

#147

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CRIMINAL ACTION NO.
BRCR2013-00983

COMMONWEALTH

vs.

AARON HERNANDEZ

**FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE SEIZED FROM HIS RESIDENCE
ON JUNE 22, 2013 THAT WAS BEYOND THE SCOPE OF THE WARRANT**

INTRODUCTION

Defendant Aaron Hernandez moves to suppress certain evidence obtained during the execution of a search warrant for his residence at 22 Ronald C. Meyer Drive in North Attleboro on June 22, 2013. For the reasons discussed below, the motion to suppress is **allowed in part** and **denied in part**.

FINDINGS OF FACT

Based upon all the evidence and the reasonable inferences drawn from that evidence, the Court finds the following facts:

On June 22, 2013, Massachusetts State Police Trooper Eric Benson applied for and received a search warrant, Attleboro District Court No. 1334-SW-24, for “[t]he structure and grounds located at 22 Ronald C. Meyer Drive in North Attleboro” occupied by and/or in the possession of Aaron Hernandez and Shayanna Jenkins. The warrant stated that there was probable cause to believe that the property contained or concealed evidence of a crime or criminal activity. The search warrant authorized police to search for:

Trace/biological evidence, including blood, serums, skin, clothing, gunshot residue, fingerprints, firearms, ammunition, DNA, clothing as identified in Addendum "A," "B," and "C," shoes, footwear impressions, and any other evidence as described in the affidavit to assist in the identification of a suspect or suspects, and that if any of the above evidence is found that it be seized as evidence and further analyzed or searched as necessary.

In addition, the warrant authorized a search of Hernandez's person and any person present.

The affidavit in support of the warrant describes the property of 22 Ronald C. Meyer Drive as follows: "The structure located at 22 Ronald C. Meyer Drive in North Attleboro is more particularly described as a three story, brick front, wood frame house with the number 22 on the mail box. . . . There is a three car garage attached to the residence leading to the driveway of 22 Ronald C. Meyer Drive in North Attleboro."

Police executed the search warrant on June 22, 2013 and, according to the return, seized twenty-three items. Among the items seized from the residence were a white bath towel, a scale located in a safe, a dish located in a safe, and a Vitamin-Water XXX (Glaceau) acai-blueberry-pomegranate. The police also seized numerous items from inside a Toyota Camry. Hernandez, Jenkins and Jenkins's sister were at the residence during the search.

When Odin Lloyd's body was found on June 17, 2013, the police observed and collected a white towel located approximately fifteen feet to the east of the bottom of Lloyd's feet. There is no evidence as to the size, shape, texture, or brand of the towel. There is no evidence as to whether the towel appeared to be a beach, kitchen, bath, hand or athletic workout towel.

A large white bath towel was recovered in the home during the search by Sgt. John Moran.¹ It is clearly not a hand towel. Other than with respect to color, no evidence was introduced at this

¹ Moran did not testify at the hearing on the instant motion.

hearing as to how it compares, if at all, to the towel found at the scene. Yellowish stains are visible on one of the photographs of the towel. There is no evidence as to the apparent nature of those stains or whether the stains were visible when the police first observed the towel. There is no evidence as to where in the residence the towel was located.²

Within a few feet from the right side of Lloyd's body, police found a partially burnt cigar that appeared consistent with a marijuana cigar, also known as a blunt. During the investigation, the police learned that Lloyd was acquainted with Hernandez and that his girlfriend was the sister of Shayanna Jenkins, Hernandez's girlfriend. They also learned that the keys in Lloyd's pocket were to a vehicle that had been rented by Hernandez. When Jenkins was interviewed on the night of June 17th, she told police that she and Hernandez live together and that Lloyd smoked marijuana and was a marijuana dealer. She stated that she would often observe Lloyd on his phone talking about marijuana sales, that Lloyd's phone was constantly ringing, and that he was talking in "lingo." An analysis of Lloyd's phone showed the following text message, among others, sent to Lloyd on June 16, 2013 at approximately 9:05 PM from a phone determined to be Hernandez's cell phone: "I'm coming to grab that tonight u gon b around I need dat and we could step for a little again [sic]." From other messages and investigatory work performed before the search warrant was obtained, the police had reason to believe that Hernandez had arranged to meet Lloyd and was with him at the location and time that Lloyd was killed.

Police located a locked two-foot cube shaped safe in a walk-in closet in the second floor master bedroom suite. Because the warrant authorized the seizure of small items, such as

² One photograph of the towel shows it folded up on a wooden floor. No stains are visible. A second photograph shows the towel in a tiled room on top of what appears to be a laundry basket.

ammunition, a locksmith was located to force open the safe. The police did not collect everything that was in the safe. A square shaped bowl containing residue that appeared to be consistent with marijuana was seized from the safe as was a Taylor scale. The scale was next to the dish. A dish with residue together with a scale is indicative of the scale being used to weigh a controlled substance.

Prior to the search, law enforcement was aware that several items had been located by Enterprise Rent-A-Car during the cleaning of the vehicle returned to the rental agency by Hernandez on the evening of June 17th. Those items included a bottle of Vitamin Water XXX.

