

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 342 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
NATHANIEL JOHN CLARK, II,	:	
Defendant	:	Motion to Suppress Evidence

OPINION AND ORDER

Before the Court is Defendant’s Motion to Suppress Evidence, filed April 6, 2006. A hearing on the motion was held June 13, 2006.

Defendant has been charged with possession with intent to deliver cocaine, criminal use of a communication facility, receiving stolen property and a firearms offense. In the instant motion, he seeks to suppress all evidence obtained as a result of his arrest on December 7, 2005, contending the arrest was not supported by probable cause.

The Commonwealth presented the testimony of two law enforcement officials involved in Defendant’s arrest: Sergeant Terrance O’Connell of the South Williamsport Borough Police Department and Officer Jeremy Brown of the Williamsport Police Department, who also serves as an undercover officer for the Lycoming County Drug Task Force. According to the officers, after one Taurance Johnson had been arrested on December 7, 2005, on drug charges he agreed to cooperate with authorities by setting up a controlled buy with his supplier, whom he identified as “Pook”. O’Connell contacted the Lycoming County Drug Task Force and Officer Brown then met with Johnson at the South Williamsport Police Department. Johnson confirmed his willingness to cooperate in setting up his supplier. Johnson provided a cell phone number and Officer Brown dialed the number. In the presence of both officers, Johnson arranged with someone to purchase cocaine, agreeing to meet at the Giant Plaza on Third Street in Williamsport. Johnson was then transported to the Giant Plaza in an unmarked U.S. marshal’s vehicle. Johnson informed the officers that “Pook” would be arriving in a silver Chevy Impala. While they were waiting in the vehicle at the Giant Plaza, Johnson received a call on his cell phone from “Pook”, who indicated he would be arriving in a couple minutes. A

couple minutes later, they observed a silver Chevy Impala pull into the parking lot and park. Johnson indicated the vehicle looked like the one driven by “Pook”, and after the marshal’s vehicle was moved closer and the driver of the Impala exited his vehicle, Johnson positively identified him as “Pook”. “Pook” then went into the store, and came back out after five to ten minutes. At that time, he was arrested, and identified as Nathaniel Clark, Defendant herein.

Defendant contends this matter is controlled by In the Interest of O.A., 717 A.2d 490 (Pa. 1998). There, the defendant also challenged the probable cause for his arrest, which had been made based on an informant’s tip that two individuals were selling drugs from an abandoned garage. The Court explained the “totality of the circumstances test” whereby probable cause is found to exist “where the facts and circumstances within the officer’s knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed”, and also indicated that where the officer’s actions resulted from information gleaned from an informant, the informant’s veracity, reliability and basis of knowledge must be assessed. Id. at 495. In finding insufficient facts and circumstances to justify a finding of probable cause in the situation before it, the Court noted the lower court’s reliance on a “bare assertion” of the officer that the informant “provided reliable information in the past.” Id. at 496. The Court pointed to “no objective facts to substantiate this assertion” and also noted that the tip in that case did not “disclose a sufficient basis of knowledge to support the officers’ belief that a crime had been or was being committed at the time they entered the garage. The only assertion made relevant to his basis of knowledge was that he observed drugs for sale in Appellant’s possession in an abandoned garage.” Id. at 496-497. The Court found the informant’s statement insufficient to form the basis for a warrantless arrest, “given the dearth of specifics” on the matter, and indicated its belief that the case “provided a situation where the police needed to ‘further investigate’ before arresting Appellant.” Id. at 497.

In responding to the dissent in O.A., however, the Court went on to recognize that where the reliability of the informant is not established, the facts and circumstances surrounding the tip may provide sufficient indicia of reliability to support a finding of probable cause, and noted that such reliability may be found where the tip is reasonably corroborated by

other matters within the officers' knowledge. Id. Specifically, the Court noted that the tip must "provide information that demonstrates 'inside information', a special familiarity with the defendant's affairs", and that police corroboration of that inside information could impart additional reliability to the tip. Id. at 498. The Court also emphasized that the indicia of reliability of a tip is increased where the informant's tip provides "detailed and accurate predictions". Id., n. 8. In addition, it has been noted in other cases that reliability is imparted to an informant's tip where the informant himself participated in the criminal activity. In the Interest of J.H., A.2d 351 (Pa. Super. 1993); Commonwealth v. Luv., 735 A.2d 87 (Pa. 1999).

In the instant case, the Court believes that although the reliability of the informant was not established, other circumstances provide sufficient indicia of reliability to support a finding of probable cause. First, the informant himself participated in the criminal activity, having been arrested for possession with intent to deliver and indicating at that time that he would like to cooperate with police by leading them to his supplier. Second, the informant demonstrated that he had inside information, and provided detailed and accurate predictions, when he made arrangements in the presence of officers to meet Defendant for the purpose of purchasing drugs, and informed officers that Defendant would meet him at the Giant parking lot and would arrive in a silver Chevy Impala. Those predictions were confirmed, and his information corroborated by police, when they observed Defendant's vehicle, matching the description given by the informant, arrive at the designated location at the designated time. Thus, the instant case is distinguishable from O.A., where the information provided by the informant "failed to provide any facts that would indicate a special familiarity with Appellant's personal affairs". In the Interest of O.A., *supra*, at 499.

The Court therefore concludes that the arrest in this case was supported by probable cause. Accordingly, the motion to suppress will be denied.

ORDER

AND NOW, this 16th day of June 2006, for the foregoing reasons, Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
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Hon. Dudley Anderson