defendant was subsequently taken into custody.

ISSUES

- A. Did Trooper Bennett have probable cause to search the Defendant's vehicle?
- B. Was Ethel Freeman's consent to the search of the residence voluntary?

DISCUSSION

Through his pre-trial motion, the Defendant challenges both searches that occurred during the police investigation of the robbery. First, he argues that the drug paraphernalia inside of his vehicle was not in plain sight and that police did not have probable cause to search the vehicle. Second, he argues that Trooper Bennett's refusal to allow Ethel Freeman back into her

residence until a search occurred amounted to coercion and that her consent to search was involuntary. Therefore, the Defendant asks this Court to suppress all evidence resulting from the search of his vehicle and the residence.

A. Trooper Bennett possessed probable cause to search the Defendant's vehicle for drug paraphernalia.

Trooper Bennett testified that he first observed a Ziplock bag that contained suspected marijuana on the ground next to the driver's side of the Defendant's vehicle. Trooper Bennett further testified that he observed drug paraphernalia inside of the Defendant's vehicle, specifically in the center console. Though he could not recall whether the center console was opened or closed, Trooper Bennett was sure that the paraphernalia was located inside of it.

"[P]olice may search an automobile without a warrant so long as they have probable cause to do so, as an automobile search 'does not require any exigency beyond the inherent mobility of a motor vehicle.'" Commonwealth v. Harris, 176 A.3d 1009, 1022-23 (Pa. Super. 2017) (citing Commonwealth v. Gary, 91 A.3d 102, 104 (Pa. 2014)).

"With respect to probable cause to search, our Supreme Court instructs us that:

[p]robable cause exists where the facts and circumstances within the officers' knowledge are

sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. With respect to probable cause, this [C]ourt adopted a "totality of the circumstances" analysis in Commonwealth v. Gray, 509 Pa. 476, 503 A.2d 921, 926 (1985) (relying on Illinois v. Gates, 462 U.S. 213, [103 S.Ct. 2317, 76 L.Ed.2d 527] (1983)). The totality of the circumstances test dictates that we consider all relevant facts, when deciding whether [the officer had] probable cause."

Id. at 1023 (citing Commonwealth v. Luv, 735 A.2d 87, 90 (Pa. 1999)).

One exception to this general rule is if an item is in plain view. "For the exception to be present, initially, the officer must not have violated the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed. Moreover, two additional conditions must be satisfied to justify the warrantless seizure. First, the incriminating character of the item must be 'immediately apparent.' Also, the officer must have a lawful right of access to the object itself." Commonwealth v. Turner, 982 A.2d 90, 92 (Pa. Super. 2009) (citing Commonwealth v. McCree, 857 A.2d 188, 190 (Pa. Super. 2004)).

Further, "[o]ur Supreme Court has expressly recognized that incriminating objects 'plainly viewable [in the] interior of a vehicle' are in 'plain view' and, therefore, subject to seizure without a warrant. This doctrine rests on the principle that an individual cannot have a 'reasonable expectation of privacy in an

object that is in plain view.'" Turner, 982 A.2d at 92 (citing Commonwealth v. Ballard, 806 A.2d 889, 892 (Pa. Super. 2002)).

In this case, Trooper Bennett saw the first Ziplock bag containing suspected marijuana on the ground near the Defendant's vehicle. Clearly, the bag on the ground outside meets the plain view standard. Additionally, the Defendant had no reasonable expectation of privacy relative to the ground surrounding his vehicle. Therefore, the bag of suspected marijuana found by Trooper Bennett on the ground next to the Defendant's vehicle will not be suppressed.

As for the items found inside of the Defendant's vehicle, Trooper Bennett testified that he saw what he immediately recognized as drug paraphernalia inside of the center console of the Defendant's vehicle. Trooper Bennett was standing outside of the vehicle speaking with the Defendant when he made this observation, which did not violate the Fourth Amendment. Additionally, as Trooper Bennett testified, the unlawful nature of the item was immediately apparent. Lastly, as per the Turner standard, the Defendant had no reasonable expectation of privacy concerning items that were in plain view in the interior of his vehicle.

B. The Defendant's mother, Ethel Freeman, voluntarily consented to the search of the residence.

According to Trooper Bennett, he needed to conduct a search of the entire house to collect evidence and ensure that no persons were remaining in the house. The robbery victims had relayed that the robbers had asked to go to the attic and, therefore, a search of the attic was deemed necessary. Trooper Bennett relayed this to Ethel Freeman. Though she was initially reluctant to consent, she ultimately signed the consent form perfectly on the signature line despite her claim that she was unable to read the form due to darkness.

"A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies." Commonwealth v. Kemp, 961 A.3d 1247, 1260 (Pa. Super. 2008) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973)). One such exception is consent, voluntarily given. Id.

"In connection with [the inquiry into the voluntariness of a consent given pursuant to a lawful encounter], the Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice—not the result of duress or coercion, express or implied, or a will overborne—under the totality of the circumstances.... [W]hile knowledge of the

right to refuse to consent to the search is a factor to be taken into account, the Commonwealth is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.... Additionally, although the inquiry is an objective one, the maturity, sophistication and mental or emotional state of the defendant (including age, intelligence and capacity to exercise free will), are to be taken into account[.]” Id. at 1261 (citing Commonwealth v. Strickler, 757 A.2d 884, 901-02 (Pa. 2000)).

In addition to the consent factors, it is worth noting that this case is factually similar to the case of Commonwealth v. Lowery. The Superior Court of Pennsylvania held that a defendant’s mother’s consent to a search of his bedroom was voluntary where officers had requested her consent and told her that a search warrant would be obtained if she refused. Commonwealth v. Lowery, 451 A.2d 245, 246-249 (Pa. Super. 1982).

In this case, Ethel Freeman was given the choice to consent to the search of her residence or wait for the officers to obtain a search warrant. Though there is no doubt that Ethel Freeman was still shaken from the events that had occurred that night, there was no evidence presented that she was coerced into signing the consent to search form. The fact that she was told what would happen should she refuse to consent to a search of the residence further supports the fact that her consent was voluntary. Ethel

Freeman admitted during her testimony that she consented to "move things along." We cannot find that Ethel Freeman's impatience to return to her residence amounts to duress or coercion on the part of Trooper Bennett.

CONCLUSION

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

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Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 1st day of December, 2020, upon
consideration of "Defendant's Omnibus Pre-Trial Motion to
Suppress" and following an evidentiary hearing held thereon, it
is hereby

ORDERED and DECREED that the aforesaid motion is
DENIED and that the parties shall appear for a pre-trial
conference at 3:15 p.m. on January 8, 2021 in the Office of the
District Attorney on the second floor of the Carbon County
Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:



Steven R. Serfass, J.