

Commonwealth v Manning

Commonwealth of Pennsylvania v. Eugene Manning, Defendant
Court of Common Pleases of the 39th Judicial District of Pennsylvania, Franklin County Branch
Criminal Action No. 1674 - 2011; 1169 - 2012; 1173 - 2012

HEADNOTES

Omnibus Pretrial Motions; Search and Seizure; Suppression; Independent Source Doctrine; Plain View Doctrine; Offenses Involving Danger to the Person; Suppression of Medical Records

1. Where a cellular phone was illegally seized, text messages contained on the phone were still admissible under the Independent Source Doctrine because they were subsequently obtained from the cellular service provider based upon untainted information. *Commonwealth v. Henderson*, 47 A.3d 797 (Pa. 2012).
2. In order to contest a search, a Defendant must establish standing by establishing the following factors: (1) his presence on the premises at the time of the search and seizure; (2) a possessory interest in the evidence improperly seized; (3) the offense charged include[s] as an essential element of the prosecution's case, the element of possession at the time of the contested search and seizure; or (4) a proprietary or possessory interest in the searched premises. *Commonwealth v. Hawkins*, 718 A.2d 265 (Pa. 1998)
3. Where a police officer is lawfully executing a search warrant, items not listed in the search warrant are admissible if it is immediately apparent that the items are evidence of a crime.
4. Where a defendant is charged with the crime of Harassment, a business can be a victim of the harassing conduct despite the title of Article B of the Crimes Code, "Offenses Involving Danger to the Person."
5. The Commonwealth of Pennsylvania cannot and does not violate the federal HIPAA laws by subpoenaing a defendant's medical records without the defendant's consent because the Commonwealth is not regulated by HIPAA and because 45 C.F.R. § 164.512(f)(1)(ii)(A) specifically allows regulated entities to release records when served with a subpoena.

Appearances:

Eugene Manning, pro se, Defendant
JFranklin county District Attorney

OPINION

Before Herman, J.

Procedural History

Defendant, Eugene Manning, is charged with two counts of stalking and twenty-eight counts of harassment. The matter before us is an Amended Omnibus Pre-trial Motion which contains three motions to suppress evidence and one motion to dismiss. On July 25, 2012 defendant filed a motion to suppress evidence. A hearing on the motion was held on August 27, 2012 but defendant's counsel failed to appear and the motion was dismissed. On September 5, 2012 the defendant filed an Amended Omnibus Pre-trial Motion which is now before the court.^[1] The Commonwealth responded on September 24, 2012. A hearing on the motion was held on October 2, 2012^[2] and the record was left open for the possibility of additional evidence. Additional evidence was then submitted at an October 24, 2012 hearing. The record is now closed and the matter is ready for decision.

Discussion

Suppression of evidence from the cell phone

Defendant seeks to suppress evidence derived from his cell phone because it was the result of an illegal seizure.

Defendant's argument is as follows. At some point while his property was in the possession of prison officials, Defendant's cell phone was missing. The notation on the inventory sheet indicated that it was held by law enforcement. At some point the phone was returned to the property bag. At a bail hearing on July 3, 2012, the issue of the missing phone was raised, however, the Commonwealth stated that it had no evidence from the phone that it planned on using; therefore there was nothing to suppress. Two days after the hearing, a search warrant was executed and the cell phone was seized. Defendant asserts that this seizure was the result of information gained from the prior unlawful seizure.

The Commonwealth has responded that the warrant was valid because the subsequent seizure was the result of an independent source of information and was not the product of tainted information. Following the July 3, 2012 bail hearing, the Commonwealth obtained and executed a search warrant to seize the phone. Upon review of the affidavit of probable cause used to support the application for the search warrant, it appears the seizure of the cell phone was not based upon any tainted information.

