

COMMONWEALTH OF PENNSYLVANIA v. BRIAN TRUETT, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
No. 808-2005

Motion to Suppress; Search and Seizure; Consent to Search; Apparent Authority; Search Incident to Lawful Arrest; Search Warrant; Probable Cause

1. In a private home, searches and seizures without a warrant are presumptively unreasonable.
2. The police may conduct a search incident to an arrest when the search is contemporaneous with the arrest and is confined to the immediate vicinity of the arrest.
3. If the owner or resident of a residence voluntarily and willingly consents to a search of the residence, then a warrant is not necessary.
4. A person who possesses common authority over a premises can give valid consent to search because it is reasonable to recognize that any of the co-inhabitants has the right to permit the search and that the others have assumed the risk that one of the inhabitants might permit the common area to be searched.
5. If a defendant is taken into custody in the doorway of a travel trailer, the police may search the trailer to determine if others are present when the search is conducted immediately following the arrest.
6. When the owner of a travel trailer allows a person to stay in the trailer, the owner can have apparent authority to consent to a search of the trailer when the trailer is parked a short distance from the owner's residence; the owner is the defendant's sister and possesses a key to the trailer; and the defendant had only been staying in the trailer for a short time.
7. A search warrant must contain facts that would enable the issuing authority to make an independent determination that seizable evidence will be found on the premises to be searched.
8. When the police make an error in the preparation of a search affidavit and attribute a comment made by the defendant to someone else, the Court will not correct this error, but if there is enough other information in the affidavit to satisfy the probable cause requirement, then the search warrant is still valid.

Appearances:

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

R. Paul Rockwell, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., November 22, 2005

Factual Summary

The defendant, Mr. Brian Truett, was wanted on a warrant by the state of Colorado for drug violations involving the production of methamphetamine (hereinafter "meth"). Troopers Borza and Fow of the Pennsylvania State Police went to a residence owned by Barbara Snively because the police had information that Mr. Truett may be there. Ms. Snively is Mr. Truett's sister. Upon arriving at the residence, Ms. Snively informed the police that Mr. Truett was there. Furthermore, she explained that he had been

staying in her travel trailer for approximately the past two weeks. The travel trailer was located about twenty-five feet away from the residence in the driveway. The police proceeded to the trailer where they knocked on the door. When they did not receive a response to their knock, Ms. Snively gave them a key to the trailer. Upon returning to the trailer with the key, the police again knocked on the door.[1] When Mr. Truett opened the door, he was immediately taken to the ground, cuffed, patted down, Mirandized, and put in the back of a police cruiser.

After the arrest, Trooper Borza checked the trailer to determine if anyone was still inside. Because of the layout of the trailer, it was necessary for the trooper to step inside to see if anyone was in the sleeping compartment. Trooper Borza also testified that he had to retrieve the defendant's pants for him and that the pants were located in the sleeping compartment of the trailer. While inside the trailer, Trooper Borza saw some items that caused him and Trooper Fow to suspect illegal activity including a burning device on the counter and some tools on the table.

During these events, Trooper Fow identified the odor of cat urine emanating from the trailer. Through his training, Trooper Fow knew this to be a sign of the manufacture of meth. The troopers asked Mr. Truett if there were drugs in the trailer and he either responded in the negative or ambiguously. Trooper Borza asked Ms. Snively for consent to search the trailer, which she granted. The police then proceeded to search the trailer. The search yielded precursors to the manufacture of meth including a jar of red liquid located in the refrigerator and a mint tin containing a white powder substance. Mr. Truett confirmed that the powder was meth and that the red substance was a precursor to meth.[2] Mr. Borza contacted his supervisor, Corporal Hassinger, who spoke with Mr. Truett regarding the production of meth. [3] The trailer was then secured for officer safety until the State Police Clandestine Lab Response Team could respond. Search warrants were obtained to authorize the search of Mr. Truett's pick-up truck and the search of the trailer. When the Clandestine Lab Response Team arrived, they videotaped the trailer and vehicle before removing materials related to the production of meth.[4] The Clandestine Lab Response Team discovered numerous chemicals used in the manufacture of meth, as well as five (5) grams of meth.

