[J-27-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 99 MAP 2006
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 23, 2006 at No.
	:	669 EDA 2005, vacating and remanding
v.	:	the judgment of sentence of the Court of
	:	Common Pleas of Bucks County entered
	:	March 10, 2005 at No. 56/2005.
JOSE HERNANDEZ,	:	
	:	892 A.2d 11 (Pa. Super. 2006)
Appellee	:	
	:	ARGUED: April 16, 2007

OPINION

JUSTICE FITZGERALD **DECIDED: November 21, 2007**

This case involves the limited search of a motor vehicle without a warrant, which supported, in part, the issuance of a search warrant for the entire vehicle. We must determine whether the initial search was lawful and, if not, whether the probable cause affidavit that included information obtained in that search nonetheless was sufficient to validate the warrant that ultimately issued. The Commonwealth, as Appellant, challenges the Order of the Superior Court, which deemed the search unlawful, reversed the trial court's denial of suppression, and vacated sentence. We now reverse the Superior Court's Order and reinstate the judgment of sentence.

On October 21, 2004, Joseph Purcell, the Operations Manager of Yellow Freight shipping company in Bensalem Township, contacted local police. Purcell reported that a Hispanic male had arrived at the office to pick up a shipment of 20 boxes, for which a fee of over $2,000 was due on delivery. Purcell said the man, whom he described as "nervous," was unaware that he would have to pay for the shipment. According to Purcell, the man left the premises and promised to return with the cash. Purcell became suspicious and inspected the shipment. In one of the boxes, he observed packets of marijuana wrapped in plastic.

With the cooperation of other law enforcement personnel, Bensalem Police instructed Purcell to allow the man to pick up the shipment, which he did less than thirty minutes later. The man paid the shipping fee in cash and the boxes were loaded into the U-Haul truck he was driving. Meanwhile, police staked out the area around Yellow Freight and waited for the U-Haul truck to exit the terminal. When it did so, police stopped the truck and ordered the man from it. The man was identified as Appellee Jose Hernandez. In his possession were directions from the Philadelphia International Airport to the Yellow Freight terminal, as well as directions from Yellow Freight to an address in Reading, Pennsylvania. Police learned that Hernandez had flown from Los Angeles to Philadelphia earlier that morning and paid cash for a hotel room in Bensalem with two other Hispanic males. Several hours later, Hernandez rented the U-Haul truck, also with cash, and then made his way to Yellow Freight.

Bensalem Police Officer Cary Palmer was involved in the investigation and had been approaching the Yellow Freight terminal in his vehicle when he observed the U-Haul truck. By the time Officer Palmer arrived on the scene, other officers had stopped Hernandez and he was standing outside the truck speaking to the officers. Officer Palmer approached the truck and observed that the rollup rear door was closed with a latch, but unlocked. Drawing his weapon, he opened the rollup door, entered the rear of the truck, and circled the pallet

of boxes contained inside. Officer Palmer did not touch any of the boxes, but he did observe an open box and saw that it contained "a brown package, maybe 12 to 18 inches in length . . . that, from [his] training and experience [he] recognized . . . [as] consistent with . . . some kind of narcotics."

According to Officer Palmer, he entered the rear of the truck "to see[,] for officers' safety reasons[,] if there was someone else in the truck." Following Palmer's observation, the officers had the U-Haul truck towed to headquarters, where they continued their investigation. A canine sniff of the vehicle resulted in a positive indication for controlled substances in the rear. Further, Hernandez spoke with officers and explained that he had been paid $1,000 to travel from Los Angeles to Philadelphia to pick up the shipment. He admitted that the shipment contained controlled substances, but he refused to name the person for whom he was working because he feared for his family's safety.

Law enforcement personnel prepared an affidavit of probable cause seeking a search warrant for the U-Haul truck and included all of the facts set out above. The affidavit, in relevant part, provided the following:

> Whereas, on 10/21/04 at approximately 1043 HRS Joseph Purcell, the Operations Manager of Yellow Freight 2627 State Road, Bensalem, PA 19020, contacted the Bensalem Township Police Department regarding suspicious packages being picked up. Joseph Purcell stated that a [H]ispanic male had arrived to pick up a pallet of approximately 20 boxes and had been acting suspicious and nervous, and that the [H]ispanic male had paid $2,283.83 in U.S. currency. The package was shipped COD, which was suspicious to Mr. Purcell. The [H]ispanic male was unaware that he had to pay the $2,283.83 and went outside returning with the $2,283.83 approx. 1/2 hour later. Mr. Purcell had opened one of the approximately 20 boxes and observed a package in the box that he believed to be marijuana wrapped in plastic wrap. Mr. Purcell was confident that the item in the opened box was some type of controlled substance.

