

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

UNITED STATES OF AMERICA

CRIMINAL ACTION

v.

NO. 98-120

EDWIN RUIZ

M E M O R A N D U M

Broderick, J.

September 14, 1998

On September 14, 1998, the Court held a hearing on Defendant Ruiz's motion to suppress "evidence taken from defendant or the automobile" in the above-captioned criminal case. Following the hearing, the Court denied Defendant's motion. This memorandum sets forth the reasons for the Court's denial.

Defendant Ruiz filed a motion to suppress all physical evidence which Philadelphia police officers recovered on November 12, 1997, when they stopped the Defendant, patted down his person and searched his automobile. Specifically, Defendant Ruiz sought to suppress evidence of drugs, money and identification papers seized from Defendant's automobile.

At the hearing, the Court heard testimony from two witness: Officers Thomas Clarke and James Schwartz. Based upon the credible testimony of these officers, the Court made the following findings for the purpose of this suppression motion.

On November 12, 1997, at about 10:40 a.m., Philadelphia Police Officers Thomas Clarke, Angela Lomax, Rafael Ganderilla, Brian Werner, and James Schwartz responded to a radio call that a Hispanic male, wearing a red baseball cap, dark pants, and a black and white jacket was selling narcotics from a black Toyota in the area of 2757 N. Mascher Street. This area was known to the officers as a "high drug area" where cocaine and heroin were sold both day and night.

Officer Clarke testified that within one minute of the radio broadcast, he and his partner, Officer Lomax, arrived in the area of 2757 N. Mascher Street. Upon arrival, Officer Clarke observed a white male stop his white truck near the intersection of Somerset and Mascher Streets. Officer Clarke then observed Defendant Ruiz, who appeared to be a Hispanic male wearing a red baseball cap, dark pants, and a black and white jacket, standing on the corner. No other person in the area matched the radio description. When the white truck stopped, Defendant Ruiz approached the white male who was a passenger in the white truck and spoke briefly with him. The white male passenger then handed Defendant Ruiz what appeared, to Officer Clarke, to be U.S. currency. Defendant Ruiz walked to a black Toyota station wagon parked on the west side of Mascher Street. Defendant Ruiz took

out his keys, opened the driver's side back door, entered the back seat for a moment, and exited the black Toyota station wagon. Defendant Ruiz immediately walked north on Mascher Street to where he had met the white male passenger in the truck. Officer Clarke stated that as Defendant Ruiz was walking to the white truck, however, the white male had apparently observed the uniformed police officers and the white truck sped away. Seeing that the white male had left the area, Defendant Ruiz immediately returned to the black Toyota station wagon and again used his keys to enter through the driver's side back door, stay for a moment, and then exit the black Toyota station wagon.

Officer Clarke, believing that he had observed Defendant Ruiz engage in a drug transaction, instructed Officer Ganderilla to stop and detain Ruiz. Officer Ganderilla approached Ruiz, stopped and patted him down. Officer Ganderilla removed a set of keys from Ruiz's pockets and handed the keys to Officer Clarke. Officers Clarke, Schwartz and Werner then walked to the black Toyota station wagon and unlocked the door with the keys that they had taken from Defendant Ruiz. Officer Clarke entered the driver's side rear door and immediately saw a cigar box on the floor behind the driver's seat. Officer Clarke opened the flip top of the box and recognized drugs. The box contained some money, 573 orange-tinted zip-lock packets of crack cocaine, 26

blue-tinted packets of heroin, and 23 empty clear plastic bags.

Officer Schwartz, who had entered the front door of the black Toyota station wagon, recovered money in the arm rest and a wallet in the glove compartment. The total sum of money recovered from the cigar box and the arm rest of the car was \$356. The wallet contained Ruiz's driver's license and a registration and insurance card, both in Ruiz's name, for the black Toyota station wagon. After the police recovered the drugs, money, and the Defendant's identification from the black Toyota station wagon, they placed Defendant Ruiz under arrest.

