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Commonwealth v. Fennell

COMMONWEALTH OF PENNSYLVANIA v. KAREN A. FENNELL, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 379-2005

Motion to Suppress; Search and Seizure; Search Warrant

1. The rule of exclusion is properly applied where the objection addresses the reliability of the challenged evidence or reflects intolerable government conduct that is widespread and cannot be otherwise controlled.

2. The suppression of evidence that results from a search where there has not been compliance with a rule of criminal procedure depends upon the relationship of the violation with the reliability of the seized evidence.

3. The suppression of evidence is not an appropriate remedy for every violation of the Pennsylvania Rules of Criminal Procedure concerning searches and seizures. Rather it is only where the violation implicates fundamental, constitutional concerns, is conducted in bad faith or has substantially prejudiced the defendant that suppression may be an appropriate remedy.

4. The procedures required for the execution and return of the warrant are ministerial and irregularities should not void an otherwise valid search absent a showing of prejudice.

5. Where police officers obtained a search warrant from a Magisterial District Judge in one county and executed that warrant in another county but corrected the error by later obtaining and executing a second warrant from a Magisterial District Judge in the appropriate county, the evidence seized though the execution of the second warrant does not need to be suppressed when the defendant is found to not have been prejudiced by the ministerial error and when the police used the same affidavit of probable cause to apply for both warrants.

Appearances:

Jeremiah Zook, Esq., *Assistant District Attorney*

Joseph Hitchings, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., January 6, 2006

Factual Summary

Karen Fennell was charged with driving under the influence pursuant to 75 Pa.C.S.A. §3802(a) for being incapable of safe driving, driving under the influence pursuant to 75 Pa.C.S.A. §3802(c) for highest rate of alcohol BAC, and several summary offenses following a car accident that occurred on October 24, 2004. Officer Krause of the Washington Township Police Department was driving on Buchanan Trail East when he came upon several pieces of wood on the roadway. After discovering that the wood was from a fence and seeing that there was a sign lying on the berm of the road, he followed tire tracks through the grass. The tracks led him to where a male and a female were looking around the front of a residence. There was a vehicle resting on the driver's side with its front end in the side of the residence and its rear end into a storage shed. The female in the driver's seat was identified by her driver's license as Karen

Fennell. Upon speaking with the driver, Officer Knopp of the Washington Township Police Department determined that she was uninjured and that she had consumed several alcoholic beverages that evening. Officer Knopp observed that her speech was slurred, that she was disoriented and confused, and that there was a strong odor of alcoholic beverage emanating from her person. The EMS personnel then took over to transport Ms. Fennell to the hospital. Originally it was believed that she would be taken to the Waynesboro Hospital, but it was later determined that she would be taken to the Gettysburg Hospital instead. After traveling several hundred feet, the ambulance was notified to return to the scene of the accident so Ms. Fennell could be read the DL-26 Chemical Warnings. While being read the Chemical Warnings, Ms. Fennell began to scream and request an attorney. She was informed that she was not entitled to an attorney. When she refused to calm down, Officer Knopp continued reading the Chemical Warnings. She refused to sign the form to confirm that she had been read the Chemical Warnings. The officers informed her that refusing to sign would constitute a refusal. She still demanded an attorney and it was deemed a refusal. Ms. Fennell was then transported to the Gettysburg Hospital to be treated for any possible injuries. According to normal practice, the hospital took a blood sample to determine her toxicology levels.

On November 8, 2004, Officer Krause completed an application for a search warrant and an affidavit of probable cause in order to obtain the medical records from the Gettysburg Hospital that pertained to Ms. Fennell's treatment following the accident. Magisterial District Judge Pentz of Waynesboro issued the warrant and it was executed on November 9, 2004. On November 16, 2004, charges were filed against Ms. Fennell. On October 12, 2005, defense counsel filed an omnibus motion. On October 21, 2005, on the advice of the District Attorney's office, a second application for a search warrant was applied for; however, this time it was issued by Magisterial District Judge Carr of Adams County. The officers executed this warrant and obtained a second set of Ms. Fennell's medical records from the Gettysburg Hospital. Identical affidavits of probable cause were used to apply for both search warrants.

