

COMMONWEALTH OF PENNSYLVANIA
v. RICHARD L. BARNETT, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 1389 of 2003 and No. 1513 of 2004

Motion to suppress evidence from warrantless entry into home

1. The Commonwealth has the burden of showing by a preponderance of the evidence that police entry into a defendant's home was constitutional.
2. Police entry into a home without a warrant is presumed unreasonable unless police had a valid consent to enter, with that consent having been given unequivocally, specifically, and voluntarily.
3. Whether an occupant gave consent is a question of fact to be determined from a totality of the circumstances.
4. A person who has shared possession of a premises with another person has the authority to allow police to enter that shared premise.
5. The police's warrantless entry into the defendant's home, which he shared with his live-in girlfriend, was not unconstitutional because the totality of the circumstances clearly showed that the girlfriend admitted the police into the home in order to put a stop to the defendant's drunken and abusive conduct toward her on the evening in question.

Appearances:

Timothy D. Wilmot, Esq., *Assistant District Attorney*

Jeremiah D. Zook, Esq., *Counsel for Defendant*

OPINION

Herman, J., January 12, 2005

Introduction

The defendant was charged with driving under the influence (No. 1513 of 2004) and simple assault, resisting arrest and aggravated assault (No. 1389 of 2003). All charges arose from events which allegedly occurred on the evening of September 1, 2003. The defendant filed the instant motion, alleging that the entry of police into his home without a warrant was an unconstitutional intrusion, making all evidence obtained thereafter inadmissible. The court held a hearing on the motion on January 3, 2005.

Background

On the evening of September 1, 2003, Franklin County 911 Services and/or the Chambersburg Borough Police Department received five calls in connection with the residence at 151 South Fourth Street in Chambersburg. Living at the residence at the time were the defendant, his long-time live-in girlfriend Patricia Davis and the defendant's daughter Tina Barnett.¹

The first request for police assistance was made by Taneysa Bays, one of the defendant's

daughters. Chambersburg Police Officers Rob Peterson and Jon Greenawalt were dispatched to investigate this report of physical abuse between the defendant and Patricia Davis. In speaking with the defendant and Davis, the officers saw no sign of physical abuse and Davis denied same. However, because the defendant was highly intoxicated, the officers advised him to stay inside in order to avoid being charged with public drunkenness. The officers did not enter the home at that time but merely stood in the front doorway which opens directly onto the sidewalk. They left without incident.

The second dispatch to the vicinity was prompted by two calls made at approximately 9:51 p.m. One was from a bystander unrelated to the defendant's family who then put Tina Barnett on the line. These callers reported that the defendant was driving in the vicinity of the Fourth Street residence in an intoxicated condition and on the wrong side of the road. Simultaneously, a call came into a different call center from a neighbor who lived across the street from the defendant. She reported a domestic disturbance in the nature of repeated screaming by the defendant's daughter just outside the residence. Officers Peterson and Greenawalt drove around the area in an effort to locate the defendant but were unsuccessful.

The neighbor made another call at 10:13 p.m., renewing her request for police to come to the scene. The officers were again dispatched to investigate a domestic disturbance at the defendant's home. While they were on their way, the defendant called to complain about the repeated, and in his view, unnecessary presence of the police at his home that evening. It was evident from listening to the tape that the defendant was in a confused, intoxicated state when he made the call.

Parenthetically, we note that the Commonwealth played these tape-recorded calls for the court at the January 3, 2005 hearing. We also read the transcript of those calls which had been made part of the record at an earlier proceeding before the Honorable Richard J. Walsh. The tape and transcript provide many details about the events of that evening, details which Officers Peterson and Greenawalt did not have access to when they responded to the dispatches because they did not hear the calls as they came in.

Officer Peterson arrived at the scene before Officer Greenawalt. Officer Peterson testified that at the time he drove to and approached the residence, he had no specific reason to believe the defendant would be armed. Officer Peterson also testified he had no grounds to arrest the defendant at that point. The record shows Officer Peterson first spoke to Tina Barnett who was standing on the sidewalk directly outside the home. From there, he could hear a verbal argument taking place inside. The record also shows the only two people inside the house were the defendant and Patricia Davis.

Officer Peterson knocked on the front door which was closed. He testified he was let into the home but he could not state with certainty who admitted him. Testimony from both Officer Peterson and the defendant shows that the defendant was sitting on the couch in the first room and Patricia Davis was standing nearby. According to Officer Peterson, Davis was upset and crying. He testified she motioned with her head for him to come further into the house and led him into the adjacent kitchen area.

Officer Peterson spoke with Davis for several minutes. According to Officer Peterson's affidavits of probable cause filed in connection with No. 1389 of 2003, his testimony at the January 3, 2005 hearing, and also his testimony at a related suppression hearing on April 15, 2004 before the Honorable John R. Walker, Davis told him that the defendant had pushed her into the wall and caused damage to the drywall. Officer Peterson also personally observed a hole in the drywall. According to Officer Peterson, Davis said that the defendant had used a stick approximately two feet long to hit her on the leg and, knowing the police were on their way, repeatedly threatened to hit her with it. Officer Peterson testified at both hearings that Davis showed him a red mark on her leg, the dimensions of which matched those of the stick.

