

COMMONWEALTH OF PENNSYLVANIA
v.

IN THE COURT OF THE COMMON
PLEAS FOR THE 26TH JUDICIAL
DISTRICT, COLUMBIA COUNTY
BRANCH, PENNSYLVANIA

NADINE HOWARD

CRIMINAL DIVISION

Defendant. No. 849 of 2019

APPEARANCES:

BRENDA R. HESS, ESQUIRE, Attorney for Commonwealth of Pennsylvania

PETER R. CAMPANA ESQUIRE, Attorney for Defendant

September 11, 2020. JAMES, J.

OPINION

Defendant filed a Motion to Suppress Evidence found in her home. A hearing regarding the motion was held on July 2, 2020. The primary issue is whether Children & Youth workers, who were performing a welfare check, conducted an unlawful search and seizure of defendant's home when they entered her attached garage without a search warrant in violation of defendant's Fourth Amendment right under the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution.

FINDINGS

After hearing held on July 2, 2020, the court makes the following findings of facts:

1. On July 19, 2019, two Children & Youth agency intake workers (hereinafter, "Hess" and "Edgar") received a referral regarding home conditions and substance abuse at 133 North Fourth Street, Catawissa, PA, where defendant lived with her minor daughter.
2. Based upon this information, Hess and Edgar went to defendant's residence to conduct a home visit and a welfare check to ensure the safety of the child.
3. Prior to going to the residence, the caseworkers went to the local police department to let the police know what they were doing. Officer "Kistner" told them that if they saw anything out of the ordinary to let him know. N.T. 25
4. The caseworkers initially "knocked on the back door for several minutes, they knocked on the front door for several minutes and then they noticed the garage bay was open, so they went in through there because we can see a door going into her apartment." N.T. 4-5
5. Hess then went to the house door inside the garage because defendant was not answering any other doors. The garage door was open. "There was an air-conditioner on, and she was not

sure that she was able to hear the knocks from the other doors." N.T.12

6. Hess noticed "a car in the garage and a tapestry or blanket hanging up and behind that, and there was a couch and a table. The drug paraphernalia was in open view at the time she was knocking on the door inside the garage, but not from the street." N.T.5-6
7. The caseworkers contacted the police based on the paraphernalia in the garage. N.T. 7.
8. Defendant answered the door and she consented to Hess and Edgar's entry into her home. N.T 6
9. Inside the home, Hess and Edgar smelled the odor of marijuana.
10. Kistner responded to the call and proceeded to defendant's home. Kistner saw Hess, Edgar, and defendant standing in the garage with a door open to the house. From the inside of the garage, he observed the drug paraphernalia in plain view and he could detect a marijuana odor coming from the house door into the garage. N.T.22-23. Kistner left defendant's home and applied for a search warrant.
11. The probable cause cited in the search warrant included the paraphernalia found in the garage and the odor of marijuana emanating from the house door into the garage. (The search warrant also referenced an anonymous tipster who said a

confidential informant had told the anonymous tipster about drug activity in the house about a month earlier.)

12. Several police officers from Locust Township, Montour Township and Catawissa Police executed the search warrant, finding drugs and paraphernalia. N.T. 27

DISCUSSION

The issue before this court is whether Children & Youth workers, performing a welfare check, conducted an unlawful search and seizure of defendant's home when they entered her attached garage without a search warrant in violation of defendant's Fourth Amendment right under the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. This court finds that it was an unlawful search, and that the information related to the police officer is the fruit of the poisonous tree thus invalidating the police's search warrant.

Absent probable cause and exigent circumstances, warrantless searches and seizures in a private home violate both the Fourth Amendment and Article 1 § 8 of the Pennsylvania Constitution. Commonwealth v. Bowmaster, 101 A.3d 789, 792 (Pa.Super. 2014) (citing Commonwealth v. Lopez, 415 Pa. Super. 252, 609 A.2d 177, 178-179 (Pa. Super. 1992)).

