

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**JONATHAN BROWN,
Defendant**

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**CR-1577-2010
CRIMINAL DIVISION**

ORDER

The Defendant filed a Motion to Suppress on January 11, 2011. A hearing on the Motion was held February 14, 2011.

Background

The drug investigation in this case involved eleven (11) controlled buys of crack cocaine from eight (8) different drug dealers. Ten (10) of the buys were coordinated via a cell phone by Melissa Harbst (Harbst). On three (3) separate occasions during the investigation, Jonathan Brown (Defendant) delivered crack cocaine to an under cover officer. On May 15, 2010, under cover police officer Edward Lucas (Lucas) met with Harbst for the purpose of purchasing crack cocaine and arresting her on an existing warrant obtained pursuant to the above described drug investigation. In setting up this purchase of crack cocaine, an under cover police officer called cell phone (570) 974-9138. Harbst answered the call and agreed to sell crack cocaine to the officer. Harbst directed the officer to go to the intersection of High Street and Center Street for the transaction. Harbst was observed by surveillance officers departing from the front door of the Cherry Street residence. Prior to Harbst's arrest, Lucas listened in on a cell phone conversation Harbst was having with someone. Harbst could be heard ordering powder cocaine from whomever she was speaking with. Harbst later revealed that the person with whom she

was speaking was Antwaine Chambers (Chambers) who was currently at, and often stays in the third floor room of the Cherry Street residence.

Harbst then met with Lucas and was subsequently arrested and taken into custody. At the time of her arrest, Harbst had cocaine on her person. Harbst informed the police that she resides at the Cherry Street residence, and had done so for the past few weeks. Harbst stated that the residence is divided into single rooms on the first and second floor. Harbst further relayed that the second floor has three rooms, her room being the middle room, and the third floor has only one room, which is often occupied by Chambers. Harbst stated that she shared the room at the Cherry Street residence with Jonathan Brown (Defendant). Harbst stated that the Defendant was not living in the room, but that he often stopped in and dropped things off to her. The room was in the Defendant's name and he stayed there periodically. At the time of her arrest on May 15, 2010, Harbst gave the police permission to go into the second floor room. Harbst also relayed that she was selling cocaine for the Defendant and Chambers.

The police then applied for two (2) search warrants - one for the second floor room and one for the third floor room. Prior to obtaining the search warrants, the police went to the Cherry Street address to secure the room. The Defendant was found in the second floor room and was arrested pursuant to an existing warrant for his arrest.

A search warrant was then obtained and executed at the Cherry Street residence. The search resulted in the seizure of one "Jennings" brand .380 caliber pistol from under a mattress in the second floor room. A computer search revealed that the pistol was registered to a Connel Pickens, Jr., and had been reported stolen in 1997 to the Williamsport Bureau of Police. Also seized from the second floor room was an Adidas brand gym bag. Inside the gym bag were two sandwich type bags, each containing suspected cocaine, electronic weight scales, another sandwich bag containing \$2,820.00 U.S. currency, and various letters and documents addressed

to the Defendant. Also in the gym bag were various items of male clothing, including an Adidas style jacket. The jacket resembled the jacket worn by the Defendant during two of the controlled buys of crack-cocaine earlier in the investigation. The suspected cocaine field tested positive for cocaine and weighed approximately 15.3 grams.

Discussion

The Defendant contends in his Motion to Suppress that the officers unlawfully secured the second floor room located at the Cherry Street residence as no exigency existed to permit securing the residence prior to obtaining the search warrant. The Defendant also contends that the warrant fails to establish probable cause to search the second floor room because probable cause was established by Harbst who was a co-defendant, and no evidence established that she was reliable. As a result, the Defendant contends that the seizures resulting from searches of his person and of the room should be suppressed.

The officers unlawfully secured the second floor room located at the Cherry Street address

The Defendant contends that the officers unlawfully secured the second floor room located at the Cherry Street residence as no exigency existed to permit securing the residence prior to obtaining the search warrant. While the Court might agree with the Defendant that exigent circumstances did not exist to permit entry into the residence prior to obtaining a search warrant, the Court believes that Harbst consented to a search of the second floor room. One exception to a warrantless search and seizure is consent, which can be provided by a third party who has apparent authority to consent. Commonwealth v. Strader, 931 A.2d 630 (Pa.2007) (See Commonwealth v. Hughes, 836 A.2d 893 (Pa. 2003)). “Third party consent is valid when police

reasonably believe a third party has authority to consent.” Strader at 634. (see Illinois v. Rodriguez, 110 S.Ct. 2793 (1990)).

In this case, Harbst was living in the second floor bedroom at the time she gave the officers consent to search the room. The officers were not aware that the Defendant was the person who paid rent on the room at the time they went to the room to secure it. Therefore, even if Harbst did not have authority to consent to a search of the room, she had apparent authority to consent to a search. For that reason, the Court finds that the officers securing of the second floor room prior to obtaining a search warrant was lawful. The Court notes that even though the officers had consent to search the room, they only secured the room before obtaining a warrant. At the time the officers secured the room, the Defendant was present in the room. The Defendant was then arrested pursuant to an existing warrant obtained as a result of a drug investigation. The Court finds nothing unlawful about the Defendant’s arrest, which was done pursuant to a valid warrant.

The warrant fails to establish probable cause to search the second floor room

The Defendant alleges that the warrant fails to establish probable cause to search the second floor bedroom because probable cause was established by Harbst who was a co-defendant, and no evidence established that she was reliable. The Court agrees that the issuance of a search warrant must be supported by probable cause. See Commonwealth v. Jones, 988 A.2d 649, 655 (Pa.2010). “Probable cause exists where the facts and circumstances within the affiant’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted.” Jones at 655. (Citing Commonwealth v. Thomas, 292 A.2d 352 (Pa.1972)).

[T]he task of an issuing authority is simply to make a practical, commonsense decision whether, given all of the circumstances set forth in the affidavit before

him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. ...

Jones at 655. (Citing Commonwealth v. Torres, 764 A.2d 532, 537-538 (Pa.2001)).

The search warrant affidavit in this case reveals that on May 15, 2010, Lucas met with Harbst to purchase crack cocaine and to arrest Harbst on an existing arrest warrant. Harbst was observed by surveillance officers departing the Cherry Street residence on her way to meet with Lucas. Prior to arresting Harbst, Lucas listened in on a cell-phone conversation Harbst was having during which she ordered powdered cocaine from the person to whom she was speaking. Harbst later revealed that the person to whom she was speaking was Chambers, who often stays in the third floor room above her room on Cherry Street. At the time of her arrest, Harbst was found to be in possession of approximately 5.1 grams of suspected crack cocaine, which subsequently field tested positive for the presence of cocaine. After her arrest, Harbst stated that she resides at the Cherry Street residence and had done so for several weeks. Furthermore, and perhaps most damaging to the Defendant's claim, while in custody Harbst received a phone call from Chambers who had locked himself out of the Cherry Street residence. Chambers stated that he needed Harbst's key to get into the Cherry Street residence so that he could retrieve cocaine to be sold to a buyer.

As the above stated information was all contained within the affidavit of probable cause to obtain a search warrant for the Cherry Street address, the Court finds that the affidavit manifestly established a fair probability that contraband or evidence of a crime would be found in the Cherry Street address. The Court finds the Defendant's claim otherwise to be without merit.

ORDER

AND NOW, this ____day of March, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Nicole J. Spring, Esq.