

People v Barnes

2014 NY Slip Op 34014(U)

May 5, 2014

Supreme Court, New York County

Docket Number: 435/14

Judge: Renee A. White

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

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THE PEOPLE OF THE STATE OF NEW YORK :

- against - : Indictment No. 435/14
TOMMY BARNES, : Decision and Order
Defendant. :
-----X

RENEE A. WHITE, J.

Defendant is charged with Criminal Sale of a Controlled Substance in the Third Degree and Criminal Possession of a Controlled Substance in the Third Degree. In this matter, the People sought and obtained a search warrant for the defendant's cellular telephone which was recovered upon his arrest. A copy of the search warrant materials have been provided to the defendant. Upon review of those materials, the defendant has filed the instant motion to suppress evidence and controvert the search warrant issued on January 31, 2014. For the following reasons, the defendant's motion to controvert the search warrant is denied. However, the defendant's motion to suppress evidence recovered pursuant to the search warrant is granted.

The People affirm in their response that they do not intend to offer any evidence gleaned from the search warrant on their case in chief but merely the fact that a telephone was recovered from the defendant. The People were unable to access much of the information stored on the telephone as parts of the phone

were locked and other parts were corroded. Any accessible information on the telephone was provided to the defendant and will nonetheless not be used by the People at trial. The defendant has been granted a *Mapp* hearing to determine the propriety of the police recovery of the cellular telephone. In any event, the search warrant affidavit does establish probable cause.

The search warrant in this case was sworn to by Police Officer Michael Manetta, a police officer for the past three years. With regard to the instant matter, after a fellow officer informed Officer Manetta that he had observed the defendant exchange a small item for money with separately charged defendant Tyrone Davis, Officer Manetta apprehended Mr. Davis. The officer recovered a glass pipe and two bags of crack/cocaine from Mr. Davis. Upon the defendant's apprehension, Officer Manetta recovered twenty-six bags of crack/cocaine, eighty-seven dollars, and a cellular telephone from the defendant. Relying upon his training and experience, the officer believed that the defendant was a narcotics dealer. Similarly based upon that training and experience, the officer swears that dealers often use their telephones to communicate with suppliers and buyers. Based upon the foregoing, probable cause existed for issuance of the warrant.

Evaluation of whether probable cause exists in a warrant affidavit should be based on all the facts and circumstances viewed together and the affidavit should not be read in a hypertechnical manner, but considered in the light of everyday experiences.

People v. Gramson, 50 AD3d 294, 295 [1st Dept. 2008], internal citations omitted. Additionally, a court, "... may properly rely upon reasonable inferences which may be drawn from the allegations of fact in the application." *People v. Williams*, 119 AD2d 606, 607 [2d Dept. 1986].

A defendant seeking to controvert a search warrant has the burden of proving by a preponderance of the evidence that the warrant lacked probable cause. See, *Franks v. Delaware*, 438 US 154 [1978]. Defendant herein, has failed to meet his burden.

Nor is the affidavit overly broad. The affidavit specifically identified the target telephone as the item to be searched. The telephone was recovered from the defendant and held in police custody. Hence, the warrant described the item to be searched with sufficient specificity.

Nor is the search warrant overly broad with respect to the type of search to be conducted. It is limited to items directly related to the drug trafficking trade. In any event, overly broad language does not invalidate the warrant. Even if the

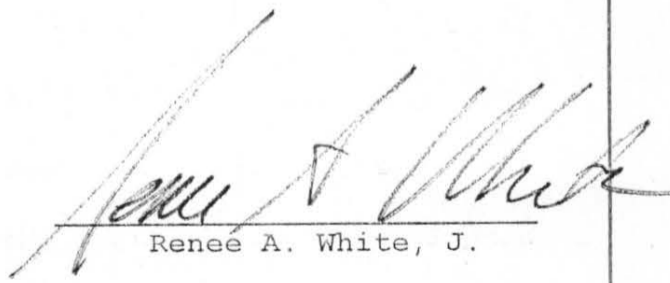
search warrant was overly broad, which it was not, it would nonetheless be valid. The offending language would be subject to severance and the property recovered pursuant to that language suppressed. *See, People v. Brown*, 96 NY2d 80 [2001].

A presumption of validity attaches to a search warrant. *People v. Castillo*, 80 NY2d 578 [1992]. And, there is a strong preference in favor of upholding warrants. *People v. Hanlon*, 36 NY2d 549 [1975]. Defendant has filed to rebut the presumption.

In conclusion, although the defendant's motion to controvert the search warrant is denied, the People affirm that they will not use any information recovered pursuant to the search warrant in their direct case. Accordingly, the defendant's motion to suppress the contents of the cell phone is granted.

This opinion constitutes the decision and order of the Court.

Dated: May 5, 2014
New York, New York



Renee A. White, J.