

LEGAL NOTICES, cont.

corporation is PENN MAR REAL ESTATE SETTLEMENT SERVICES, INC.

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4/21/95

**NOTICE OF FILING OF
ARTICLES OF INCORPORATION**

Notice is hereby given that Articles of Incorporation were filed with the Pennsylvania Department of State at Harrisburg, Pennsylvania. The name of the proposed corporation organized under the provisions of Commonwealth of Pennsylvania Business Corporation Law of 1988 is V.I.P. Cleaning, Incorporated.

LAW OFFICES OF WELTON J. FISCHER
550 Cleveland Avenue
Chambersburg, Pennsylvania 17201
4/21/95

OTHER LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA - ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: May 4, 1995.

PARKLAWNS: Second and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Trustee for the Perpetual Care Trust Established Under Agreement dated January 6, 1958 with Parklawns, Inc.

PARKLAWNS: Second and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Trustee for the Merchandise I Trust Established Under Agreement dated March 10, 1971 with Parklawns, Inc.

PARKLAWNS: Second and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Trustee for the Merchandise II Trust Established Under Agreement dated December 27, 1974 with Parklawns, Inc.

LEGAL NOTICES, cont.

PARKLAWNS: Second and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Trustee for the Service Trust Established Under Agreement dated September 4, 1984 with Parklawns, Inc.

/s/ Rhonda King
Rhonda King, Deputy
Orphans Court Division
Franklin County, Pennsylvania

4/21,4/28/95

COMMONWEALTH OF PENNSYLVANIA VS. GEORGE CARRINGTON MCDONALD, C.P. Cr.D., Franklin County Branch, No. 357 of 1994

Criminal Action- Delivery- Suppression of identification- Disclosure of confidential informer-Appointment of an investigator

1. An individual may be stopped and briefly detained, provided the investigating officer can point to specific and articulable facts which, in conjunction with the natural inferences arising therefrom reasonably warrant the intrusion.
2. An investigative detention may properly ripen into an arrest based upon probable cause when additional information confirming the earlier suspicion is uncovered.
3. "Probable cause" exists when the facts and circumstances within the officer's knowledge are reasonably trustworthy and sufficient to warrant a person of reasonable caution to believe that the accused committed the crime.
4. "Probable cause that gives rise to a permissible arrest is founded upon a probability, or a prima facie showing, that criminal activity has occurred.
5. A police officer may rely upon a radio transmission to supply probable cause for an arrest.

John F. Nelson, District Attorney

Michael J. Toms, Esquire, Attorney for Defendant

OPINION AND ORDER

KAYE, J., February 13, 1995:

**OPINION SUR DEFENDANT'S AMENDED
OMNIBUS PRE-TRIAL MOTION**

George Carrington McDonald ("defendant"), is charged with unlawful delivery of a controlled substance ("crack" cocaine). Currently before the Court for disposition is defendant's "Amended Omnibus Pre-trial Motion" which was filed on December 5, 1994. A hearing thereon was scheduled for December 27, 1994, but was continued to January 26, 1995 on motion of the Commonwealth. On the last-mentioned date, a hearing was held and counsel were directed to provide the Court with memoranda of law in support of their respective positions. Those memoranda were received by the Court from defendant on February 3, 1995 and from the Commonwealth on February 8, 1995, and the matter is now before the Court for disposition. In

his motion, defendant seeks: to suppress the identification of defendant by a police officer; to compel disclosure of the police confidential informant; and the appointment of an investigator. Pursuant to Pa.R.Crim.P. 323(i), the Court makes the following:

A. SUPPRESSION OF IDENTIFICATION

I. FINDINGS OF FACT

1. On February 22, 1994, Gina Tasselmyer was an officer employed by the Pennsylvania State Police ("PSP") who was then working in an undercover capacity with the Franklin County Drug Task Force.

2. At approximately 8:20 o'clock p.m. on the above date, Trooper Tasselmyer was at the Hotel Madden in the company of a confidential informant when she encountered defendant and a second unidentified black male in a stairwell at the hotel.

3. Defendant was positioned to Trooper Tasselmyer's left, and the other individual was to her right at the time. At least four other black males, including Ralph Williams and Roy Stewart, were in the area, but were behind Trooper Tasselmyer at the time of the events which she described.

4. The unidentified male with defendant said to Trooper Tasselmyer and the confidential informant words to the effect of, "I got it big, what you want".

