

COMMONWEALTH OF PENNSYLVANIA
v. CLINTON M. DOLEMAN, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
No. 1355 of 2005

Motion to Suppress; Probable Cause

1. Probable cause exists when criminality is one reasonable inference of a set of circumstances, but it does not need to be the only, or even the most likely, inference.
2. When the police receive a detailed tip concerning a possible drug transaction in process in a high drug area from an individual who has given the police reliable and credible information on numerous occasions, the police may have probable cause to arrest the defendant.
3. When the police have probable cause to arrest the defendant, the drugs that fall out of the defendant's pocket during a struggle with the police shall not be suppressed.

Appearances:

David W. Rahausser, Esq., *Assistant District Attorney*

R. Paul Rockwell, Esq., *Assistant Public Defender*

OPINION

Walker, P.J., February 9, 2006

-

Factual Summary

Dara Taylor, the co-owner of a local bar, was exiting her establishment sometime between 1:30 p.m. and 3:00 p.m. on May 18, 2005, when she viewed three individuals about sixty feet away from her on the sidewalk. Ms. Taylor knew one of the individuals was a drug dealer from Philadelphia because of a previous encounter she had with him through the bar. Ms. Taylor thought the other two might be truant from school based on their appearance. Ms. Taylor observed two of the individuals reach their arms out as if to exchange something. Then one of them put his hand in his pocket and kept it there.[1] Following this interaction, the individuals walked past where Ms. Taylor sat in her parked car.

Ms. Taylor, believing she had witnessed a drug transaction, called the police on her cell phone.[2] While speaking with the police and describing what she saw, she followed the individuals.[3] Meanwhile, the police dispatched officers to the area.[4] When Officer Rosenberry of the Chambersburg Police Department arrived at the location, Ms. Taylor pointed out the individuals. Officer Rosenberry then approached them. One of the individuals had his hand in his pants pocket and did not remove it even after Officer Rosenberry identified himself.[5] Therefore, out of concern for his safety, Officer Rosenberry put his hand over the defendant's hand and pulled it out of the pocket. When he went to feel the pocket, the defendant fled. Officer Rosenberry gave chase and caught the defendant when he became caught in a fence. Following a brief scuffle, Officer Rosenberry gained control of the defendant and saw that there was marijuana lying on the ground where he and the defendant had been wrestling.[6]

Following this incident, the defendant was charged with several crimes including unlawful possession of small amount of marijuana, unlawful possession of drug paraphernalia, and escape. The defendant has filed a motion to suppress on the grounds that there was not probable cause to arrest him and therefore, the marijuana discovered during the arrest should be suppressed.

Discussion

The defendant cites to Commonwealth v. Banks, 540 Pa. 453, 658 A.2d 752 (1995), in support of his argument that the marijuana found following the arrest should be suppressed. The Commonwealth cites to Commonwealth v. Dennis, 417 Pa.Super. 425, 612 A.2d 1014 (1992), in support of its argument that the defendant's motion to suppress should be denied. After reviewing the applicable case law, the Court has determined that Dennis is applicable to the situation before it.

In Dennis, the police had received information from residents of a community that there was drug activity occurring at a certain residence. While driving by that residence, police officers viewed two individuals on the porch conducting some sort of transaction. The police saw money and a small unidentifiable object exchange hands. When the individuals saw the police officers, they fled into the house. The police pursued and arrested them. The Court in that case held that the police had probable cause to arrest the individuals. Id. at 432, 612 A.2d at 1017. The Court stated that it found the fact that local residents had made multiple reports to the police regarding drug dealing occurring at that residence particularly compelling. Id. at 430, 612 A.2d at 1016. The Court also stated that members of a particular neighborhood are uniquely well qualified to observe what is going on in their community and should be supported in reporting drug activity to the police. Id.

In this case, the police received information from Ms. Taylor concerning a drug transaction in process. The area where this incident occurred is a high drug area. Additionally, the Court recognizes that Ms. Taylor is not an average citizen. She is the co-owner of a business in the community, has a history of cooperating with the police, and is familiar with the criminal activity that occurs in her neighborhood. The Pennsylvania Liquor Control Board has been attempting to refuse to renew Ms. Taylor's liquor license because of the criminal activity that has been occurring in the area of her bar. In order to address the Liquor Control Board's concerns, Ms. Taylor has undertaken many security measures including the installation of security cameras both inside and outside her establishment.[7] Ms. Taylor is trying to control and decrease the criminal activity in her community by reporting all suspected crimes to the police. She has given the officers reliable and credible information on numerous occasions. These efforts have gained Ms. Taylor the respect of the Chambersburg Police Department. Further, the Court finds it compelling that Ms. Taylor followed the suspects and ensured that the police approached and detained the correct individuals.

Probable cause exists when criminality is one reasonable inference of a set of circumstances, but it does not need to be the only, or even the most likely inference. Id. at 431, 612 A.2d at 1017. After looking at the totality of the circumstances known to Officer Rosenberry, the Court finds that it was a reasonable inference that the individuals were involved in criminal activity. Therefore, Officer Rosenberry had probable cause to believe that the defendant had committed a crime and to arrest him. Thus the discovery of the marijuana shall not be suppressed.

ORDER OF COURT

February 9, 2006, after reviewing the record and conducting a hearing, the Court hereby orders that the defendant's motion to suppress is denied. After reviewing the totality of the circumstances, the Court finds that the police had probable cause to believe that the defendant had committed a crime and to arrest him. Therefore, the Court finds that the marijuana discovered during the arrest shall not be suppressed.

[1] Although Ms. Taylor did not see anything exchange hands, the individuals did not shake hands or do anything similar to that.

[2] Ms. Taylor called Corporal MacDonald of the Chambersburg Police Department. She had his cell phone number and called him directly.

[3] Ms. Taylor followed the individuals in her car. Ms. Taylor remained on the telephone with the police until an officer arrived and approached the individuals. Besides relaying the facts surrounding the suspected

drug transaction, Ms. Taylor also informed the police where the suspects were heading, what they were wearing, and what they were doing. Ms. Taylor also confirmed that the police officer who arrived on the scene was approaching the correct individuals. The police officers in route to Ms. Taylor's location were in contact with Corporal MacDonald through their police radios and were updated about Corporal MacDonald's conversation with Ms. Taylor.

[4] Corporal McDonald stated that he felt comfortable relying on the information provided by Ms. Taylor because she has provided the police with reliable and credible information on numerous occasions.

[5] Officer Rosenberry testified that from experience he believes that when an individual has his hand in his pocket and will not remove it, it usually means there is something in the pocket that the individual wants to protect such as a weapon or contraband.

[6] The police officer testified that there was not any other debris on the ground in the immediate vicinity.

[7] Ms. Taylor invites the police to view the cameras and surveillance tapes whenever they want to.