



LEGAL UPDATE

Discovery of Used Crack Pipe is Evidence that a Crime has Likely Occurred

Commonwealth v. Eddie Torres, Appeals Court (March 6, 2023).

RELEVANT FACTS

At 3:23AM two State troopers in a marked cruiser observed a sedan cross the rumble strip on I-91 into a prohibited travel area. A query check revealed the registered owner's Vermont driver's license was suspended. The troopers initiated a motor vehicle stop.

As the car was pulling over, one of the troopers observed the defendant, who was sitting in the back seat, sit up as if he had been lying down. The defendant looked out the back window and then ducked back down.

When the troopers approached the vehicle on foot, they saw the defendant was not wearing his seatbelt. He refused to provide his identification. The troopers confirmed the driver was the registered owner and ordered him out of the car and placed him under arrest for operating a motor vehicle with a suspended license. As the driver stepped out, the trooper saw a used crack pipe on the driver's side floor.

The driver was handcuffed and put in the cruiser. The defendant and the front seat passenger were ordered out of the car. The troopers searched the car and seized a large quantity of heroin, cocaine, and fentanyl in the area where the defendant had been seated.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

The defendant was charged with various drug trafficking offenses. The defendant filed a motion to suppress the evidence arguing that the seizure of the pipe and the subsequent search of the car were unconstitutional. The motion was allowed. The Commonwealth appealed.

DISCUSSION

The plain view doctrine holds that when an officer who is lawfully present in a place inadvertently sees an object whose incriminating character is immediately apparent, the officer may seize the object without a warrant.

In this case, the trooper was lawfully present when he saw the crack pipe in plain view as the driver got out of the car. The trooper also saw that the pipe was charred and had burnt Brillo at the end. Based upon his training and experience, the trooper believed that the crack pipe had been used at some point.

Because of the evidence of use, the court found that it was reasonable for the trooper to infer that the used crack pipe was intended to be, and actually had been, used to smoke crack cocaine, which is illegal to possess. The court concluded that it was readily apparent that the pipe the trooper saw was an instrumentality of a crime and the seizure of the pipe was, therefore, justified.

The next question for the court to answer was whether the trooper's observation of the used crack pipe justified the subsequent search of the car.

The court agreed that possession of drug paraphernalia, without more, is not a crime. Mere observations of an object that is often associated with drug use or distribution alone will also not supply probable cause to search for contraband.

"A crack pipe, however, falls squarely outside this class of objects, as it is primarily used for an illegal purpose: smoking crack cocaine. This distinguishes it from other items that have lawful applications but may also be – or used in close connection with – contraband in other circumstances."

At the time of the search, the troopers had probable cause to believe a crime had been committed; specifically, possession of crack cocaine. There was also probable cause to believe that evidence of that crime would be found in the vehicle.

"Given a used crack pipe's inherent connection to criminal activity, [the trooper's] observation of the used crack pipe in plain view on the floor of the vehicle raised a fair probability that crack cocaine would be found therein."

The order allowing the motion to suppress was reversed.

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