When defense counsel filed the omnibus motion on October 12, 2005, he anticipated arguing that the first set of medical records was obtained illegally and should be suppressed because an issuing authority had not signed the warrant.[1] However, after the motion was filed, the District Attorney's office provided defense counsel with a copy of the warrant signed by Magisterial District Judge Pentz and informed him that they were going to issue and execute a second search warrant for the medical records. On October 25, 2005, defense counsel was provided with a copy of the second search warrant that had been issued and executed on October 21, 2005. Thereafter, defense counsel amended his omnibus motion to include a motion that the second set of medical records should also be suppressed.

Discussion

When the police officers applied for the first search warrant, they did so before a Franklin County Magisterial District Judge. That Magisterial District Judge issued the warrant and it was executed upon the Gettysburg Hospital; however, the Gettysburg Hospital is located in Adams County. A warrant issued by a Franklin County Magisterial District Judge cannot legally be executed in another county. In order to correct this error, the officers applied for a second search warrant before an Adams County Magisterial District Judge. The second warrant was issued and also executed upon the Gettysburg Hospital.

Ms. Fennell argues that both sets of the medical records obtained from the Gettysburg Hospital should be suppressed. The defendant argues that the first set should be suppressed because the warrant was not issued by a proper authority and the second set should be suppressed under the doctrines of "independent source" and "fruit of the poisonous tree." The defendant primarily relies on Commonwealth v. Melendez, 544 Pa. 323, 676 A.2d 226 (1996), and Commonwealth v. Mason, 535 Pa. 560, 637 A.2d 251 (1993), in support of her argument. The Commonwealth has agreed to stipulate that the first set of medical records should be suppressed.[2] The Commonwealth cites to Commonwealth v. Mason, 507 Pa. 396, 490 A.2d 421 (1985), in support of its argument that the second set of medical records should not be suppressed.

The question before this Court today is whether the Commonwealth has violated the defendant's right against unreasonable searches and seizures. The Court finds that the defendant's right has not been violated and that the second set of medical records should not be suppressed.

In Commonwealth v. Mason, 507 Pa. 396, 401, 490 A.2d 421, 423 (1985), the Pennsylvania Supreme Court rejected "the automatic application of the exclusionary rule to suppress evidence seized pursuant to a search which in some way violates the Pennsylvania Rules of Criminal Procedure relating to the issuance and execution of search warrants." Furthermore, the Supreme Court stated that "the rule of exclusion is properly employed where the objection goes to the question of the reliability of the challenged

evidence . or reflects intolerable government conduct which is widespread and cannot be otherwise controlled." Id. at 403, 490 A.2d at 424, citing Commonwealth v. Musi, 486 Pa. 102, 404 A.2d 378 (1979). The Court continued on to state that the "imposition of a sanction requiring the exclusion of evidence that results from a search where there has not been compliance with the rule must depend upon the relationship of the violation with the reliability of the evidence seized." Id. The Court re-emphasized its holding when it said:

[E]xclusion/suppression of evidence is not an appropriate remedy for every violation of the Pennsylvania Rules of Criminal Procedure concerning searches and seizures. It is only where the violation also implicates fundamental, constitutional concerns, is conducted in bad faith or has substantially prejudiced the defendant that exclusion may be an appropriate remedy.[3] 507 at 406-407, 490 A.2d at 426.

The Pennsylvania Supreme Court found support for its opinion in the federal courts. Several federal cases that analyzed some of the Federal Rules of Criminal Procedure that are comparable to some of the Pennsylvania Rules of Criminal Procedure stated that "the procedures required for execution and return of the warrant are ministerial and that irregularities should not void an otherwise valid search absent a showing of prejudice." (Citations omitted.) Id. at 403-404, 490 A.2d at 424-425.