A Children and Youth agency is subject to the limits under the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution. In re Petition to Compel Cooperation with Child Abuse Investigation, 875 A.2d 365, 376 (Pa. Super. 2005), addressed an issue very similar to ours. In that case, the court was considering probable cause in the context of a petition to compel cooperation:

"The Fourth Amendment to the Constitution of the United States protects people from unreasonable government intrusions into their legitimate expectations of privacy. Upon closing the door of one's home to the outside world, a person may legitimately expect the highest degree of privacy known to our society." Commonwealth v. Flewellen, 475 Pa. 442, 446, 380 A.2d 1217, 1219-1220 (1977) (citations and quotation marks omitted). The Fourth Amendment to the United States Constitution reads as follows:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

Article I, Section 8 of the Pennsylvania Constitution provides:

§ 8. Security from searches and seizures

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor

without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const. Art. I, § 8.

"The protection against unreasonable searches and seizures afforded by the Pennsylvania Constitution is broader than that under the federal Constitution." Commonwealth v. Jackson, 548 Pa. 484, 488, 698 A.2d 571, 573 (1997), citing Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991).

The issue of whether the Fourth Amendment and/or Article I, Section 8 of our constitution apply to an investigation by a children and youth agency caseworker is one of first impression in this Commonwealth. We hold that the CPSL and specifically 55 Pa. Code § 3490.55(i), *supra*, which mandates a "home visit" at least once during the investigation period, are subject to the limits of existing Fourth Amendment jurisprudence.

Id., 875 A.2d at 373-374.

In In re Petition to Compel Cooperation with Child Abuse Investigation, *supra*, the court also stated:

C&Y argues that the court's order did not violate appellants' Fourth Amendment rights because a home visit is required by the DPW's regulations; and that the Fourth Amendment does not apply where the safety of children is at issue ("A home visit by [C&Y] is not only required by law but also necessary to insure this (and any other) child's safety") (emphasis in original). (C&Y's brief at 3.) We disagree that Section 3490.55(i) can be enforced absent a showing of probable cause, good cause shown, or the existence of exigent circumstances; and C&Y's assertion that the Fourth Amendment simply does not apply in the context of child abuse investigations is fatally flawed and unsupportable.

Id. 188 Pa.Super. at 26, 875 A.2d at 374 (emphasis supplied).

In the case at bar, the Children and Youth workers entered defendant's home, i.e., the attached garage,¹ without a warrant. They had no order to cooperate based on probable cause. There were no exigent circumstances.

Citing Walsh v. Erie County dept. of Job and Family Services, 240 F.Supp.2d 731, 751-752, the court in In re Petition to Compel Cooperation with Child Abuse Investigation said:

[W]e emphasize the importance of protecting this Commonwealth's children from abuse and neglect:

There can be no doubt that the state can and should protect the welfare of children who are at risk from acts of abuse and neglect. There likewise can be no doubt that occasions arise calling for immediate response, even without prior judicial approval. But those instances are the exception. Otherwise child welfare workers would have a free pass into any home in which they have an anonymous report of poor housekeeping, overcrowding, and insufficient medical care and, thus, a perception that children may be at some risk.

Id. at 751-752.

We are sympathetic to C&Y's mission and its mandate under the DPW regulations: "These regulations set forth a specific time frame within which the agency must conduct and complete its investigation and it sets forth specific parameters within which that investigation must be completed." (C&Y's brief at 10-

¹The attached garage is part of the house, or at least part of the curtilage, which is protected by the Fourth Amendment. See Commonwealth v. Rood, 686 A.2d 442 (Cmwlth. 1986).

11.) These regulations, however, are subject to Fourth Amendment constraints. By our decision today, we do not imply that C&Y should have stood idly by in the face of serious allegations of medical neglect:

This is not to say that the defendants could have done nothing in response to the phone call (reporting child neglect). They could, as they did, contact the plaintiffs to request their help in resolving any questions they may have had as a result of the phone call. But once the plaintiffs declined to be responsive, the defendants were obligated by the Constitution to depart, and to leave the plaintiffs alone and in peace until such time as more information was learned from other, and more trustworthy sources. If, at that point, the plaintiffs refused to cooperate, defendants had several options, including filing of an abuse or neglect complaint . . .

