

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
v. : CR. NO. 01-636
JAMES M. BROWN :

FINDINGS OF FACT

ROBERT F. KELLY, Sr. J.

SEPTEMBER 16, 2002

Defendant was indicted for possession of a firearm by a convicted felon, possession with intent to distribute cocaine base (“crack”), and possession of a firearm in furtherance of a drug trafficking crime. He has now filed a Motion to Suppress Physical Evidence which he contends was obtained as a result of an unlawful arrest and search. A hearing was held on that Motion on September 13, 2002 at which the following facts were determined.

On January 30, 2001, four officers of the Narcotics Field Unit, in plain clothes, went to the 5600 block of Malcolm Street in Philadelphia. This was a high crime area, and the officers went there on that day at the request of the Chief of that Division because of heavy narcotic sales in that particular block. The officers stopped near the 5600 block of Malcolm Street where one of them, Jeffrey Walker, got out of the car and walked to a location near 5624 Malcolm Street at approximately 12:35 pm. Officer Walker maintained communication with the other Officers, who remained as his back-up, by way of a radio. After being in the area for approximately two minutes, he observed an individual, later identified as James M. Brown, the Defendant, leave the house at 5624 carrying a silver and black pistol in plain view. Over the radio, he advised the backup officers that there was a black male carrying a large silver hand gun

getting into a small blue Chevrolet automobile.

After getting into the automobile, Brown lowered the window as a man, later identified as Andre Thomas, approached the driver's side. Officer Walker observed Thomas hand Brown U.S. currency. At the same time, Brown handed Thomas a small object. Based upon his years of experience with street sales of drugs, Walker believed that he had just witnessed a drug sale.

Walker approached the car, identified himself as a Police Officer, and ordered Brown out of the car so he could place him under arrest. At that time, Officer Brian Reynolds observed the pistol in plain view on the floor of the driver's side of the automobile Brown was removed from. Near the pistol were 65 pink and two purple plastic packets containing substance which the Officer believed to be crack cocaine.

At about the same time Officer Brian Monaghan arrested Andre Thomas, who had in his possession, eight small packs of what the Officer believed was crack cocaine.

CONCLUSIONS OF LAW

When Officer Walker observed Defendant Brown carrying a firearm in plain view on a public street in Philadelphia, he had the right to arrest him on the first degree misdemeanor charge under 18 Pa.C.S.A. § 6108.

Even without the authority of the Statute, Officer Walker had probable cause to arrest Brown for the drug activity that took place in Officer Walker's presence.

The police officers had the right to search Brown incident to his arrest. They also had the right to seize the pistol and drugs which were in plain view.

Based on the foregoing, I enter the following Order.

