

COMMONWEALTH OF PENNSYLVANIA v. HASAN SHAREEF, DEFENDANT
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 43-2006

Searches and seizures, execution and return of warrants, manner of entry; Warning, in general

1. Exigent circumstances exist, and following the "knock and announce" rule is not necessary when, as police approach the house, they hear people running through the house.
2. A set of four criteria can permit entry under exigent circumstances:
 - a. The occupants of the premises remain silent after repeated knocking and identification.
 - b. The police are virtually certain that the occupants of the premises already know their purpose.
 - c. The police have reason to believe that an announcement prior to entry would imperil their safety;
and
 - d. The police have reason to believe that evidence is about to be destroyed.

Although the word "and" is used, courts construe this as an "or" test.

Appearances:

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

Stephen H. Sacks, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., February 16, 2007

Facts

Hasan Shareef is charged with various drug offenses and has contested the execution of the search warrant related to his being charged with these drug crimes. He asks that evidence seized as a result of the alleged faulty execution of that search warrant be suppressed. This Court held a hearing on this matter on December 11, 2006.

Detective Darren North of the Franklin County Drug Task Force (Drug Task Force) testified about the events that occurred during the execution of the search warrant. The search warrant was obtained after Drug Task Force officers were able to conduct two controlled buys of crack cocaine on November 5, 2005 and November 11, 2005 at 1671 Letterkenny Road, Hamilton Township, Franklin County, Pennsylvania. The search warrant was issued on November 11, 2005 at 6:00 p.m. It expired at 6:00 p.m. on November 13, 2005.[1] The search warrant was timely executed at 6:30 a.m. on November 12, 2005.[2]

When the police arrived at 1671 Letterkenny Road to execute the search warrant, Detective North observed that people were running through the trailer. He could hear the people running from outside the

trailer, and described the sound to this Court as "like a herd of cattle." Detective North approached the trailer, did not knock on the door, but merely turned the doorknob to open the door (which was unlocked). He opened the door to see a man (later identified as Mr. Shareef, the defendant in this matter) running towards him. At the same time, Detective North yelled "Police, search warrant."

After running towards Detective North (Detective North described Mr. Shareef as a "streak"), Mr. Shareef turned and went into a bathroom, slamming the bathroom door behind him. Detective North kicked the door open, and Mr. Shareef slammed it shut again. After attempting to flush the toilet, Mr. Shareef was taken into custody. The Court does not recall testimony regarding Mr. Shareef's purpose in flushing the toilet.

Legal Analysis

Mr. Shareef believes that Detective North knocked on the door prior to entering the trailer. The Commonwealth believes that the officers knocked on the door prior to entry. However, the Court does not believe that Detective North or any other police officer knocked prior to entering the trailer. Detective North testified at the hearing on this matter that he did not knock prior to entering the trailer.

Detective North testified that after he opened the door, he yelled "Police, search warrant." Therefore, although Mr. Shareef argues that there was never an announcement made as to Detective North's purpose, this Court disagrees with him, as there was uncontradicted testimony by Detective North that he yelled "Police, search warrant" as he opened the door.

Mr. Shareef states in his memorandum of law that this case is governed by Pa.R.Crim.P. 2007. The Commonwealth cites a case discussing how to apply Pa.R.Crim.P. 2007 to this case, Commonwealth v. Martinelli, 729 A.2d 628 (Pa. Super. 1999). Therefore, both the Commonwealth and Mr. Shareef appear to agree that Pa.R.Crim.P. 2007 is applicable to his case. The Pennsylvania Supreme Court renumbered the Pennsylvania Rules of Criminal Procedure so that Pa.R.Crim.P. 2007 is now Pa.R.Crim.P. 207. The Supreme Court also made the rule gender-neutral, although the rule is substantively the same. Pa.R.Crim.P. 207 states the following:

"(A) A law enforcement officer executing a search warrant shall, before entry, give, or make reasonable effort to give, notice of the officer's identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require the officer's immediate forcible entry.

(B) Such officer shall await a response for a reasonable period of time after this announcement of identity, authority, and purpose, unless exigent circumstances require the officer's immediate forcible entry.