Members of the Bensalem Township Police Department established a perimeter and waited until the [H]ispanic male took possession of the approximately 20 boxes, having them loaded into the back of a rented U-Haul box truck. The police officers converged on the [H]ispanic male, the lone occupant of the U-Haul truck. The [H]ispanic male was identified as Jose M. Hernandez Jr. DOB: 12/28/71. Hernandez had in his possession printed out directions from Yahoo Maps, specifically directions from the Philadelphia International Airport to Yellow Freight, and a second set of directions from Yellow Freight to 831 Walnut Street in Reading, PA. Hernandez also possessed a cellular telephone.

During the investigation your Affiants learned that Jose Hernandez had flown in to Philadelphia Airport from Los Angeles California at 9:50 PM on 10/21/04 [sic] (Pacific Standard Time), arriving in the early AM hours on 10/21/04. Hernandez then rented room # 107 at the Sleep Inn 3427 Street Road, Bensalem, PA 19020, paying cash. Hernandez was accompanied by two unidentified [H]ispanic males when he checked into the room. At 9:42 AM Hernandez rented a U-Haul truck paying $284.52 in cash. Hernandez arrived at the Yellow Freight 2627 State Road, Bensalem, PA 19020. The package [sic] with the approximately 20 boxes was loaded into the U-Haul truck.

Whereas, your Affiants are familiar with the fact through their training and experience that people involved in the illicit possession and distribution of controlled substances pay for everything in cash, as drug dealing is a cash business generating vast amount[s] of U.S. currency.

Whereas, the U-Haul truck had an Arizona registration plate: AB02180, bearing VIN: 1FDKF37G2VEB24093. Police Officer Palmer, Smith and Det. Gross observed in the back of the U-Haul rental truck a pallet containing approximately 20 cardboard boxes, one of which had been opened. The Officers were checking to ensure that there were no persons hiding in the back of the U-Haul that could pose a threat to the Officers' safety as well as their own. Det. Gross has made hundreds of narcotics related arrests, has recovered controlled substances hundreds of times, and has attended hundreds of hours of specialized narcotics training. Det. Gross observed a package

inside of the opened box that he described as rectangular with rounded edges, 1 1/2-2 feet long and several inches thick, wrapped in plastic wrap and tape. Det. Gross through his training and experience recognized the packaging as being consistent with packaging that has been recovered in the past containing controlled substances. It is Det. Gross' opinion that the package contained controlled substances.

Whereas, Hernandez was interviewed at police headquarters by Sgt. Barry and D.E.A. Agent Bleier. Hernandez stated that this was the first time he had done this, and that he was paid $1,000.00 to fly out to Philadelphia from Los Angeles, California to pick-up the shipment at Yellow Freight. Hernandez was supposed to call someone who [sic] he refused to identify and transfer the U-Haul and shipment it contains somewhere on the way to Reading. Hernandez was to get detailed instructions when he placed the call. Hernandez refused to give names and certain specifics stating that he had 5 children and family and that he feared for their lives if he gave specifics. Hernandez stated that someone else had paid for his plane ticket. Hernandez stated that he knew the boxes contained controlled substances, either marijuana or cocaine, believing it was probably cocaine.

Whereas, Officer David Weiser, K-9 certified Police Officer with Bristol Township Police Department, utilizing his narcotics detector certified K-9 Rommel, conducted a search of the exterior of the vehicle for the presence of the odor of controlled substances. K-9 Rommel gave a positive indication for the presence of the odor of controlled substances at the rear/tail roll-up door of the U-Haul.

Whereas, Hernandez stated that he had one prior arrest for possession of cocaine in California.

Whereas, the U-Haul truck has been seized and has been in police custody since the time that it was stopped after having exited the parking lot of Yellow [F]reight. A Police Officer has maintained constant visual surveillance of the U-Haul.
Whereas, based on the information contained within this Affidavit of Probable Cause, your Affiants have established probable cause exists to believe that the U-Haul contains approx. 20 boxes that contain controlled substances, and

> request the issuance of the accompanying search warrant to secure evidence of violations of ACT 64.