We do not confirm that the evidence was, indeed, tainted or that the missing phone was the result of an illegal seizure. However, we will address this argument and we hold that even if there was a prior illegal seizure of the phone, the evidence from the phone now possessed by the Commonwealth would not be deemed inadmissible because that evidence it comes from an independent source. See *Commonwealth v. Henderson*, 47 A.3d 797 (Pa. 2012) (holding that where evidence is tainted by illegal police conduct, it may nevertheless be admitted into evidence if the evidence originated from a source independent of the unlawful conduct). The defendant was placed on bail on September 7, 2011 and ordered to have no contact with the victim. Trooper Rush was conducting an investigation into the matter and obtained call records from the phone company for the defendant's cell phone. The records showed that the defendant was sending text messages to the victim from August 29, 2011 through May 2, 2012. When it was revealed that text messages were indeed being sent from the defendant's phone to the victim, in direct violation of his bail conditions, the Trooper sought a warrant to seize the phone in order to view the contents of those text messages. [3] None of this information was obtained from a prior illegal seizure of the phone. Therefore, the evidence derived from the seizure of the phone is not tainted and will not be suppressed.

Suppression of Documents Seized from Gloria Waite's Home

Defendant argues that the letters seized from, his friend, Gloria Waite's house were outside the scope of the search warrant because the trooper's application for the warrant only sought the seizure of several letters from the defendant to the victim. When the warrant was executed, the search yielded a bundle of, what the defendant identifies as, journal entries and a CD.

The Commonwealth has raised several arguments. First, the Commonwealth challenges the defendant's standing to raise this motion as the defendant has not established a legitimate expectation of privacy in Gloria Waite's home. To determine whether a defendant has standing to contest a search of a premise, he must establish

- (1) his presence on the premises at the time of the search and seizure;
- (2) a possessory interest in the evidence improperly seized;
- (3) that the offense charged include[s] as an essential element of the prosecution's case, the element of possession at the time of the contested search and seizure;
- or (4) a proprietary or possessory interest in the searched premises.

Commonwealth v. Hawkins, 718 A.2d 265 (Pa. 1998) (citing *Commonwealth v. Peterkin*, 513 A.2d 373, 378 (Pa. 1986)). Upon review of the motion and evidence presented at the hearing, we conclude that the defendant has not established any of the above requirements which would give him standing to contest the search. At the hearing, Ms. Waite testified that the defendant was living at a hotel and asked her to take control of his personal property. He did not live at her house at any time. The documents were kept in a way that they were open for anyone in her home to have read. Therefore, we agree with the Commonwealth and find that the defendant does not have standing to challenge the search of Gloria Waite's home.

Even if the defendant did have standing, the search and seizure was not outside the scope of the warrant. The warrant provided that the following may be searched for and seized: "Letters of correspondence between Eugene MANNING and Pamela ROSS in various forms of stationary. The letters are addressed to Pamela ROSS and sometimes The Center for Dermatology."

The defendant argues that the documents seized were journal entries and not letters. We disagree that the documents were not within the scope of the warrant. The documents seized were all in the form of letters written from the defendant to Ms. Ross. Although the documents were in a bound notebook and had not yet been sent, but they do appear to be

letters.

Additionally, the Commonwealth argues that even if these documents were not the letters described in the warrant, they were subject to seizure under the plain view doctrine. The doctrine requires that

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, 91 (Pa. Super. 2009). Here, Trooper Rush was lawfully on the premises because he obtained a search warrant to search the home of Ms. Wait for letters from the defendant to Ms. Ross. The documents were in plain view because Ms. Waite testified that the documents were kept in a way that they were open for anyone in her home to have read. She stated that they were in the open in her basement and in her bedroom. The incriminating character of the letters was apparent because the alleged journal entries were written as letters from the defendant. Finally, the trooper had a right of access to the journal entries because he was looking for letters which could have easily been mixed in with these similar looking journal entries.

Defendant's request to suppress the items seized during the execution of the June 13 search warrant of Gloria Waite's home will be suppressed because the defendant lacks standing and because the items were within the scope of the warrant.