Based on Davis's statements and his observations, Officer Peterson told the defendant that he was to be arrested for simple assault upon Davis. According to the Commonwealth, the defendant, then in a highly intoxicated state, immediately resisted Officer Peterson's attempt to handcuff him and it became necessary for all three officers at the scene to physically subdue him.² Later at the police station, the defendant allegedly struck Officer Greenawalt in the face. Based on the struggle and the blow to the face, the defendant was charged with resisting arrest and aggravated assault. He was also charged with simple assault upon Davis.

The defendant filed a motion alleging the police lacked probable cause to arrest him for simple assault on September 1, 2003. The Honorable John R. Walker presided over a hearing on the motion on April 15, 2004. At that hearing, Patricia Davis denied opening the door to let Officer Peterson into the residence. She also denied telling Officer Peterson that the defendant had intentionally struck her with a stick, maintaining instead that the stick "was thrown" in her direction and accidentally hit her. Finally, she denied that the hole in the drywall was the result of the defendant pushing her into the wall. Instead she

maintained that the damage occurred when the defendant backed up into the wall while trying to grab his car keys away from her. (Davis was behind a locked door at the time.) Judge Walker found Davis's denials wholly lacking in credibility. He denied the motion, concluding there was indeed probable cause to arrest the defendant for simple assault, resisting arrest and aggravated assault.

Patricia Davis did not testify at the January 3, 2005 hearing before the undersigned. The defendant, who did testify, denied that either he or Davis invited Officer Peterson into the home on the evening in question.

Discussion

The issue is whether the Commonwealth has shown by a preponderance of the evidence that Officer Peterson's entry into the 151 South Fourth Street residence without a warrant was not an unconstitutional intrusion under the 4th Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. The Commonwealth has the burden of establishing that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 323(h); Commonwealth v. DeWitt, 608 A.2d 1030 (Pa. 1992).

Under both these constitutional provisions, entry into or search of a home without a warrant is presumed to be unreasonable. Commonwealth v. Cleckley, 738 A.2d 427 (Pa. 1999). The Commonwealth can overcome this presumption, however, by showing the police had a valid consent to enter. Commonwealth v. Slaton, 608 A.2d 5 (Pa. 1992). That consent must be unequivocally, specifically, and voluntarily given. Commonwealth v. Gibson, 638 A.2d 203 (Pa. 1994). This is a question of fact to be determined from a totality of the circumstances. Cleckley, *supra*.

A person who has shared possession of a premises with another person has the authority to allow police to enter and search that shared premises. Commonwealth v. Hughes, 836 A.2d 893 (Pa. 2003). The defendant has never challenged the notion that Patricia Davis was a resident of 151 South Fourth Street and had the legal authority to allow entry by other persons, including police officers. Indeed the record shows she had full authority to consent to Officer Peterson's entry into the residence without a warrant. The question is whether the credible evidence shows that she did in fact give such consent.

We find the Commonwealth has proven by a preponderance of the evidence that Patricia Davis wanted the police to enter the home to put a stop to the defendant's drunken and physically abusive conduct toward her on that evening. In the first place, we are bound by Judge Walker's conclusion that Davis's testimony at the April 15, 2004 hearing was completely without credibility, including her denial of having consented to Officer Peterson's entry into the home. Although Davis admitted at the hearing that the defendant was very drunk that evening, her attempts to whitewash the violent nature of the defendant's conduct simply did not ring true in light of Officer Peterson's observations at the scene and his description of the ensuing struggle with the defendant.

In addition, we have considered the testimony of both Officer Peterson and the defendant at the January 3rd hearing, as well as the recorded phone calls and the transcripts of those calls. It is clear from the totality of the circumstances that Davis unequivocally, specifically and voluntarily invited Officer Peterson into the home in order to obtain protection from the defendant's drunken and abusive behavior that night. Because she had full legal authority to consent to the police's entry, the officers did not need a warrant to enter the home. Therefore, whatever evidence the police gathered once they were inside was constitutionally obtained and is admissible as to both cases against the defendant.

Consistent with these findings and conclusions, the court will enter an appropriate Order.

ORDER OF COURT

Now this 12th day of January 2005, the court hereby denies the defendant's omnibus motion to suppress evidence obtained as a result of police entry into his residence on the evening of September 1, 2003. This ruling applies to Criminal Action No. 1389 of 2003 and Criminal Action No. 1513 of 2004.

¹There may have been other residents but this is not clear from the record.

²Officer Greenawalt arrived shortly after Officer Peterson. It is alleged that he and a third officer helped Officer Peterson subdue the defendant.