[J-152-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 69 MAP 2006
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered July 28, 2005 at No. 1749
	:	MDA 2004 Affirming the Order of the
v.	:	Court of Common Pleas of Bradford
	:	County, Criminal Division, entered July 28,
	:	2004 at No. 03-CR-618.
CORY DOBBINS,	:	
	:	
Appellant	:	ARGUED: December 5, 2006

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: November 20, 2007**

Finding no authority to investigate drug cases, the majority deems the acts of these deputies "illegal" ab initio and orders suppression. The majority, in my estimation, mistakenly focuses on the scope of employment of a sheriff's deputy, rather than evaluating their actual conduct under the Rules of Criminal Procedure and the Constitution. I find the issue of statutory investigative authority to be a red herring, not determinative of the case; investigative authority does not settle the question of whether deputies should, may, or must investigate drug offenses. To obtain relief, appellant must show there was impropriety in the actions of the officers, some violation of a statute, our Rules, or the Constitution. I do not find he has done so.

If the actions of the sheriff's deputies, to be "legal," required specific authority to enforce drug laws, the majority may be correct. Conversely, if their actions were not

made "illegal" by a lack of specific drug law authority, the majority is incorrect. In fact, appellant does not argue specific wrongdoing beyond the alleged lack of authority to get involved with drug offenses. Whatever their relative authority, a seriatim look at the events leads me to conclude there simply was no illegality by these officers.

The initial information that led to the search warrant was not the result of an illegal presence at the scene. The officers came to the property of April Harris, not appellant Cory Dobbins, a place where he claims no expectation of privacy on the record before us. Their reason for their presence is irrelevant-- constitutional analysis of their actions does not concern itself with their motive, if the actions were not themselves invasive of appellant's privacy or otherwise unconstitutional. As with any case, what is preliminarily relevant is whether the deputies did anything to invade the privacy of this appellant. The answer is, they did not.

It is nonsensical to suggest their presence at Ms. Harris's property somehow gave appellant the ability to complain of what they did or found there, based solely on why they were there. The officers committed no entry less "legal" than that of any other citizen coming to her door, regardless of their purpose. Whether they are statutorily authorized to investigate drug matters is irrelevant-- as concerns appellant, it does not matter whether they came for a quiet stroll, to distribute religious tracts, or to investigate the Lindbergh kidnapping. They did nothing in seeking Ms. Harris that offends appellant. As such, that which they saw and smelled there, in the air and light accessible to all, and which eventually comprised probable cause for the search warrant, was not learned illegally. To the point appellant chose to take flight, they did nothing improper, unconstitutional, or illegal.

The officers next sought a search warrant. The majority states, "[S]heriff's deputies had no legal authority to obtain that warrant in the first instance." Majority Slip Op., at 19. This is patently wrong, for anyone may request a search warrant under our Rules-- one does not need special authority to seek a warrant. The "illegality" alleged being in the "who," not the "what," we look to our Rules, which teach us the "who" is the "affiant." "[T]he issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant." Pa.R.Crim.P. 203(C). An "affiant" is clearly defined in Rule 103: "any responsible person capable of taking an oath …." Id., 103. It does not say police officer or law enforcement officer-- it says "any person" and makes no mention of authority, be it statutory, investigative, or otherwise.

There is no prohibition in our Rules, or elsewhere for that matter, precluding a deputy sheriff or any other citizen from appearing before an issuing authority as an affiant. Rule 204 specifically requires execution of the search warrant be accomplished by law enforcement officers-- the ability to apply for a warrant, to be an affiant, is not so restricted. Pa.R.Crim.P. 204. Clearly a sheriff's deputy, capable of taking an oath, may be an affiant; to say such an officer "had no legal authority to obtain that warrant" is manifestly incorrect. See Majority Slip Op., at 19.

Finding probable cause in an affidavit by a properly sworn affiant, the magistrate's issuance of the search warrant was not illegal. Its execution by the deputies is authorized by Rule 204. Pa.R.Crim.P. 204. Thus, the fruits of the search were not illegally obtained and were properly held by all courts below to be admissible. There simply is no illegality to this point, for any citizen (authorized to enforce the drug laws or not) may act exactly as did the officers here. That they were in fact law enforcement officers only magnifies the incongruity of calling their conduct "illegal."

