



8 of 16 DOCUMENTS

COMMONWEALTH vs. ELLA R. ROBINSON (and seven companion cases ¹).

¹ Five against Ella R. Robinson and two against Ryan Robinson.

09-P-743**APPEALS COURT OF MASSACHUSETTS****2010 Mass. App. Unpub. LEXIS 906****August 6, 2010, Entered**

NOTICE: DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS RULE 1:28 ARE PRIMARILY ADDRESSED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, RULE 1:28 DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO RULE 1:28, ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT.

SUBSEQUENT HISTORY: Reported at Commonwealth v. Robinson, 77 Mass. App. Ct. 1114, 931 N.E.2d 67, 2010 Mass. App. LEXIS 1052 (Mass. App. Ct., Aug. 6, 2010)

JUDGES: Duffly, Brown & Vuono, JJ.

OPINION**MEMORANDUM AND ORDER PURSUANT TO RULE 1:28**

Ella R. Robinson and her son, Ryan Robinson, ²

were charged with various drug and firearm offenses after members of the Medford police department drug control unit (MPDCU) searched Ella's apartment pursuant to a warrant issued by an assistant clerk of the District Court. ³ The search warrant was executed moments after the police made a controlled delivery of a package containing forty-seven pounds of marijuana to Ella's apartment. The package, which was the subject of a separate anticipatory search warrant, also was seized. On appeal, Ella contends that her motion to suppress the package should have been allowed. She also argues that the evidence was insufficient for the jury to find that she knew the package contained marijuana. Ryan does not challenge the search but also argues that the Commonwealth's evidence was insufficient. Specifically, he claims that the Commonwealth failed to prove that he had knowledge or the intent to distribute the marijuana.

² To avoid confusion, we refer to the defendants by their first names.

³ The jury acquitted Ella of possession of a firearm without a firearm identification card. The same charge against Ryan was not pressed by the Commonwealth prior to trial.

On our review of the transcript and record on appeal, we conclude that none of these contentions has merit. However, because we conclude that the introduction of eight certificates of analysis establishing that the

substances found in the package and the apartment were marijuana, cocaine, clonazepam, diazepam, buprenorphine, and bupropion was not harmless beyond a reasonable doubt, we are constrained to reverse the defendants' convictions. See *Commonwealth v. Vasquez*, 456 Mass. 350, 366-368, 923 N.E.2d 524 (2010). We briefly discuss the defendants' various claims.

1. *The anticipatory warrant.* The MPDC opened the package before it was delivered to Ella's apartment and discovered that it contained marijuana. The police did not obtain a warrant before opening the package. They did, however, then obtain an anticipatory search warrant before a Medford police officer, dressed in a United Parcel Service (UPS) uniform, delivered the package. Ella contends that the initial warrantless search of the package was unlawful, and, therefore, all subsequent events relating to the package, including the anticipatory warrant, were tainted.

We assume, without deciding, that Ella has standing to assert that the search at issue violated her rights. We also assume, without deciding, that the predelivery search of the package was unlawful. Even after making these assumptions, we conclude that the motion to suppress was properly denied because the information set forth in the affidavit in support of the anticipatory search warrant -- apart from the initial warrantless search -- established probable cause.

The affidavit related that UPS officials became suspicious because the package was shipped from Arizona but had a return address from New Jersey. After informing United States Customs in Boston of their suspicion, the package was exposed to a narcotics-certified dog, who alerted positively to the presence of narcotics. Finally, the affidavit stated that the addressee of the package, "Elanor Shields," was known to the MPDCU and that she lived at the address identified on the package. Because these facts were sufficient to establish probable cause to believe that the package contained narcotics, the anticipatory warrant was lawfully issued even though the affidavit also contained information obtained as a result of the initial search of the

package. See *Commonwealth v. Pinto*, 45 Mass. App. Ct. 790, 793, 702 N.E.2d 32 (1998).

2. *Sufficiency of evidence.* Viewed in the light most favorable to the Commonwealth, see *Commonwealth v. Latimore*, 378 Mass. 671, 676-677, 393 N.E.2d 370 (1979), the Commonwealth's evidence was sufficient to support the convictions. Regarding Ella, the jury properly could have inferred that she knew what was in the package from the fact that she was expecting it. See *Commonwealth v. Sheline*, 391 Mass. 279, 284-285, 461 N.E.2d 1197 (1984). It suffices to note that the police officer testified that when he arrived at Ella's apartment, posing as a UPS delivery man, and informed her that he had a package for "Elanor Shields," Ella responded, "That's mine. I've been waiting for that."

With respect to Ryan, the evidence established that he also was expecting the package and accepted delivery. As the officer arrived at the apartment, he saw someone from the apartment looking out the window at him. Ryan then opened the door before the officer knocked, and tried to take the package, stating, "Hey, that belongs over here," and, referring to the package, "That belongs to me." Ryan then took the package and placed it on a chair. As to Ryan's intent to distribute the marijuana, such intent readily can be inferred by the amount (forty-seven pounds) of marijuana, and its street value. See *Commonwealth v. Roman*, 414 Mass. 642, 645, 609 N.E.2d 1217 (1993). The Commonwealth's expert testified that, for example, a forty-pound shipment of marijuana typically would be divided into one-ounce packages for resale, and would have a street value of up to \$153,000. Accordingly, both Ella's and Ryan's motions for required findings of not guilty were properly denied.

Judgments reversed.

Verdicts set aside.

By the Court (Duffy, Brown & Vuono, JJ.),

Entered: August 6, 2010.