The defendant filed a motion to suppress arguing that the search of the trailer was illegal on several grounds. First, there was no warrant. Second, Ms. Snively's consent was not valid. Third, there were no exigent circumstances.[5] Fourth, the plain view doctrine does not apply. Fifth, the search does not satisfy the criteria for being a search incident to a lawful arrest. The defendant also argues that the search warrant for his vehicle was defective.

Discussion

I. Was the search of the trailer valid?

The search of a residence without a warrant is per se unreasonable. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). However, there are several exceptions to this rule. One such exception is that the police may conduct a search incident to an arrest when the search is contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. Commonwealth v. Wright, 560 Pa. 34, 42, 742 A.2d 661, 665 (1999), quoting Shipley v. California, 395 U.S. 818, 819, 89 S.Ct. 2053, 2054, 23 L.Ed.2d 732 (1969). Another exception is that the police are not required to obtain a search warrant when the police obtain the consent of a third party who has the authority to give consent. Commonwealth v. Hughes, 836 A.2d 893, 900 (Pa. 2003). A person who possesses common authority over a premises can give valid consent to search because it is reasonable to recognize that any of the co-inhabitants has the right to permit the search and that the others have assumed the risk that one of the inhabitants might permit the common area to be searched. Hughes, quoting United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974).

There are two searches at issue in this case. The first search (hereinafter "initial search") is when Trooper Borza entered the trailer immediately following the arrest but before he asked Ms. Snively for consent to search. While checking the trailer to determine if there were any other people inside, he saw some items that caused him to suspect that illegal activity had been occurring. The second search is the more in-depth search that occurred after Ms. Snively gave her consent to a search of the trailer.

A. The initial search of the trailer

The defendant cites to Commonwealth v. Wright, 560 Pa. 34, 742 A.2d 661 (1999), in support of his argument that the initial search of the trailer was illegal. In Wright, the Court held that the search was illegal because it was not contemporaneous in time to the arrest when the police searched the residence an hour after the defendant had been taken into custody. The Court also held that the search of the residence was not conducted in the immediate vicinity of the arrest because the defendant had been

arrested outside of the residence.

This Court finds that Wright is factually dissimilar to the instant case. First, the troopers searched the trailer within minutes after Mr. Truett was taken into custody; therefore, the search was contemporaneous with the arrest. Second, although Mr. Truett was cuffed and Mirandized outside of the trailer, the Court finds that he was taken into custody while he was still inside the trailer. When Mr. Truett opened the door, the police reached in while he was standing in the doorway and pulled him out of the trailer. Mr. Truett was in custody as soon as the police grabbed him. Therefore, unlike in Wright, where the police ordered the defendant out of the residence before they took him into custody, this defendant was taken into custody in the trailer. Because the search was contemporaneous with the arrest and was in the immediate vicinity of the arrest, the Court finds that the initial search of the trailer was a valid search incident to a lawful arrest and that the evidence discovered in plain view is admissible.[6]

B. The search after Ms. Snively's consent

The Court is not sure if Ms. Snively had the actual authority to consent to the search of the trailer because she might have relinquished this right by giving Mr. Truett a privacy interest in the trailer and by permitting him to have exclusive use of the trailer. See Commonwealth v. O'Neal, 287 Pa.Super. 238, 429 A.2d 1189 (1981); Commonwealth v. Gibbons, 379 Pa.Super. 285, 549 A.2d 1296 (1988). However, the Court finds that Ms. Snively had sufficient apparent authority to warrant a man of reasonable caution to believe that she had the authority to consent. See Hughes at 461, 836 A.2d at 901. Ms. Snively was the owner of the residence, the trailer, and the land the trailer was sitting on. Furthermore, she possessed a key, was the defendant's sister, and was aware that he was in the trailer at the time when the police arrived. Additionally, the Court finds it persuasive that he had only been staying in the trailer for a short time and that the trailer was located only twenty-five feet from the house. Under these circumstances, the Court finds that it was reasonable for the police to believe that Ms. Snively had joint access and control over the trailer and that she had the authority to consent to a search of the trailer. Therefore, the search of the trailer was valid based upon Ms. Snively's apparent authority to consent to the search.