In Mason, the Court reviewed a situation where police officers from one jurisdiction executed a search warrant in another jurisdiction while police officers from that jurisdiction stood by and watched. The Pennsylvania Rules of Criminal Procedure require that the in-jurisdiction police officers execute the warrant, which would require at least some participation on behalf of the in-jurisdiction officers. Because the in-jurisdiction officers did not participate in the search at all, the defendant argued that the evidence seized during the search must be suppressed. The Court found that there was probable cause for the entry and search and that there was no dispute as to whether the evidence was in fact found on the premises described on the warrant and seized pursuant to the warrant. Therefore, that Court held that the appellant's rights were not prejudiced by the officers' failure to fully comply with the mandate of the Pennsylvania Rules of Criminal Procedure.

While Mason is not factually on point with the case before this Court, the Court believes that the rule of law set forth in Mason still applies. Like in Mason, there was sufficient probable cause for the search and seizure. Additionally, the medical records were obtained from the premises described on the warrant and were obtained pursuant to the warrant.[4] Therefore, the only remaining question is whether the defendant has been prejudiced.

After reviewing the applicable case law and the facts of this case, the Court does not find that the defendant has proven that she is prejudiced by the ministerial error made by the police officers. The Court acknowledges the defendant's argument that she will be prejudiced if the medical records are admitted into evidence because she may serve a longer sentence if convicted, but the Court does not find that argument persuasive.

The Court also does not find the defendant's arguments based on the theories of the "independent source" doctrine and "fruit of the poisonous tree" doctrine persuasive. Arguably, these doctrines may not apply to the instant case because the sufficiency of the probable cause is not being challenged; however, even if they do apply, the Court does not believe that the second application for a search warrant or the second set of medical records is tainted by the first search and seizure. The police officers used the same affidavit of probable cause for both applications. They did not revise the second affidavit to include any information derived from the first set of medical records or to include any information discovered after they applied for the first warrant. They provided the Adams County Magisterial District Judge with the same probable cause he would have had to review had they not made the error. Furthermore, the Court finds that Commonwealth v. Melendez, 544 Pa. 323, 676 A.2d 226 (1996), is not similar to the instant case. In that case, the police officers did not have probable cause to stop the defendant's car, but they effectuated the stop, escorted her back to her house, went inside, and waited about an hour for a search warrant to be issued anyway. In the instant case, there is no question that there was sufficient probable cause and the police officers believed they were obtaining the medical records in accordance with a valid search warrant.

Because the defendant has failed to prove that she has been prejudiced or that the second search and seizure is tainted, suppressing the second set of medical records is not justified.

ORDER OF COURT

January 6, 2006, after reviewing the record and conducting a hearing, the Court hereby orders that the

defendant's amended omnibus motion is denied. By stipulation, the set of medical records obtained through the execution of the search warrant signed by Magisterial District Judge Pentz on November 8, 2004, is suppressed. The Court finds that the ministerial error that invalidated the first search warrant is not sufficient to prejudice the defendant or to taint the second set of medical records; therefore, the Court hereby orders that the second set of medical records obtained through the execution of the search warrant signed by Magisterial District Judge Carr on October 21, 2005, shall not be suppressed as evidence.

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[1] The copy of the warrant he received from the Commonwealth was unsigned.

[2] Because the District Attorney's office has agreed to stipulate that the first set of medical records should be suppressed, the Court will concentrate on the status of the second set of medical records.

[3] This Court finds that the police officers in this case did not act in bad faith. The Court also finds that this case does not implicate fundamental, constitutional concerns. See Mason, 507 Pa. 396, 404-406, 490 A.2d at 425-426.

[4] The Court notes that two Magisterial District Judges reviewed the same affidavit of probable cause and both found that there was sufficient probable cause. Furthermore, the defendant is not arguing there was insufficient probable cause.