

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	ID No. 0810006006
)	
MONTREZ BROWN,)	
Defendant.)	

ORDER

AND NOW, TO WIT, this **30th** day of **March, 2009**, **IT IS HEREBY**

ORDERED as follows:

Introduction

Defendant Montrez Brown (“Brown”) moves this Court to suppress all the evidence seized from his residence because it is the fruit of an illegal search. Specifically, he claims that although the police had probable cause to enter his residence to effectuate his arrest, they did not have probable cause to search for weapons. For the reasons discussed below, Brown’s Motion to Suppress is **DENIED**.

Facts

According to the Affidavit of Probable Cause, on February 1, 2008, Brown’s girlfriend, Leneka Peters (“Peters”) purchased a black .9 mm pistol, ammunition

and holster. On the State and Federal forms, Peters provided false information regarding her residence. On February 7, 2008, Brown was involved in a domestic altercation involving a black and silver handgun.¹ At the time, Brown was living with Peters' mother at 8 Pell Street. A search was conducted of that residence but neither Brown nor the gun was recovered. On February 22, 2008, Brown was involved in another altercation involving a black handgun. The victim reported that Brown also had a holster. Upon his arrest, Brown told the police that he hid the handgun in a location where the police would be unable to find it. Also in February, another witness reported that Brown was waving and discharging a black handgun. Upon his arrest, Brown told the police officers that he would kill them with his .9mm handgun.

During this time, Peters admitted to the police that she owned a handgun and that the holster recovered from Brown belonged to her. When the police went with Peters to her home, she was unable to find the handgun. She explained that it must have been stolen.

On September 11, 2008, Peters purchased another gun, this time a .38 revolver. She also purchased ammunition and a holster. On the State and Federal forms, Peters again reported false information regarding her residence. On September 26, 2008, an arrest warrant was issued for Brown for Non-Compliance

¹ Brown is convicted felon and therefore is prohibited from possessing a handgun.

of Bond. On or about October 1, 2008, the police confirmed that Brown and Peters were residing at 21A Deen Street. The police applied for a search warrant on October 7, 2008 based on their belief that Peters was purchasing guns for Brown. Based on the information provided in the Affidavit of Probable Cause, a warrant was issued authorizing the search and seizure of Brown, Peters and “firearms, ammunition and accessories.” The warrant was executed the next day. The police arrested Brown and Peters and seized amongst other things, a pistol and ammunition.

Discussion

Brown concedes that the police had probable cause to enter 21A Deen in order to effectuate his arrest. He claims, however, that the police did not have probable cause to search his residence for weapons. The Affidavit indicates that in February 2008, Brown was involved in two incidents in which he possessed a gun. The police applied for a search warrant in October 2008 requesting authorization to search Brown’s residence for weapons. Given the eight month lapse, Brown argues that evidence used to support the search warrant was stale.

Where staleness is alleged, “the test of temporal proximity is determined on an *ad hoc* basis in the light of circumstances of each case.”² In *State v. Pulgini*,³ the Delaware Supreme Court adopted the general rule that:

² *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984).

The vitality of probable cause cannot be quantified by simply counting the number of days between the occurrence of the facts relied upon and the issuance of the affidavit. Together with the element of time, we must consider the nature of the unlawful activity. Where the affidavit recites a mere isolated violation it would not be unreasonable to imply that probable cause dwindles rather quickly with the passage of time. However, where the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant.⁴

This case does not involve an isolated violation rather a course of conduct evidencing a continuing violation. The Affidavit indicates that Peters bought a black .9mm handgun in February 2008 and that Brown was involved in two altercations days later involving a black and silver handgun. The Affidavit also indicates that Brown threatened to kill police officers with his .9 mm handgun. The Affidavit indicates that Peters again purchased a handgun on September 11, 2008. On October 1, 2008, the police confirmed that Peters was living with Brown at 21A Deen Street. On October 7, 2008, the police applied for and obtained a search warrant.

Under these facts, a continuing violation is sufficiently established. When looking at the totality of the circumstances contained within the warrant, there was a fair probability that Peters was supplying Brown with handguns and it was likely that the handguns would be kept where Brown and Peters lived. Given the prior

³ 374 A.2d 822 (Del. 1977).

⁴ *United States v. Johnson*, 461 F.2d 285, 287 (10th Cir. 1972).

history provided in the Affidavit, evidence that Peters bought a handgun on September 11, 2008 was not stale for the purposes of the October 7, 2008 warrant. Because there was a fair probability that contraband would be found at 21A, the Court finds that the warrant is supported by sufficient probable cause. Accordingly, Brown's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.