

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIE JAMES MILES,	:	
	:	
Appellant	:	No. 446 WDA 2012

Appeal from the Judgment of Sentence February 21, 2012,
Court of Common Pleas, Allegheny County,
Criminal Division at No. CP-02-CR-0003921-2011

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 26, 2013

Appellant Willie James Miles (“Miles”) appeals from the judgment of sentence entered following his convictions of possession of a controlled substance with intent to deliver (“PWID”), 35 P.S. § 780-113(a)(30); possession of a controlled substance, 35 P.S. § 780-113(a)(16); and possession of drug paraphernalia, 35 P.S. § 780-113(a)(32). For the reasons that follow, we affirm.

On March 22, 2011, Detective Richard Manning (“Detective Manning”), an Allegheny County Deputy Sheriff, and four members of the Allegheny County Sheriff’s Fugitive Squad were executing criminal bench warrants in Allegheny County. When these law enforcement officers attempted to execute a warrant for Gregory Jones (“Jones”) at 6952½ Mount Vernon Road, the resident of that home informed Detective Manning that Jones lived

next door, at 6952 Mount Vernon Road.¹ Accordingly, Detective Manning and the other officers proceeded next door to 6952 Mount Vernon Road. As Detective Manning approached the door of 6952 Mount Vernon Road, he encountered Tia Staples ("Staples") exiting that residence, along with the smell of burning marijuana emanating from within the dwelling. Detective Manning informed Staples that he was looking for Jones. Staples responded that only she and her boyfriend, whom she identified only as "Phats," were in the apartment.

At this time, Detective Manning received a radio call that someone was running within Staples' residence. Consequently, under the belief that a crime was in progress, Detective Manning and members of the Fugitive Squad entered the apartment. Upon entering the apartment, the officers identified themselves and moved through the apartment in order to secure the residence. Detective Manning apprehended Miles, who had an active warrant in his name from the Pennsylvania State Parole Board, on the second floor of the dwelling. After apprehending Miles, the officers performed a visual sweep of the residence to discern whether there were any other people present. While doing so, one member of the Fugitive Squad, Detective Dwyer, observed a baggie containing crack cocaine on top of a fish tank in the dining room and alerted Detective Manning to its presence. At this point, the detectives placed both Staples and Miles under

¹ These residences were attached, townhome-style dwellings.

arrest, read them their *Miranda*² rights, and Staples consented to a search of her apartment.

Miles subsequently filed a motion seeking the suppression of the crack cocaine. The trial court denied this motion, and the case immediately proceeded to a bench trial on stipulated facts. The trial court convicted Miles of the aforementioned crimes, and upon the trial court's announcement of the verdict, the Commonwealth indicated that it would be seeking a mandatory minimum sentence on the PWID charge. The trial court ultimately imposed the mandatory minimum and sentenced Miles to five to ten years of incarceration.

Miles filed a timely notice of appeal and now presents four issues for our review. **See** Appellant's Brief at 2. The first three issues that Miles raises challenge the trial courts denial of his motion to suppress. We apply the following standard of review when considering such challenges:

Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

bound by these findings and may reverse only if the court's legal conclusions are erroneous.

Commonwealth v. Jones, 605 Pa. 188, 197-98, 988 A.2d 649, 654 (2010).

In his first issue, Miles argues that the trial court erred in failing to find that he had an expectation of privacy in Staples' apartment. Appellant's Brief at 9. A defendant in a suppression hearing has the preliminary burden of establishing both that he has standing and a legitimate expectation of privacy. **Commonwealth v. Burton**, 973 A.2d 428, 435 (Pa. Super. 2009).

Standing requires a defendant to demonstrate one of the following: (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 includes as an essential element the element of possession; or (4) a proprietary or possessory interest in the searched premises.

Id. Standing for a suppression motion is automatically conferred where a defendant has been charged with a possessory offense. **Commonwealth v. Bostick**, 958 A.2d 543, 551 (Pa. Super. 2008). As Miles was charged with possessory offenses, he automatically had standing to file the suppression motion. However, he was still required to independently establish an expectation of privacy in the premises searched. **Burton**, 973 A.2d at 435.

As the Pennsylvania Supreme Court has stated,

[H]aving standing based on a proprietary or possessory interest in the premises searched merely entitles a defendant to an adjudication of the merits of his/her suppression motion. In order to actually

prevail on such a motion, the defendant must also separately demonstrate that he had a subjective expectation of privacy in the premises at the time of the search and that such an expectation is objectively reasonable, *i.e.*, that he had a legitimate expectation of privacy.

Commonwealth v. Torres, 564 Pa. 86, 104, 764 A.2d 532, 542 (2001) (internal citation omitted).