II. Is the search warrant defective?

A search warrant must contain facts that would enable the issuing authority to make an independent determination that seizable evidence will be found on the premises to be searched. Illinois v. Gates, 462 U.S. 213 (1983). In the affidavit prepared in this case, the troopers made an error by attributing a comment made by the defendant to Ms. Snively. This statement as written is hearsay. When an affidavit is based on hearsay, the officers must offer evidence as to why the hearsay comment should be considered credible; however, the officers failed to offer any such evidence in this affidavit. Jones v. United States, 362 U.S. 257 (1960). The Commonwealth is asking the Court to substitute Truett for Snively in its reading of this comment in the affidavit. The Commonwealth offers Commonwealth v. Chinea, 371 A.2d 944 (Pa.Super. 1977) as precedent for this request.

The Court finds that Chinea is too factually dissimilar to control in this case. In Chinea the Court only added the month to the date portion when it was mistakenly omitted. In the instant case, the Court is being asked to change the name of a person who is alleged to have made a potentially damaging statement. The Court believes this is a much more material change than the change made in Chinea. The Court also takes note that the paragraph in which this statement is contained only discusses Ms. Snively and comments she made. This makes it highly unlikely that the issuing authority made this change when deciding to issue the warrant. Therefore, this Court refuses to substitute the name as requested by the Commonwealth.

However, the Court finds that there was enough other information in the affidavit to enable the issuing authority to make an independent determination that seizable evidence would be found on the premises to be searched. The affiant had significant drug enforcement experience. The fact that he or his partner recognized the smell of cat urine, which is known to be a sign of the production of meth, is sufficient to meet the probable cause standard. This is especially so when there were no cats in the area and the officers knew the individual was wanted in Colorado on meth production charges. Therefore, the Court finds that the warrant was not defective because there was enough other information in the affidavit to satisfy the probable cause requirement.

The Court is quite disappointed to find such a sloppy and poorly drafted affidavit. This affidavit did not include a lot of information that should have been included in it. The Court would sincerely hope that an officer with over fourteen years on the force would be able to draft an affidavit that included all matters within his knowledge. In fact, the Court believes that a first year law student could have done a much better job. The Court recommends that criminal investigators proofread and inspect an affidavit for error before signing it and swearing to its accuracy.

ORDER OF COURT

November 22, 2005, after reviewing the record and conducting two hearings, the Court finds that the initial search of the trailer was valid because it was contemporaneous with the arrest and was in the immediate vicinity of the arrest. The Court finds that the second search of the travel trailer was valid because the defendant's sister had apparent authority to consent to the search of the trailer. The Court also finds that the search warrant was not defective. Therefore, the Court hereby orders that the defendant's omnibus motion to suppress is denied.

[1] The police did not use the key because the defendant opened the door.

[2] This is statement that is the root of the controversy concerning the search warrant. In the affidavit, this statement was mistakenly attributed to Ms. Snively rather than Mr. Truett.

[3] Because of the safety hazards posed by the chemicals used in the production of meth, Corporal Hassinger spoke with the defendant in order to determine which method of production was being used so he could warn the police and the Response Team accordingly.

[4] At the request of defense counsel, the Court viewed this videotape, which showed the contents of the trailer and vehicle upon the arrival of the Clandestine Lab and then the removal of evidence from the trailer and vehicle.

[5] The Commonwealth does not argue this point, so the Court will not address it.

[6] Furthermore, the Court would like to point out that if the defendant asked Trooper Borza to get his pants out of the trailer as Trooper Borza testified then that alone was sufficient to permit the entry into the trailer.