Commonwealth v. Hernandez, 892 A.2d 11, 19-21 (Pa. Super. 2007) (quoting from Affidavit of Probable Cause, October 21, 2004).

The district justice approved the warrant later that afternoon and the ensuing search of the U-Haul truck yielded over four hundred pounds of marijuana.

Hernandez was charged with one count of possession with intent to deliver marijuana. Prior to trial, he moved to suppress admission of the drugs based on his assertion that the officers' entry into the rear of the U-Haul truck was unlawful. The trial court denied the motion, reasoning that the limited search of the truck was proper in light of the potential danger to police. Following a guilty verdict and the imposition of a five-to-ten year prison term, Hernandez filed an appeal with the Superior Court. That Court vacated the judgment of sentence, relying on its conclusion that the initial search was not authorized by law and, further, that the warrant was insufficient in setting out probable cause. The Commonwealth sought allowance of appeal in this Court, which we granted.

Our review focuses on whether the trial court properly denied suppression and our standard is well settled. "[W]e must determine whether the record supports the court's factual findings. … [If so,] we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error." Commonwealth v. Stevenson, 744 A.2d 1261, 1263 (Pa. 2000). The facts surrounding suppression are not in issue. Rather, the parties' positions diverge on the legal conclusions, specifically, whether police were authorized to conduct a warrantless search of the U-Haul truck based on the potential danger it allegedly posed to police and whether the affidavit in support of the warrant set forth sufficient probable cause.

Under the federal Constitution, law enforcement personnel may conduct a warrantless search of an automobile as long as probable cause exists. Chambers v.

Maroney, 399 U.S. 42, 51 (1970); Carroll v. United States, 267 U.S. 132, 147-56 (1925). This rule, known as the automobile exception to the warrant requirement, is based on the inherent nature of vehicles—their mobility—and applies even if a vehicle is "seized and immobilized." Commonwealth v. McCree, 924 A.2d 621, 629 (Pa. 2007) (plurality) (citing Chambers). In Pennsylvania, however, "we have not adopted the full federal automobile exception under Article I, Section 8." Id. Warrantless vehicle searches in this Commonwealth must be accompanied not only by probable cause, but also by exigent circumstances beyond mere mobility; "one without the other is insufficient." Commonwealth v. Luv, 735 A.2d 87, 93 (Pa. 1999). This dual requirement of probable cause plus exigency is an established part of our state constitutional jurisprudence. McCree, 924 A.2d at 629-30. See also Commonwealth v. Casanova, 748 A.2d 207, 211 (Pa. Super. 2000), appeal denied, 808 A.2d 569 (Pa. 2002); Commonwealth v. Galineau, 696 A.2d 188, 192 n.2 (Pa. Super 1997), appeal denied, 705 A.2d 1035 (1998); Commonwealth v. Rosenfelt, 662 A.2d 1131, 1146 (Pa. Super. 1995), appeal denied, 674 A.2d 1070 (1996).

Precisely what satisfies the exigency requirement for warrantless vehicle searches has been the subject of many of this Court's opinions, some of which include multiple, varying expressions with no clear majority.[1] For instance, in Commonwealth v. Perry, 798 A.2d 697 (Pa. 2002) (opinion announcing the judgment of the Court), this Court considered the propriety of a warrantless vehicle search immediately following a shooting. The automobile at issue was in the middle of a city street at 3:00 am with its engine running and its occupants in police custody. Police had probable cause to believe that loaded firearms were inside the car or, if not, that the guns perhaps had been abandoned in the neighborhood surrounding the vehicle. In light of these safety concerns, police lifted the

[1] While the discussion regarding the requirements for warrantless vehicle searches in McCree was not necessarily crucial to the resolution of the matter, the various expressions in that case illustrate the differing, current viewpoints held by members of this Court.

floor mats, and discovered a loaded, 9mm handgun and a .22 Beretta. The issue at trial was the validity of that search in the absence of a warrant.

Then Justice, now Chief Justice, Cappy wrote the lead opinion announcing the judgment of the Court in Perry. Justice Cappy concluded that the danger posed to police constituted exigent circumstances sufficient to permit the limited, warrantless search. Id. at 703. Justice Castille wrote a concurring opinion that Madame Justice Newman joined. Justice Castille agreed that if exigency were required for warrantless vehicle searches, then danger to police surely would satisfy that requirement. However, Justice Castille was of the opinion that our state "jurisprudence should [not] require any exigency beyond the mobility of a vehicle and the unexpected development of probable cause." Id. at 706 (Castille, J. concurring).

