

COMMONWEALTH OF PENNSYLVANIA vs. LAWRENCE EVANS, JR., Defendant, C.P. Franklin County Branch, Criminal Division, Criminal Action No. 1371 of 1998, Charge: Possession With Intent

Commonwealth v. Evans

Motion to suppress evidence discovered during execution of "all-vehicles-present" search warrant. Pa.R.Crim.P. 2005(c); 2006(f).

- 1) A search warrant must name or describe with particularity the person or place to be searched.
- 2) Whether probable cause exists is determined under the totality of the circumstances.
- 3) Information in an affidavit of probable cause should be viewed in a common sense, realistic, non-technical and ungrudging manner.
- 4) In resolving marginal cases, courts should determine whether the information in an affidavit of probable cause is sufficient by the preference accorded to warrants and by deference to the magistrate's determination as to whether the information in the affidavit established probable cause.
- 5) An "all persons present" search warrant is permissible when it is supported by probable cause and a sufficient nexus exists between the persons to be searched, the location of the search and the type of criminal activity suspected.
- 6) A warrant authorizing police to search "any other vehicles on the property which Johnny B. Thomas, Barbara Evans (Slaughter) and John Doe #230, 'Smokey,' have access to" was analagous to an "all persons present" search warrant, and was permissible where the affidavit of probable cause indicated that a controlled undercover purchase of crack cocaine took place from the residence containing the three named individuals within the preceding forty-eight hours, a 1990 Chrysler sedan owned by one of those individuals was being used to store and transport drugs, and the officer's experience was that vehicles are routinely used to store and transport drugs.
- 7) The scope of a lawful search is defined by the object of the search and the places in which there is probable cause to believe that it may be found.
- 8) Where vehicles were identified in the warrant as likely repositories of drugs which were the object of the search, probable cause existed to search the defendant's minivan where police found a vehicle key ring containing the key to the specified 1990 Chrysler sedan which also contained the key to the defendant's minivan, thereby establishing that one of the named persons had access to the minivan, placing the minivan within the scope of the warrant.

9) The requisite nexus existed between any other vehicles to which the named persons had access and the defendant's minivan because police found a vehicle key containing not only the key to the 1990 sedan but also the key to the minivan, establishing that one of the persons targeted in the search had access to that minivan, placing the minivan within the scope of the warrant.

David W. Rahausser, Assistant District Attorney, Counsel for the Commonwealth

Jerry J. Russo, Esquire, Counsel for the Defendant

OPINION AND ORDER

HERMAN, J., April 22, 1999:

INTRODUCTION

Before the court is the defendant's motion to suppress evidence found during the execution of a search warrant. The defendant was charged with possession with intent to deliver after police found crack cocaine in his Plymouth Voyager minivan. The issues for decision are twofold: whether the probable cause affidavit in support of the search warrant described the vehicles to be searched with sufficient particularity, and whether there was probable cause to search A Plymouth Voyage minivan located on the premises to be searched. For the following reasons, the court denies the motion.

FACTUAL BACKGROUND

Pennsylvania State Police Trooper Christian Dow applied for a warrant to search the premises of a mobile home located at 4840 Lincoln Way West in St. Thomas Township. The home, which was described in detail, was believed to be owned and/or occupied by Johnny B. Thomas, Barbara Evans (Slaughter) and a John Doe #230, "Smokey." A 1990 Chrysler sedan on the premises registered to Johnny B. Thomas was included in the affidavit of probable cause as a target of the search. The affidavit also requested permission to search "any other vehicles on the property which Johnny B. Thomas, Barbara Evans (Slaughter) or John Doe #230, "Smokey," have access to."

The affidavit also stated a confidential informant told police crack

cocaine was being sold from the home and that the 1990 Chrysler sedan on the premises owned by Johnny Thomas was being used to store and transport cocaine. The informant purchased crack cocaine from an occupant or occupants at the residence during a controlled buy within forty-eight hours of the warrant application. Trooper Fow stated in the affidavit he had been involved in over one hundred drug investigations and/or arrests and that in his experience drug users and traffickers often use their homes, outbuildings and vehicles to store and distribute drugs. The affidavit was submitted to and signed by the magistrate on September 25, 1998. The search took place early the next morning.

