IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANZARA BROWN Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	)	No. 603, 2013

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

APPELLANT'S REPLY BRIEF

SANDRA W. DEAN [#2860]
12322 Willow Grove Road
Camden, Delaware 19934
(302) 697-6716
Attorney for Appellant

DATED: February 20, 2014

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

Statutes:

Other:

1.THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING EVIDENCE OBTAINED AS A RESULT OF A TRAFFIC STOP AND SUBSEQUENT ARREST OF BROWN

Police are authorized to stop a vehicle without a warrant if they have probable cause to believe that the occupants are or have been committing criminal violations. State v. Prouse, 382 A.2d 1359 (Del. 1978). Probable cause is measured by the totality of the circumstances as viewed from the standpoint of a reasonable police officer. Miller v. State 4 A3d 371 (Del. 2010).

In the case at bar, the totality of the circumstances may be summarized as follows: (1) Police did not know the identity of the person ordering drugs from Brooks; (2) Police did not observe Brown and Brooks conducting any drug transaction; and (3) Police incorrectly concluded that it was not possible that John Price was the person who had ordered drugs from Brooks.

In the final conversation with Brooks, the unknown male ordering drugs told Brooks he would arrive in seven minutes. Ans. Br. at 11. Brown arrived at the residence sixteen minutes later, but Price was already there, making it more likely that Price had been the caller.

The State asserts that "Officers knew that Price was not responsible for the transaction because they were familiar with him and with his phone".

Ans. Br. at 11. It was conceded that police were familiar with Price as an associate of Brooks. In another section of this appeal (Argument 2 concerning the wiretap) the State reveals that "during the course of their investigation, officers learned that Brooks would purchase new prepaid cell phones approximately every forty five days to avoid police detection" Ans. Br. at 19.

If it is common and customary for drug dealers to frequently change cell phones, how could police be so "familiar" with Price's phone that they ruled him out as the unknown caller? Police already had Price identified as an associate of Brooks, and they stopped Brown on a mere hunch that he could have been the unknown caller. The totality of the circumstances do not add up to probable cause or to reasonable suspicion.

2. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING INTO EVIDENCE TELEPHONE CALLS BETWEEN BROWN AND GALEN BROOKS INTERCEPTED BY A COURT ORDERED WIRETAP

The wiretap statute, 11 Del.C. Section 2407 (c)(1)(d) requires "probable cause for the belief that the facilities from which the electronic communications are to be intercepted are being used or are about to be used in connection with the commission of the offense, — or are commonly used by an individual engaged in criminal activity". In the case at bar, the Court authorized interception of calls from a number ("9787") once removed from Brooks' known number, on the belief that Brooks was changing numbers. This is sometimes referred to as a "roving wiretap" which follows numbers which could be connected to the target.

The federal equivalent of Delaware's wiretap statute is the USA Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001). In 2006 the American Bar Association passed several resolutions asking the government to review implementation of the Act to insure that investigations pursuant to the Act did not violate the U.S. Constitution. The ABA established a website and a blog, Patriot Debates, for debate on the topic. The following comment is from James X. Dempsey, Vice President for Public Policy with the Center for Democracy and Technology:

"The purpose of roving taps is to follow the bad guy, so unless the bad guy is

being followed, the roving tap cannot and should not be activated.

If an officer is required to end surveillance after determining that the wiretap is intercepting the communication of innocent persons, it hardly seems onerous to require the officer to determine that the target is using the communication device before activating the wiretap in the first instance."

Http://222.patriotdebates.com/209-212 and 220 - 2 # opening. Retrieved 1-13-06.

Most citizens speak regularly on the telephone with people they do not know - a customer service person, a delivery person, the person who cuts their grass or cleans their house. If one of them turns out to be a drug dealer, the government may be listening.

Every number subject to a wiretap should have a proven, direct connection to the target. Otherwise, the wiretap violates the Fourth Amendment.

3. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING THE COCAINE INTO EVIDENCE WHEN THE STATE FAILED TO ESTABLISH AN ADEQUATE CHAIN OF CUSTODY

The standard for admission of evidence over a chain of custody objection is whether there is a reasonable probability that the evidence offered is what the proponent says it is. Tricoche v. State, 525 A. 2d 151 (Del. 1987).

In the case at bar, the report of the Medical Examiner. Ex G. To Op. Br. documents two bags of powder cocaine, one bag of plant material, and three bags of a chunky substance.

At trial, Sgt. Skinner testified that he found one bag of powder and several bags of crack cocaine in Brown's pocket. Ans. Br. At 26.

The evidence envelope contained three bags of crack cocaine and one bag of powder cocaine Ans. Br. At 27. The medical examiner testified that she grouped the bags on her report in a different manner than the way the bags had been labeled by police Ans. Br. At 27. She also attempted to explain discrepancies by explaining "it's really not uncommon for the powder cocaine to sort of chunk together and it becomes described as chunky versus powder" Ans. Br. At 29.

In order to meet the burden of showing a reasonable probability of authenticity, the State must show a clear and unambiguous chain or match between the evidence seized and the evidence tested. Here, the medical examiner re-arranged the evidence instead of matching it with the evidence envelope and then

unconvincingly tried to explain how powder cocaine could be mistaken for crack cocaine. The fact that ultimately all the evidence turns out to be cocaine in some form misses the point. The question is whether or not it is the same cocaine as that seized from Brown. The authenticity of this evidence was not shown to a reasonable probability and the evidence should have been excluded

CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's convictions and sentence should be reversed.

Respectfully submitted,

s/s Sandra W. Dean [#2860]

Attorney for Defendant

12322 Willow Grove Road

Camden, DE 19934

Dated: February 17, 2014