

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1186 - 2006
:
vs. : CRIMINAL DIVISION
:
ANWAR CHRISTOPHER AMOS, :
Defendant : Motion to Suppress

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress, contained in his Omnibus Pre-trial Motion, filed October 9, 2006. A hearing on the motion was held December 8, 2006. At the conclusion of the hearing, defense counsel requested the opportunity to file a brief; that brief was filed December 15, 2006.

Defendant was charged with various drug-related offenses after state police and a confidential informant conducted four controlled buys, and the confidential informant identified Defendant as the seller. Defendant contends the identification procedure was so unduly suggestive as to have deprived him of his right to due process of law, and seeks to have both that identification, as well as any in-court identification, suppressed.

According to the testimony offered at the hearing, Defendant was shown a single photograph (not of Defendant) after two of the buys, but indicated that the person in the picture was not the seller. After the fourth buy, he was shown a single photograph of Defendant, and identified Defendant as the seller. Defendant argues that this showing of a single photograph was unduly suggestive.

A photographic identification is unduly suggestive if, *under the totality of the circumstances*, the identification procedure creates a substantial likelihood of misidentification. Commonwealth v. Harris, 888 A.2d 862 (Pa. Super. 2005). *See also* Commonwealth v. Swinson, 626 A.2d 627 (Pa. Super. 1993)(the use of photographs during an identification procedure must be analyzed *under the facts and circumstances of each particular case*). In the instant case, a state trooper involved in the investigation testified that the confidential informant had indicated to state police at the time of the first buy that the seller was a man he knew, but

only by the street name of “Love”. He was able to give a general physical description, but the troopers were not able to come up with a proper name, nor at that time were city police. After the second buy, having obtained a photograph from the Commonwealth Photographic Identification Network by searching for the street name “Love”, the troopers showed that photo to the confidential informant who, as noted above, said it was not the seller. After the fourth buy, the confidential informant was taken by a state trooper to talk with city police about an unrelated matter, and while there, one of the officers indicated he thought “Love” was Anwar Amos, Defendant herein. The trooper asked city police to find on their computer a photograph of Anwar Amos, and when the informant viewed that photograph on the computer screen, he responded that he was “150% positive it’s him”.

The confidential informant testified that he knew Defendant through his father’s business, that Defendant’s brother had introduced them, but he knew him only as “Love”, and had never known his proper name until, at one of the buys involved in this case, a friend called him by the name “Anwar”. While the informant agreed that he could have heard the name “Amos” from the police, he insisted that knowing the name did not affect his identification, stating that the identification was based on his knowing Defendant, and having known him for eight to ten years.

The Court believes that under all the circumstances here, where the informant already knew the person to be identified, and thus the likelihood of misidentification was minimal, showing a single photograph was not unduly suggestive. Even were the procedure held to be so, however, the circumstances provide an independent basis for the identification.

An in-court identification of a defendant need not be suppressed, despite a suggestive out-of-court identification, if the Commonwealth is able to establish by clear and convincing evidence that the later identification was not the result of the earlier suggestive event. To meet its burden in this regard, the prosecution must demonstrate that, under the totality of the circumstances, an independent basis existed for the identification. The factors to be considered in determining whether an independent basis exists are: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation.

Commonwealth v. Fisher, 769 A.2d 1116 (Pa. 2001). Of these factors, the opportunity of the witness to observe the defendant at the time of the incident is considered to be the most important. Commonwealth v. Smith, 396 A.2d 744 (Pa. Super. 1978). In the instant case, the informant knows the person to be identified, has known him for eight to ten years, and has recently interacted with him on four separate occasions. His description of Defendant, albeit general, is apt. When shown the photograph of Defendant, he indicated he was 150% sure it was the person from whom he had purchased drugs, and at the suppression hearing he expressed the same certainty. The controlled buys occurred just this past year, the most recent only five and a half months ago. Considering all of these circumstances, the Court has no trouble finding an independent basis for an in-court identification, even were the photographic identification to be suppressed.

Accordingly, the Court having determined that the photographic identification procedure was not unduly suggestive, and that there exists in any event an independent basis for any in-court identification, Defendant is not entitled to relief.

ORDER

AND NOW, this 20th day of December 2006, for the foregoing reasons, Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Edward J. Rymysza, Esq
Gary Weber, Esq.
Hon. Dudley Anderson