(C) If the officer is not admitted after such reasonable period, the officer may forcibly enter the premises and may use as much physical force to effect entry therein as is necessary to execute the search." Pa.R.Crim.P. 207

This rule is ancient. Semayne's Case, 77 Eng. Rep. 194 (K.B. 1603), an English case on this issue, explains that the rule comes from a statute enacted in 1275. Even at that time, common law already required those entering a dwelling under authority of the king to announce their presence and purpose. See Wilson v. Arkansas, 514 U.S. 927, 932 (1995) (internal citations omitted)

Mr. Shareef cites Commonwealth v. Carlton, 701 A.2d 143 (Pa. 1997). In that case, the police were investigating a house that they believed was being used for drug transactions and obtained a warrant to search the residence. After one defendant left the residence, the police arrested that defendant as they had bought drugs from him in the past. The police then knocked on the door, and after waiting twenty or thirty seconds for a response, battered the door down without announcing their purpose. Id. at 144.

In Carlton, the Commonwealth argued that exigent circumstances existed. The Commonwealth claimed that the police feared that when the arrested defendant did not return to the residence, the occupant or occupants of the house would realize that something was amiss and start destroying evidence. The Pennsylvania Supreme Court rejected the Commonwealth's argument that this constituted exigent circumstances, and because of the police officer's failure to comply with then-Pa. R. Crim. P. 2007, ordered that the evidence resulting from the search warrant be suppressed. Id. at 147.

Mr. Shareef argues that this is a similar case, in that the police did not have exigent circumstances that justified entering the trailer without announcing their identity and purpose. Mr. Shareef argues that the police could not see into the trailer and that, therefore, logically, the occupants of the trailer could not see outside. The Court does not agree with this logic, as with glass windows it is possible, depending on the lighting conditions both inside and outside the building, for a person on one side of the glass window

to be able to see through the glass while a person on the other side of the window might not be able to see through.

Detective North, at the hearing, commented that he was not sure if the logical conclusion proposed by Defendant's counsel regarding the occupants' ability to see out of the residence based upon Detective North's ability to see in was plausible. Mr. Shareef did not present any testimony that supports his argument. Regardless of the physics of being able to see through glass, the Court finds another reason to find that there were exigent circumstances in this case.

Detective North testified (without being contradicted) that when the Drug Task Force officers approached the house, they could hear movement inside the house. In fact, this movement sounded like "a herd of cattle." Detective North was concerned, because of this noise, that the occupants of the trailer were about to destroy evidence, and so opened the door without knocking.

Martinelli permits the police to enter a residence without knocking if certain circumstances exist such as:

1. the occupants of the premises remain silent after repeated knocking and identification.
2. the police are virtually certain that the occupants of the premises already know their purpose.
3. the police have reason to believe that an announcement prior to entry would imperil their safety; and
4. the police have reason to believe that evidence is about to be destroyed.

Id. at 630 (internal citations omitted). Although the word "and" is used, courts construe this as an "or" test. Commonwealth v. Piner, 767 A.2d 1057, 1059, n.1 (Pa. Super. 2000) (internal citations omitted).

The Commonwealth argues that the police were permitted to enter without knocking first because circumstance two applies to this case. The Court agrees with the Commonwealth that, given the sounds emanating from the trailer, the occupants of the trailer likely already knew the police officers' purpose. The police could reasonably be "virtually certain" that the occupants knew their purpose.

The Court also believes that it is likely that circumstance four applies as well. With the noises emanating from the trailer, it is clear to this Court that the occupants of the trailer were probably about to destroy evidence when the police entered. By implication, if the defendants were about to destroy evidence, they also knew the purpose of the visit by the police.

The police were justified, therefore, under exception two or four, in entering the house without knocking or otherwise announcing their presence and purpose. The Commonwealth has shown that once the police did enter the trailer, they did announce their presence and purpose.

The Court will therefore deny Mr. Shareef's motion to suppress.

ORDER OF COURT

And now, this 16th day of February, 2007, Defendant's Motion to Suppress Evidence is denied.

[1] Mr. Shareef does not contest the validity of the search warrant itself.

[2] The Affidavit of Probable Cause, Application for Search Warrant and Authorization, and Receipt/Inventory of Seized Property were all entered into evidence at the hearing collectively as Commonwealth's Exhibit One.