The United States Supreme Court has held that if a law enforcement officer does not have probable cause for arrest, the officer may nevertheless lawfully stop and temporarily detain a person, provided that the officer has a reasonable suspicion that "criminal activity may be afoot." Terry v. Ohio, 392 U.S. 1, 30 (1968). The reasonable suspicion which justifies a Terry stop "must be based upon 'specific and articulable facts, which, taken together with rational inferences from those facts reasonably warrant that intrusion.'" United States v. Rickus, 737 F.2d 360, 365 (3d Cir. 1984) (quoting Terry, 392 U.S. at 21). On the basis of Officer Clarke's observations, there is no question that he and Officer Ganderilla were authorized, pursuant to Terry, to

detain Defendant Ruiz without violating the Fourth Amendment. The above facts clearly amount to reasonable suspicion that criminal activity is afoot. Officer Ganderilla lawfully undertook a protective pat down search, and removed the car keys.

The subsequent warrantless search of the black Toyota station wagon can be justified by the automobile exception to the warrant requirement. Police may conduct a warrantless search of a vehicle and any container found therein if a reasonable police officer has probable cause to believe there is contraband inside the vehicle. United States v. Ross, 456 U.S. 798, 823 (1982). See also United States v. Salmon, 944 F.2d 1106, 1123 (3d Cir. 1991)(automobile exception to warrant requirement permits warrantless searches of any part of vehicle, including containers, if there is probable cause to believe the vehicle contains contraband), cert. denied, 502 U.S. 1110 (1992). If a vehicle is readily mobile, the police do not need any additional exigency to justify the warrantless search. Pennsylvania v. Labron, 518 U.S. 938 (1996).

The test for probable cause in this context is simply whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 232, 238 (1983). Determinations of probable cause are based on a review of the "totality of the

circumstances," and involve a practical, common sense review of the facts available to the officers at the time of the search. Id. at 230. "[P]robable cause is a fluid concept -- turning on the assessment of probabilities in particular factual contexts" and must be evaluated in light of the totality of the circumstances. Id. at 232.

The test for probable cause is an objective test, based on "the facts available to the officers at the moment of arrest." Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1994), quoting Beck v. Ohio, 379 U.S. 89, 96 (1964). An officer may draw inferences based on experience to determine if probable cause exists. United States v. Ornelas, 517 U.S. 690, 700 (1996). Probable cause exists where the facts and circumstances within an arresting officer's knowledge are sufficient to warrant a reasonable police officer to believe an offense has been committed. United States v. McGlory, 968 F.2d 309, 342 (3d Cir. 1992), cert. denied, 506 U.S. 956 (1992); United States v. Cruz, 910 F.2d 1072, 1076 (3d Cir. 1990), cert. denied, 498 U.S. 1039 (1991). The "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying motivation. Graham v. Conner, 490 U.S. 386, 397 (1989).

In this case, Officer Clarke clearly had probable cause to believe that the black Toyota station wagon contained contraband. The factors which support a finding of probable cause include the radio broadcast, the defendant matching the description of the drug seller, the exchange of money, the flight of the buyer, the defendant using his car to stash the drugs, and the fact that this occurred in a high drug area. The totality of these circumstances would give a reasonable police officer probable cause to believe that Ruiz had been engaging in a drug transaction and using his car to stash the drugs. After Officer Ganderilla recovered the car keys from Defendant Ruiz, Officer Clarke had probable cause to conduct a search of the black Toyota station wagon.

It is therefore clear that the police officers had a reasonable suspicion that criminal activity was afoot, and could lawfully effect a Terry stop of the Defendant. In addition, the officers had probable cause to believe the black Toyota station wagon contained contraband, and had probable cause to make a warrantless search of the black Toyota station wagon.

For the above stated reasons, the Court has denied Defendant's motion to suppress all physical evidence seized from the black Toyota station wagon.

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O R D E R

AND NOW, this 14th day of September, 1998; the Court having held a hearing on Defendant's motion to suppress all "evidence taken from defendant or the automobile;" for the reasons set forth in the Court's memorandum of September 14, 1998;

IT IS ORDERED: Defendant's motion to suppress all physical evidence recovered by law enforcement officers from the black Toyota station wagon on November 12, 1997 is **DENIED**.

RAYMOND J. BRODERICK, J.