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Commonwealth v. Murray

**Commonwealth of Pennsylvania v.
Uzziah Yeasseem Murray, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Criminal No. 189-2013

HEADNOTES

Search and Seizure; Standing; Scope of a Warrant; Search of a Person Named in a Warrant; Video Obtained without a Warrant

1. A defendant seeking suppression of seized evidence has the initial burden of establishing standing and a legitimate expectation of privacy in the area searched or the items seized. Commonwealth v. Boulware, 876 A.2d 440 (Pa. Super. 2005).
2. A search warrant for a location can also be issued for the search of a person. When this occurs, there is no requirement that the person be located at the premises named in the warrant. Commonwealth v. Franklin, 990 A.2d 795 (Pa. Super. 2010)
3. Where an individual is primarily known by a nickname, there is no requirement that a search warrant identify the individual by his real name.
4. Video footage recorded inside an individual's home, without a warrant, is an illegal search. Commonwealth v. Dunnavant, 63 A.3d 1252 (Pa. Super. 2013).

Appearances:

Steven Smith, *District Attorney's Office*

Ian Brink, *Public Defender's Office*

OPINION

Before Herman, P.J.

Procedural History

On January 17, 2013, a warrant was issued for the search of Heroin or any related contraband in Apartment 1 at 60 Lincoln Way West, Chambersburg, PA. Following execution of the search warrant, Defendant, Uzziah Yeasseem Murray, was charged by Pennsylvania State Police on January 18, 2013, with one count of Possession with Intent to Deliver Heroin. On May 2, 2013, Defendant filed a motion to suppress evidence. A hearing on the matter was held on July 25, 2013, and the parties were ordered to submit briefs. The matter is now ready for decision.

Discussion

Standing

A defendant seeking suppression of seized evidence has the initial burden of establishing standing and a legitimate expectation of privacy in the area searched or the items seized. Commonwealth v. Boulware, 876 A.2d 440 (Pa. Super. 2005). In fact, to not place this burden on the Defendant is reversible error. Id. In this Commonwealth, a person charged with a possessory offence automatically has standing to challenge a search. Commonwealth v. Brown, 64 A.3d 1101 (Pa. Super. 2013). As Mr. Murray is charged with Possession with Intent to Deliver, our issue is narrowed down to whether "he had a subjective expectation of privacy in the premises at the time of the search and that such an expectation is objectively reasonable." Commonwealth v. Torres, 764 A.2d 532, 542 (Pa. 2001). "A defendant must separately establish a legitimate expectation of privacy in the area searched or thing seized." Commonwealth v. Maldonado, 14 A.3d 907, 910-11 (Pa. Super. 2011)(quoting Commonwealth v. Burton, 973 A.2d 428, 435 (Pa. Super. 2009)). "The determination whether defendant has met this burden is made upon evaluation of the evidence presented by the Commonwealth and the defendant." Id.

At the suppression hearing, Mr. Murray did not testify. The only testimony at the hearing came from Trooper Rost. We find that the testimony of Trooper Rost establishes that Mr. Murray did have a subjective expectation of privacy. The trooper testified that when speaking to the landlord of the property search, the landlord related that he recognized Mr. Murray is the individual who pays rent. He also stated that Mr. Murray had changed the locks on the apartment. Further, neighbors knew Mr. Murray. Trooper Rost testified that he never witnessed a drug transaction because all transactions took place inside the building. The Commonwealth has suggested that Mr. Murray has no privacy interest in this apartment because he stated at the preliminary hearing that he did not live at the apartment. Further, the Commonwealth suggests that his name is not on the lease. Aside from these bare assertions, none of this evidence is before us. Even if it was, we are not convinced that it does not outweigh the evidence which suggests that Mr. Murray had some propriety interest over this apartment and its contents and, therefore, had a legitimate expectation of privacy in this apartment.

Mr. Murray is entitled to a review of the merits of his motion to suppress evidence.

Scope of Warrant – Search of Defendant’s Person

Defendant next argues that the search of his person was unlawful because it took place in the hallway of his apartment and was, therefore, outside the scope of the warrant issued for the search of the apartment.

Following a discussion of several cases in other jurisdictions and noting the lack of case law in Pennsylvania, the Superior Court offered the following holding:

The above case samples are undoubtedly not exhaustive, but appear to fully represent the prevailing view on the issue at hand: that a search warrant can issue for a person and when it does, the search need not be at the location specified in the warrant. Given the above authority, we see no reason Pennsylvania would take a divergent view.

Commonwealth v. Franklin, 990 A.2d 795 (Pa. Super. 2010). Here, the warrant is issued for the search of the apartment, as well as the defendant, Uzziah Murray, and any other person on the premises. Therefore, the search of Mr. Murray was not outside the scope of the warrant.

Sufficiency of the Warrant – Identification of Defendant

Defendant next argues that because the affidavit of probable cause supporting the search warrant did not make the connection between “Slim” and the defendant, Uzziah Murray. Therefore, he argues that the warrant was insufficient to justify a search of his person.

Pursuant to Pa. R. Crim. P. 203(B), also known as the “Four Corners” rule, an authority issuing a warrant may not consider evidence outside the four corners of the supporting affidavit of probable cause. Pursuant to Pa. R. Crim. P. 206(3), a person to be searched must be named in the application or described with particularity.

