



**FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK**

JUNIUS P. FULTON III
JUDGE

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

March 15, 2007

Amanda E. Burks, Esq.
Assistant Commonwealth's Attorney
Office of the Commonwealth's Attorney
800 E. City Hall Avenue, Suite 600
Norfolk, Virginia 23510

Michael J. Lutke, Esq.
Chief Deputy Public Defender
Office of the Public Defender
125 St. Paul's Blvd., Suite 600
Norfolk, Virginia 23510

**Re: Commonwealth v. William Reid Greenberg
Docket No.: CR06004011-00**

Dear Counsel:

As you know, the Court heard argument on February 8, 2007 on Defendant's Motion to Suppress statements made and evidence obtained as a result of the Defendant being stopped and seized during the execution of a lawfully obtained search warrant at his home. The Defendant at the time of the seizure was approximately one mile away from his home, having left the residence just prior to the execution of the search warrant.

Having had an opportunity consider the arguments of counsel and the transcript of the record of proceedings reflecting the testimony received on February 8, 2007, the Court has concluded that the Motion to Suppress should and will be denied.

The facts in this case are not in controversy, as the Defendant William Reid Greenberg was detained approximately one mile from his home prior to the execution of a search warrant for his home. The search warrant contained information which details that the Defendant was "the primary target," named in the affidavit to the search warrant. Additionally, the confidential informant who supplied the information upon which the warrant was granted indicated that the Defendant was present at the house when the distribution of drugs took place and that the Defendant had told the informant that he could "come back any time." Testimony adduced at the hearing indicated that

while the search warrant execution team was en route to the residence, the Defendant and another person departed the home and were stopped approximately one mile away.

The Defendant argues that the detention in this case is invalid as it was not authorized under the search warrant and that Michigan v. Summers, 452 U.S. 692 (1981) and Whitaker v. Commonwealth, 37 Va. App. 21 (2001), require the exclusion of any evidence obtained as a result of this illegal detention. However, the Commonwealth argues that the detention in this case is a valid Terry stop under the principles enunciated in Terry v. Ohio 392 U.S. 1 (1968) which allow the detention of a person if the totality of the circumstances show a basis for reasonable and articulable suspicion that criminal activity is afoot.

The Court finds that the stop and subsequent detention of Greenberg is unlawful if based solely on the authority granted to law enforcement during the execution of a search warrant under Michigan v. Summers. Nevertheless, it was a lawful, investigative detention pursuant to Terry v. Ohio. In Summers, the Supreme Court articulated three legitimate law enforcement interests that provide substantial justification for detaining an occupant during the execution of a search warrant.

1. Preventing flight in the event incriminating evidence is found.
2. Minimizing the risk of harm to the officers.
3. Facilitating the orderly completion of the search. Summers, 452 U.S. at 702-703.

The circumstances of the instant case are such that none of these legitimate law enforcement interests are implicated. Consequently, the Defendant is correct when he asserts that his detention is not authorized under the Summers, and Whitaker decisions.

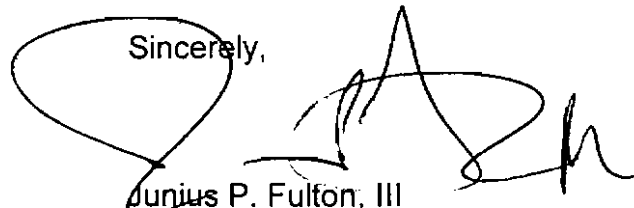
However, although there is no authority for Greenberg's detention under Summers, the Court does find that the seizure of the Defendant and his brief detention prior and during the execution of the search warrant on his home are supported by specific articulable facts that criminal activity was afoot. Perusal of the search warrant affidavit provides the necessary basis for this conclusion.

As the Commonwealth suggested in oral argument, the detention at issue is valid under Terry v. Ohio. The Supreme Court indicated in Terry that a "judge must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances." The facts should be "judged against an objective standard: would the facts to the officer at the moment of seizure or the search 'warrant a man or reasonable caution in the belief' that the action taken was appropriate?" 392 U.S. 1, 21-22 (1967). The Court later explained, "[I]f there are articulable facts supporting a reasonable suspicion that a person has committed a criminal offense, that person may be stopped in order to identify him, to question him briefly, or to detain him briefly while attempting to obtain additional information." Hayes v. Florida, 470 U.S. 811 816 (1985). The Court of Appeals of Virginia explained in Williams v. Commonwealth that "[i]n order to determine what cause is sufficient to authorize police to stop a person, cognizance must

be taken of the 'totality of the circumstances- the whole picture.'" 4 Va. App. 53, 65 (1987).

Applying Terry and Virginia jurisprudence to the detention at issue, the police officers that stopped the vehicle "clearly possessed sufficient articulable facts to support a reasonable suspicion that [he] was, or had been engaged in criminal activity." Id. The Defendant was named in the affidavit to the search warrant. The confidential informant also said that the Defendant resided in the home and was present at the house when the drug distribution occurred. Additionally, the affidavit states that the Defendant said the informant who purchased drugs in the house "could come back anytime." Given the totality of these facts, the police officers were clearly acting reasonably in suspecting that criminal activity was "afoot."

Consequently, the Defendant's Motion to Suppress is denied and exception noted.

Sincerely,

Junius P. Fulfon, III
Judge

JPFiii/hmh