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Commonwealth v. May

COMMONWEALTH OF PENNSYLVANIA v. WILLIAM FRANCIS MAY, JR., Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Fulton County Branch  
Criminal Division, No. 139 of 2002

*Criminal Law; Search and Seizure; Suppression of Evidence; Probable Cause; Search Warrant; Maryland Declaration of Rights; Pennsylvania Constitution Article I, Section 8; Fruit of the Poisonous Tree Doctrine*

1. All citizens of the United States are guaranteed freedom from unlawful search and seizure through the Fourth Amendment of the United States Constitution.
2. The state of Maryland articulates privacy rights afforded its citizens that are *in pari materia* with the Fourth Amendment through Article 26 of the Maryland Declaration of Rights.
3. Article I, Section 8, of the Constitution of Pennsylvania echoes the U.S. Constitution in regard to privacy rights afforded the Commonwealth's citizens.
4. By requiring a search warrant, Maryland and Pennsylvania place an issuing authority between police and citizens so that a detached, reasonable and neutral person can weigh the necessity of invading a citizen's privacy to further law enforcement, and the issuing authority's determination that probable cause existed must be given deference.
5. For analyzing probable cause for a search warrant, both Pennsylvania and Maryland have adopted the totality of the circumstances standard.
6. If the magistrate who issued a search warrant in Maryland had a substantial basis for concluding that probable cause existed, then that same information conveyed by Maryland police to Pennsylvania authorities could properly be used as probable cause to support a search warrant in Pennsylvania.
7. The real issue in the evaluation of whether a search warrant was properly issued is the presence or absence of probable cause, a term defined as less than certainty of proof, but more than suspicion or possibility.
8. In determining probable cause sufficient for issuing a search warrant, the rule in Maryland is that grounds must be evidenced within the four corners of the affidavit.
9. The Supreme Court and the Maryland courts have established a deferential standard of review when determining whether probable cause existed to issue a search warrant.

Appearances:

Dwight C. Harvey, Esq., *Fulton County District Attorney*

Thomas A. Crawford, Esq., *Counsel for Defendant*

Barbara L. Weiss, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., January 17, 2003

Background

This matter is before the Court pursuant to a Pre-Trial Motion to Suppress filed by Defendants

Barbra Jean May and William Francis May, Jr., represented by Thomas A. Crawford, Jr., Esquire, and Barbara L. Weiss, Esquire, with the Commonwealth being represented by District Attorney Dwight Harvey, Esquire.

Defendant Barbra May was charged by Criminal Complaint with Possession of Marijuana on June 24, 2002 in Criminal Action No. 138 of 2002. Defendant William Francis May, Jr., was charged by Criminal Complaint on June 24, 2002, with Manufacture, Delivery, Distribution, Possession With Intent to Deliver, Possession of Marijuana, and Receiving Stolen Property in Criminal Action No. 139 of 2002. Both Defendants waived Mandatory Arraignment on September 16, 2002, and trial was scheduled for the January 2003 Trial Term beginning January 21, 2003.

A hearing was held and evidence presented on November 26, 2002, in the Fulton County Courtroom on the Motions of Defendants. At the conclusion of the hearing, the Court ordered a response from the Commonwealth as to Defendants' discovery requests and permitted Defendants to file an Amended Pre-Trial Motion after review of the provided discovery materials. Upon the failure of the Defendants to file an amended Motion, the Court required counsel to submit Memoranda regarding their positions on the matters presented to the Court for decision. The Court makes the following as required by Pa.R.Crim.P. 581(I):

#### Findings of Fact

1. The Application and Affidavit for Search and Seizure Warrant (Commonwealth Ex. 1) verified by Detective Mike Malone sets forth the following:

