

Franklin County Legal Journal

Volume 23, No. 16, pp. 45-47

Commonwealth v. Sambola

COMMONWEALTH OF PENNSYLVANIA
v. MANA SAMBOLA, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 2075 of 2004

Motion to Suppress; Search of Third Party Residence

1. The Fourth Amendment of the United States Constitution and Article 1, Section 8, of the Pennsylvania constitution guarantee the right of people to be secure in their persons, houses, and effects against unreasonable searches and seizures; however, this right is personal in nature.
2. In order to challenge the search of a third-party residence, the defendant must prove that he has standing to raise this challenge.
3. A defendant charged with a possessory offense has automatic standing to maintain a challenge to the search and seizure.
4. In order to prevail on the motion to suppress, the defendant must prove that he had a personal privacy interest in the area searched or the items seized.
5. The privacy interest must be actual and societally sanctioned as reasonable and justifiable.
6. A privacy interest is absent where an owner or possessor meaningfully abdicates his control, ownership, or possessory interest.
7. Because he transferred possession and control of the drugs to the possessor of the bedroom when he relinquished his domain over them, the defendant cannot reasonably allege a privacy interest in them now.
8. Because the defendant was only a brief guest in the apartment, he cannot prove a privacy interest in the residence.
9. Where the defendant fails to prove that he had a justifiable personal privacy interest in the area searched or the items seized, the motion to suppress must be denied.

Appearances:

Angela R. Krom, Esq., *Assistant District Attorney*

Michael J. Toms, Esq., *Chief Public Defender*

OPINION

Walker, P.J., September 2, 2005

Procedural History and Factual Summary

Corporal John Shindledecker was attempting to locate Jeremy Kint because he had an active bench warrant for him. Shindledecker approached an apartment on the second floor of an apartment building because he had information that Kint may be there. The occupants of that apartment informed Shindledecker that they believed Kint was in an apartment on the first floor. Shindledecker proceeded to

the first floor apartment where he knocked on the door. While he was knocking, the door opened revealing Jolie Delosier, the resident, standing inside. Shindledecker asked Delosier if Kint was present and she nodded and pointed. Shindledecker then asked if anyone else was present and she responded in the negative. He then gave three warnings for anyone present to make themselves known. When no response was forthcoming, he sent his canine partner in to search for people.[1] The canine discovered several people in the apartment including Sambola and Kint. During the course of these events, the officers smelled the odor of burnt marijuana and saw a partially smoked joint in plain view. Shindledecker requested permission to search the apartment and was refused, so several officers secured the apartment while he obtained a search warrant. The search incident to the warrant yielded a quantity of cocaine from two locations in the bedroom where Sambola was found. Sambola was charged with possession with intent to deliver cocaine. Sambola has now filed a motion to suppress this evidence on the basis that the search of Delosier's residence was invalid.

Discussion

The charges against the Defendant arose from the search of an apartment belonging to Ms. Jolie Deloiser. Mr. Sambola has petitioned the Court to suppress the evidence discovered during this search on the basis that the search of the apartment violated Article 1, Section 8 of the Pennsylvania constitution. The Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania constitution guarantee the right of people to be secure in their persons, houses, and effects against unreasonable searches and seizures; however, this right is personal in nature. To prevail on a claim protecting these rights, the defendant must prove an invasion of his or her own rights.

In order to challenge the search of a third party residence, the Defendant must prove that he has standing to raise this challenge. Because he was charged with a possessory offense, the Defendant has automatic standing to maintain a challenge to the search and seizure. Commonwealth v. Sell, 470 A.2d 457 (Pa. 1983). However, in order to prevail on the motion to suppress, the Defendant must prove that he had a personal privacy interest in the area searched or the items seized. Commonwealth v. Hawkins, 718 A.2d 265, 267 (Pa. 1998). The privacy interest must be actual and societally sanctioned as reasonable and justifiable. Id. A privacy interest is absent where an owner or possessor meaningfully abdicates his control, ownership, or possessory interest. Sell, 504 at 67, 470 A.2d at 469.

Mr. Sambola has not alleged or proven that he had a personal privacy interest in the apartment. As evidenced by the search warrant, Ms. Delosier was the sole occupant and possessor of the apartment. Mr. Sambola has not offered any evidence that he was residing or staying in the bedroom where he was found. The Defendant's own witness testified that Mr. Sambola had only been at the apartment for about thirty to forty-five minutes before the police arrived. Because the Defendant did not offer any evidence to prove that he was any more than a brief visitor in the apartment, this Court finds that Mr. Sambola did not have a justifiable personal privacy interest in the apartment.

The Defendant has also not alleged or proven a personal privacy interest in the drugs. In Hawkins, the defendant had given the drugs to his codefendant when the police apprehended the two men. That court held that the defendant did not have a personal privacy interest in the drugs because he had surrendered control and possession by transferring them to his codefendant. Hawkins, 553 Pa. at 82, 718 A.2d at 267. In this case, the drugs were found in the bedroom of a third person rather than on the Defendant's person. Because he transferred possession and control of the drugs to the possessor of the bedroom when he relinquished his domain over them, this Court finds that Mr. Sambola cannot reasonably allege a privacy interest in them now.

Since the Defendant has failed to prove that he had a justifiable personal privacy interest in the area searched or the items seized, the motion to suppress must be denied. In his motion, the Defendant raised issues concerning the constitutionality of the search of Ms. Delosier's apartment and the "all persons present" search warrant. These issues are moot since the Defendant has failed to allege a personal privacy interest.

ORDER OF COURT

September 2, 2005, defendant's motion in limine is hereby denied.

[1] The canine had a command to search for people and another command to search for drugs. The command to search for people was given.