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Commonwealth v. Mason

COMMONWEALTH OF PENNSYLVANIA

v. GARY L. MASON, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch

Criminal Action Nos. 420-2008, 608-2008, 1148-2008, 1159-2008, 1160-2008, 1161-2008, 1162-2008, 1163-2008, 1174-2008, 1175-2008, 1176-2008

Motion to suppress stemming from a warrantless arrest in defendant's place of residence

1. The Commonwealth has the burden of proving by a preponderance of the evidence that a defendant's incriminating statements are admissible.
2. An arrest warrant is required in order to arrest a person in his home unless there are exigent circumstances which justify such a warrantless intrusion.
3. Where the information in the affidavit supporting a warrant to search the defendant's home contained facts which would cause a reasonably prudent man to conclude that the defendant had committed a crime and that he could be found at the location intended to be searched, the warrantless arrest was unlawful because exigent circumstances existed to justify that arrest, and also, police already had authorization to be inside the defendant's home pursuant to the search warrant, and in entering the home, police fully complied with the "knock and announce" rule which must be satisfied when police are executing a valid arrest warrant or a search warrant, or are making a warrantless arrest.

Appearances:

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

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

ORDER OF COURT

Herman, P.J., July 21, 2009

July 21, 2009, this matter having come before the court pursuant to the defendant's Motion to Suppress Evidence consisting of incriminating statements obtained by way of a warrantless arrest of the defendant at his home, and upon consideration of the evidence at the hearing held on April 2 and May 28, 2009 and written arguments of counsel, the court hereby denies the Motion and in support of this ruling sets forth the following:

Findings of Fact

While investigating an attempted theft of a transformer from a Penelec substation in Fannettsburg at 3:00 a.m. on January 29, 2008, State Police Trooper David Rush obtained information from one Jack Bonebrake who was found at the scene that night. Bonebrake told police he and defendant Gary Mason had stolen a trailer and were attempting to steal the transformer but that Mason fled the scene before the police arrived. Bonebrake also indicated he and Mason had been involved in other crimes such as theft of metals and wiring. Based on Bonebrake's statements about such other crimes, Trooper Rush obtained a search warrant for Mason's home on February 1, 2008. (Commonwealth exhibit #1.)

Trooper Rush went to Mason's home in daylight hours on February 1, 2008 to execute the search warrant. He identified

himself and was admitted without incident. (The two men already knew each other.) He told Mason he had a warrant to search the premises and proceeded to conduct the search. Nothing of evidentiary value was found there but Trooper Rush took Mason into custody for the theft of the trailer and for trespass at the Penelec substation. Trooper Rush informed Mason of his Miranda rights during transport to the State Police barracks in Chambersburg. Mason acknowledged the Miranda warnings and agreed to speak with Trooper Rush.

Mason admitted to his involvement in the January 29, 2008 incident with Bonebrake at the Penelec substation and gave details about it. He also gave Trooper Rush details about other criminal incidents in which he and Bonebrake had participated. Mason agreed to allow his statements to be recorded and he provided such a recorded statement. Trooper Rush filed a complaint against Mason shortly after the interview, charging him with trespass, attempt to commit theft of the transformer, theft of the trailer, and conspiracy to commit theft of the trailer.

Trooper Rush obtained a warrant to search the property and buildings at 11367 Fort Loudon Road in Montgomery Township, Franklin County, which was the residence of Clifford Brodie and Jeremy Brodie. The affidavit of probable cause indicated this residence was admittedly the storage location of items stolen by Bonebrake and/or Mason and that Mason had occasionally lived there during the previous two years. The warrant dated February 5, 2008 also authorized the search of a "primer black in color Ford F-150" as a result of Mason's statements to Trooper Rush that he was driving this truck during some of the thefts being investigated and that the truck was then parked at the Brodie residence. (Commonwealth exhibit #2.) Trooper Rush searched the truck and found in the glove compartment receipts bearing Mason's name which came from recycling centers. During his investigation of a series of metal thefts, Trooper Rush testified he found remnants of copper wire and copper pipe which could have fit into a space which was the size of the black Ford truck's glove compartment.

Discussion

Mason concedes Trooper Rush was lawfully inside his home for the purpose of executing a search warrant which was issued in connection with an unrelated case. The Commonwealth concedes Trooper Rush lacked a warrant to arrest Mason in connection with the particular charges for which he was arrested. It is Mason's contention that the lack of such an arrest warrant taints his subsequent incriminating statements. The Commonwealth has the burden of proving by a preponderance of the evidence that Mason's statements are admissible. Pa.R.Crim.P. 581(H); Commonwealth v. DeWitt, 608 A.2d 1030 (Pa. 1992).

The Commonwealth and the defendant agree an arrest warrant is required in order to arrest a person in his home unless there are exigent circumstances which justify such a warrantless intrusion. Commonwealth v. Williams, 396 A.2d 1177 (Pa. 1978). The Commonwealth takes the position there were no exigent circumstances at play in the instant case at the time of Mason's arrest on February 1, 2008. We disagree and we will address this issue later in this discussion. The Commonwealth nevertheless maintains that Mason's arrest was lawful under the totality of circumstances. The Commonwealth argues Trooper Rush's intrusion into Mason's residence was not completely without all judicial authorization insofar as an affidavit of probable cause in support of a search warrant contained the same information as would have been required in an affidavit in support of an arrest warrant. The Court adopts this position and further notes that Trooper Rush complied with the "knock and announce" procedures required for serving any warrant as set forth in Pennsylvania Rule of Criminal Procedure 207(A) and Commonwealth v. Sanchez, 907 A.2d 744 (Pa. 2006) when he served the search warrant.

