

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-322-2008  
 :  
 vs. : CRIMINAL  
 :  
 D. D., : Motion to Suppress  
 Defendant :

**ORDER**

AND NOW, this \_\_\_\_ day of November 2008, Defendant's Motion to suppress the evidence of his verbal and written statements to the Williamsport Police are hereby **DENIED**.

Defendant raises two issues in regard to the motion. First, defendant contends the affidavit of probable cause for his arrest warrant was defective because the affidavit relied on information provided by Amy Artley to state probable cause. Ms. Artley, who is named in the arrest warrant, advised the police that she was in a vehicle outside the scene of the of the on Memorial Avenue home robbery and that two black males left the vehicle she was in to commit the robbery. The two black males were armed with guns, and when they returned to the vehicle they laughed and told the driver, who the witness knew as "Ma", to "get out of here", adding "the fucking lady did not have any legs." The black males were described by Ms. Artley as carrying a square silver gray item that she thought was a DVD player or a small computer.

The affidavit also reports information from the victims of the robbery, James Diffenbach and Pamela O'Neill who lived at 1605 Memorial Avenue, which corroborated information that on or about December 3, 2007, two black males entered their residence with guns and demanded they tell them where the safe was inside the house. Ms. O'Neill is a

double leg amputee. They said the perpetrators took a laptop computer, credit cards, Nextel cell phone and \$735.00 in cash.

The defense complains the affidavit is defective because it did not advise the magisterial district justice that Ms. Artley has a lengthy criminal record, which is contain in Defense Exhibit 1.

The Court does not believe the failure to include this information negates the viability of the affidavit. Ms. Artley was named for the Magisterial District Justice and was not an anonymous informant. Moreover, in light of the corroborating information between the victim's information and Ms. Artley's account of events, there is a good basis for the Magisterial District Justice to credit the information provided and to issue the arrest warrant. In light of the corroborative information the Court believes that even if Ms. Artley's prior record were made known to the Magisterial District Justice he would have issued the arrest warrant.<sup>1</sup>

The defense also claimed that Defendant's statement were the product of a custodial interrogation which was not preceded by a knowing, intelligent and voluntary waiver of Defendant's right to counsel and right to remain silent. The Court cannot agree. The testimony presented at the hearing established that the police advised Defendant of his rights, both orally and in writing. Defendant agreed to talk to the police without having an

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<sup>1</sup> The Court believes the police should have included in the affidavit the circumstances under which the Ms. Artley provided information to the police (i.e., she was in custody for suspected credit card fraud and during that investigation she initially gave the police a false last name, see CR-275-2008). Nevertheless, the Court believes even if that information had been provided the Magisterial District Judge would have issued the warrant based on the corroborating information from the victims of the crime.

attorney present. Defendant initially denied knowing anything about the robbery. When Defendant asked the police would he be released if they found the real people, Defendant's mother suspected he may know something about who committed the crime and told him to tell the police anything he knew. Defendant then gave the police Amin Akar's name, and he subsequently gave a written statement. Neither Defendant nor his mother ever requested to speak to an attorney or asked that the interview cease. The police did not threaten or coerce Defendant into giving a statement. The tenor of the entire testimony, including the testimony from Defendant and his mother, was that Defendant gave the police Amin's name and wrote the statement because of his mother's crying and urging him to tell the police anything he knew about the case and not because of anything the police did.

By The Court,

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Kenneth D. Brown, P.J.

cc: Peter Campana, Esquire  
A. Melissa Rosenkilde, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file