5. Trooper Tasselmyer handed \$40 in United States currency to the confidential informant, who handed it to defendant. Defendant gave one "rock" of crack cocaine to the informant, who gave it to Trooper Tasselmyer.

6. Trooper Tasselmyer and the confidential informant went to their vehicle where the former radioed a description of defendant to backup police officers from the PSP and Chambersburg Borough Police Department.

7. The description radioed was that of a black male in his mid-to-late 30s, six feet two inches in height, 185 pounds, with a medium build, black hair, brown eyes, beard and mustache, "scruffy" appearance, wearing a gray warm-up suit with red across the shoulders of the suit.

8. Trooper Tasselmyer went to a pre-arranged meeting place where she met Officer George Mayer of the Chambersburg Police Department to give him the crack cocaine. While at that location, Trooper Tasselmyer received a radio transmission that a possible suspect was located on the "Square" in Chambersburg, where another police officer had stopped him. This call was received at 8:53 o'clock p.m.

9. Trooper Tasselmyer drove by the location where defendant was said to be, and made a positive identification of him from her vehicle. She did not stop, but continued to drive by.

10. As she drove by, Trooper Tasselmyer observed defendant standing on the "Square" conversing with a police officer, and located at the rear of a police paddy wagon.

11. PSP Trooper Michael A. Ruda was involved with Detective David Warren and Officer George Mayer in providing "back-up" for Trooper Tasselmyer and to assist in identifying suspects in illegal drug sales which were made to her.

12. Trooper Ruda was located in a vehicle in the Rosedale parking lot, which is across the street from the Hotel Madden when Trooper Tasselmyer broadcast the description of defendant which was set forth above.

13. At 8:40 o'clock p.m., Trooper Ruda received a radio call that police were being called to a disturbance at the Hotel Madden, and he observed a number of people exit from the building, one of whom met the description of the person who had delivered the crack cocaine to Trooper Tasselmyer.

14. The suspect walked right past Trooper Ruda, and continued to walk to Spring Street, and then onto Lincoln Way West, where he proceeded on foot in a westerly direction to an apartment building which he entered.

15. Trooper Ruda continued to watch the building for about 5-10 minutes from his vehicle, which he had driven onto Lincoln Way West at a position that was west of the apartment building he had seen the suspect enter.

16. After about 5-10 minutes, the suspect exited the apartment building with another individual whose identity

was not known to Trooper Ruda, and began to walk in an easterly direction toward the "Square".

17. Trooper Ruda radioed Officer Michael Rosenberry of the Chambersburg Police Department of the suspect's location, and officer Rosenberry arranged a ruse to temporarily stop the suspect so he could be viewed by Trooper Tasselmyer to determine if he was the same person who was involved in the drug transaction.

18. Officer Rosenberry was operating a police paddy wagon, and he pulled into position on the "Square" when he observed a person known to him to be Preston Branche and another person whose name was unknown to him, but who was determined to be defendant.

19. Officer Rosenberry gave a false story, saying that a woman who was seeking to recover support arrearages was at the police station claiming that the money was owed by a "John Robinson". Defendant said his name was "Carrington", not "Robinson", and that he was from Florida.

20. After Trooper Tasselmyer had observed Officer Rosenberry with defendant, Officer Rosenberry radioed Trooper Ruda, and was informed that Trooper Tasselmyer had positively identified defendant as the person who had delivered drugs previously.

21. Officer Rosenberry asked defendant if he would accompany him to the police station to attempt to straighten this out, but told him he was not under arrest.

22. Defendant was driven to the Chambersburg Borough Police Station which he entered, and was then arrested for the instant offense.

II. CONCLUSIONS OF LAW

1. The initial encounter between defendant and Officer Rosenberry was not an arrest, but was a brief investigatory stop.

2. The action by Officer Rosenberry in briefly stopping defendant was perfectly lawful in the circumstances.

3. Whether Officer Rosenberry's request that defendant accompany him to Police Headquarters constituted an "arrest" is irrelevant, as by that time he possessed sufficient probable cause to effect an arrest for felony drug delivery charges and, in any event, no evidence was obtained as a result of these actions.

