



## Legal Update

### Commonwealth v. DeFrancesco

February 12, 2021

#### ***Search warrant affidavit established sufficient nexus to rental car***

---

Commonwealth v DeFrancesco  
Appeals Court 20-P-162

Relevant facts: Over a period of five (5) weeks in August and September 2017 police conducted a drug investigation into the defendant. During the investigation, officers conducted three (3) controlled buys with the assistance of a confidential informant (CI). During each of the controlled buys the defendant was driving a rental car, met with the CI briefly and sold the CI cocaine.

Over the course of the investigation the defendant drove three (3) different rental cars. Each was registered to the same rental company and rented to Joseph Dmitruk. The first rental car was exchanged for another rental car a few days after being pulled over by the police. During that motor vehicle stop, the defendant was operating the car and was seen switching places with the passenger when officer pulled him over. On multiple dates during the investigation the detective observed the defendant leave his residence, enter a rental car which was parked across the street from the defendant's residence and drive the car.

The last two (2) controlled buys involved a Nissan Rogue. On both occasions officers observed the defendant leave his home, enter the Rogue, drive to the meet location, and meet briefly with the CI. On both occasions the CI purchased cocaine from the defendant.

On September 12, 2017 search warrants issued for the Rogue and the defendant's residence. The same affidavit was used to secure both warrants. The defendant only contested the search warrant involving the Rogue. During the execution of the search warrant on the Rogue, officers recovered drugs, a gun case, four (4) empty magazines and documents bearing the defendant's name.

**For specific guidance on the application of these cases or any law, please consult your supervisor or your department's legal advisor or prosecutor.**

Issue: Did the search warrant establish a nexus to the rental car?

Short Answer: Yes. The search warrant demonstrated that the defendant was engaged in the ongoing business of illegally selling narcotics. It also established probable cause to believe that the defendant was using the Rogue in connection with his drug business and that controlled substances and related evidence would be located within the Rogue.

Discussion: “Probable cause does not require proof that it is more likely than not that evidence would be found in the Rogue; rather, it requires a quantum of proof from which the magistrate can conclude, applying common sense and reasonable inferences, that evidence is “reasonably likely” to be found in the Rogue.”

The court found that the investigation in this case was thorough and recent. The investigation included three (3) controlled buys, all of which the defendant drove to in a rental car. Two (2) of those controlled buys involved the Rogue and took place within a week before the execution of the search warrant. The court also credited the affidavit where it states the detective’s opinion, based in part on his extensive training and experience in narcotics investigations, that the defendant is storing illegal narcotics within the Rogue.

It did not matter that the same affidavit was used to secure search warrants for both the residence and the Rogue. “A search warrant affidavit may establish probable cause that evidence could be found in more than one location.” A search warrant application does not need to establish to a certainty that the items to be seized will be found in the specified location to the exclusion of all other locations. This is particularly true when talking about drugs or other easily dispersed items.

The court acknowledged that there may be a general inference that people would park vehicles in their driveway and not across the street from their home if the vehicle contained contraband. The court stated that the facts and circumstances of this case do not warrant such an inference. Here the defendant took several steps to conceal any connection between himself and the rental cars including: using rental cars rented in another person’s name, switched places with his passenger when he was pulled over by the police and then exchanging that car for another rental car within days of the motor vehicle stop.

The affidavit did not specifically say that the controlled buys involving the Rogue occurred inside the vehicle. The court found that it was reasonable to infer that the deals did occur inside the Rogue in this case. The court went on to say that, even if it was unclear whether the transactions occurred inside the vehicle, there was still probable cause to conclude that the defendant used the rental cars, including the Rogue, to transport cocaine to the location of each sale.

Based upon all the facts and circumstances of this case, it is reasonable to infer that the defendant was using the rental cars to store and to transport drugs.

**For specific guidance on the application of these cases or any law, please consult your supervisor or your department’s legal advisor or prosecutor.**