Justice Saylor also filed a concurring opinion. He noted that the issue was less than settled, but stated nonetheless that "both probable cause and exigent circumstances [were required] to justify a warrantless [vehicle] search." Id. at 719. Proceeding on the belief that exigency required more than merely late or recent acquisition of probable cause, Justice Saylor agreed that the dangerous circumstances presented in Perry justified the warrantless search. Id. at 720.

In a dissenting opinion, Justice Nigro, joined by Justice Zappala, stated that validation of the search based on danger to police "unjustifiably expand[ed] the scope of exigent circumstances." Id. at 724 n.5 (Nigro, J., dissenting). Justice Flaherty did not participate in the decision.

In this case, the suppression court found that police had ample basis to stop Hernandez's vehicle.[2] Relying on Justice Cappy's opinion in Perry, the suppression court went on to conclude that police were authorized to conduct a limited search of the rear of

[2] Hernandez does not claim that the initial stop of his vehicle was unlawful.

the truck based on exigent circumstances, namely, "to assure officer safety." Trial Court Opinion, 6/24/05, at 7. The Superior Court disagreed. That Court first questioned whether danger to police was a valid justification for the warrantless search of a vehicle. Hernandez, 892 A.2d at16. Next, the panel reasoned that even assuming the validity of a "police danger exception," the facts of the case did not support its application. Id.

Although we agree with the Superior Court that the initial, warrantless search of the U-Haul truck in this case was not justified on the basis of danger to police, we explicitly hold that potential danger to police or the public indeed satisfies the exigency requirement for warrantless vehicle searches in this Commonwealth. We proceed first to clarify that principle and go on to explain why it is inapplicable here.

The notion that the possibility of danger can rise to the level of exigent circumstances in the context of a vehicle search initially was suggested in Commonwealth v. White, 669 A.2d 896 (Pa. 1995). In that case, this Court considered whether police lawfully searched the defendant's vehicle during the investigation of a drug transaction. Police had advance knowledge of the drug activity and had secured warrants for some of the participants' homes and one of their cars. However, police had not sought a warrant for White's car. After careful consideration of all the facts, this Court held that the search of White's vehicle could not be justified on any basis, including exigent circumstances under the automobile exception, a search incident to arrest, or an inventory search. In holding that a warrantless vehicle search is not proper simply because the driver or an occupant has been removed from the vehicle and placed in custody, the White Court cautioned that exigent circumstances had the potential to change matters:

> We do not propose to invalidate warrantless searches of vehicles where the police must search in order to avoid danger to themselves or others, as might occur in the case where police had reason to believe that explosives were present in

> the vehicle. Emergencies such as this, however, are not part of this case.

Id. at 902 n.5.

This qualifying language in White was the foundation of Justice Cappy's opinion in Perry and, apparently, the genesis of what later became known as the controversial "police danger exception" to the warrant requirement. But neither the footnote in White nor the lead opinion in Perry purported to create a separate and new "exception" to the warrant requirement for vehicles. Rather, both expressions simply recognized that potential danger to police or the public constituted exigent circumstances, which were required, along with probable cause, for warrantless vehicle searches. Although exigency based on danger is hardly a new concept, "danger to police" as a separate "exception" nonetheless appears to have taken on a life of its own, culminating in the Superior Court's extensive analysis in this case of whether it even exists as the basis for justifying a warrantless search. Hernandez, 892 A.2d at 11 ("[T]he Justices [in Perry] could not reach a majority on whether Pennsylvania should recognize a broad 'police danger' exception to the warrant requirement."). We hold today, without equivocation, that where there is potential danger to police or others in the context of a vehicle stop, exigency has been established for purposes of a warrantless search.

The fact that potential for danger to police or the public is enough to constitute exigent circumstances does not mean that a mere assertion of danger is sufficient. Rather, police must be able to articulate the danger posed under the specific circumstances of the case.

Applying this standard to the facts in this case, we conclude that the claim of exigent circumstances based on potential danger was not sufficiently supported on the record. The transcript from the suppression hearing reveals that the Commonwealth did not offer any evidence in support of its assertion that there was potential for harm. Officer Palmer

explained his decision to search the truck with a single sentence: "I wanted to open the gate to see for officers' safety reasons if there was someone else in the truck." N.T., 3/8/05, at 9. He did not attempt to explain why he was concerned for his safety.

