J-S24031-13

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SCOTT HARPER,	:	
	:	
Appellant	:	No. 2906 EDA 2012

Appeal from the Judgment of Sentence September 25, 2012 in the Court of Common Pleas of Bucks County Criminal Division at No(s): CP-09-CR-0004914-2012

BEFORE: PANELLA, OLSON, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED MAY 23, 2013**

Scott Harper (Appellant) appeals from the judgment of sentence entered September 25, 2012, after a stipulated waiver trial at which he was found guilty of possession of drug paraphernalia.[1] We affirm.

The trial court summarized the relevant facts as follows:

> [Appellant] is a past offender in Pennsylvania who was released to the community under a Parole Agreement ("Agreement") on September 25, 2009. Under the terms of the Agreement, [Appellant] expressly consented to the warrantless search of his person, property and residence by agents of the Pennsylvania Board of Probation and Parole. [Appellant] also agreed to maintain employment, attend outpatient drug and alcohol treatment, submit to periodic urinalysis, and avoid persons who use or sell drugs and/or alcohol except in the treatment setting. Parole Officer David Goldstein ("Goldstein") began supervising [Appellant] when [Appellant] was released from a self-help movement center on November 30, 2009. Goldstein visited [Appellant] at his Bucks County residence approximately once per month.

[1] 35 P.S. § 780-113(a)(32).

* Retired Senior Judge assigned to the Superior Court.

> On March 31, 2011, [Appellant's] father phoned Goldstein, concerned that [Appellant] was abusing drugs based on his involvement in a new romantic relationship. Goldstein had no interactions with [Appellant's] father prior to this phone call. At approximately 3 p.m. on April 6, 2011, Goldstein visited [Appellant's] residence. Goldstein knocked on the door but there was no response. No car was observed in the driveway, but Goldstein knew that [Appellant] did not own a car.
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> [Appellant's] neighbor then noticed Goldstein and his partner agent in the driveway, and approached the two of them. The neighbor corroborated the concerns of [Appellant's] father—that [Appellant] had a new girlfriend and had relapsed into drug use. The neighbor said that he noticed significant changes in [Appellant's] habits; that [Appellant] was "inside all the time, not out working . . . he was quite sure that [Appellant] was at home [at the current time] and that the girlfriend was there with him."
>
> Based on Goldstein's past relationship with and knowledge about [Appellant], the agent then became concerned that [Appellant] might have overdosed if he had relapsed on drugs. Golstein approached the front door, knocked again, and turned the doorknob, which was unlocked. Goldstein called out [Appellant's] name several times, but received no response. Goldstein proceeded into the ranch home and down the hallway, where he observed through an open doorway [Appellant] getting up out of bed. Goldstein announced his presence and asked [Appellant] to come into the hall and speak with him.
>
> As [Appellant] approached, Goldstein observed that [Appellant] appeared to be in an intoxicated state, with droopy eyes, slow speech, and a staggered walk. Goldstein observed another person in [Appellant's] bed, who was later identified as Brooke Cohen. [Appellant] admitted he had been using drugs and was placed in custody. During the pat-down search of [Appellant's] person, an unused hypodermic syringe was found. [Appellant] admitted that he had been using heroin, marijuana, Xanax, and Percocet[]. Goldstein conducted a search for additional drugs and drug paraphernalia, and found several used hypodermic syringes on the floor at the foot of the bed.

Trial Court Opinion, 12/7/2012, at 1-4 (footnotes omitted).

Appellant filed an Omnibus Pre-trial Motion on September 24, 2012. In the motion Appellant requested, *inter alia*, that "all statements of [Appellant] and all items seized" as a result of this incident be suppressed. A suppression hearing was held on September 25, 2012. Following the hearing, the trial court denied Appellant's motion. N.T., 9/25/2012, at 39. Appellant then agreed to proceed directly to a stipulated waiver trial, and the trial court found Appellant guilty of possession of drug paraphernalia. ***Id.*** at 39-44. Appellant was sentenced to 60 days to 12 months of incarceration. A timely appeal followed. Both the Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant presents the following issue for our review: "[d]id the trial court err in denying Appellant's motion to suppress evidence by finding that there was reasonable suspicion of a parole violation to justify the search of Appellant's home?" Appellant's Brief at 4 (capitalization omitted).

> The standard and scope of review for a challenge to the denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. When reviewing the rulings of a suppression court, this Court considers only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. When the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Downey, 39 A.3d 401, 405 (Pa. Super. 2012) (quoting ***Commonwealth v. Johnson***, 33 A.3d 122, 124 (Pa. Super. 2011)).

> Because the very assumption of the institution of parole is that the parolee is more likely than the ordinary citizen to violate the law, the agents need not have probable cause to search a parolee or his property; instead, reasonable suspicion is sufficient to authorize a search. Essentially, parolees agree to endure warrantless searches based only on reasonable suspicion in exchange for their early release from prison.
>
> The search of a parolee is only reasonable, even where the parolee has signed a waiver ..., where the totality of the circumstances demonstrate that (1) the parole officer had reasonable suspicion to believe that the parolee committed a parole violation; and (2) the search was reasonably related to the duty of the parole officer.