The Commonwealth correctly states that in issuing the search warrant, the Magisterial District Judge determined, after reviewing the information in the affidavit, that under the totality of the circumstances there was probable cause to believe a felony had been committed and that contraband or evidence of a crime, in this case a felony, would be found in Mason's residence. Commonwealth v. Wallace, 953 A.2d 1259 (Pa.Super. 2008); Pa.R.Crim.P. 502(2)(b)(Criminal proceedings may be instituted by an arrest without a warrant upon probable cause when the offense is a felony); 18 Pa.C.S.A. §3904 ("A law enforcement officer shall have the right of arrest without a warrant for any grade of theft as exists or may hereafter exist in the case of the commission of a felony"). Trooper Rush included in the affidavit of probable cause supporting the search warrant all the details about the January 29, 2008 incident at the Penelec substation along with the statements given by Jack Bonebrake. Even though Trooper Rush's February 1, 2008 search of Mason's residence ultimately yielded nothing of evidentiary value, this information in the affidavit did present a fair probability that evidence of a crime would be found at Mason's residence. The information in the affidavit supporting the search warrant also contained facts which would cause a reasonably prudent man to conclude that the defendant had committed a crime and that he could be found at the location that Trooper Rush intended to search. In essence Trooper Rush had specific judicial authority to arrest the defendant in his home.

Probable cause has been defined as, "those facts and circumstances available at the

time of the arrest which would justify a reasonable prudent man in the belief that a crime has been committed and that the individual arrested was the probable perpetrator." Commonwealth v. Harper, 485 Pa. 572, 583, 403 A.2d 536, 542 (1979).

Specifically the search warrant application identified the correct location of the defendant's residence and the affidavit in support contained statements from the co-defendant that the defendant committed several burglaries. The court also finds that Mason's arrest without a warrant was lawful, under Williams, *supra*, the Commonwealth's position to the contrary notwithstanding. The warrantless arrest of a person in his home is lawful only if certain factors are present. The suppression court must take into account: (1) the seriousness of the offense; (2) a reasonable belief that the subject is armed; (3) the strength of the probable cause to arrest; (4) the likelihood that the subject is home; (5) the likelihood of the subject's escape if he is not swiftly apprehended; and (6) the manner of entry into the home. *Id.* These factors do not constitute a rigid, mechanical test in the sense that the absence of any one is necessarily fatal to the validity of the arrest. "The reasonableness of the police conduct depends on the totality of the circumstances, not the least of which is the nature of the investigation of which the warrantless activity is a part." Commonwealth v. Govens, 632 A.2d 1316, 1326 (Pa.Super. 1993), citing U.S. v. Webster, 750 F.2d 307 at 327-328, fn. 19 (5th Cir. 1984).

More to the point, we find exigent circumstances did in fact exist to justify Mason's arrest. Beginning in November 2007 and continuing through the beginning of February 2008, Trooper Rush was in the process of investigating 10-15 burglaries and thefts of metal and similar items. These offenses were ongoing and several were felonies committed under cover of darkness. At the time Trooper Rush took the defendant into custody on February 1, 2008 he knew at least one firearm had been recovered as an item stolen in the burglaries. The January 29, 2008 incident at the Penelec station took place at night. At least one of the burglaries was of a residential property. Given the number of offenses and their felony nature, there was a very real potential that a perpetrator might, alone or in the company of a conspirator, resort to violence in order to evade capture. Also, Trooper Rush knew that during the previous two years, Mason sometimes lived at the Brodie residence, a location believed to store stolen items, and Trooper Rush credibly testified that he had been trying without success to contact Mason for several months and believed Mason was intentionally avoiding him. Information coming into police hands about this string of burglaries, metal thefts and related crimes was quickly coalescing in the last days of January and pointed, directly and indirectly, to Mason as one of the perpetrators. Under all these circumstances, it would have been wholly unrealistic for Trooper Rush to simply leave the premises without the defendant once he had found him.

We conclude that in addition to satisfying the requirements of Commonwealth v. Williams, *supra*, for a warrantless search, additional support for denial of the motion to suppress lies in the following two interrelated factors: First, Trooper Rush already had judicial authorization to be inside Mason's home pursuant to the search warrant. Second, in entering the home, he fully complied with the knock and announce rule which must be satisfied when police are executing a valid arrest warrant, search warrant or are making a warrantless arrest. West's Pa. Criminal Practice, Wasserbly, §19.17 (2009).

Conclusion of Law

The Commonwealth has met its burden of proving by a preponderance of the evidence that the February 1, 2008 arrest of the defendant at his residence without a warrant was lawful. The court will deny the relief requested in defendant's Motion to Suppress Evidence, specifically, exclusion at trial of the statements he made to Trooper Rush during his transport to the State Police barracks in Chambersburg and his statements while at the barracks on February 1, 2008.