



West Virginia E-Filing Notice

CC-54-2022-F-271

Judge: John D. Beane

To: Jenny Lenn Cochran
jcochran@sclawpllc.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

State of West Virginia v. MICHAEL KEITH ALLMAN

CC-54-2022-F-271

The following order - case was FILED on 4/5/2023 4:20:30 PM

Notice Date: 4/5/2023 4:20:30 PM

Celeste Ridgway
CLERK OF THE CIRCUIT COURT
Wood County
Wood County Judicial Building
PARKERSBURG, WV 26102

(304) 424-1700
Celeste.Ridgway@courtswv.gov

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA,
PLAINTIFF,

VS.

/// CASE NO. 22-F-271

MICHAEL KEITH ALLMAN,
DEFENDANT.

ORDER

This matter came on for hearing on this the 28th day of March, 2023, upon the appearance of the State of West Virginia by and through it's Assistant Prosecuting Attorney, Russell Skogstad; upon the appearance of the defendant, in person, incarcerated and by Counsel, Jenny L. Cochran; and upon the previous filing of the Defendant's Motion to Suppress Evidence.

Whereupon testimony and other evidence was presented in connection with Defendant's motion to suppress, the argument of both counsels, and the entire record, the Court **DENIES** the motion upon the following findings of fact and conclusions of law:

1. Sgt. A.D. McGary of the Parkersburg Police Department is a 14-year veteran who is presently assigned to the Detective Bureau, but at the time of this investigation was on patrol.
2. On June 4, 2022, at approximately 9 p.m., Sgt. McGary was patrolling in the City of Parkersburg, Wood County, West Virginia in and around 16th St. when he looked through an open garage door of the business known as "Proline Collison" and saw Michael Keith Allman, who was known to have an active warrant.

3. Even though other people were in the business as well, Sgt. McGary stopped, calling Mr. Allman by name, who looked at him.
4. Sgt. McGary got out of his car and the defendant walked forward with a backpack, while removing an item from his waistband and placing it between vehicles in an open area. Sgt. McGary also saw the defendant place the backpack on the floor by a vehicle.
5. The defendant was advised to turn around so that handcuffs could be placed on him however he continued to resist, trying to face the officer, until being placed down face first on a vehicle and handcuffed.
6. Sgt. McGary then took the backpack under his control. During this time, 6 to 8 other individuals were in the area of the arrest, when an unknown individual, tried to claim ownership of the backpack.
7. Sgt. McGary exited the building with the defendant and the backpack.
8. Other officers then arrived on scene, specifically Officer Abraham, who was directed to the general location of where the defendant placed something from his waistband. Officer Abraham found a loaded semi-automatic firearm with a bullet in the chamber.
9. Sgt. McGary also found upon the waist of the defendant an empty holster.
10. Sgt. McGary searched the backpack for any additionally firearms, before placing the defendant in the back of his SUV police car and placing the evidence he secured in the front floorboard.
11. Sgt. McGary testified he is mindful of placing prisoners in the middle seat given their close proximity to himself and/or evidence as well as he was concerned about the prisoner's ability to sometimes manipulate their bodies into positions that will permit them to remove their handcuffed hands from their back to their front.

12. On cross examination, the defendant elicited testimony showing that the police had no search warrant and/or no consent to go into Proline Collision; no consent to search the backpack from either the defendant or the unknown individual who claimed ownership; as well as argued the backpack was not in the immediate control of the defendant as he was under arrest.

Given these arguments, the Court will address the legality of the search.

First of all, the State argued that the Officer had the ability and right to enter into the premises of a business where a person is located that has a warrant issued for his arrest. The business was open and the defendant could be seen clearly. No legal impediment kept the Officer from entering these premises.

Secondly, the defendant argues that the backpack belonged to someone else who claimed it at the scene and time of arrest. If indeed that is his argument, then the defendant has no standing to object to the seizure of an item not owned or possessed by him.

Lastly, the Defendant argues that since he was "secure and the bag was not under his immediate control or reach," a warrant should have been secured and therefore the evidence should be suppressed. However, there is more to consider. The officer and the defendant were not alone in the garage. Approximately six to eight other individuals were in the garage with the defendant before the officer entered to arrest the defendant. Sgt. McGary witnesses the defendant remove something from his waist and place it on the ground, while sitting the backpack down on the floor. While Sgt. McGary was arresting the defendant over earnest resistance from the defendant, one of the individuals approached the backpack and attempted to assert ownership. The others in the garage were so close that the officer ordered them to back up. The Sgt. picked up the bag and took

the defendant and the bag outside. An empty holster was found on the defendant. A gun was found by an additional officer where the defendant had been seen making a furtive gesture by Sgt. McGary. Sgt. McGary testified where one gun is found being held by a person, there is often a second or more gun in their possession.

Additionally, Sgt. McGary was placing the defendant in the back seat of his SUV. Sgt. McGary described in detail his vehicle, where the defendant was sitting and his training on dealing with occupants who resist/escape or reaching for items that have been taken. Behind the seat where the defendant was seated was his work items, so Sgt. McGary placed the defendant in the second seat and the backpack in the front seat on the floor.

