



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHERYL COOPER

Defendant Below
Appellant

v

STATE OF DELAWARE

Plaintiff Below
Appellee

CASE NO. 159, 2013

ON APPEAL FROM THE SUPERIOR COURT OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF PROCEEDINGS

Cheryl Cooper was arrested and charged with several drug related charges stemming from the search of her residence on October 18, 2012. On February 15, 2013 a hearing to suppress all evidence secured through an unlawful search was held, the Motion was Denied.

A non - jury trial was held March 12, 2013, Cooper was found guilty on three of the four counts and sentenced immediately.

A timely Notice of Appeal was filed. This is Appellants's Opening Brief.

SUMMARY OF ARGUMENT

1. Appellant had standing to seek suppression of the seized contraband and her statement.

STATEMENT OF FACTS

On February 15, 2013 Judge Brady addressed Appellant concerning her refusal of the State's Plea and Appellant's desire to proceed with the Motion to Suppress. The Judge explained that it was alleged the probationer was living at Ms. Cooper's home and was dealing in drugs. The Judge explained that Cooper could be found guilty as an accomplice. (A4,5)

Bryan Vettori a Probation Officer assigned to Safe Streets, testified that he received information from a confidential informant that Kareem Bradley, a probationer, was in possession of firearms at his father address, 1607 North West Street, an address listed as the probationers address. (A5) Based upon this information, Vettori secured an administrative warrant to search Kareem Bradley's residence. 1607 North West Street. Vettori along with his partner responded to a607 North West Street where they made contact with Bradley's father. The officers searched Bradley's room found it to be empty. Vettori stated, Bradley's father told them Bradley was still in the process of moving in and his belongings were at his previous address. Appellant's previous address was 2450 N. Market Street. (A6)

Vettori claimed that he acted on 2450 N. Market Street pursuant to the administrative warrant (A6) When Vettori and his partner arrived at 2450 N.

Market Street he claims to have knocked on the door, the door swung open and he saw Kareem Bradley inside the residence. They conducted a pat down of Bradley and found marijuana in his possession subsequently Bradley told him there were drugs in his room , drugs, paraphernalia and currency were located.(A7,8)

On cross examination Vettori was questioned about the administrative search. The search was specifically for 1607 North West Street, Apartment 2. The search was granted based upon a confidential tip that firearms were in the possession of Bradley at that address, information that was inaccurate. Vettori also testified that he received information from another officer that Bradley's father had stated , Bradley was still living at 2450 N. Market Street. Vettori did not have an administrative warrant for 2450 N. Market Street. Vettori also testified that he had visited 2450 N. Market Street on several occasions (A8,9)

Detective Aaron Lewis, Wilmington Police testified that he was with Vettori at 2450 N. Market Street he corroborated his testimony. (A10,11)

Defense called Istavan Norwood to the stand, Norwood is the father of Kareem Bradley. Norwood resides at 1607 North West Street and was present when Vettori called looking for Kareem Bradley. Norwood denied ever telling anyone that his son was at 2450 N. Market Street. (A12)

During cross examination of Norwood stated he was asked where Kareem was and he stated he did not know. Norwood further testified that Kareem had been living with Cheryl Cooper at 2450 N. Market Street, prior to Kareem moving into 1607 North West Street. (A12,13)

The defense called Antoinette Bradley, she testified that she was present at Ms. Cooper's apartment, 2450 N. Market Street on the day of the search. Ms Bradley stated the police just walked into Ms. Cooper's house. (A14)

On cross examination Ms. Bradley testified that she was no more than five or six feet from Ms. Cooper's door when the police entered the residence. (A15)

Vettori was recalled by the State , he testified he did not need an administrative warrant for 2450 N. Market Street because he had been approved one to locate Kareem Bradley at 1607 North West Street. (A15,16)

Judge Brady denied the Motion to Suppress never addressing the issue of the Administrative Warrant . She dismissed the Motion finding Appellant did not have standing.(A17 - A 20)

Appellant proceeded to a bench trial in front of Judge Brady. Appellant was acquitted of Drug Dealing and found guilty of Maintaining, Procession of Drug Paraphanalia and Posession of Marijuana. Cooper was sentenced March 12, 2013 to a suspended sentence, Level II probation. (A21,22)

***FAILURE TO CONSIDER MERITS OF APPELLANT'S
MOTION TO SUPPRESS ON THE BASIS THAT SHE LACKED STANDING
WAS AN ABUSE OF DISCRETION***

QUESTION PRESENTED

Did the Judge abuse her discretion by finding Appellant lacked standing thus avoiding the issue of whether the search was valid ? (A4 - A21)

Standard and Scope of Review

Supreme Court reviews a trial court's grant or denial of a Motion to Suppress after an evidentiary hearing for abuse of discretion. Lopez - Vazquez v. State, 956 A.2d 1280 (Del. 2008)

ARGUMENT

The sole issue is whether Cooper who based upon the uncontested testimony of two witnesses resided in the premises where the search was conducted had standing to move to suppress.

Defendants, who are merely present when a premises is searched lack " standing to object to the search. Thomas v. State, 467 A.2d 954 (Del. 1983) In Thomas the defendants were stopped outside of the premises to be search. cf: State v Pierson, 311 A.2d 854 (Del. 1973) citing State v. Manetti, 189 A.2d 426 (Del. Super 1963) where the court held anyone legitimately on the premises

where a search occurs may challenge its legality by way of a Motion to Suppress.

In Pierson and Manetti the moving party, as in the case at bar, was legitimately present inside the premises during the search.

The State presented no evidence or attempted to impeach defense witness's on either Cooper's residence status or her right to be present in the property at the time of the search. Instead arguing that the bedroom searched was Bradley's not Cooper's (A23,24)

CONCLUSION

The Trial Judge abused her discretion in finding that a person who resided in the residence where the co defendant was found lacked standing to search a bedroom which co defendant claimed was his. In so finding the true merits and legality of the warrant less search were not addressed.

Appellant had standing to challenge the search.

/s/ Anthony A. Figliola, Jr.

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