Not only did the Commonwealth fail to proffer any evidence to show that police reasonably believed that someone else was present in the truck and posed a danger to them, but the testimony and documentary evidence of record showed otherwise. Specifically, Officer Palmer testified to knowing that Yellow Freight personnel reported *a Hispanic male* would be driving a U-Haul truck loaded with marijuana. Id. at 7. Further, the affidavit in support of the warrant refers to "*a [H]ispanic male* [who] had arrived to pick up a pallet of approximately 20 boxes," and later notes that police "waited until *the [H]ispanic male* took possession of the approximately 20 boxes, *having them loaded into the back of a rented U-Haul box truck*." Affidavit of Probable Cause, October 21, 2004 (emphasis supplied). A fair reading of the affidavit indicates that the Yellow Freight employees had contact with a single Hispanic male only, including at the time the boxes were loaded into the man's truck.

There is no testimony of record that Officer Palmer suspected that another person was assisting Hernandez, nor was there testimony about a period of time that the truck was outside of police surveillance when another person could have joined him. Considering the suppression hearing record in its entirety, we are compelled to conclude that there was no evidence to support police claims of danger from a second person. Further, the testimony that was offered tended to show that just a single person occupied the truck. The Commonwealth suggests that that the police acted properly because, as the suppression court concluded, "there is a high level of violence associated with the drug trade" and "those involved in the drug trade are known to frequently be armed." Appellant's Brief at 14. Such a claim may supply a rationale for why police would be concerned that Hernandez posed a danger, but it fails to demonstrate the logic of believing a second

person was present in the truck. This is particularly true in light of the information police received from Yellow Freight personnel describing a single male suspect. We reject the Commonwealth's claim that the inherently dangerous nature of the drug trade translated supplies the evidence necessary to establish potential danger in this case. Indeed, Officer Palmer was not asked and did not offer the basis for his beliefs.

We likewise reject the Commonwealth's argument that our holding means that police "can only protect themselves if they are virtually certain that life or limb is in imminent danger." Id. at 17. The fatal flaw in this case is not that the Commonwealth failed to establish with certainty that someone else might have been hiding in the truck. Instead, it is that the Commonwealth did not offer *any* support for such a claim, and the evidence it did offer belies it.[3] The initial, limited search of the U-Haul truck was not supported by exigent circumstances, and thus it was unlawful in this Commonwealth. As a result, the observations of police during that search cannot form the basis for establishing probable cause in support of the search warrant.

Our conclusion that there were no exigent circumstances here does not end the inquiry. The law is clear that where some evidence contained in a search warrant affidavit is unlawfully obtained, we must consider whether the affidavit nonetheless sets forth probable cause in the absence of such evidence. Commonwealth v. Shaw, 383 A.2d 496, 501 (Pa. 1978). In other words, we must decide whether, absent the information obtained through illegal activity, probable cause existed to issue the warrant. Id. at 502. Only

[3] At the suppression hearing, the trial judge conceded that "nothing in the information that was received from Mr. Purcell … tended to establish that … [Hernandez] had someone accompanying him." N.T. 3/8/05, at 39. Nonetheless, the court concluded that "none of [Purcell's] information … exclude[d] that possibility," thus, the search was justified. We cannot agree. The Commonwealth has the burden of affirmatively establishing exigent circumstances; it is not enough that the possibility of exigent circumstances was not disproved.

evidence that was available to police because of the unconstitutional search, *i.e.*, "the product of the illegal police activity," is disregarded. Id. (citing, inter alia, Wong Sun v. United States, 371 U.S. 471 (1963)).

The suppression court concluded that even if the initial search of the truck was unlawful and the officers' observations were subject to suppression, the affidavit in support of the warrant set forth independent probable cause. The Superior Court acknowledged the rule in Shaw, but concluded with virtually no discussion that, absent the illegally obtained information, the warrant was issued upon an insufficient basis. Hernandez, 892 A.2d at 21. Essentially, the Superior Court held that the only remaining evidence offered in support of probable cause was Purcell's report to police that he had observed Hernandez's shipment and that it contained marijuana wrapped in plastic wrap. The Superior Court reasoned:

> [T]he affidavit is silent as to Mr. Purcell's familiarity or lack of familiarity with drugs or drugs packaging. Moreover, there is nothing contained in the affidavit to support Purcell's subjective belief that the boxes contained contraband.