Given these facts, the Court **FINDS** the following: The defendant was wanted on an outstanding warrant; the defendant was placed under arrest; while the officer was trying to secure the defendant, he was trying to escape and wrestled with the officer; the defendant had an empty holster on his waist; the defendant was a carrier of a gun/weapon; the backpack was in the immediate possession of the defendant when the officer first saw him; the defendant tried to hide his backpack at his feet while between the cars; the defendant did hide a weapon after seeing the officer; the defendant was being arrested on a warrant and at the same time the backpack was retrieved from the general area wherein the defendant was; while transporting, the officer was going to place the defendant in the second seat of the police SUV, directly behind the officer; the backpack was going to be in the front seat floor; and in the officer's experience and training, one who carries one gun is likely to carry two and lastly, just because an arrestee is handcuffed, does not mean he doesn't pose danger or threat to an officer.

Therefore, the Court **FINDS AND CONCLUDES** that Sgt. McGary made a reasonable and lawful search of the defendant's backpack incident to a lawful arrest. Based upon the behavior

of the defendant as stated above and the testimony of Sgt. McCrady, the search was to prevent the destruction of evidence of a crime, prevent an escape, and/or look for weapons. This preventive action was not only for the safety of the officer, but the defendant and other individuals on the premises.

It is therefore **ORDERED** the backpack and items therein, including the drugs are hereby admissible at trial.

It is therefore **ORDERED** that the Defendant's Motion to Suppress is hereby **DENIED**.

The Court takes notice of the Defendant's objection to the rulings herein.

The Clerk shall forward a copy of this Order to the Counsel for the Defendant, Jenny Cochran and to the Wood County Assistant Prosecuting Attorney, Russell Skogstad.

Entered:

4-5-2023



J.D. BEANE, JUDGE



West Virginia E-Filing Notice

CC-54-2022-F-271

Judge: John D. Beane

To: Jenny Lenn Cochran
jcochran@sclawpllc.com

NOTICE OF FILING

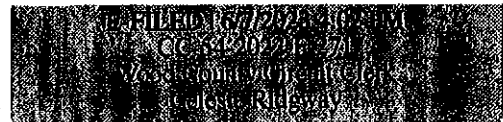
IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA
State of West Virginia v. MICHAEL KEITH ALLMAN
CC-54-2022-F-271

The following order - case was FILED on 6/7/2023 4:02:56 PM

Notice Date: 6/7/2023 4:02:56 PM

Celeste Ridgway
CLERK OF THE CIRCUIT COURT
Wood County
Wood County Judicial Building
PARKERSBURG, WV 26102

(304) 424-1700
Celeste.Ridgway@courtsww.gov



In the Circuit Court of Wood County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-54-2022-F-271
Judge John D. Beane

MICHAEL KEITH ALLMAN,
Defendant

TRIAL ORDER - GUILTY VERDICT

MICHAEL KEITH ALLMAN, who stands charged on Indictment Number 22-F-271, this 2nd day of June, 2023, appeared at the bar of this Court in person and by his attorney, Jenny Cochran, also appeared the State of West Virginia by Russell J. Skogstad, Jr., Assistant Prosecuting Attorney in and for Wood County.

Whereupon, the jury again appeared pursuant to their adjournment of June 1, 2023.

Whereupon, the jury heard jury instructions from the Court and closing arguments from both parties. The Jury adjourned to their room to deliberate.

After a time later the jury returns to inform the Court they have reached a verdict and upon their oaths say "We the Jury, find the Defendant, Michael Keith Allman, **"GUILTY OF COUNT ONE, "POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER FENTANYL IN AN AMOUNT LESS THAN ONE GRAM", GUILTY OF COUNT TWO "POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, HEROIN", GUILTY OF COUNT THREE "POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, MORPHINE", GUILTY OF COUNT FOUR, "POSSESSION OF A CONTROLLED SUBSTANCE, MARIJUANA", GUILTY OF COUNT FIVE, "PERSONS PROHIBITED FROM POSSESSING A FIREARM" AND GUILTY OF COUNT SIX, "PERSONS PROHIBITED FROM POSSESSING A CONCEALED FIREARM"** which verdict is received and **ORDERED** recorded.

Whereupon, the Defendant moves the Court for an acquittal and a new trial, the State objects. The Court **DENIES** the Defendant's motion and is advised of his appeal rights.

The Court discharged the jury and set the matter for sentencing on August 3, 2023, at 9:30 a.m.

It is **ORDERED** that the Clerk of this Court send a certified copy of this Order to all parties.

/s/ J.D. Beane
Circuit Court Judge
4th Judicial Circuit

PREPARED BY:

/s/ Russell Skogstad, Jr.
WV Bar #9804
Assistant Prosecuting Attorney
317 Market St.
Parkersburg, WV 26101

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.