In re Petition to Compel Cooperation with Child Abuse

Investigation, *supra*, 875 A.2d at 378.

In the case at bar, the Children and Youth caseworkers' entry into the garage was without a warrant, without consent, and without exigent circumstances. While a welfare check of a child may be deemed an exigent circumstance that would warrant entry into defendant's residence, an unnamed source tip alleging medical neglect and deplorable home conditions is insufficient to support exigency or urgency. See In re Petition to Compel Cooperation with Child Abuse Investigation, 875 A.2d 365, 376 (Pa. Super. 2005) (concurring with the court in Walsh that an anonymous tip did not provide reason that the children were at such risk of harm or injury that immediate action was necessary.)

23 Pa.C.S. § 6368 provides that upon receipt of a report of suspected child abuse from the department, the county agency shall immediately commence an investigation within 24 hours of receipt of the report in all other cases. Section 23 Pa.C.S. § 6368 (b) (2). In addition, 55 Pa. Code § 3490.55(i) mandates a "home visit" at least once during the investigation period in order to ensure the child's safety. 55 Pa. Code § 3490.55(i).

While the legislature imposes a duty to inspect the home to conduct a welfare check and we recognize the state's interest in protecting children from abuse, this does not circumvent the protections under Fourth Amendment of the United States Constitution and Article 1, Section 8 under the Pennsylvania Constitution. We find that information from an unnamed, anonymous source to Children and Youth is constitutionally insufficient to establish probable cause that the child was at risk that would sustain the issuance of a search warrant or establish a basis for exigent circumstances.

"Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted." Commonwealth v. Leed, 186 A.3d 405, 413 (2018) (citing Commonwealth v. Johnson, 615 Pa. 354, 42 A.3d 1017, 1031

(Pa. 2012)). The Commonwealth has the burden of establishing that the challenged evidence was not obtained in violation of the defendant's rights. Pa. R. Crim. P. 581(h). In our case, there was no basis to determine that the tipster was reliable and credible. Moreover, Children and Youth had no search warrant or order compelling cooperation or exigent circumstances that would justify entry into the garage.

It has been well established that evidence seized during an unlawful search cannot constitute proof against the victim of the search. The exclusionary prohibition extends as well to the indirect as well as the direct products of such invasions. Commonwealth v. Santiago, 160 A.3d 814, 816 (Pa. Super. 2017). The exclusionary rule also applies to any evidence discovered as a result of the original illegal police conduct; such evidence is termed "fruit of the poisonous tree." Commonwealth v. Williams, 2 A.3d 611, 619 (Pa. Super. 2010) (citing Nardone v. United States, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307 (1939)).

In the present case, Kistner made an initial invalid warrantless entry into the defendant's garage after he received a phone call from Children and Youth. He came to the house based on information that there was paraphernalia in the garage. But that information was a result of illegal entry into the

garage by Children and Youth workers. There was no warrant or exigent circumstances permitting such an entry into defendant's residence. Kistner's subsequent entry into the garage without a warrant was also in violation of the Fourth Amendment.² Therefore, the evidence discovered during the subsequent search of the residence with the warrant is fruit of the poisonous tree and it should be suppressed.

Thus, after considering the facts and the case law advanced by the parties, this court finds that the evidence seized, its fruits, instrumentalities, and evidence related thereto should be suppressed.

²The police officer was in the garage without a warrant when he smelled marijuana. Thus, the detection of the odor is also suppressible.

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ORDER

AND NOW, this day of 10th day of September, 2020,
defendant's Motion to Suppress Evidence is **GRANTED**.

BY THE COURT

HONORABLE THOMAS A. JAMES, JR., J.