What defendant argues is that the affidavit fails to identify “Slim” as Uzziah Murray. The connection is made, instead, in the application for the warrant. Therefore, to consider the application would be a violation of the Four Corners rule. We are not sure that it is entirely necessary that this connection be made. Rule 206 makes no requirement that the name of the individual be his actual name. It is a common occurrence, in the drug trade, for nicknames to be used. There is no doubt that the affidavit of probable cause, alone, sufficiently identifies “Slim” as the perpetrator of the alleged crime and sets forth the requisite probable cause to issue a warrant for the search of “Slim’s” person. “Slim” was the individual searched, and “Slim” was the individual arrested. Therefore, Uzziah Murray, who is also known as “Slim,” was identified as a subject of the search warrant.

Although we do not base our decision on this argument, we do note that the Commonwealth’s argument that the Application for the Search Warrant is incorporated in to the affidavit of probable cause is persuasive at some level. The Four Corners rule, as provided in Pa. R. Crim. P. 203(B), prohibits the issuing authority from using any other evidence outside the affidavit of probable cause, in order to determine if probable cause exists to issue the warrant. Further, during any suppression proceeding, no other evidence is admissible outside the affidavit. Upon review of these rules, as well as a general review of case law on the Four Corners rule, it appears that this prohibition of evidence pertains to additional testimony from a police officer or other source in order to establish probable cause. The mention of the name “Uzziah Murray” in the application for the search warrant is not of this type of evidence. The application is a document which is merely an extension of the affidavit, presented to the issuing authority in writing at the same time as the affidavit, and sworn to by the affiant at the same time at which the affidavit is sworn

to. This information is of the same reliability as the information in the affidavit and is submitted simultaneously with the affidavit. It is reviewable by a suppression court in the same manner as the affidavit. Therefore, unlike any testimonial or undocumented evidence from a police officer at the time a warrant is requested, information contained in an application for a search warrant is not precluded by the Four Corners rule.

Sufficiency of the Warrant -Based on False or Illegal Information

Defendant argues that the video footage from the camera worn by the confidential informant was of very little evidentiary value. Further, had the affidavit of probable cause not overstated and exaggerated the value of the video, the issuing authority would not have had sufficient probable cause to issue the search warrant.

We agree that the video contains very little evidentiary value for a determination of probable cause. However, we must disagree with the defendant's characterization of the amount of reliance placed upon this video by the affidavit of probable cause. The affidavit barely mentions this video. Rather, an emphasis is placed on information relayed from the confidential informant to the affiant. The affidavit states that the officer conducted a successful controlled purchase of heroin using this informant. Additionally, the historically reliable informant related that he or she witnessed heroin and money throughout the apartment and has made several purchases in the past at this apartment from the defendant and other at the apartment. In addition to information from the informant, the affiant stated that a traffic stop was conducted of individuals leaving this apartment. These individuals admitted to purchasing drugs from "Slim" at the apartment. They also provided other evidence which corroborated information given by the informant.

Even without the video surveillance, there was an abundance of probable cause in the affidavit that would allow the district judge to issue this warrant.

Video Obtained Without Warrant

Defendant's final argument seeks to suppress the video footage obtained by the affiant by equipping the confidential informant with a hidden camera. In support of this argument, Defendant cites Commonwealth v. Dunnavant, 63 A.3d 1252 (Pa. Super. 2013), allocator granted 152 WAL 2013. In Dunnavant, the Superior Court held that video surveillance of an individual's home without a warrant is a search and, therefore, a constitutional violation.

Although the Commonwealth did obtain a warrant to conduct audio surveillance of the defendant's apartment, no warrant was obtained to obtain video surveillance. Dunnavant clearly prohibits use of evidence obtained through video surveillance in a subject's home without a warrant to do so, therefore, we are compelled to find that the video footage taken inside the apartment was unlawfully obtained and any evidence derived there from is fruit of the poisonous tree.

As we discussed in the previous section, the video is of very little evidentiary value in the context of whether probable cause existed to issue the warrant. There was more than sufficient probable cause to support the issuance of the warrant. The video footage, itself, will be suppressed, but will have no bearing on the search warrant as there still exists enough evidence for a finding of probable cause.

Conclusion

In light of the foregoing discussion, we find that the Defendant, Uzziah Murray, does have standing to contest the search of the apartment. Further, the warrant sufficiently identified him and provided authorization to search him outside of the apartment. The warrant was issued based on facts obtained from a reliable confidential informant and facts from the affiant, himself. The warrant was not issued based on the video footage which contained very little evidentiary value. Finally, because no warrant was sought to obtain the video footage of the apartment, it is an illegal search and is, therefore, inadmissible as evidence.

ORDER OF COURT

AND NOW, this 1st day of November 2013, upon consideration of the Defendant's Motion to Suppress Evidence and brief in support, the Commonwealth's answer thereto and brief in opposition, the hearing on the matter, the record, and the applicable law,

IT IS HEREBY ORDERED that the *Motion to Suppress Evidence* is DENIED, in part, as to all issues except the motion to suppress the video footage obtained without a warrant. The motion to suppress the video footage obtained without a warrant is GRANTED and the footage, along with any evidence derived therefrom, is suppressed. An Opinion is attached containing our reasoning.

Pursuant to Pennsylvania Rules of Criminal Procedure 114, the Clerk of Courts shall immediately docket this Order and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Order, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.