

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 03-11,219</b>
	:	
<b>KEITH TONER,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is the Commonwealth's Motion to Amend Search Warrant Application, filed September 23, 2003. The Commonwealth requests that the Search Warrant Application be amended to permit the Court to affix this Court's signature to the line which approved the warrant request based on a finding a probable cause and permitted the service of the search warrant upon the Defendant's residence.

On August 12, 2003, Trooper James A. Wool of the Pennsylvania State Police presented a search warrant application to this Court for approval. Tpr. Wool alleged in the affidavit accompanying the search warrant that probable cause existed for the issuance of a search warrant and requested that this Court not only issue the warrant but also alleged the need to keep the warrant under seal for a period of sixty (60) days. By stipulation, the parties agreed that this Court reviewed the affidavit attached to the application for Search Warrant, found that probable cause for issuance of a warrant existed and affixed her signature on two of the three signature lines at the bottom of the Search Warrant Application. Specifically, those two lines were 1) the warrant application indicating that the Trooper had sworn to and subscribed the search warrant request in her presence and 2) that the Court found

good cause to seal the search warrant affidavit for a period of sixty days. The undersigned did not, however, sign the line on the form above the words “Signature of Issuing Authority”, in the space indicating that probable cause had been found and that the Pennsylvania State Police were authorized to serve the warrant and search the Defendant’s residence. “The linch-pin that has been developed to determine whether it is appropriate to issue a search warrant is the test of probable cause.” Commonwealth v. Chandler, 505 Pa. 113, 477 A.2d 851 (1984). The probable cause standard protects us from unwarranted or even vindictive incursions upon our privacy. It insulates us from the state, and “preserves the concept of democracy that assures the freedom of its citizens. This concept is second to none in its importance in delineating the dignity of the individual living in a free society.” Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991).

The Commonwealth asserts that the Court clearly reviewed the documentation presented by the Trooper and found that probable cause existed. In support of this position, the Commonwealth points to the Court’s signature at the end of the attached Affidavit of Probable Cause, indicating that Trooper Wool swore to and subscribed the affidavit in her presence, as well as the Court’s signature on the Application for Search Warrant itself finding good cause to seal the search warrant affidavit for a period of sixty days. The Commonwealth contends that the signature sealing the warrant is proof of the Court’s finding of probable cause and intent to issue the warrant because without such a finding and the subsequent issuance of a warrant, there would be nothing to seal.

The Defendant's position is that without the appropriate Court signatures on each and every line upon which a signature is required, the warrant is defective and cannot be rehabilitated by a motion to "amend" when the warrant was executed while defective. In support of his position, Defendant cites the cases of Commonwealth v. Vaughan, 789 A.2d 261, (Pa.Super. 2001). The Vaughan case involved a search warrant where a district justice issued the warrant by "filling out the form completely, including affixing his jurat, but neglecting to sign the warrant over the line "Signature of Issuing Authority."" Vaughan, supra., at 263. In that case, the Pennsylvania Superior Court determined that "at the time of the warrant application there was no "record determination" that probable cause existed and no "written order" to that effect," therefore requiring the conclusion that the warrant was never issued. Ibid. The Court reached that conclusion despite the fact that the district justice testified at the suppression hearing that he had found probable cause and intended to issue the warrant and made an explicit finding that a written order is required to signify the finding of probable cause, id. at 263, 266. Here, the Defendant argues that a similar finding is required. Defense counsel asserts that despite a finding of probable cause by the issuing authority, the failure of the Court to memorialize that finding in writing mandates the conclusion that no warrant was ever issued.

The Court has searched but found no cases on point where the issuing authority neglected to sign on the line normally used to issue the warrant but did sign on the line indicating that the issued warrant would be sealed. The Court finds that the cases cited by the Defendant are distinguishable from this case in that none of the

warrants in those cases was sealed. Therefore, in light of that distinguishing factor, the Court finds that the signature which seals the search warrant is sufficient written proof of the Court's finding of probable cause and issuance of the warrant. The Court agrees with the Defendant that a finding of probable cause for issuance of a warrant must be made in writing under Vaughan, id. However, the Court also agrees with the Commonwealth that absent a finding of probable cause and issuance of a warrant, there would be nothing to seal.<sup>1</sup> It is only when a warrant is issued that there is any information which might be sealed from the view of the public. Accordingly, the Court issues the following Order.

ORDER

AND NOW, this \_\_\_\_ day of February, 2004, for the reasons set forth above, the Court GRANTS the Commonwealth's Motion to Amend Search Warrant Application. It is ORDERED and DIRECTED that the Search Warrant be amended to reflect a signature verifying probable cause existed justifying the issuance of a search warrant.

By the Court,

\_\_\_\_\_ J.

Nancy L. Butts, Judge

xc: DA (KO)  
Peter Campana, Esquire  
Hon. Nancy L. Butts  
Diane L. Turner, Esquire  
Gary Weber, Esquire

---

<sup>1</sup> The portion of the search warrant application which seals the issued warrant affidavit specifies that good cause has been stated in the affidavit, and that as a result of this finding, the affidavit is sealed. If no warrant had issued, the warrant application and its accompanying affidavit would merely have been returned to the Trooper and would not be a matter a public record.