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Commonwealth v. Chambers

COMMONWEALTH OF PENNSYLVANIA  
v. ERIC A. CHAMBERS, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action Nos. 1849 of 2008

*Warrantless Arrest – Probable Cause – Petition for Writ of Habeas Corpus – Motion to Dismiss*

1. An arrest without a warrant may be made upon probable cause when the offense is a felony or a murder.
2. To determine probable cause, the crucial test is whether there were facts available at the time of the initial apprehension which would justify a man of reasonable caution in the belief that a crime had been committed and that the individual arrested was the probable perpetrator. The focus lies on the officer's knowledge at the time of the arrest.
3. The defendant's warrantless arrest was supported by probable cause since the officer knew that felony drug crimes had occurred and the officer was aware of evidence indicating that Defendant was the probable perpetrator.
4. A petition for writ of habeas corpus is the proper vehicle for challenging a pretrial finding that the Commonwealth presented sufficient evidence to establish a prima facie case.
5. A motion to dismiss can be treated as a petition for writ of habeas corpus. Such a petition is similar to a preliminary hearing, and, to prevail, the Commonwealth must present a prima facie case. A prima facie case is that measure of evidence which, if accepted as true, would justify the conclusion that the defendant committed the offense charged.
6. Although typically hearsay evidence is admissible at a preliminary hearing, if the hearsay testimony is the only basis for establishing a prima facie case, it fails to meet the criteria for evidence upon which the preliminary hearing judge may rely.
7. Since only the informant's out-of-court statement tied the defendant to the crimes charged from the May 29, 2008 incident, the Court dismissed the charges of unlawful delivery of a controlled substance and criminal use of a communication facility which resulted from that incident.

Appearances:

Jeremiah D. Zook, Esquire, *Assistant District Attorney*

Ian M. Brink, Esquire, *Assistant Public Defender*

OPINION

Walsh, J., September 8, 2009

Facts

The Court must decide the omnibus motion of Defendant, Eric Chambers. First, Chambers asks the Court to suppress all evidence obtained as a result of his warrantless arrest on June 17, 2008. Second, Defendant seeks to have the Court dismiss all charges stemming from an alleged May 29, 2008 drug delivery to a confidential informant.<sup>[1]</sup> On July 20, 2009, a hearing was conducted, and the case is ready for decision.

The Court decides the suppression motion in conformity with Pa. R. Crim. P. 581. The Commonwealth must prove by a preponderance of the evidence that the evidence obtained from Defendant's warrantless arrest was not obtained in violation of his rights. Pa. R. Crim. P. 581 Comment. The Court must also make findings of fact and conclusions of law as to "whether the evidence was obtained in violation of the defendant's rights." Pa. R. Crim. P. 581(I).

#### Factual Findings

1. Trooper James O'Shea, the officer who oversaw the operation that led to Defendant's arrest, knows the defendant personally.
2. On May 22, 2008, Trooper O'Shea arranged a controlled purchase of cocaine from Defendant, Eric Chambers, through a confidential informant.
3. On that date, the informant called a man he identified as Chambers and set up a drug deal at the Food Lion in Shippensburg, in Franklin County, PA.
4. The informant was searched, found to be clean, given marked state police funds, and kept under constant surveillance during the operation.
5. Defendant was spotted by surveillance at a barn along the Mainsville Road, Franklin County, PA, where he had his suspected center of operations.
6. Surveillance observed Defendant drive his Chevy Caprice from the barn to the Food Lion in Shippensburg.
7. During transit, his car remained under surveillance, and the drug exchange took place at the Food Lion parking lot, as planned.
8. Chambers was then trailed by surveillance back to the Mainsville Road barn.
9. Chambers was positively identified in connection with the May 22, 2008 controlled buy, and police officers observed the entire operation.
10. On June 17, 2008, Trooper O'Shea arranged another controlled buy from Defendant, Eric Chambers, through the same confidential informant that police used on May 22, 2008.
11. Several police officers were involved on June 17, and the plan was to make the buy from Chambers and then to follow him back to the location of his stash, which surveillance had revealed was likely in a barn along the Mainsville Road.
12. On June 17, just prior to the drug deal, Trooper O'Shea searched the informant and his car before giving him marked state police funds for the buy.
13. The informant placed a phone call and set up a meeting for a parking lot behind an old store in Roxbury, Franklin County, PA.
14. Trooper O'Shea and Detective Kurtz of the Cumberland County Drug Task Force followed the informant to the meeting location, keeping his vehicle under surveillance at all times.
15. Trooper Donald Beynon remained in the woods behind the store and surveilled the parking lot where the meeting was to take place.
16. At around 3:30 p.m., Defendant's Chevy Caprice arrived at the meeting place.
17. The occupants were four unidentified black males.
18. The informant left his vehicle and approached the Caprice.
19. The drug deal was consummated and the Caprice left the parking lot and headed for Shippensburg, PA.
20. Trooper O'Shea and two other officers followed the Caprice to Shippensburg but lost it at that location.
21. Trooper Beynon searched the informant at the parking lot and found cocaine but nothing else illegal.
22. Trooper O'Shea radioed Detective Kurtz and asked him to check the barn along Mainsville Road.

23. The Caprice pulled in at the barn just as the detective was approaching, and the detective saw four black males exit the Caprice.
24. The detective maintained surveillance on the barn and the four black males.
25. The other police officers then proceeded to the barn to arrest Defendant for the crimes for which he is now charged.
26. When the police arrived at the barn to make the arrest, the four black males were back in the car, with Defendant occupying the driver's seat.
27. The Caprice was boxed in by police, and the occupants were removed, searched, and taken into custody.
28. Defendant had \$300 in marked state police funds and some crack cocaine on him when he was arrested.
29. All of the offenses for which Defendant was charged were felonies, and police officers were present for each of the drug deliveries.