4. There is no basis to suppress the identification of defendant by Trooper Tasselmyer.

III. DISCUSSION

In the instant case, a police officer, PSP Trooper Gina Tasselmyer, operating in an undercover capacity, made a purchase of a controlled substance from an individual at the Hotel Madden, Chambersburg. While she observed the suspect for a long enough time to speak with him, and to transact the deal, she did not know the person's identity. However, she almost immediately radioed a detailed description of the person's physical appearance and his distinctive clothing to other police officers in the area who were assisting in the undercover operation. Trooper Ruda observed an individual matching that description emerge from the Hotel Madden after other police were called to the scene to quell a disturbance that was, as far as we know, unrelated to these events.

Trooper Ruda followed the suspect from the Hotel as he walked some distance to an apartment building and then observed him as he exited that building. At that point he radioed another officer, and it was arranged that the other officer would attempt to detain the suspect so that Trooper Tasselmyer could determine if he was the individual involved in the drug sale. Officer Rosenberry spoke to defendant and his companion, spinning a tale that a woman was seeking to recover child support arrearages which he thought might be owed by defendant who, of course, denied any knowledge of this purported obligation. Defendant was not put under arrest during the time he spoke to Officer Rosenberry, and was only formally arrested after he had accompanied the officer to the Chambersburg Police Station.

In the interim, i.e. between Officer Rosenberry's first contact with defendant, and his request that the latter accompany him to

police headquarters, Trooper Tasselmyer surreptitiously had driven by the scene and made a positive identification, which was communicated to Officer Rosenberry via police radio.

The initial action by Officer Rosenberry in detaining defendant through the use of a ruse was perfectly lawful in the circumstances set forth above. The police knew that a felony drug offense had been committed only a short time before, and they had a detailed description of the perpetrator which closely matched defendant, who had been observed leaving the locus of the commission of the felony.

An individual may be stopped and briefly detained, provided the investigating officer can point to specific and articulable facts which, in conjunction with the natural inferences arising therefrom, reasonably warrant the intrusion. *Commonwealth v. White*, 358 Pa.Super. 120, 516 A.2d 1211 (1986); *Commonwealth v. Prengle*, Pa.Super. 64, 293, 437 A.2d 992 (1981).

Commonwealth v. Brown, 417 Pa.Super. 165, 169, 611 A.2d 1318, 1320 (1992), appeal dismissed 643 A.2d 1078 (1994).

Moreover,

[a]n investigative detention may properly ripen into an arrest based upon probable cause when additional information confirming the earlier suspicion is uncovered. *Commonwealth v. Palm*, 315 Pa.Super 377, 462 A.2d 243 (1983). *Id.*

The initial brief stop and detention clearly was based upon reasonable grounds to think that a crime had been committed, and that defendant may have been the perpetrator. The eyewitness identification of defendant as the perpetrator provided Officer Rosenberry, once communicated to him via radio, with probable cause to make the arrest. The police may make an arrest without a warrant for a felony in the presence of probable cause to believe that the crime was committed, and that the arrestee committed it. "Probable cause" exists when the facts and circumstances within the officer's knowledge are reasonably trustworthy and sufficient to warrant a person of reasonable caution to believe that the accused committed the crime. *Commonwealth v. Traviglia*, 502 Pa. 474, 467 A.2d 288 (1983), cert. den. sub nom. *Lesko v.*

Pennsylvania, 104 S.Ct. 3547, 467 U.S. 1256, 82 L.Ed. 2d 850, rehearing denied 105 S.Ct. 27, 468 U.S. 1226, 82 L.Ed. 2d 920, habeas corpus granted 689 F.Supp. 508, reversed 881 F.2d 44, rehearing denied, cert. den. 110 S.Ct. 759, 493 U.S. 1036, 107 L.Ed. 2d 775, appeal after remand 925 F.2d 1527, rehearing denied, cert. den. sub nom. *Lehman v. Lesko*, 112 S.Ct. 273, 116 L.Ed. 2d 226. "Probable cause" that gives rise to a permissible arrest is founded upon a probability, or a prima facie showing, that criminal activity had occurred. *Commonwealth v. Brown*, 426 Pa.Super. 601, 627 A.2d 1217 (1993). A police officer may rely upon a radio transmission to supply probable cause for an arrest. *Commonwealth v. Sanchez*, 416 Pa.Super. 160, 610 A.2d 1020 (1992), app. den. 533 Pa. 626, 620 A.2d 490.

