J-S08002-14

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
STEVEN REBERT,	:	
	:	
Appellant	:	No. 1021 WDA 2012

Appeal from the Judgment of Sentence January 30, 2012,
Court of Common Pleas, Jefferson County,
Criminal Division at No. CP-33-CR-0000386-2010

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE and PLATT*, JJ.

CONCURRING STATEMENT BY DONOHUE, J.: **FILED MAY 13, 2014**

I concur in the result reached by the Majority, but I write separately to express my opinion that the search warrants did not permit the seizure of Rebert's vehicle. Pennsylvania Rule of Criminal Procedure 205 provides that a search warrant must "identify specifically the property to be seized." Pa.R.Crim.P. 205(2). It is uncontested that the search warrants at issue here do not identify Rebert's vehicle as an item to be seized. Search Warrant, 4/29/10, at 2; Search Warrant, 5/5/10.[1] I cannot agree with the Majority that reading these warrants in a "common sense, non-technical manner" compels the conclusion that they "contemplated" the seizure of the vehicle. Maj. Mem. at 8. Indeed, in my opinion, a common sense and non-

[1] In the April 29, 2010 warrant, Trooper Ray also sought to search Rebert and his residence. However, as Rebert's challenge the validity of the search warrant was limited to the seizure of his vehicle, we similarly limit our discussion of the warrants.

*Retired Senior Judge assigned to the Superior Court.

technical interpretation of these warrants requires giving effect to the plain words of the warrants - that only a search of the vehicle is permitted. Conversely, interpreting the warrants as the Majority does requires additional knowledge and an inferential leap; specifically, that the police wanted to place the vehicle in a controlled, completely dark space to "process" it for trace evidence. ***See*** N.T., 9/1/11, at 25-26. I do not agree that the techniques the police employ to search for trace evidence are so well know as to make it them a matter of common sense, much less "implicit" in the request. ***See*** Maj. Mem. at 8.[2] Thus, I conclude that seizure of Rebert's vehicle was not authorized.

However, the warrants authorized the search of Rebert's vehicle for numerous specifically identified items, including the shoes upon which the trace evidence (blood from one of the victims) was found. The police were lawfully authorized to search the vehicle on the premises, and had they done so, they would have seized the shoes. As such, the trace evidence would have inevitably been discovered by lawful means. ***See Commonwealth v. Gatlos***, 76 A.3d 44, 60 n.13 (Pa. Super. 2013) (noting that where the illegally obtained evidence ultimately or inevitably would have been discovered by lawful means, the evidence is admissible).

[2] Indeed, in my view, the notion that the request for seizure was implicit is belied by the fact that the police were also searching Rebert's residence for trace evidence, N.T., 9/1/11, at 42, and therefore would have transported the equipment necessary for this search to the residence.

Furthermore, even if the inevitable discovery rule did not apply in this case, the record contains other evidence that overwhelming supports Rebert's convictions, and so I would find that its admission amounted to harmless error. ***See Commonwealth v. Green***, 76 A.3d 575, 582 (Pa. Super. 2013). For these reasons, I concur in the result.