

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA : NO. 02-10,012  
:   
:   
vs. : CRIMINAL DIVISION  
: Motion to Suppress  
KAREEM WATSON, :   
Defendant :

OPINION AND ORDER

Defendant was charged with possession with intent to deliver a controlled substance, two counts of possession of a controlled substance, and possession of drug paraphernalia, after a search of his person while at a residence on Cherry Street revealed the presence of controlled substances. The search was pursuant to a search warrant issued by Magistrate Schriener, which warrant authorized the search of the residence, and “any and all persons present.” In the instant Motion to Suppress, Defendant contends the authorization to search “any and all persons present” was not supported by probable cause and as a result, the search of Defendant’s person was illegal and the results of that search must be suppressed.

A search warrant may authorize the search of “all persons present” when the totality of the circumstances establish a sufficient nexus between the persons to be searched, the location and the criminal activity suspected. Commonwealth v Graciani, 554 A.2d 560 (Pa. Super. 1989). In Graciani, the “all persons present” authorization was upheld because the Court found the sufficient nexus to have been established in the fact that the place to be searched was a private residence, the contraband being searched for could easily be hidden on the body (controlled substances), sales of controlled substances were observed from the residence within three days of the application of the warrant, and a recent seizure of controlled substances from that residence and new sales within five

days thereafter allowed one to infer that a large quantity of controlled substances was kept at the residence. An “all persons present” authorization in a search warrant was also upheld by the Superior Court in Commonwealth v Heidelberg, 535 A.2d 611 (Pa. Super. 1987), where the affidavit of probable cause in support of the warrant indicated that cocaine sales had been observed between the occupant and other persons at the house within twenty-four (24) hours of application for the warrant, a large quantity of cocaine was believed to be kept at the house, the place to be searched was a private residence, and the crime suspected involved contraband which could easily be hidden on the body.

In the instant case, the affidavit of probable cause indicates that the source of information, two persons arrested for robbery of a truck driver, from whom they had obtained two CB radios, had supplied information that they had taken the CB radios to a house on Cherry Street (later identified by the suspects as 714 Cherry Street), where they traded the radios for two bags of crack cocaine, that the resident of the house was a person by the name of Al and that Al allowed people to deal cocaine out of the house. The suspects also provided information, contained in the affidavit of probable cause, that the suspects had purchased the cocaine from a black male in the residence, that they had purchased from there in the past and that when they purchased the cocaine from the black male, that person had more cocaine in a sandwich baggie. It should further be noted that the report to the police by the suspects was made on the same date as the officer applied for the warrant. Considering this information, the Court finds a sufficient nexus to justify authorization of an “all persons present” search warrant. Although Defendant offers in support of his argument the case of Commonwealth v Wilson, 631 A.2d 1356 (Pa. Super. 1993), wherein the Court suppressed the evidence of contraband found on the person of the defendant in that matter, there was not an “all persons present” authorization in the warrant involved in that matter. While the Court indicated in dicta that such a warrant could not have properly been obtained, in that case the Court noted that the confidential informant provided information about the activities of one named person only and there was no indication that any occupants other than that named person had ever participated in illegal activities. In the instant matter, the Affidavit of Probable Cause in support of the warrant indicates that the suspects providing information to the police purchased the drugs from someone other than the resident

of the residence and that that person, the owner/lessee, allowed other people to deal cocaine out of his house. The Court finds these facts to provide a sufficient distinguishing basis from Wilson.

Having concluded the warrant was sufficiently supported by the Affidavit of Probable Cause, Defendant's Motion to Suppress must be denied.

ORDER

AND NOW, this 31<sup>st</sup> day of October, 2002, for the foregoing reasons, Defendant's Motion to Suppress is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber, Esq.  
Hon. Dudley N. Anderson