Where a person establishes a legitimate expectation of privacy in the invaded place, an illegal search of that place will result in a violation of that person's constitutional rights. ***Commonwealth v. Govens***, 632 A.2d 1316, 1319 (Pa. Super. 1993). Courts determine whether a person's expectation of privacy is legitimate based on the totality of the circumstances. ***Commonwealth v. Viall***, 890 A.2d 419, 422 (Pa. Super. 2005).

Generally, the Fourth Amendment affords the greatest amount of protection to a person's residence. ***Govens***, 632 A.2d at 1321. Notably, courts have frequently held that a person may have a legitimate expectation of privacy in a place other than his own home. ***Id.*** at 1319. However, cases have also frequently shown "that a casual visitor who is merely present in another person's home does not have a legitimate expectation of privacy to contest an illegal entry by police into that home." ***Id.*** (citing ***Commonwealth v. Tann***, 459 A.2d 322, 325 (Pa. 1983)). Factors that courts use to determine if a defendant has a legitimate expectation of privacy in another person's residence include:

(1) possession of a key to the premises; (2) having unlimited access to the premises; (3) storing of clothing or other possessions on the premises; (4) involvement in illegal activities conducted on the premises; (5) ability to exclude other persons from the premises; and (6) expression of a subjective expectation of privacy in the premises.

Bostick, 958 A.2d at 553 (quoting **Govens**, 632 A.2d at 1319). For example, in **Commonwealth v. Davis**, the court held that the appellant had an expectation of privacy in the subject premises because he had a key to the apartment and because he kept clothing, identification, and prescription medicine in the apartment. **Commonwealth v. Davis**, 743 A.2d 946, 950 (Pa. Super. 1999).

We have reviewed the record and conclude that it supports the trial court's determination that Miles did not establish that he had a legitimate expectation of privacy in Staples' apartment. The notes of testimony from the suppression hearing show that no evidence was introduced that would support a finding that Miles had an expectation of privacy in this residence. There was no evidence that Miles ever stayed overnight at the residence, had a key to the residence, was a named lessee for the location, had mail delivered to that address, was listed on utility bills for that address, or kept any personal effects in the residence. To the contrary, the evidence established that on the date in question, Staples resided at 6952 Mount Vernon Street with her son only. N.T., 2/21/12, at 4. Staples further testified that Miles did not live at this location; that he was not on the lease

for the property; and that he did not keep “a lot” of personal effects there. *Id.* at 5. There simply is no evidence that Miles was anything more than a casual guest at Staples’ residence on the day in question. Thus, we find no error in the trial court’s determination that Miles failed to demonstrate that he had a legitimate expectation of privacy in Staples’ apartment.

Miles’ next two issues challenge the officers’ entry into Staples’ residence and their seizure of the crack cocaine as improper, and argues that his motion to suppress should have been granted on those bases, as well. However, “[t]o prevail on a motion to suppress, the defendant must show that he has a privacy interest which has been infringed upon.” *Commonwealth v. Benson*, 10 A.3d 1268, 1272 (Pa. Super. 2010). Thus, because Miles failed to establish that he had an expectation of privacy in the residence, Miles cannot successfully challenge the officers’ entry or their seizure of the crack cocaine as constitutionally invalid. Thus, he is due no relief on these claims.

As for his fourth and final issue on appeal, Miles contends that the Commonwealth “failed to give adequate notice of a mandatory minimum penalty[.]” Appellant’s Brief at 20. Miles concedes that a mandatory minimum sentence pursuant to 18 Pa.C.S.A. § 7508 applies here. Appellant’s Brief at 22. He argues only that “the Information failed to provide meaningful, pre-trial notice that any of the charges carried a mandatory penalty under [18 Pa.C.S.A. §] 7508.” *Id.* at 21. He complains

that “[t]he Information did not bear a stamped legend indicating *which counts* if any might result in a mandatory sentence upon conviction[,]” thereby not allowing him to “mount a coherent approach to the seemingly applicable mandatory.” *Id.* (emphasis in the original).

These statements stand in isolation. Miles provides no authority for his proposition that he was required to receive notice via the criminal information that some charges carry a mandatory minimum sentence upon conviction. In fact, he concedes that there is no requirement that the Commonwealth inform a defendant pre-trial of its intention to seek a mandatory minimum sentence under § 7508. *Id.* Miles states that he “has attempted to show that pre[-]trial notice is constitutionally necessary as an antecedent to a mandatory penalty under [§] 7508,” but he cites absolutely no authority, and provides absolutely no argument, in support of this position. Because of these deficiencies, we find this issue waived. *Commonwealth v. McLaurin*, 45 A.3d 1131, 1139 (Pa. Super. 2012) (holding that appellant waives issue for review where he cites no legal authorities or develops any meaningful analysis); Pa.R.A.P. 2119(a).

Judgment of sentence affirmed.