### Discussion

Chambers requests that the Court suppress all evidence obtained as a result of his warrantless arrest on June 17, 2008. Defendant argues that the officers lacked the probable cause to believe that he had delivered a controlled substance in their presence. Defendant also seeks to have the Court dismiss charges of unlawful delivery of a controlled substance and criminal use of a communication facility, because the Commonwealth has failed to make a prima facie case. The Court will evaluate each claim in turn.

#### **I. Motion to Suppress**

Chambers argues that his warrantless arrest on June 17, 2008 was illegal because the officers lacked the probable cause to believe that he had committed a felony in their presence. An arrest without a warrant may be made "upon probable cause when the offense is a felony or murder." Pa. R.Crim.P. 502(2)(b). Here, since the crimes charged are all felonies, the arrest was proper as long as it was made with probable cause. To determine probable cause, "the crucial test is whether there were facts available at the time of the initial apprehension which would justify a man of reasonable caution in the belief that a crime had been committed and that the individual arrested was the probable perpetrator." Commonwealth v. Jones, 322 A.2d 119, 123 (Pa. 1974). The focus lies on the officer's knowledge. Commonwealth v. Urbina, 434 A.2d 157, 159 (Pa. Super. 1981).

In this case, Defendant does not really contest that Trooper O'Shea knew that a crime had been committed. Indeed, a confidential informant exchanged marked state police funds for a quantity of crack cocaine. But Defendant does contest the quantum of proof of which Trooper O'Shea was aware that indicated that Defendant was the perpetrator. However, the trooper knew of the following facts. First, the informant told the trooper that he had spoken with Chambers on the phone to arrange the drug deals, and the deals occurred as planned. Second, Trooper O'Shea knew Chambers personally and knew that he owned the Chevy Caprice that was used to deliver drugs on both occasions. Third, on May 22, 2008, Chambers was surveilled from the barn to the drug sale at the Food Lion and then back to the barn. These facts clearly tie him to the June 17, 2008 charges. Thus, his warrantless arrest was justified on that date, and the evidence seized during that arrest will not be suppressed.

#### **II. Motion to Dismiss**

Next, the Court will evaluate the motion to dismiss all charges stemming from the alleged incident on May 29, 2008. "A petition for writ of habeas corpus is the proper vehicle for challenging a pretrial finding that the Commonwealth presented sufficient evidence to establish a prima facie case." Commonwealth v. Kohlie, 811 A.2d 1010, 1013 (Pa. Super. 2002). A motion to dismiss can be treated as a petition for writ of habeas corpus. Id. Such a petition is similar to a preliminary hearing, and, to prevail, the Commonwealth must present a prima facie case. Id. "A prima facie case is that measure of evidence which, if accepted as true, would justify the conclusion that the defendant committed the offense charged." Id. Although typically hearsay evidence is admissible at a preliminary hearing, "if the hearsay testimony ... is the only basis for establishing a prima facie case, it fails to meet the criteria for evidence upon which the preliminary hearing judge may rely." Commonwealth v. Carmody, 799 A.2d 143, 146 (Pa. Super. 2002).

Here, charges of unlawful delivery of a controlled substance, Count 3, and criminal use of a communication facility, Count 6, resulted from the May 29, 2008 incident. And, although the Commonwealth presented non-hearsay evidence that those crimes occurred, the defendant was tied to the crimes only by the out of court statements of the informant. In those statements the informant indicated that he spoke on the phone to the defendant to arrange the drug deal. Although the

Commonwealth presented evidence that the informant called the same number to arrange the June 17, 2008 drug deal for which Chambers is also charged, in both instances police failed to tie the number to Chambers in any way other than the informant's testimony. Furthermore, the drug delivery on May 29, 2008 was carried out by two unidentified white males, with a blue pickup truck with a trailer carrying a four-wheeler. The police were surprised by this development and failed to investigate the occupants of the pickup truck, who left the scene without even having police run the registration on their truck. Accordingly, hearsay testimony is the only basis for tying Defendant to the crimes charged, and, so the charges of unlawful delivery of a controlled substance, Count 3, and criminal use of a communication facility, Count 6, will be dismissed.

#### Conclusion

In conclusion, probable cause supported Trooper O'Shea's arrest of the defendant for the felony offenses with which he has been charged as to May 22, 2008, and June 17, 2008. Police knew that a crime had been committed, and a reasonable man would have believed that the defendant was the probable perpetrator. Thus, the Court finds that the arrest was legal, and the Court denies the Motion to Suppress Evidence. Additionally, the Court will treat the motion to dismiss as a petition for writ of habeas corpus and will dismiss the charges stemming from the May 29, 2008 incident, because only hearsay ties the defendant to the events on that day.

#### ORDER OF COURT

September 8, 2009, this matter having come before the Court on Defendant's Omnibus Motion, and the Court having reviewed the record, the motion, the arguments, and the law, it is hereby ordered that Defendant's request for suppression is denied. This determination shall be final, conclusive, and binding at trial except upon a showing of evidence that was heretofore unavailable, and the Defendant shall not be prevented from opposing this evidence at trial upon any ground except its suppressibility. It is further hereby ordered that the motion to dismiss is denied for all counts, except Count 3 and Count 6 which shall be dismissed.

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[<sup>1</sup>] The charges subject to the motion to dismiss are (1) unlawful delivery of a controlled substance and (2) criminal use of a communications facility.