A. In May of 2000, a confidential informant, identified as a concerned citizen, informed Officer Schwartz of the Maryland State Police that she had personal knowledge that a person named Billy May (later identified as Defendant William Francis May, Jr.) was growing marijuana on his farm in Pennsylvania and then selling it out of Graymar Liquors in Baltimore, Maryland, while he was employed there each weekend. The concerned citizen stated to the officer that she had personally observed numerous persons enter Graymar Liquors when Billy May was working and then leave without making an alcohol purchase. The concerned citizen gave the officer a description of Billy May's Ford truck stating that it displayed a Pennsylvania license plate. The officer made periodic checks of the parking lot of Graymar Liquors for approximately two months and observed the above described Ford truck parked on the lot at Graymar Liquors each weekend, but not during the week. The officer conducted a registration check on the Ford truck and identified the registered owner as Defendant William F. May, 1826 Overly Raker Road, McConnellsburg, PA 17233, the primary of two residences maintained by Defendant May. The officer contacted the Baltimore County Narcotics Unit and this case was eventually turned over to Maryland Police Detective Malone for additional investigation;

B. In furthering his investigation, Detective Malone used the information reported to him in checking various police related databases which revealed a more complete description of Defendant May, including his Social Security number and information of no prior drug arrests;

C. In October of 2001, a Baltimore County Detective Frederick received information from a confidential informant, who had provided reliable information in the past, that Defendant May was selling marijuana across the counter at Graymar Liquors at 7624 German Hill Road, Baltimore, Maryland. According to the informant, Defendant May would place the marijuana in small paper bags, and the informant had seen persons exiting the store with small paper bags. The informant added that Defendant May drives down from Pennsylvania each weekend, and Defendant May parks his truck in the rear of Graymar Liquors, where Defendant May works on Friday and Saturday evenings;

D. In November of 2001, a second concerned citizen contacted the Baltimore County Narcotics Unit and reported that her son was buying and selling marijuana obtained from "Billy" at Graymar Liquors;

E. In the early part of 2002, a Baltimore County Detective Hann met with a narcotics reliable informant who advised the detective that he/she had previously purchased marijuana from a person known as "Billy" at a beef stand across the street from Graymar Liquors, but that "Billy" now sells marijuana from Graymar Liquors where May works. The informant claimed personal knowledge of this because he/she had driven a friend to Graymar Liquors about six months previous for the purpose of purchasing marijuana from "Billy," and "Billy" sold his/her friend a quantity of marijuana from inside Graymar Liquors on that occasion.

2. Detective Malone testified that as a follow-up to all of this provided information, in February,

2002, he and another detective met with a narcotics reliable informant who advised that he/she had personally purchased marijuana from a person known as Billy May on numerous occasions in the past. The informant stated that he/she had purchased marijuana inside Graymar Liquors and from inside an apartment where May stays when he comes to Dundalk<sup>[1]</sup>, Maryland, each week. The informant gave the detectives the explicit location of May's apartment in Baltimore. He/she further stated that May lives in Pennsylvania, but drives to Baltimore each weekend to work at Graymar Liquors. The informant advised Detective Malone that Billy May drives a red truck which he always parks in the rear of Graymar Liquors when he works there. The informant told Detective Malone that he/she had personally observed marijuana in Billy May's truck and in his apartment at 1600 Leslie Road, Baltimore, Maryland (Defendant May's secondary residence) on past occasions. Detective Malone showed the informant a photograph of Defendant William Francis May, Jr., and the informant identified the picture as the person he/she knew as Billy May.

3. During the course of this investigation, Detective Malone observed the Pennsylvania license plate on the red Ford truck parked behind Graymar Liquors. A registration check with the Pennsylvania Bureau of Motor Vehicles revealed that the owner was Defendant William Francis May, of 1826 Overly Raker Road, McConnellsburg, PA 17233.

4. In March, 2002, Detective Malone and another detective met with a narcotics reliable informant and arranged a controlled marijuana purchase from Defendant May. The informant purchased a quantity of marijuana from Defendant May at the counter inside Graymar Liquors.

5. Later in March, 2002, a second controlled purchase of marijuana from Defendant May was arranged with a narcotics reliable informant. This time, the marijuana purchase from Defendant May was effectuated inside Defendant May's apartment at 1600 Leslie Road, Baltimore, Maryland.

6. In May of 2002, Detectives Malone and Hannon met with a narcotics reliable informant and arranged another controlled purchase of marijuana from Defendant May. This time, the marijuana purchase from Defendant May was completed inside Graymar Liquors.

