

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: CRIMINAL DIVISION
	:
vs.	: NO. 00-10212
	:
JASON WEBB,	:
Defendant	: MOTION TO SUPPRESS

OPINION and ORDER

This matter came before the Court on Defendant's Motion to Suppress. The relevant facts are as follows:

On December 22, 1999, Roy Snyder of the Williamsport Police Department received a dispatch about an incident at 1300 Sherman Street, concerning the defendant, Jason Webb. The dispatch indicated Defendant had a handgun and was making threats to his family. The complaint came from Defendant's family members, and it indicated that Defendant had left the Sherman Street scene with his sister in her car, and that they were traveling to Defendant's residence on Ames Place in Williamsport.

An officer was dispatched to Sherman Street and Officer Snyder, who had prior contact with Defendant and knew his address, was dispatched to Ames Place. When Officer Snyder arrived at Defendant's address at Ames Place, he observed the car described in the dispatch parked in front of Ames Place. Tiasha Webb, Defendant's sister, was standing in front of the vehicle. The door of the vehicle was open and the motor was running. Officer Snyder detained Tiasha Webb for investigative purposes. Ms. Webb became disorderly at the scene and she was arrested by the police for disorderly conduct. Ms. Webb was handcuffed and taken to City Hall.

Officer Snyder determined that Defendant had already entered his home. The officer made verbal contact with Defendant and asked him to come out of the house. Defendant initially denied he was Jason Webb, but Officer Snyder saw him through the window and recognized him to be Jason Webb. The officer continued to order him out of the house. Eventually, Defendant complied with this command and he came out of the house whereupon he was arrested for the incident on Sherman Street.¹ The officer placed Defendant in custody and transported him from the scene to the Williamsport Police Station. The firearm mentioned in the police dispatch was not found on Defendant's person when he was placed under arrest.

After the arrest, Officer Snyder decided to enter Defendant's home to see if he could obtain the firearm. No search warrant was obtained for the entry into Defendant's home. The officer testified that he entered the home without a search warrant for officer safety reasons and public safety concerns. Officer Snyder also testified that he wanted to check the home to see if a third party was present. We assume that Officer Snyder felt a third party might have access to the possible firearm. The officer also testified that he wanted to see if the gun was in plain view.

The officer then did a "sweep" of the residence to locate the gun or any person inside. During this "sweep" of the residence, Officer Snyder observed apparent drug paraphernalia.² The officer did not touch the alleged paraphernalia. He then contacted a

¹Our notes of the hearing do not reflect specifically what charges Defendant was arrested for by Officer Snyder.

²In his testimony, the officer never explained exactly what drug paraphernalia he observed, beyond one reference to a baggie seen on a kitchen table. He testified that he

Williamsport police vice and narcotics officer to obtain a warrant to search the residence and to seize the evidence in question. He secured the residence in anticipation of the service of a search warrant. Ultimately, a search warrant was obtained and drug paraphernalia³ was discovered. The search also produced a Crosman BB pistol that was found in a closet in the living room.

Corporal Thomas Ungard of the Williamsport Police Department also testified. Corporal Ungard was a vice and narcotics officer at the time of this incident. Corporal Ungard interviewed Defendant's sister, Tiasha Webb, after she was transported to the Williamsport police station. Ms. Webb was handcuffed to the wall at the time she was approached by Corporal Ungard. Corporal Ungard was aware of Officer Snyder's observation of drug paraphernalia in Jason Webb's home, and he was aware that a search warrant was being prepared to search the home. Corporal Ungard was also interested in searching for drugs in the car in which Defendant and his sister, Tiasha Webb, had just traveled. Corporal Ungard was also interested in seeing if the gun reported in the initial incident was in the car.

Corporal Ungard testified that Ms. Webb told him that she owned the vehicle in question. She told Officer Ungard that her brother, Jason Webb, had been using the vehicle for the past several days. Ms. Webb told Corporal Ungard that nothing in the car was hers, except the laundry in the back seat of the vehicle. Corporal Ungard asked her to

could not recall exactly what he saw in plain view.

³The paraphernalia consisted of a bong, rolling papers glass pot pipes, plastic vials, crack pipes and a box of syringes.

consent to a search of the vehicle. The Corporal told her that if she said "no," he would talk to other officers about obtaining a search warrant for the vehicle. The officer also told her that he was not interested in the assault incident and that he was not investigating it. Ms. Webb then agreed that the police could search the vehicle with the condition that she be present when the vehicle was searched. Corporal Ungard agreed to this and Ms. Webb signed a written form consenting to a police search of the 1988 Oldsmobile vehicle. See Commonwealth Exhibit 1, at the Suppression hearing.

Corporal Ungard then went to the Ames Place location to search the vehicle, and Ms. Webb went with him. During the search of the vehicle, Corporal Ungard observed a box with dishes and plates in the back seat of the car. In the box he found acid blotters and waxed paper, which are items commonly used to package heroin. He also observed a closed safe in the back seat of the car. Corporal Ungard asked Ms. Webb about the safe and she indicated that it wasn't in the car when she gave it to her brother, Jason Webb. Corporal Ungard called City Hall and talked to Officer Kreitz who was interviewing Defendant, Jason Webb. Officer Kreitz then asked Defendant about the safe. Defendant provided the combination of the safe to Officer Kreitz, who conveyed it to Corporal Ungard. The corporal then successfully opened the safe, but found nothing contained therein.

After searching the interior of the car, Corporal Ungard went on to search the trunk. In the trunk of the vehicle, the corporal located a closed, black gym bag. He opened the black gym bag and found marijuana. The gym bag also contained a black container that was opened and searched by Corporal Ungard. In the container, the corporal found LSD, cocaine and weighing scales.