Police found Thomas's vehicle key ring during the search of the premises. In addition to the 1990 Chrysler sedan key, the ring also contained a key which fit a Plymouth Voyager minivan belonging to the defendant parked in the immediate vicinity. Police found crack cocaine in the van and charged the defendant with possession with intent to deliver.¹

DISCUSSION

The minivan was not described by make, model, plate number or color. This, the defendant argues, renders the warrant defective under Pa.R.Crim.P. 2005(c). That Rule requires the warrant to "name or describe with particularity the person or place to be searched." The defendant also argues that even if the affidavit described the minivan with particularity, there was no probable cause to search the minivan under Rule 2006(f). That Rule requires the affidavit to

set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe that the items or property identified are evidence or the fruit of a crime, or are contraband, or are otherwise unlawfully possessed or subject to seizure, and that these items or property are located on the particular person or at the particular place described.

¹ The defendant does not challenge the information which the police received from the confidential informant. He also does not contest that the van belonged to him.

Whether probable cause exists is determined under the totality of the circumstances. *Commonwealth v. Gray*, 503 A.2d 921 (Pa. 1985). Information in an affidavit of probable cause should be viewed in a common sense, realistic, non-technical and ungrudging manner. *Commonwealth v. Edwards*, 426 A.2d 550 (Pa. 1981). In resolving doubtful or marginal cases, courts should decide the matter by the preference accorded to warrants. *Commonwealth v. Matthews*, 285 A.2d 510 (Pa. 1971). Courts should give deference to the magistrate's determination as to whether probable cause was established by the information included in the affidavit. *Matthews*, supra.

The warrant authorized police to search "any other vehicles on the property which Johnny B. Thomas, Barbara Evans (Slaughter) and John Doe #230, "Smokey," have access to." This language makes this situation similar to an "all persons present" search warrant. Such a warrant is permissible when it is supported by probable cause and a sufficient nexus exists between the persons to be searched, the location of the search and the type of criminal activity suspected. *Commonwealth v. Wilson*, 631 A.2d 1356 (Pa.Super. 1993).

The magistrate issued an all-vehicles-present warrant based on the following information in the affidavit: A controlled drug buy from the residence containing the three individuals occurred within the preceding forty-eight hours. The 1990 Chrysler sedan owned by one of those individuals was being used to store and transport drugs. Trooper Dow's experience was that vehicles are routinely used to store and transport drugs. From these facts, the magistrate determined there was probable cause to believe that any and all vehicles physically on the premises, accessible by the named persons, were being used for drug-related purposes. In light of the preference accorded to warrants, the defendant has not shown the magistrate's determination was unreasonable.

Having found the warrant sufficiently described the location to be searched and the persons or things to be seized, the scope of the search could properly extend to the entire area in which the object of the search could be found. *Commonwealth v. Reese*, 549 A.2d 909 (Pa. 1988). The scope of a lawful search is "defined by the object of

the search and the places in which there is probable cause to believe that it may be found.” *Id.* at 911 (citations omitted). In this case, vehicles on the premises to which the named individuals had access were identified in the warrant as likely repositories of drugs, the object of the search. The search of the minivan was supported by probable cause. Indeed, the same factors considered sufficient to establish probable cause to issue the all-vehicles-present warrant also served to establish probable cause to search the minivan in particular, these factors being the minivan was (1) a vehicle (2) located on the property to be searched. In addition to probable cause, the requisite specified nexus existed between “any other vehicles which [the named persons] have access to,” and the Plymouth Voyager minivan because police found a vehicle key ring when they searched the premises which contained not only the key to the 1990 sedan, but also the key to that minivan. The discovery of the key ring clearly established that Johnny Thomas, one of the specific targets of the search, did have access to the minivan. The search of the minivan was therefore fully within the scope of the warrant and evidence discovered during that search is admissible.

The defendant’s motion to suppress will be denied. An appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW, this 22nd day of April, 1999, the defendant’s motion to suppress evidence is hereby DENIED.

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