Trooper Anne Marie Robertson located numerous bottles of Vitamin Water XXX in a refrigerator in the basement. One was seized. It was same brand and flavor as the bottle of vitamin water left in the rental car returned by Hernandez.

Hernandez's residence at 22 Ronald C. Meyer Drive has an attached three-car garage. The garage is accessible from inside the home from a door in a short hallway that extends off the kitchen area. The garage can also be accessed by opening one of the three garage bays or by an exterior door leading to the garage from the driveway.

Trooper Michael Bates conducted a search in the attached garage. The garage doors were closed when he entered the garage. In the garage, he came across an older model Toyota Camry.³ It had out-of-state Florida plates. A cardboard box was on the hood of the vehicle. A large cardboard box containing several more boxes was on the vehicle's trunk. The rear of the vehicle was closest to the garage door. Between the rear of the vehicle and the door was a stack of cardboard boxes. Foam and other packaging materials were sticking out of the boxes. To move the car out of the

³ The police were aware of the existence of the car before executing the warrant.

garage, it would have been necessary to move the boxes off the vehicle and away from the rear of the vehicle. A filled orange trash bag was close to the front passenger side tire. There was a layer of dust or dirt on the car. It appeared as if the vehicle had not been driven or cleaned in a while. The car was unlocked. From the exterior of the car, bags on the back seat inside the car were visible. In the course of searching for firearms and ammunition, Bates opened the car without the help of any apparatus or a locksmith. Bates seized several items, including a rifle, clothing, and a boarding pass.

RULINGS OF LAW

Seizure of Certain Items Inside the House

Hernandez seeks to suppress, as beyond the scope of the warrant, the following items: the white bath towel, the scale located in a safe, the dish located in a safe, and the vitamin water. Items to be seized must be described in a search warrant with particularity in order to protect individuals against general exploratory rummaging by the police during a search. Commonwealth v. Balicki, 436 Mass. 1, 7 (2002). In response to the defendant's motion, the Commonwealth did not claim that the seizure of the towel, vitamin water, scale and dish were authorized by the search warrant for the defendant's residence. The seizure of objects not identified in a warrant is presumptively unreasonable. Id. at 8.

When an item is seized outside the scope of the warrant, the Commonwealth bears the burden of proving that an exception to the warrant requirement applies. Commonwealth v. Sliech-Brodeur, 457 Mass. 300, 306 (2010); Commonwealth v. Ericson, 85 Mass. App. Ct. 326, 333, rev. den., 469 Mass. 1103 (2014). With respect to each of the disputed items, the Commonwealth contends that they were lawfully seized under the plain view doctrine.

If police are lawfully in a position from which they view an object, its incriminating character

is immediately apparent, and they have a lawful right of access to the object, police may seize it without a warrant if they came across it inadvertently. Commonwealth v. Sliech-Brodeur, 457 Mass. at 306-307; Commonwealth v. Balicki, 436 Mass. at 8; Commonwealth v. Ericson, 85 Mass. App. Ct. at 333. Inadvertence in this context means that police lacked probable cause, prior to entering the premises to search, to believe that the specific items would be discovered there. Commonwealth v. Sliech-Brodeur, 457 Mass. at 309; Commonwealth v. Balicki, 436 Mass. at 8. In cases concerning contraband or fruits and instrumentalities of a crime, the nexus to criminal activity is deemed obvious. On the other hand, “mere evidence” can be seized only if the officers recognize it as plausibly related to the criminal activity of which they were already aware. Commonwealth v. D’Amour, 428 Mass. 725, 731 (1999).

The permissible intensity or scope of a search is determined by the description and size of the items to be seized, and a valid search may include any area, place, or container reasonably capable of containing the object of the search. Commonwealth v. Signorine, 404 Mass. 400, 405 (1989); Commonwealth v. Wills, 398 Mass. 768, 774 (1986).

Towel

In its Response to the Defendant’s Motion to Suppress, the Commonwealth argues that the criteria of the plain view exception was met with respect to the towel because it “was similar in appearance to a towel observed in video images of the occupants of the defendant’s vehicle culled from a service station CCTV camera close in time to the murder and also similar to a towel found at the murder scene.” The factual assertions in its Response were not supported by the evidence presented at the hearing. The Commonwealth did not introduce into evidence any of the video images culled from a service station CCTV camera, and it did not call a witness knowledgeable

about any of the characteristics, other than color, of the towel seized at the scene of the killing. There is no evidence that would permit a finding that the towel found at the house was similar in appearance to the towel found near Lloyd's body.⁴ There is also no evidence as to where in the residence the towel was located and in what condition. It is not clear, for example, whether the towel was folded with no stains visible and opened by the police or whether it was open when encountered. Cf. Commonwealth v. Cruz, 53 Mass. App. Ct. 24, 35 (2001). There is also no evidence as to the nature of the stains or what they reasonably may have appeared to be. In short, the Commonwealth has not shown that the police recognized the towel when first observed as plausibly related to Lloyd's killing. The Commonwealth did not meet its burden of showing that the seizure of the towel is justified under the plain view doctrine.