Dismissal of Harassment Charges against Center For Dermatology

Defendant argues that Counts 1 through 26 of docket number 1173-2012 should be dismissed because the Information filed states that the victim is the Center for Dermatology and that the Center is not a natural person. Defendant offers no authority to support this argument other than that the title of this section of the crimes code, Article B, is titled "Offenses Involving Danger to the Person."

The Commonwealth directs our attention to several other crimes listed in this section in which a victim does not need to be a natural person. The crime of Terrorism, 18 Pa. Con. Stat. § 2717, can be committed against governments. Making a Threat to Use Weapons of Mass Destruction, 18 Pa. Con. Stat. § 2715, does not require the crime to be committed against a natural person. Also in this section of the crimes code is the crime of Sexual Intercourse with Animal, 18 Pa. Con. Stat. § 3129 where the crime is clearly not committed against a natural born person and can only be committed against an animal. Therefore, defendant's argument has no merit and we will deny this request for dismissal of the charges.

Further, we note that we agree with the Commonwealth's argument that if defendant's argument was permitted to succeed, this argument could be used to allow a defendant to avoid prosecution for calling in a bomb threat to a business since the crimes of Terroristic Threats, 18 Pa. Con. Stat. § 2706, and Threat to Use Weapons of Mass Destruction, 18 Pa. Con. Stat. § 2715 fall under the same section of Offenses Involving Danger to the Person. Clearly this could not be a result that the legislature intended.

Medical Records Inadmissible Because of HIPAA Violation

Defendant's final request for suppression is in regards to medical records the Commonwealth received from the Center for Dermatology. The defendant argues that these medical records were obtained without his consent, in violation of the Health Insurance Portability and Accountability Act (HIPAA) and should be suppressed.

First, we note that HIPAA governs those entities which it describes as "covered entities." These are healthcare providers and business dealing with medical information. It does not appear that the Commonwealth is a "covered entity." See 45 C.F.R. § 160.103. Nor do we find any support that a violation of HIPAA can result in suppression of evidence in a criminal matter.

Nonetheless, even if a HIPAA violation was grounds for suppression, the Commonwealth has drawn our attention to a section of HIPAA regulations titled Disclosures for Law Enforcement Purposes, which states that "A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if . . . A court order or court-ordered warrant, or a subpoena or summons [is] issued by a judicial officer." 45 C.F.R. § 164.512(f)(1)(ii)(A). A subpoena from this Court was issued on July 5, 2012 in order to obtain the medical records at issue. Therefore, we find that the medical records were lawfully obtained and no violation of HIPAA occurred.

This motion for suppression is denied as the federal authority cited is inapplicable in this matter and even if it was

applicable, no violation of that authority occurred.

Conclusion

Defendant's motions to suppress evidence will be suppressed because no illegal searches or seizures were made. Further, all searches and seizures occurred within the scope of the issued warrants. The motion to dismiss charges of Harassment against the Center for Dermatology will be denied as the crime of harassment can be perpetrated against a business. Finally, the defendant's medical records will not be suppressed as they were lawfully obtained by way of subpoena and HIPAA laws do not preclude their use at trial.

ORDER OF COURT

AND NOW, this 13th day of December 2012, upon consideration of the Defendant's Amended Omnibus Pre-Trial Motion, the Commonwealth's answer thereto, the hearing on the matter, and the applicable law,

IT IS HEREBY ORDERED that Defendant's Amended Omnibus Pre-Trial Motion is DENIED pursuant to the attached opinion.

^[1]Both the July 25, 2012 and the September 5, 2012 motions were submitted by defendant's counsel (Attorney Scott Thomas and Attorney Brian Williams, respectively), however, defendant has chosen to proceed pro se.

^[2]The Amended Omnibus Pre-Trial Motion contains the same motion to suppress evidence as was previously dismissed, however, the Commonwealth has indicated that it is willing to litigate the matter.

^[3]Law enforcement had no less intrusive way to retrieve the contents of the text messages because cellular phone companies only retain the contents of a text for ten days. After that time period, the only way to view the text message would be from the phone, itself.