

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

COMMONWEALTH	:	
	:	
	:	
v.	:	No.: 04-11,289
	:	
LOGANTRA OUTEN,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress filed September 29, 2004. Defendant is charged with Criminal Conspiracy, Possession with Intent to Deliver, Possession of a Controlled Substance, and Possession of Drug Paraphernalia. The charges are based on bags of heroin found and seized at 812 Park Place, Williamsport. Defendant challenges the use of the drugs in evidence, alleging they were seized in violation of his Constitutional rights.

The relevant facts are as follows. The Williamsport Bureau of Police (WBP) found the drugs while conducting a search pursuant to a warrant. The warrant was issued based on the confession of Shawn Michael Davidson (Davidson) to the theft of a firearm. Davidson gave WBP reason to believe the firearm was being held as collateral for drugs given to Davidson at 812 Park Place in Williamsport. While conducting the search for the firearm, police were informed by a visitor to the residence, Miranda Mistretta, that the officers should concentrate their search on an upstairs bedroom. While searching said bedroom, the officers found bags of what appeared to be narcotics. Officers procured a

second warrant to search the residence for narcotics after which they seized the bags. The second warrant is not presently at issue.

1. The discrepancy between the address found on the face of the warrant and the address listed in the affidavit of probable cause does not invalidate the warrant.

As an initial matter, the Court notes that the address found on the face of the search warrant differs from that found in the supporting affidavit of probable cause. The affidavit identifies the location of the residence to be search as 812 Park Place, whereas the warrant lists 812 Park Street.

Rule 206 of Criminal Procedure requires particularity in naming and describing the person or place to be searched. Pa.R.Crim.P. 206. The comment to Rule 205 “Contents of a Search Warrant,” however, states: “[s]uch warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations.” Pa.R.Crim.P. 205, cmt. The corresponding holding by the Superior Court has been that, “where there was no ambiguity about the location where the criminal activity occurred, as well as no question that probable cause for the search existed at the location that was searched, the erroneous listing of the address did not violate the appellant’s constitutional protection, and the goals of the particularity requirement of our Rules of Criminal Procedure were not offended.” *Commonwealth v. Washington*, 2004 Pa.Super. 362, 858 A.2d 1255, 1257-58 (2004); citing *Commonwealth v. Belenky*, 2001 Pa.Super. 148, 777 A.2d 483 (2001).

The Court finds in the present case that there was no ambiguity as to the location of the criminal activity nor was there a question that probable cause existed at the location. The address discrepancy does not present a challenge to the validity of the warrant.

2. The officers had proper authority to search the bedroom of the residence

Defendant argues that the search warrant did not give WBP the authority to search the bedroom of the residence. Specifically, Defendant contends that the bedroom is a separate and private area within the residence and should not have been searched without some specific probable cause within the four corners of the affidavit as per the bedroom.

“[W]here a search warrant adequately describes the place to be searched and the items to be seized the scope of the search ‘extends to the entire area in which the object of the search may be found and properly includes the opening and inspection of containers and other receptacles where the object may be secreted.’” *Commonwealth v. Waltson*, 555 Pa. 223, 724 A.2d 289,292 (1998); citing *Commonwealth v. Reese*, 520 Pa. 29, 549 A.2d 909, 911 (1988). The scope of a lawful search is “defined by the object of the search and the places in which there is probable cause to believe that it may be found.” *Maryland v. Garrison*, 480 U.S. 79, 107 S.Ct. 1013 (1987); citing *U.S. v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982).

The WBP had probable cause to believe the firearm was located in the residence at 812 Park Place. That probable cause legitimately extended to those rooms of the specified residence where the gun could have been placed.

3. Ms. Mistretta’s authority to consent

Defendant contends that because WBP were aware that Ms. Mistretta was not a resident at the place of the search, she could not authorize by her consent a search of the bedroom. Because the Court has found that the bedroom was validly searched under the warrant, consent was unnecessary and the legal effect of Ms. Mistretta's consent need not be considered. In light of the evidence, there is no reason to doubt that WBP were poised to search the entire residence. Whether or not Ms. Mistretta had any authority, WBP were under no obligation to ignore her advice or refrain from searching the areas to which she referred.

4. Davidson's information was sufficiently reliable.

Defendant also argues that within the four corners of the application for the warrant, the reliability of the informant is not established to the extent necessary to form probable cause. Probable Cause is determined based on totality of the circumstances. *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921 (1985). "The totality of the circumstances test is satisfied where the police officers have a reasonable belief that the items to be seized are related to criminal conduct and that those items are presently located in the place to be searched." *Commonwealth v. Waltson*, 555 Pa. 223, 724 A.2d 289, 292 (1998).

The test has been satisfied in the present case. Following the theft of a gun, the gun's owner implicated Davidson. Davidson was interrogated, confessed to the theft of the gun and implicated himself in the drug transaction. This self-implication furthered the WBP's reliance on his information. Davidson proceeded to inform WBP of the details of the transaction including why the gun would be found at the residence. He told WBP that

the gun was collateral for a drug transaction, further substantiating that the gun would remain at the residence. Davidson described the place of the transaction and identified it to officers. Based on the totality of the circumstances, probable cause had been sufficiently established.

ORDER

AND NOW, this ____ day of January, 2005, for the reasons set forth above, the Court hereby DENIES the Defendant's Motion to Suppress.

By the Court,

Nancy L. Butts, Judge J.

xc: DA (RF)
J. Stillman, Esquire
Hon. Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges