

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 99-11,172</b>
	:
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	:
<b>JAMAL BENNETT,</b>	:
<b>Defendant</b>	<b>: 1925(a) Opinion</b>

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Judgment of Sentence dated February 15, 2000 and docketed February 18, 2000. The relevant facts are as follows. On April 22, 1999, officers of the Williamsport police went to 1225 Vine Avenue to execute an arrest warrant for the defendant. The residence was owned by Jenny Lou DeGarmo, the mother of the defendant's girlfriend, Toni DeGarmo. The police believed execution of the warrant was high risk because: (1) they were dispatched to the defendant's residence at 1248 West Fourth Street on April 9, 1999 for an incident in which the defendant pointed a shotgun at several individuals; (2) the police seized a large quantity of cocaine, as well as a photo depicting the defendant and Abdul Clark pointing weapons at the cameraperson, when they were executing a search warrant for the defendant's residence on April 9, 1999; and (3) based on contacts and observations of the defendant and Mr. Clark, the police believed both displayed a propensity for violence involving guns.

Early in the morning on April 22, 1999, the police held a briefing regarding

the execution of the arrest warrant for the defendant. They discussed how they would approach the residence, effect entry and arrest the defendant. The police were dressed in special response team uniforms and carried side arms and tactical weapons for entries in high risk situations.

At approximately 7:00 a.m., the police proceeded to the front door of 1225 Vine Avenue. A white male by the name of Phillip Doebler answered the door.<sup>1</sup> The police did not expect Mr. Doebler to be at the residence, but they did expect Jenny Lou Degarmo, the owner of the house, to be present. The police announced who they were and asked if a black male named Jamal Bennett was in the residence. Mr. Doebler indicated that he believed Mr. Bennett was upstairs with Tony. At least one officer remained with Mr. Doebler while the other officers proceeded up the stairs to the second floor.

The stairwell opened into a game room. Off this middle room branched other doors into the bedrooms and bathroom. Officer McKenna proceeded to the first bedroom door around the stairwell. The door was partially ajar. Officer McKenna kicked the door the rest of the way open and found the defendant and Tony Degarmo in bed. At that point Officer McKenna ordered the defendant out of bed and Miss Degarmo away from the defendant. When the defendant got out of bed, Officer McKenna observed that he had a pager clipped to his boxer shorts. The defendant was then placed in custody and handcuffed.

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<sup>1</sup>Mr. Doebler was the boyfriend of Jenny Lou Degarmo.

Agent Sorage stayed with the defendant while Officer McKenna proceeded out into the game room to continue a protective sweep of the residence. Officer McKenna checked the bathroom and then went to the other bedroom. When he went into the other bedroom, Officer McKenna immediately observed the barrels of shotguns in the northwest corner of the bedroom, adjacent to the nightstand. Officer McKenna could not see on the other side of the bed, so he maneuvered around it to make sure no persons were there within reach of the weapons. When he went to the other side of the bed, Officer McKenna clearly observed that the weapons were shotguns and rifles. Additionally, he observed a brass and silver marijuana pipe on the nightstand and a plastic baggie which appeared to contain marijuana remnants in the open, bottom portion of the nightstand. The remainder of the house was checked and no other persons were found.

The defendant and Miss Degarmo were taken to city hall and the residence was secured. Officer McKenna relayed the information he gathered to Detective Turner so a search warrant could be obtained for the residence.

Detective Turner obtained a search warrant. During the search of the residence, the police found a plastic bag containing 23 small, zip-lock baggies of crack cocaine, \$379 in U.S. currency, 50 empty baggies, a corner of a plastic bag, and a razor in the cedar chest in the bedroom from which the defendant had been taken into custody. None of these items were the property of Miss Degarmo.

The defendant waived his right to a jury and proceeded to trial on a case stated basis. The Court found the defendant guilty of possession with intent to deliver

cocaine and possession of drug paraphernalia.<sup>2</sup>

The defendant asserts that his rights against unreasonable searches and seizures were violated. Specifically, the defendant contends the facts contained in attachment B of the search warrant were illegally obtained and were insufficient to establish probable cause.

With respect to the manner in which the facts and circumstances were obtained, the crux of the defendant's argument is that the protective sweep of the residence, which revealed the weapons, marijuana remnants and drug paraphernalia, was unlawful. A protective sweep is defined as "a quick and limited search incident to an arrest and conducted to protect the safety of police officers or others; it is narrowly confined to a cursory visual inspection of those places in which a person may be hiding."

Commonwealth v. Crouse, 729 A.2d 588, 590 (Pa.Super. 1999), citing Maryland v. Buie, 494 U.S. 325, 327, 110 S.Ct. 1093, 1094, 108 L.Ed.2d 276, 281 (1990). Protective sweeps are permissible under both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution if the officer reasonably believes, based on specific and articulable facts and rational inferences from those facts, that the area to be swept harbors an individual posing a danger to those on the arrest scene. Buie, 494 U.S. at 327, 110 S.Ct. at 1095; Crouse, 729 A.2d at 592, 597. The rationale for this holding is that the risk of danger in the context of an arrest in the home is as great as, if not greater than, it is in an on-the-street or roadside investigatory

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<sup>2</sup>The simple possession count merged with possession with intent to deliver.

encounter and the in-home arrest puts the officer at the disadvantage of being on his adversary's "turf." Buie, 494 U.S. at 333, 110 S.Ct. at 1098. Therefore, the interest of the officers in taking reasonable steps to assure their safety from other persons who could unexpectedly launch an attack outweighs the limited intrusion on individual privacy interest that a protective sweep may entail. Id. at 334, 110 S.Ct. at 1098; Crouse, 729 A.2d at 592.

In the present case, the officers were legitimately concerned for their safety. They were arresting the defendant for possessing controlled substances with the intent to deliver them. N.T. at p.7. Drug dealers are known to carry weapons. N.T. at p.35. The police knew this particular defendant, and other individuals with whom he was associated, had weapons and displayed violent propensities. N.T., at pp. 7-10. When the officers went to 1225 Vine Avenue to arrest the defendant, they did not expect Mr. Doebler to be present, but did expect Jenny Degarmo to be there. N.T., at 12, 24. After they arrested the defendant without locating Jenny Degarmo, the police conducted a protective sweep to locate her and any other individuals who may have posed a danger to them. See N.T., at pp. 15. Although the law does not allow the police to conduct a protective sweep any time they execute an arrest warrant in a home, the Court found that the facts and circumstances of this particular case, as set forth above, justified the police conducting a protective sweep for their safety. See N.T. at pp. 39-41.

The defendant also contends the facts and circumstances contained in attachment "B" of the search warrant were insufficient to establish probable cause to search the residence. "The task of the issuing magistrate is simply to make a practical,

common sense decision whether, given all the circumstances set forth in the affidavit ..., there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Commonwealth v. Gray, 509 Pa. 476, 484, 503 A.2d 921, 925 (1985). The Court must review a magistrate’s determination of probable cause “with common sense and a realistic manner, and not subjected to overly technical interpretations; the magistrate’s determination of probable cause is to be accorded great deference on review.”

Commonwealth v. Sharp, 683 A.2d 1219 (Pa.Super. 1996), quoting Commonwealth v. Vergotz, 616 A.2d 1379, 1382 (1992). Here, the affidavit sets forth the following: (1)the police were executing an arrest warrant on the defendant for drug trafficking violations; (2) while executing that warrant, the police observed a baggie of marijuana and a pipe used to smoke marijuana in plain view; (3)the police observed three rifles and two shotguns in close proximity to the marijuana and pipe; (4) individuals who use and/or sell controlled substances often have various amounts of controlled substances and paraphernalia stored in different locations in their residence. Based on this information, the Court found the evidence was sufficient to establish probable cause that additional items of controlled substances and/or paraphernalia would be found in the residence. N.T. at pp. 41-43.<sup>3</sup>

Finally, the defendant asserts that the warrantless search of the residence was overly broad and a pretextual search for narcotics. This simply was not the case.

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<sup>3</sup>The Court could not consider any evidence outside the four corners of the affidavit. Pa.R.Cr.P. 2003(a); Commonwealth v. Sharp, 683 A.2d 1219, 1223 (1996); Commonwealth v. Singleton, 603 A.2d 1072, 1073 (1992). Therefore, the Court did not consider that the defendant had a pager on his boxer shorts when the police ordered him out of bed or that the police knew the defendant was involved in a shotgun pointing incident and had violent propensities.

Based on the facts and circumstances of this case set forth above, the police were legitimately concerned for their safety. They did not go into other rooms of the house to look for evidence. They were looking for other persons in the residence who could have posed a danger to them, such as Jenny Degarmo.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Kenneth D. Brown, J.

cc: Michael Dinges, Esquire (ADA)  
Kyle Rude, Esquire  
Law Clerk  
Work File  
Superior Court (original & 1)  
Gary Weber, Esquire (Lycoming Reporter)