Dish and Scale

The police had a lawful right of access to the interior of the safe given that the search encompassed small items like ammunition. The incriminating character of the dish with marijuana residue and scale was plausibly related to criminal activity of which police were already aware. The text message on Lloyd's phone from Hernandez to the effect that he was coming to "grab that tonight" and needed "dat," combined with the information from Jenkins that Lloyd was a marijuana dealer and the blunt found at the scene, supported a reasonable inference that marijuana was the item to be picked up by Hernandez from Lloyd. The police lacked probable cause, prior to entering the premises to search, to believe that these specific items would be found in his home.

⁴ The Court notes that, in an unrelated motion, the Court was provided with the testimony of a witness that the towel at the scene was a "hand towel type item."

Vitamin Water

The police had a lawful right of access to the refrigerator in the basement given that items for which they were authorized to search may have been secreted in the refrigerator. The incriminating character of the vitamin water was plausibly related to criminal activity of which police were already aware. The bottle of vitamin water was the same flavor and brand as that found in the vehicle returned by Hernandez to the rental agency. The police lacked probable cause, prior to entering the premises to search, to believe that the same type of vitamin water would be found in Hernandez's home.

Seizure of Items From Toyota in Attached Garage

Hernandez contends that the warrant did not authorize police to search the Toyota parked in the garage. Under art. 14 of the Massachusetts Declaration of Rights, the scope of a warrant authorizing the search of particularly described premises includes automobiles owned or controlled by the owner of the residence that are found within the curtilage of the described premises at the time the warrant is executed. Commonwealth v. Fernandez, 458 Mass. 137, 143 (2010) (if a vehicle parked in a driveway is within the curtilage, it may be searched pursuant to a warrant issued to search the accompanying residence); Commonwealth v. Santiago, 410 Mass. 737, 740 (1991); Commonwealth v. Signorine, 404 Mass. at 403. The curtilage consists of those areas that are so intimately tied to the residence that the owner reasonably expects them to be as protected as the home itself. Commonwealth v. Escalera, 462 Mass. 636, 647 (2012); Commonwealth v. McCarthy, 428 Mass. 871, 874 (1999).

Hernandez does not argue that the garage was not part of the curtilage of his residence. It clearly is. Rather, he argues that police were aware of the existence of the Toyota prior to the search,

had the opportunity to research the ownership of that vehicle, had no reason to believe that the Toyota was owned or controlled by him and, thus, were required to obtain a separate warrant to search the vehicle. Ownership is not the determinative factor. Courts applying Fourth Amendment principles have concluded that police may search an automobile within the curtilage that, based on an objective assessment, reasonably appears to be owned or controlled by the owner of the premises. See United States v. Pennington, 287 F.3d 739, 745 (8th Cir. 2002) (noting that warrant for residence includes vehicles found on premises, “except, for example, the vehicle of a guest or other caller”); United States v. Patterson, 278 F.3d 315, 318 (4th Cir. 2002) (police properly searched vehicle parked on property where, during investigation, they repeatedly observed it parked at house and it appeared unconnected to any guests who visited); United States v. Sturmoski, 971 F.2d 452, 458 (10th Cir. 1992) (police reasonably searched horse trailer on premises where path from trailer led to defendant’s office, providing reasonable indicia of control over vehicle); United States v. Gottschalk, 915 F.2d 1459, 1461 (10th Cir. 1990) (warrant includes automobiles within curtilage that, based on objectively reasonable indicia, appear to be under control of premises owner, regardless of actual ownership or control). Indeed, the Seventh Circuit has stated that it does not matter who owns a car within the curtilage of a described premises unless it obviously belongs to someone wholly uninvolved in the criminal activity under investigation. See United States v. Evans, 92 F.3d 540, 543-544 (7th Cir. 1996).

Here, the Toyota was parked in a closed garage attached to and easily accessible from the kitchen of Hernandez’s residence providing reasonable indicia of control over the vehicle by the residents of the home. It was not merely parked in the driveway. The vehicle was unlocked, allowing ready access by Hernandez to the interior and trunk of the vehicle as a place to store things, whether

or not he had keys to the vehicle. The boxes piled on top of the car and behind the car rendered it extraordinarily unlikely that the vehicle was connected to Jenkins's sister, who was visiting. Furthermore, the vehicle was covered with a layer of dirt and dust suggesting that it had remained in the garage for some time. The investigation had also uncovered the fact that Hernandez does not drive only one vehicle. Based on an objective assessment, the Toyota Camry reasonably appeared, at a minimum, to be under the control of the owner of the premises. Accordingly, the police had authority under the warrant to search the Toyota Camry.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the Defendant's Motion to Suppress Evidence Seized From His Residence On June 22, 2013 That Was Beyond the Scope of the Warrant be **ALLOWED** with respect to the towel and otherwise **DENIED**.



E. Susan Garsh
Justice of the Superior Court

DATED: October 10, 2014