Defendant's position is that defendant was illegally arrested by Officer Rosenberry at the time he was initially stopped, and that this allegedly illegal arrest taints the identification by Trooper Tasselmyer. As we have found that the initial stop of defendant by the officer was not an arrest, but a lawful, brief investigatory detention, there can be no basis for sustaining defendant's contention.

This situation only arguably changed after Officer Rosenberry was told, in effect, "that's the man who sold the drugs" via radio, upon which probable cause to effect a warrantless arrest existed. Since he could lawfully have made an arrest at that point, whether his actions constituted an "arrest" is moot.

There is no basis to suppress the identification of defendant by Trooper Tasselmyer, as his detention and subsequent arrest were lawful, and no relief will be granted.

B. DISCLOSURE OF CONFIDENTIAL INFORMANT

Defendant next sought to compel the disclosure of the Commonwealth's confidential informant. However, at the omnibus pre-trial hearing, defendant presented no evidence whatever, and did not even mention this issue, as far as we can recall, or discern from our notes. We think this issue was abandoned and waived by defendant by reason thereof.

Defendant apparently sought to resurrect the issue of a succinct reference in his post-hearing memorandum that it was not his intent to abandon the issue by not briefing it more fully. We do not think that a mere statement to this effect is sufficient in the absence of some reference to authority and to the evidence that was presented as to the basis for the relief sought. In the case *sub judice* we are apparently asked to search the record for defendant to see if a basis for disclosure exists as not a single argument in favor of disclosure was made.

Assuming, *arguendo*, that we are some how incorrect in disposing of this issue so summarily, we were directed by the decision in *Commonwealth v. Payne*, Pa. , A.2d , (No. 66 Western District Appeal Docket 1992, decided 12/22/94). In *Payne*, a discussion was made of the circumstances wherein disclosure of the Commonwealth's confidential informant should be made, i.e. when the limited privilege against disclosure is overcome by the need to disclose that individual's identity. While the *Payne* case does not establish a bright line rule where disclosure must occur, it does hold that the balance tips in favor of disclosure "where guilt is based solely upon a single observation by police, but testimony from a more disinterested source is available." [Slip op. at 6, citing *Commonwealth v. Carter*, 427 Pa. 53, 61, 233 A.2d 284, 288 (1967)]. However, it further holds that where other corroboration of the officer's testimony exists, disclosure is not necessarily required. (Slip op. at 7) .

The police have an interest in keeping the identity of confidential informants undisclosed to avoid possibly preventing their utility in future investigations, from dissuading other potential informants from coming forward, and simply in keeping the informant free from intimidation, bodily injury, or even death, while the accused may hope that the informant may clear his name or may desire disclosure for other purposes. Obviously, the issue is a significant one for both sides.

In the instant case, the Commonwealth has identified by name two persons who allegedly were in the immediate vicinity of the drug transaction at the Hotel Madden, and of a third person who was a companion of defendant, and who left with him from an

apartment building shortly after the sale allegedly occurred. Additionally, Trooper Tasselmyer's identification of defendant is partially corroborated by her detailed description of the person involved in the drug transaction, and the observation by another officer of defendant leaving the same hotel where the sale occurred, dressed in a distinct type of clothing that matched the undercover's description of the seller of the drugs.

In the foregoing circumstances, the officer was not the only witness to these alleged events (or non-events), and the identities of other observers has been made known to defendant, nor is her testimony totally uncorroborated. Defendant was observed at the location of the alleged sale by another officer shortly after the sale occurred, and was wearing distinctive clothing, and presented the physical characteristics which matched the description of clothing and physical characteristics broadcast via police radio by Trooper Tasselmyer. We will not direct the disclosure of the confidential informant's identity under these circumstances.

C. APPOINTMENT OF INVESTIGATOR

Under the circumstances, it would appear that a certain amount of legwork and interviewing of potential witnesses will have to be conducted by the defense. We will approve the appointment of Paul Weachter for this purpose for up to 10 hours' time at \$35.00 per hour. Costs of the investigation will be taxed as costs in this case.

ORDER OF COURT

NOW, February 13, 1995, upon consideration of defendant's omnibus pre-trial motion, the Court hereby DENIES defendant's motion to suppress identification testimony and to compel disclosure of the Commonwealth's confidential informant, and GRANTS the motion to appoint Paul Weachter as investigator for the defense for up to 10 hours at \$35.00 per hour. Copies of all invoices shall be submitted to the Clerk of Courts and shall be taxed as costs in the case.