

COMMONWEALTH OF PENNSYLVANIA
v. SHERRI LYNN HATFIELD, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 912 of 2005

Motion to Suppress; Search and Seizure; Consent to Search

1. In a private home, searches and seizures without a warrant are presumptively unreasonable.
2. If the owner or resident of a residence voluntarily and willingly consents to a search of the residence, then a warrant is not necessary.
3. In order for consent to be voluntary, the consent must not be the product of undue coercion or force.
4. Failure to inform a defendant of the right to refuse to give consent is a factor to consider while determining whether the consent was given voluntarily, but it is not determinative.
5. Where a defendant is in police custody, the defendant's consent may not be voluntary when the defendant has not been Mirandized, was not told he could refuse to give consent, and was not given an express endpoint to the initial lawful detention.
6. When a defendant is not in police custody, it is not necessary to Mirandize the defendant before eliciting a voluntary consent to search.
7. The defendant's consent was voluntary even though she was not informed of her right to refuse consent, was told that the police would obtain a search warrant if she refused to consent, and was unclothed in bed during her initial encounter with the police.

Appearances:

Nancy H. Meyers, Esq., *Assistant District Attorney*

Stephen D. Kulla, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., September 23, 2005

Factual Summary and Procedural History

The police had a valid arrest warrant for an individual named Douglas Tarr, which was served at his residence. After being taken into custody, the police escorted Mr. Tarr back into the residence so he could get dressed. The police asked Mr. Tarr for permission to search the premises and it was granted. During this time, the police made contact with the defendant who was unclothed in bed in a room adjacent to the dining room where Mr. Tarr was getting dressed.^[1] The police asked the defendant for permission to search the premises and she agreed. Later in the search after the defendant had gotten dressed and moved to the living room, the police requested the defendant's permission to search her purse and that was also granted.^[2] During the search, drugs and paraphernalia were found in the residence and in the defendant's purse; however, the defendant has only been charged with crimes relating to the contraband found in her purse. The issue before this Court is whether the defendant's consent to the search was

given voluntarily. The defendant has filed an omnibus motion to suppress the evidence.

Discussion

The defendant alleges that the evidence should be suppressed because 1) she was unclothed in bed during her initial contact with the police, 2) she was not Mirandized, 3) she was not informed that she could refuse to consent, 4) she was not given an express endpoint to the detention, and 5) the police threatened to obtain a warrant if she refused to consent. The Commonwealth argues that 1) the defendant was not in custody so there was no need to Mirandize her, 2) not notifying the defendant of her right to refuse to give consent is a factor to consider but is not determinative, 3) informing the defendant of the police's ability to get a search warrant was not false or coercive, and 4) she was permitted to get dressed alone in her bedroom.

The defendant relies on Commonwealth v. Acosta, 815 A.2d 1078 (2003), in support of its contention that the defendant's consent was not voluntary; however, the Court finds stark distinctions between the facts in that case and the facts in this case. Acosta involved a traffic stop where the police held on to the defendant's driver's license and then asked for consent to search the vehicle. The defendant was found to be in custody when he was removed from his car, asked to sit on the curb where he was surrounded by police officers and police cruisers with lights flashing, and then was moved to the back seat of the police cruiser. In that case, the court found that the consent was invalid because he had not been Mirandized, was not told he could refuse, and was not given an express endpoint to the initial lawful detention.

The facts are quite different in this case and do not rise to the same level of coercion. Unlike the defendant in Acosta who was confined to a restricted area and was under close police supervision, this defendant was not. The defendant was permitted to be alone in the bedroom with her purse while she got dressed. She was free to move about the apartment throughout the search. Therefore, the Court finds that the defendant was not in custody. As she was not in custody, there was no need to Mirandize her or to give her an express endpoint to the detention before requesting her consent to search the premises.

The Court also finds the defendant's other arguments to be unpersuasive. First, the police informed the defendant that she could consent to the search or they could obtain a search warrant; however, this statement was not false or unduly coercive under the circumstances. The police had found contraband in plain view, which was sufficient probable cause for a search warrant. Secondly, the police did not inform the defendant that she could refuse; however, this is only a factor to consider, not a determinative factor. Commonwealth v. Cleckley, 558 Pa. 517, 527, 738 A.2d 427, 433 (1999). The Court finds that under these circumstances failing to inform the defendant of her right to refuse is not sufficient to overcome the voluntariness of her consent because the other evidence is adequate to prove voluntariness. Lastly, the Court does not find the fact that the defendant was unclothed in bed sufficient to overcome the voluntariness of her consent because the defendant was permitted to get dressed alone in her bedroom and the police did not use her state of undress as a threat or ploy against her. Furthermore, permission to search the purse was granted in a different room at a later time after the defendant had had the opportunity to get dressed and roam freely throughout the apartment. Therefore, the Court holds that the defendant's consent to search was given voluntarily.

ORDER OF COURT

September 23, 2005, after reviewing the record and conducting a hearing, the Court finds that the defendant's consent to search the residence and her purse was given voluntarily, and the Court hereby orders that the defendant's omnibus motion to suppress is denied.

[1] Mr. Tarr's clothing was in the dining room, which is why he was getting dressed there. A third party was also in the residence when the police arrived; however, that individual was allowed to leave soon thereafter.

[2] The police initially viewed the defendant's purse in the bedroom, but the defendant moved it to the living room, which is where the police decided to search it.