7. On May 2, 2002, Detective Malone observed Defendant May and an unknown white male exit the rear door of Defendant May's 1600 Leslie Road apartment, whereupon Detective Malone observed Defendant May place a box into his Ford truck and then drive away from 1600 Leslie Road. Detectives Malone and Hannon followed Defendant May directly to Graymar Liquors where Defendant May parked behind the liquor store and entered the store through the front door.

8. Based upon all of the above information and upon Detective Malone's personal knowledge of facts, training, experience, and participation in controlled dangerous substance investigations and in financial investigations involving quantities of controlled dangerous substances, on May 12, 2002, the Honorable G.D. Russell, Associate Judge for the District/Circuit Court for Baltimore, County, State of Maryland issued a warrant to search Defendant May's person, vehicle, and apartment in Baltimore.

9. On May 16, 2002, at 4:44 p.m., Detective Malone and other members of the Baltimore County, Maryland, Narcotics Unit observed Defendant May leave his apartment located at 1600 Leslie Road, 2nd Floor Rear, Baltimore, Maryland 21222. At this time and about a quarter of a mile away, a stop of the vehicle was conducted and search warrants previously obtained by Detective Malone were executed by searching Defendant May and his vehicle. Nothing was found on Defendant May's person.

10. Located in Defendant May's vehicle were two brown paper bags which contained numerous smaller bags of marijuana.

11. Defendant May was read his *Miranda* rights, and Defendant May made no request for counsel.

12. The bags containing marijuana were seized, and Defendant May was taken back to his apartment where the search continued. The arresting officers and Defendant May arrived back at May's apartment within fifteen minutes, used May's keys to enter, whereupon a number of items were found including the following:

(a) several large 3-gallon bags of marijuana equaling about 1800 grams;

(b) marijuana on a living room table with baggies, pipe with residue, rolling papers, baggie with residue;

(c) electronic scale, plastic bowls, pipes with residue, loose marijuana, capsules, partially burned marijuana, sandwich bags;

(d) \$19,000 in currency under a bed mattress;

(e) 158 boxes of fireworks; and

(f) mail containing Defendant May's Fulton County, Pennsylvania, address which had originally been mailed to the Fulton County address.

13. A Maryland police officer, again, read Defendant May his *Miranda* rights from a card published by Maryland Police Supply, Inc., and carried by all Maryland police officers, whereupon Defendant May was interviewed and questioned.

14. At 6:50 p.m., Defendant May was again read his *Miranda* rights by Sergeant Fletcher who informed Defendant May that the Pennsylvania State Police had been contacted. Defendant May did not request counsel.

15. During questioning, Defendant May stated that he lived with his wife Barbra May, Defendant in criminal action case No. 138 stemming from this same incident.

16. Defendant William May admitted to the arresting officers that he had additional marijuana at his home in Fulton County, Pennsylvania, saying that it was "enough to put me in jail." Defendant acknowledged that he had three pounds of marijuana in a feed bag behind the dresser in the Fulton County residence's master bedroom. He further stated that there were also firearms in the Fulton County residence.

17. On May 16, 2002, Baltimore County Detective Malone contacted via telephone Pennsylvania State Police Officer Charles Schaefer with the following information as set forth in his Application for Search Warrant and Authorization (Commonwealth Ex. 3):

(a) that William May was regularly traveling from Pennsylvania to Baltimore, Maryland, with loads of marijuana in a Ford truck bearing a Pennsylvania Registration;

(b) that transactions occurred in Graymar Liquors located at 7624 German Hill Road, Baltimore, Maryland 21222;

(c) that an investigation began as early as May of 2000;

(d) that on numerous occasions Detective Malone observed Defendant May's truck bearing Pennsylvania registration YJB411 parked at Graymar Liquors;

(e) that a Bureau of Motor Vehicles check indicated that the vehicle was registered to William Francis May, Jr., of 1826 Overly Raker Road, McConnellsburg, Fulton County, Pennsylvania; and

(f) that controlled purchases of marijuana were made from Defendant May.

18. Trooper Schaefer obtained a search warrant for the premises located at 1826 Overly Raker Road, McConnellsburg, Fulton County, Pennsylvania, including the attached garage and a camouflage shed, and a search of the premises was conducted.

### Discussion

Question: Was the search warrant issued by the State of Maryland for a search of Defendant May's person, vehicle, and apartment supported by sufficient probable cause in the affidavit?