Commonwealth v. Colon, 31 A.3d 309, 315 (Pa. Super. 2011) (quoting ***Commonwealth v. Hunter***, 963 A.2d 545, 551–52 (Pa. Super. 2008)).

> The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following factors, where applicable, may be taken into account:
>
> (i) The observations of agents.
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> (ii) Information provided by others.
>
> (iii) The activities of the offender.
>
> (iv) Information provided by the offender.
>
> (v) The experience of agents with the offender.
>
> (vi) The experience of agents in similar circumstances.
>
> (vii) The prior criminal and supervisory history of the offender.

> (viii) The need to verify compliance with the conditions of supervision.

61 Pa.C.S. § 6153(d)(6). "The determination of whether reasonable suspicion exists is to be considered in light of the totality of the circumstances." ***Colon***, 31 A.3d at 315.

"[Our Supreme] Court has recognized, contrary to information from an anonymous informant, a known informant is far less likely to produce false information because a known informant puts himself at risk of prosecution for producing a false claim if the tip proves untrue." ***Commonwealth v. Wallace***, 42 A.3d 1040, 1053 (Pa. 2012). "The informant's reliability, veracity, and basis of knowledge are all relevant factors. Of course, the information supplied to the police by the informant must contain specific and articulable facts that lead the police to reasonably suspect that criminal activity may be afoot." ***Commonwealth v. Allen***, 725 A.2d 737 (Pa. 1999) (quotation marks and citations omitted).

Instantly, Appellant argues that Goldstein lacked reasonable suspicion because he "entered Appellant's home based on the unverified tips from two previously unknown and unverified individuals, who themselves only had a hunch or suspicion of a violation or active drug use." Appellant's Brief at 13.

The trial court concluded that "Goldstein had reasonable suspicion to search [Appellant's] residence based on the tip from [Appellant's] father, independently corroborated by [Appellant's] neighbor, which was supported

by Goldstein's personal history with [Appellant] and his knowledge of [Appellant's] drug usage." Trial Court Opinion, 12/7/2012, at 6-7. We agree.

In this case, the record establishes that Goldstein received nearly identical tips from two known informants, Appellant's father and his next-door neighbor, and that these tips provided ample justification for Goldstein to enter Appellant's home. Goldstein testified that he went to Appellant's house "because [he] had previous information from [Appellant's] father of concern that he had been using drugs again." N.T., 9/25/2012, at 15.[2] Specifically, Goldstein "received a phone call from [Appellant's] father on March 31st of 2011 indicating that he had concern that his son [Appellant] had relapsed, using again ever since he met this girl and wanted me to just know that for when I went to visit him the next time." ***Id.***

Goldstein visited Appellant a week later, on April 6, 2011. ***Id.*** at 16. Goldstein knocked at the front, back, and side doors of the home, and did not receive a response. ***Id.*** at 16-17. Around this time, Appellant's next-door neighbor came outside and spoke to Goldstein. ***Id.*** at 18. The neighbor indicated that he "had the same concerns that the father had, knew of [Appellant], knew that he had met some girl and also believed that he had relapsed and began using again." ***Id.*** The neighbor further explained that

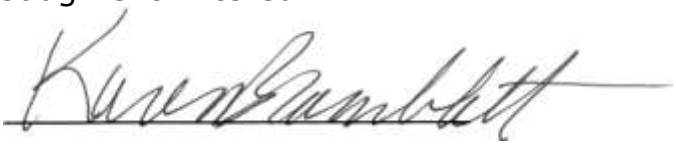
[2] Goldstein clarified on cross-examination that "I had to see him anyway . . . . He was due to be seen at some point during that month." N.T., 9/25/2012, at 25. Additionally, Goldstein noted that Appellant had tested positive for drugs at least once while under his supervision, in July of 2010. ***Id.***

"[h]e noticed significant changes, [Appellant] was inside all the time, not out working, and thought that he was home." ***Id.*** The neighbor indicated that he was "quite sure that [Appellant] was at home and that the girlfriend was there with him." ***Id.*** Goldstein knocked again, and again received no response. ***Id.*** At that point, Goldstein testified that he decided to open Appellant's front door and go inside "because I was concerned that my client, [Appellant] might have overdosed, if he had relapsed on drugs." ***Id.***

Thus, after review of the certified record, we agree with the trial court and find that, based on the totality of the circumstances, it properly determined that Goldstein had reasonable suspicion that Appellant was using illegal drugs and violating the terms of his parole. Accordingly, we conclude that the trial court did not err in denying Appellant's motion to suppress.

Judgment of sentence affirmed.

Judgment Entered.



Prothonotary

Date: 5/23/2013