



DISTRICT COURT HOLDS THAT THE POLICE LACKED PROBABLE CAUSE TO ARREST A DEFENDANT AND GRANTS HIS MOTION TO SUPPRESS EVIDENCE RECOVERED AS CONSTITUTING FRUIT OF THE POISONOUS TREE



October 2016

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Article Source : http://www.patc.com/weeklyarticles/2016_us_v_butler_chapman.shtml

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In *United States v. Butler*, 93 F. Supp. 3d 392 (W.D. Pa. 2015), the United States District Court for the Western District of Pennsylvania held that the police lacked probable cause to arrest the Defendant Gary Butler. As a result, the District Court suppressed the evidence that the police found that incriminated Butler. The District Court reached its ruling after conducting an evidentiary hearing in which made the following factual determinations.

On May 7, 2014, Officer Matthew Maritz was part of a team of Task Force officers involved in executing a search warrant on an apartment rented by Butler's co-Defendant Harry Simpson. The apartment building is two stories high and contains multiple units. A walkway leads from the sidewalk in front of the apartment building to the front door. Officer Maritz was aware that the target unit inside the apartment building was leased by Simpson and that a large quantity of heroin was suspected to be inside. Officer Maritz also knew that Simpson drove a black Lincoln with Ohio plates.

Officer Maritz and the other Task Force officers arrived at the apartment building at approximately 12:30 p.m.—before the search warrant had actually been issued by the magistrate judge. Upon arrival, they set up surveillance on the apartment building and the street directly in front of it. Officer Maritz was positioned on the same side of the street as the apartment building, approximately two or three blocks away. Officer Maritz used binoculars to scan the area, and he was in contact via radio with the other Task Force officers involved in executing the search warrant.

Whenever Officer Maritz arrived, Simpson's black Lincoln was not parked outside the apartment building. Eventually, however, Officer Maritz observed Simpson pull up and park the black Lincoln on the same side of the street as the apartment building. Simpson, then, exited the vehicle. Around the same time, Officer Maritz observed a silver Nissan Juke, whose driver was later identified as Butler,

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arrive on the scene and park directly across the street from the apartment building. Officer Maritz had never seen Butler before, and at the time, Butler was not a subject of the Task Force's investigation.

Shortly after he arrived outside the apartment building, Butler exited the Nissan and walked across the street towards Simpson. Simpson and Butler shook hands and walked towards the trunk of the black Lincoln where they were joined by two unidentified men who had been standing outside the apartment building when Officer Maritz arrived. Simpson opened the trunk of the black Lincoln, and the four men were seen "passing out" yellow bags. Simpson and Butler, then, walked towards the apartment building while the other two men left the area. At the time, Simpson was carrying a yellow bag, and Officer Maritz believed that Butler was holding a yellow bag as well.

Officer Maritz could not see whether Simpson and Butler actually entered the apartment building from his vantage point. He could not see the entrance to the apartment building or the walkway leading to the entrance of the apartment building; his view was limited to the street and sidewalk in front of the building. Furthermore, none of the other Task Force officers on the scene relayed to Officer Maritz that they had seen Simpson and Butler actually enter the apartment building. Nevertheless, Officer Maritz assumed that Simpson and Butler had entered the apartment building.

Approximately five to six minutes later, Simpson and Butler walked back into Officer Maritz's field of vision away from the apartment building back towards the street. Butler re-entered Officer Maritz's field of vision when he reached the sidewalk in front of the building, and at this time, he was holding a yellow plastic shopping bag. Butler continued across the street to the silver Nissan, opened the passenger side door, and placed the yellow bag in the passenger side of the vehicle. While standing near the Nissan, Butler had a brief conversation with Simpson, who was standing across the street, before getting into the driver's seat of the Nissan. Around the same time, Simpson got behind the wheel of his black Lincoln.

Meanwhile, Officer Maritz was relaying his observations to the other Task Force officers over his radio. Just as Butler started to drive away, FBI Special Agent Alex Shiraj gave a command to take Simpson and Butler down. The decision was made because the officers believed Simpson and Butler were leaving the area and that Butler had heroin in his vehicle. After receiving the command from Special Agent Shiraj, Officer Maritz drove up behind Butler's vehicle with his red and blue emergency lights flashing, while his partner, Officer Stewart, approached from the front of the vehicle with his emergency lights flashing. The officers exited their vehicles with guns drawn and approached Butler's vehicle, announcing that they were police officers. Officer Maritz's gun was pointed at Butler as he approached. The officers ordered Butler to stop the vehicle two or three times before Butler complied. Once Butler stopped the vehicle, Officer Maritz opened the door and removed Butler from inside placing him on the ground at gun point and cuffing his hands behind his back.