All citizens of the United States are guaranteed freedom from unlawful search and seizure through the Fourth Amendment of the United States Constitution, which states as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. amend. IV.

The state of Maryland also articulates privacy rights afforded its citizens that are *in pari materia* with the Fourth Amendment through Article 26 of the Maryland Declaration of Rights. Henderson v. State, 89 Md. App. 19, 597 A.2d 486 (1991). Article 26 states as follows:

"That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search

suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."

Md. Const., Decl. of Rights, art. 26.

Likewise, the Commonwealth of Pennsylvania echoes the Constitution in regard to the privacy rights afforded its citizens through Article I, Section 8 of the Constitution of Pennsylvania as follows:

"The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant."

Const. the Commw. of Pa., art. I, § 8.

Defendant William Francis May, Jr., alleges in his Motion to Suppress that the May 13, 2002, warrant obtained by Maryland police for the search of his person, vehicle, and apartment was not supported by probable cause, a breach of his Constitutional and state rights, thus rendering the search illegal. Defendant May further alleges that the marijuana and other contraband ("fruit") found in the illegal Maryland search was used to obtain confessions from him. Continuing in this vein, Defendant May asserts that the confessions and fruit of the illegal search were used then to satisfy the probable cause requirement for the search warrant obtained by Pennsylvania police officers for a search of Defendant May's residence in Fulton County, Pennsylvania. Defendant May reasons that because the original search warrant issued in Maryland was illegal ("poisonous tree"), all the evidence flowing from it is tainted by the illegality ("fruit of the poisonous tree") and as such is therefore inadmissible in a court of law. In other words, Defendant May argues that the information conveyed by Maryland authorities to the Pennsylvania police could not properly be used as probable cause to support a search warrant in Pennsylvania.

Although Defendant May states the fruit-of-the-poisonous-tree doctrine<sup>[2]</sup> correctly, the facts of this case do not support his premise in the first link of the causal connection: the Maryland search warrant. This Court finds that the search warrant issued by The Honorable G.D. Russell on May 13, 2002, was sufficiently supported by probable cause, and any fruits of the executed search warrant are admissible and will not be suppressed.

We look first at the statutory requirements for the issuance of search and seizure warrants in Maryland. Section 1-203 of the Annotated Code of Maryland provides in part:

(2) An application for a search warrant shall be:

(i) in writing;

(ii) signed and sworn to by the applicant; and

(iii) accompanied by an affidavit that:

1. sets forth the basis for probable cause . . . ; and

2. contains facts within the personal knowledge of the affiant that there is probable cause.

(3) The search warrant shall:

(i) be directed to a duly constituted police officer and authorize the police officer to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State; and

(ii) name or describe, with reasonable particularity:

1. the person, building, apartment, premises, place, or thing to be searched;

2. the grounds for the search; and

3. the name of the applicant on whose application the search warrant was issued.

Annotated Code of Maryland, § 1-203, 2001 ch. 10 § 2.

Both Maryland and Pennsylvania, by requiring a search warrant, place an issuing authority between police and citizens so that a detached, reasonable, and neutral person can weigh the necessity

of invading a citizen's privacy to further law enforcement<sup>[3]</sup>, and the issuing authority's determination that probable cause existed must be given deference. Illinois v. Gates, 462 U.S. 213, 236 (1983); Commonwealth v. Corleto, 328 Pa.Super 522, 528 (1984); Malcolm v. State, 314 Md. 221, 550 A.2d 670, 674 (1988). For analyzing probable cause for a search warrant, both Pennsylvania and Maryland have adopted the "totality of the circumstances" standard as articulated in Illinois v. Gates, infra; Commonwealth v. Gray, 509 Pa. 476, 503, A.2d 921 (1985); Herod v. State, 311 Md. 288, 534 A.2d 362 (1987) (where the informant exposed herself to prosecution by giving the tip, explained her motive for giving the tip, and gave information based on personal dealings with the defendant); Potts v. State, 300 Md. 567, 479 A.2d 1335 (1984) (where the confidential informant had proven reliable in the past, gave detailed information, and was partially corroborated by police investigation).