Id.

Our review of the record and applicable law leads us to conclude that the Superior Court decision is incorrect for several reasons. We begin with the definition of probable cause: "The police have probable cause where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." Commonwealth v. Rogers, 849 A.2d 1185, 1192 (Pa. 2004). We evaluate probable cause by considering all relevant facts under a totality of circumstances analysis. Luv, 735 A.2d at 90 (citing Commonwealth v. Gray, 503 A.2d 921 (1985)).

The Superior Court's blanket rejection of Purcell's report to police is unwarranted. First, it is reasonable to assume that an identified citizen who reports an observation of

criminal activity to police is trustworthy, particularly in the absence of any special circumstances that would call his report into question. Commonwealth v. Sudler, 436 A.2d 1376, 1380-81 (Pa. 1981). Purcell, as an identified citizen who managed a shipping facility and had authority and control over the packages that his company transported, was an inherently reliable source of information. Further, Purcell was not identifying a substance in order to prove its content at trial beyond a reasonable doubt; so he need not have offered expert testimony that what he saw was marijuana. Purcell reported that he observed marijuana in plastic wrap. His opportunity to see it, his identification to police, and the timely manner in which he made his observation, all combined to make his report reliable. Finally, Purcell's observation of marijuana packets cannot be viewed in isolation. Contrary to the Superior Court's analysis, the warrant reveals considerably more information than Purcell's mere "unsupported" report of contraband. The affidavit recited that Hernandez arrived to pick up a large shipment for which a sizeable cash-on-delivery charge was due. He was unaware of the fee, appeared nervous, and left the terminal, only to return thirty minutes later with the cash. Police learned that he had arrived in Philadelphia from Los Angeles earlier that morning, and had promptly rented a hotel room and the U-Haul truck by paying cash. When stopped by police, Hernandez was in possession of maps with directions from the airport to the Yellow Freight terminal and a Reading address.

All of this information, Purcell's observations and the results of the preliminary investigation by police, when viewed under a totality analysis, would warrant a person of reasonable caution to believe that Hernandez was carrying contraband. But the affidavit includes even more. Police subjected Hernandez's truck to an exterior canine sniff, which resulted in a positive indication for controlled substances in the rear. Certainly, the authority to conduct the canine sniff was not the product of the unlawful, initial search of the U-Haul truck, as canine sniffs of vehicle exteriors need only be supported by reasonable suspicion. See Rogers, 849 A.2d at 1190-91 (exterior vehicle canine sniff need only be

supported by reasonable suspicion, whereas canine sniff of person requires probable cause). Hernandez wisely does not assert that police lacked reasonable suspicion in this case. Further, the law is clear that once a canine sniff of a vehicle's exterior triggers a positive indication, reasonable suspicion of contraband in the vehicle ripens into probable cause. Id. at 1192. The inclusion of the positive canine sniff in the affidavit alone provides probable cause for the warrant that ultimately issued in this case.

The Superior Court did not discuss the additional information contained in the affidavit; it failed to consider whether and to what extent the information "would … have been available to police if it were not for the unconstitutional search" and it failed to apply the totality of evidence standard.[4] Shaw, 383 A.2d at 502. This was error. Pursuant to Shaw and the case law discussed above, the affidavit in this case set forth sufficient probable cause independent of the initial, unlawful search. As a result, the warrant was valid and the evidence seized under its authority properly was admitted against Hernandez at trial.

The order of the Superior Court is reversed.

Mr. Chief Justice Cappy, Mr. Justice Baer and Madame Justice Baldwin join the opinion.

Mr. Justice Castille files a concurring opinion.

Mr. Justice Saylor files a concurring opinion in which Mr. Justice Eakin joins.

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[4] The Commonwealth argues that Hernandez's statements to police, admitting that he was carrying contraband, likewise should be included in the evidence constituting probable cause. While the suppression transcript sheds little light on this issue, and the Superior Court reached no specific conclusion in this regard, we will assume, for argument's sake, that Hernandez's confession to police was the "product" of the initial, unlawful search. But our assumption does not change the result in this case, as our analysis demonstrates that probable cause was made out even in the absence of Hernandez's admissions.