After waiting a few minutes for additional officers to arrive on the scene, Officer Maritz entered Simpson's apartment along with Officer Stewart and Special Agent Shiraj. Once inside, they observed a large amount of heroin and packaging materials, stampers, glassine baggies, and rubber

bands scattered on a table. Officer Maritz spent approximately two or three minutes inside the apartment and, then, went back outside. After leaving the apartment, Officer Maritz walked across the street to where Butler was sitting on the ground in handcuffs outside the Nissan and administered Miranda warnings to him. From the time Butler was stopped until the time he was Mirandized, approximately ten minutes had elapsed. When police searched the silver Nissan, they discovered heroin in the front passenger side of the vehicle.

Subsequently, Butler moved to suppress the evidence against him that the police had discovered in the Nissan. Butler argued that he was unlawfully arrested whenever he was stopped outside of the apartment building and that the evidence eventually seized from the vehicle must be suppressed as the fruit of his unlawful arrest.

The District Court began its analysis of Butler's motion to suppress by noting that the "Fourth Amendment analysis typically proceeds in three stages." *United States v. Dupree*, 617 F.3d 724, 730 (3d Cir. 2010). First, the court must determine "whether a Fourth Amendment event, such as a search or seizure has occurred"—and if so, when. *Id.* Second, the court must "consider whether that search or seizure was reasonable." *Id.* Third, if the search or seizure was not reasonable, the court must "then determine whether the circumstances warrant suppression of the evidence." *Id.* (citation omitted).

Here, the District Court found that Butler was arrested when he was removed from the Nissan at gun point and placed in handcuffs on the ground outside of that vehicle. Therefore, the prosecution needed to show that the police had probable cause for Butler's arrest—a higher standard than is necessary for showing that the stop of Butler was merely an investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968).

The District Court explained that, in *Terry*, the Supreme Court "held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)(citing *Terry*, 392 U.S. at 30). What begins as a valid *Terry* stop, however, can sometimes transform into a *de facto* arrest which must be supported by probable cause. To determine whether a *Terry* stop has ripened into an arrest, the Court must "assess the reasonableness of the intrusion . . . , balancing the need of law enforcement officials against the burden on the affected citizens and considering the relation of the policeman's actions to his reason for stopping the suspect." *United States v. Goode*, 309 F.3d App'x 651, 653 (3d Cir. 2009).

The District Court found that Butler was arrested because the officers had no specific reason to believe that their actions were necessary under the circumstances. Butler was not a suspected drug dealer, and he was completely unknown to the officers. They had no particular reason to think that Butler was armed or dangerous. Butler did not make any furtive movements or do anything to pose a threat to the officers as they approached him. Accordingly, the District Court concluded that Butler was arrested during his encounter with the officers.

Thereafter, the District Court determined that the police lacked probable cause to arrest Butler. The District Court explained that, when the validity of an arrest is challenged, the district court must resolve whether the facts available to the officers at the moment of the arrest amounted to probable cause. Probable cause is “a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Maryland v. Pringle*, 540 U.S. 366, 370 (2003). Probable cause exists whenever the facts and circumstances within the officers’ knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested. “[T]his standard requires more than mere suspicion; however, it does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt.” *United States v. Burton*, 288 F.3d 91, 98 (3d Cir. 2002).

Moreover, probable cause must exist as to the particular person searched or seized. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). “[A] person’s mere propinquity to others independently suspected for criminal activity does not, without more, give rise to probable cause to search [or seize] that person.” *Id.*

In this case, the District Court concluded that the facts known to Officer Maritz (the only witness to testify at the evidentiary hearing) and to the other Task Force officers were insufficient to lead a reasonable observer to believe that Butler was committing or had committed a crime at the time that he was arrested. At most, the District Court stated, that the facts were such that a brief, investigatory stop should have been made or additional surveillance should have been conducted to confirm the officers’ suspicions. Instead, the officers arrested Butler without probable cause to do so, and therefore, the District Court suppressed the drugs and the other evidence obtained from the search of the Nissan and found that the evidence could not be used against Butler.

It is important to remember that probable cause must exist to search the particular subject of the particular search. Just because officers possess probable cause to search one suspect, that does not automatically mean that officers have probable cause to search another person who is merely nearby or who the police believe, without articulable facts, may be involved. Otherwise, any evidence obtained from a search of that person for whom the police do not possess probable cause may be suppressed as fruits of the poisonous tree.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*