The duty of this reviewing Court is to ensure that the magistrate who signed the Maryland search warrant on May 13, 2002, had a substantial basis for concluding that probable cause existed. Illinois v. Gates, 462 U.S. at 238-39. If so, then the information conveyed by Maryland police to Pennsylvania authorities could properly be used as probable cause to support a search warrant in Pennsylvania. Commonwealth v. Sanchez, 552 Pa.570, 716 A.2d 1221 (where information that was secured through valid and legal means in California was used to establish probable cause for a search warrant in Pennsylvania).

"The real issue in the evaluation of whether a search warrant was properly issued is the presence or absence of probable cause, a term defined as less than certainty of proof, but more than suspicion or possibility." State v. Edwards, 266 Md. 515, 295 A.2d 465 (1972). In determining probable cause sufficient for issuing a search warrant, the rule in Maryland is that grounds must be evidenced within the four corners of the affidavit. Valdez v. State of Maryland, 300 Md. 160, 168, 476 A.2d 1162, 1166 (1983). The Supreme Court and the Maryland courts have established a deferential standard of review when determining whether probable cause existed to issue a search warrant stating,

"when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants."

Valdez v. State of Maryland, 300 Md. 160, 169, 476 A.2d 1162, 1166 (1983) quoting Jones v. United States, 362 U.S. 257, 270, 80 S.Ct. 725, 736, 4 L.Ed.2d 697, 707 (1960). Therefore, it is the mission of this Court to determine whether there is substantial and sufficient evidence in the record, the "four corners" of the affidavit, supporting the magistrate's decision to issue the Maryland search warrant.

First, the affidavit in support of a Maryland search warrant in the case at bar is extensive, consisting of twelve (12) pages of recitation of facts, not conclusory statements, pertaining to the investigation and surveillance of Defendant May that has been ongoing in this case since May of 2000. (Commonwealth's Exhibit 1.) Second, in compliance with the statutory requirements for a valid search warrant in Maryland, the affidavit contains facts within the personal knowledge of Detectives Malone and Petras, the affiants. (Application and Affidavit for Search and Seizure Warrant, pp. 4-7.)

In determining whether probable cause existed, the Maryland magistrate who issued the search warrant made a common-sense decision, given all the circumstances set forth in the extensive, detailed affidavit before him. In assessing the confidential informants' statements outlined in the affidavit, the magistrate was justified in considering the statements' value in light of their being corroborated by independent police work. See Draper v. U.S., 358 U.S. 307 (1959) (where information given by an informer to a government agent was corroborated and could be considered in determining whether government agent had probable cause to arrest without a warrant). The magistrate's justification is especially validated concerning the statements referencing Defendant May's truck since the affiants knew from experience and training that drug traffickers often use private vehicles to transport drugs, and the affidavit included this information. Therefore, employing the totality of the circumstances standard as articulated in Illinois v. Gates, infra, this Court finds that the magistrate had a substantial basis for concluding that probable cause existed to support a search warrant upon Defendant William Francis May, Jr., his vehicle, and his Maryland apartment residence at 1600 Leslie Road, Baltimore, Maryland.

### Conclusion

This Court finds that the May 13, 2002, search warrant issued in Maryland was supported by probable cause and is entirely legal. Therefore, the information obtained from the executed Maryland warrant, and conveyed to Pennsylvania authorities, may properly be used as probable cause to support a search warrant in Pennsylvania. Accordingly, Defendant's motion to suppress is denied.

NOW, this 17th day of January, 2003, pursuant to Pennsylvania Rules of Criminal Procedure 581(I), IT IS HEREBY ORDERED that Defendant's Motion to Suppress Evidence is DENIED in that the Maryland search warrant was valid.

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<sup>[1]</sup>Dundalk is located in Baltimore County and is part of the Baltimore, Maryland, metropolitan area, and will hereinafter be referred to as Baltimore.

<sup>[2]</sup>The rule that evidence derived from an illegal search, arrest, or interrogation is inadmissible because the evidence (the "fruit") was tainted by the illegality (the "poisonous tree"). Black's Law Dictionary, 679 (7<sup>th</sup> ed. 1999).

<sup>[3]</sup>PA Crim Prac § 19:7.