Defendant seeks to suppress all evidence obtained by the police from their initial observations when they entered the Ames Place address and the subsequent search of the home as a fruit of the initial entry into the home.

Defendant also seeks to suppress the evidence found in the vehicle of Tiasha Webb, arguing that she did not have standing or authority to consent to the search of the closed gym bag and black portfolio contained in the trunk of the vehicle. Defendant also contends that Ms. Webb did not voluntarily consent to the search. Finally, Defendant contends that even if the police could open the vehicle trunk and seize the closed gym bag and portfolio, they still should have obtained a search warrant before opening these items, because Ms. Webb warned the police that they were not her items.

The Court finds no basis to constitutionally justify Officer Snyder's warrantless entry into Defendant's home on Ames Place. Defendant was already arrested and was removed from the scene. The police had no indication that a third party was in the home or that a third party was presenting any danger to them or to the public. While the police were aware a gun may have been brandished by Defendant in the prior incident on Sherman Street, there was no indication it was fired. At this point, the gun could have been anywhere from the location on Sherman Street to the location on Ames Place, and/or inside vehicle in front of Ames Place. There was no immediate exigency confronting the officer which would have vitiated the search warrant requirement. While a protective sweep may be justified for the protection of the police when they possess specific and articulable facts that the area to be swept harbors an individual posing a danger to them, this concept does not justify the warrantless entry into the defendant's home because the

police had no indication that anyone else was present. See *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990); *Commonwealth v. Crouse*, 729 A.2d 588 (Pa.Super. 1999). Therefore, the Court is compelled to suppress Officer Snyder's "plain view" observations in Defendant's home. Since the second warrant was predicated upon Officer Snyder's observations, it is clearly a fruit of the prior illegality. Thus, the results of the search of Defendant's home also must be suppressed.

The more difficult and closer issue revolves around Corporal Ungard's search of Tiasha Webb's vehicle. While Tiasha Webb was under some duress in that she had been handcuffed just prior to her consent to search the vehicle, the Court is satisfied with Corporal Ungard's testimony that she knowingly, intelligently and voluntarily consented to the search of the vehicle. The written consent form signed by Ms. Webb is persuasive that she validly consented to the search. See Commonwealth Exhibit 1. Also Ms. Webb's demand that she be present for the search indicates that she maintained control over her decision-making process.

The issue whether Ms. Wells could consent to the search of the closed gym bag and portfolio in the trunk of the car is more complex. Ms. Webb told the police that her brother, Jason Webb, had been the party using the car for the past couple days. Ms. Webb also made it clear that apart from the laundry in the car, all other items belonged to her brother, Jason Webb. Therefore, the police were on notice that the gym bag and portfolio in the trunk were not Ms. Webb's property. It is well established that the government may search a vehicle without a warrant or probable cause if the owner of the vehicle voluntarily consents to the search. *Commonwealth v. Danforth*, 395 Pa.Super. 1, 576 A.2d 1013,

1022 (1990), affirmed *sub nom.* **Commonwealth v. Kohl**, 532 Pa. 152, 615 A.2d 308 (1992). Further, with a general consent of the owner of a vehicle, the police may search any container in the vehicle which could reasonably contain the items for which the police are looking. See **Commonwealth v. Yedinak**, 676 A.2d 1217, 1220 (Pa.Super 1996); **Florida v. Jimeno**, 500 U.S. 248, 251, 111 S.Ct. 1801, 1803-04 (1991)(suspect's general consent for an officer to search vehicle for narcotics included permission to open a closed brown paper bag on the floor of the car). However, none of these cases address the situation when the police know the containers do not belong to the owners of the vehicle.

The case of **Commonwealth v. Abdul-Salaam**, 678 A.2d 342 (Pa. 1996), does not directly address this issue, but is more analogous. In **Abdul-Salaam**, the police arrested a defendant and subsequently asked the defendant's girlfriend if they could search her home. The defendant occasionally stayed overnight in the girlfriend's home. The girlfriend signed a written consent to search her home. The police were looking for a handgun and clothing. Pursuant to the search, the police found a briefcase in the girlfriend's bedroom closet. The police opened the briefcase and found ammunition and letters addressed to the defendant. The defendant claimed at the suppression hearing that the girlfriend told the police that the closed briefcase was not hers. However, the trial court found credible the police officer's testimony that the defendant's girlfriend said nothing to him about the briefcase. The trial court also noted that the girlfriend's own testimony was that she informed the police that the briefcase was not hers, only after the police had already opened the briefcase.

This case is more difficult than the case of ***Commonwealth v. Abdul-Salaam***, because Corporal Ungard, in his candor, acknowledged that Ms. Webb made it clear that her brother, Jason Webb, had the car for the past several days and that the items in the car, except for the laundry, were Defendant's - not hers. This also became readily apparent when the police had to call back to the station to get the combination for the safe from Defendant. Thus, Corporal Ungard was aware when he opened the sealed gym bag and portfolio, that this was not the property of Tiasha Webb, but was the property of Defendant, Jason Webb. Obviously, as with the safe, the officer could have called City Hall to determine if Mr. Webb would consent to the police opening the gym bag and portfolio. Without such consent, the items could have been seized or maintained until a warrant could be obtained. However, the Court does not believe that Ms. Webb's consent would be sufficient to allow the search of the items in question when she indicated that they were not hers and explained that she had not driven the car for the past several days. Therefore, the Court is constrained to grant Defendant's Motion to Suppress.

ORDER

AND NOW, this 17th day of October 2000, Defendant's Motion to Suppress the evidence seized in this matter is hereby **GRANTED**.

BY THE COURT,

Kenneth D. Brown, Judge