MBLA TRAINING PROGRAM

FACT PATTERN

On December 24, 2014, I, Officer Abernan, and other officers of the Widgita drug control unit were in the area of Workman’s Center, a subsidized housing development and high crime area well-known to us as we have made numerous prior arrests for drug offenses in and around the development. I was positioned in my vehicle on Workman’s Way while Officers Burden and Caucous were in another unmarked vehicle on the corner of Washington Street and Workman’s Way. At about 7 pm, officers observed an individual, later identified as Mickey Bowers, pacing up and down Workman’s Way near Washington Street. Mr. Bowers was looking around nervously, pacing back and forth, and speaking on his cell phone for short periods of time. Officers were familiar with Mr. Bowers from previous drug-related arrests.

A short time later, a red Jeep Grand Cherokee, MA reg. 123-ABC, was seen pulling up to the intersection of Workman’s Way and Washington Street. Officers heard loud reggae music coming from the vehicle. The vehicle pulled over and Mr. Bowers proceeded to the driver’s side of the vehicle and had a very brief (10-15 second) conversation with the operator, later identified as Darren Sawyer. After the brief interaction, Mr. Bowers walked around the front of the vehicle and entered the front passenger seat. From my vantage point, I observed both individuals lean close together with their heads bent toward the center console as they sat in the vehicle. Based on my training and experience in the Widgita PD drug control unit, I believed a street level drug transaction had taken place.

The suspect’s vehicle then proceeded on Washington Street toward Massachusetts Avenue, took a left on Massachusetts Avenue, a left on MLK boulevard, then took a left back onto Workman’s Way before stopping right back at the corner of Workman’s Way and Washington Street. Mr. Bowers then exited the vehicle and began walking up Workman’s Way. Mr. Sawyer proceeded in his vehicle on Washington Street toward Massachusetts Avenue. At this point believing a drug transaction had occurred, I, Officer Abernan, exited my vehicle and stopped Mr. Bowers on foot.

I displayed my badge and announced that I am a Widgita PD officer and asked Mr. Bowers where he was coming from. Mr. Bowers stated that he went down to the convenience store at the corner to get a bottle of Pepsi. Not seeing Mr. Bowers holding a Pepsi, I asked him where it was and he said the store did not have the kind that he wanted and so he left. I asked him if he met anyone while on the way to the store, and he said no. Knowing this to be untrue, I informed Mr. Bowers of my observations and asked him if he had any drugs on him. He replied, “I’m not sure I should be talking to you, I think I need a lawyer.” During the course of the conversation, Mr. Bowers kept putting his hands into his coat pockets. I had to ask him to take his hands out of his coat pockets several times.

At that point, for my safety, I attempted to pat/frisk Mr. Bowers. I asked him if he had anything on him that he should not, he replied “You got me; I just bought a little weed from DZ for $40.” I frisked him and recovered one plastic bag containing a white rock-like substance believed to be crack cocaine from Mr. Bowers’s right front pocket. I then read him his Miranda rights and placed him under arrest.

I informed Officers Burden and Caucous of Mr. Bowers’s statements and the fact that I recovered what I believed to be crack cocaine. Officers Burden and Caucous were following Mr. Sawyer’s vehicle. After hearing from me, the officers stopped Mr. Sawyer just past the intersection of Washington Street and Massachusetts Avenue. They asked Mr. Sawyer to exit the vehicle and proceeded to place him under arrest without incident. Officer Burden recovered $40 cash from Mr. Sawyer’s left front pocket. Inside of the vehicle, officers recovered a sandwich bag half filled with a green leafy substance that, based on their training and experience, they determined to be marijuana.

CHARGES

Mr. Bowers was charged with possession of a class b substance (cocaine) in violation of G.L. c. 94C, sec. 34. Mr. Sawyer was charged with distribution of a class b substance (cocaine), in violation of G.L. c. 94C, sec. 32A, and possession with intent to distribute a class d substance (marijuana) in violation of G.L. c. 94C, sec. 32C.

Counsel for Mr. Bowers has filed two motions to suppress: (1) the statements made to Officer Abernan; and (2) the evidence found on Mr. Bowers during the pat and frisk.

Counsel for Mr. Sawyer has filed a motion to dismiss all charges against Mr. Sawyer.

Assignments

Congratulations! You have been hired as either (1) counsel for Mr. B to move to suppress the statements made to Officer A, (2) counsel for Mr. B to move to suppress the evidence found on Mr. B, (3) counsel for Mr. S to move to dismiss the charges against him or (4) as a state prosecutor opposing one of the motions filed.

Draft a motion and supporting memorandum or a memorandum in opposition (5 to 7 pages) and email the documents to gigipinto@yahoo.com by January 17, 2015. Use the helpful cases below and feel free to do your own research.

Appear on January 24, 2015 from 9:30 am to 12:30 pm for oral argument. A panel on effective oral arguments will be held prior to the mock arguments. You will also receive individual feedback on your briefs. Prepare to argue for five minutes.

Helpful Cases

* Motion to Dismiss:

*Commonwealth v. DiBennadetto*, 436 Mass. 310 (2002)

*Commonwealth v. Ellis*, 356 Mass. 574 (1970)

*Commonwealth v. Martin*, 48 Mass. App. Ct. 391, 392–93 (1999)

* Motion to Suppress Statements:

*Commonwealth v. Phillips*, 452 Mass. 617 (2008)

*Commonwealth v. Carrington*, 20 Mass. App. Ct. 525 (1985)

*Commonwealth v. Stoute*, 422 Mass. 782 (1996)

*Commonwealth v. Barros*, 425 Mass. 572 (1997)

* Motion to Suppress Pat & Frisk Evidence:

*Commonwealth v. Almeida*, 373 Mass. 266, 270-271 (1977)

*Commonwealth v. Washington*, 449 Mass. 476, 482-483 (2007)

*Commonwealth v. Ferrara*, 376 Mass. 502, 505 (1978)

*Commonwealth v. Fisher*, 54 Mass. App. Ct. 41, 43-47 (2002)