The criminal complaint followed the search. Again, the Rules allow deputies and private citizens alike to file a complaint as an "affiant." Rule 506 makes complaints not filed by law enforcement officers (as defined in Rule 103) subject to approval by the District Attorney, reinforcing the fact that an affiant need not be a law enforcement officer.[1] Pa.R.Crim.P. 506(A). Therefore, the complaint was properly and "legally" filed and the warrant properly issued.

Moreover, as no evidence apparently was gained by execution of the arrest warrant, suppression is no remedy even if there had been an illegality. As is no allegation of actual prejudice resulting from the employment of the arresting officers, dismissal is also inappropriate. In sum, the officers acted legally throughout, regardless of specific drug enforcement responsibility.

The majority relies heavily on Kopko v. Miller, 892 A.2d 766 (Pa. 2006) (Kopko II), which held sheriffs "are not 'investigative or law enforcement officers' pursuant to [the definitions contained in] the Wiretapping Act, [18 Pa.C.S. § 5708]." Id., at 770. The majority suggests Kopko II found "sheriffs' [sic] lacked authority to investigate violations of the Controlled Substance Act, a predicate offense under the Wiretapping Act" and concludes sheriffs could not investigate crimes under the Controlled Substance Act,

[1] In Commonwealth v. Leet, 641 A.2d 299 (Pa. 1994), a deputy used a citation to bring summary charges, a procedure not authorized for a non-law enforcement officer--citizens may institute charges, but may not use citations. The case decided that issue, holding sheriffs are law enforcement officers under our Rules for purposes of instituting charges. Id., at 301. There is no reason to find a deputy should be otherwise for purposes of non-citation offenses. Sheriffs and deputies undoubtedly are "law enforcement officers" under our Rules and our jurisprudence.

making their actions here "illegal." Majority Slip Op., at 17. I do not find Kopko II says this, nor does it answer the question of the "illegality" of the action here.

Kopko II stated, "[T]he sole question before us involves the interpretation of statutory language … in the Wiretapping Act …." Kopko II, at 770. Kopko II only concluded sheriffs were not "investigative or law enforcement officers" as uniquely defined in that act and thus could not obtain wiretap training. Id. Section 5708 of that act looks to whether an officer has the responsibility to investigate a predicate offense--it does not depend on whether officers had the ability to do so. 18 Pa.C.S. § 5708. This distinction is significant, for while deputy sheriffs may not be responsible for investigating drug offenses, (which excludes them from the list of law enforcement officers eligible for wiretap training), Kopko II does not amount to a sweeping preclusion of their ability to participate in all law enforcement procedures just because they involve crimes enumerated in § 5708. One has the legal right to participate in many things that one is not responsible for; not being responsible for your brother's keep does not prevent you from helping out now and then on pain of "illegality." In any event, the issue of general authority (rather than specific responsibility) simply was not before the court in Kopko II.

These officers made no warrantless search; they made no illegal search. They brought no illegal charges, and made no warrantless or illegal arrest. They acted lawfully throughout, followed our Rules, and obtained the appropriate paperwork after review by judicial officers. Whether they had specific statutory authority to enforce drug

laws or not,[2] they did nothing unconstitutional or invasive of the rights of appellant-- to find their conduct "illegal" is a decision I cannot join; hence, my respectful dissent.

[2] The majority holds "sheriffs lack authority to conduct independent investigations under the Controlled Substances Act, including the seeking of search warrants where no breach of the peace or felony has occurred in their presence." Majority Slip Op., at 19. The modifying phrase is out of order-- "occurred in their presence" actually modifies only "breach of the peace," not "felony." Law enforcement officials have traditionally had authority to arrest without a warrant for felonies, whether committed in their presence or not; authority to warrantlessly arrest for lesser offenses existed only when a breach of the peace was committed in the presence of the officer. See Leet, at 303.

Regardless, as these officers saw considerable evidence of a felony drug manufacturing operation, they might have taken action on this recognized basis alone. No court below considered this, since the actions of the deputies were deemed appropriate. As the majority now finds the behavior "illegal" for want of statutory authority, the proper remedy should at most be a remand for consideration of their authority to act on probable cause to believe there was a felony, a point understandably not addressed below, and on which we have received no advocacy or authority.