

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

**COMMONWEALTH** :  
 :  
 v. : **CR-1079-2008**  
 : **CRIMINAL**  
 **GREGORY BARTO,** :  
 **Defendant** :

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**COMMONWEALTH** :  
 :  
 v. : **CR-110-2009**  
 : **CRIMINAL DIVISION**  
 **GREGORY BARTO,** :  
 **Defendant** :

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**COMMONWEALTH** :  
 :  
 v. : **CR-844-2009**  
 : **CRIMINAL DIVISION**  
 **GREGORY BARTO,** :  
 **Defendant** :

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**COMMONWEALTH** :  
 :  
 v. : **CR-896-2009**  
 : **CRIMINAL DIVISION**  
 **GREGORY BARTO,** :  
 **Defendant** :

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**COMMONWEALTH** :  
 :  
 v. : **CR-1606-2009**  
 : **CRIMINAL DIVISION**  
 **GREGORY BARTO,** :  
 **Defendant** :

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COMMONWEALTH	:	
	:	
v.	:	CR-1613-2009
	:	CRIMINAL DIVISION
GREGORY BARTO,	:	
Defendant	:	

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COMMONWEALTH	:	
	:	
v.	:	CR-845-2009
	:	CRIMINAL DIVISION
AMBER BARTO,	:	
Defendant	:	

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COMMONWEALTH	:	
	:	
v.	:	CR-1632-2009
	:	CRIMINAL DIVISION
AMBER BARTO,	:	
Defendant	:	

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COMMONWEALTH	:	
	:	
v.	:	CR-1633-2009
	:	CRIMINAL DIVISION
AMBER BARTO,	:	
Defendant	:	

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**OPINION AND ORDER**

On November 6, 2009, the Commonwealth filed a Motion to Consolidate and on January 14, 2010, each Defendant filed their respective Omnibus Pretrial Motions. A hearing on all three Motions was held on February 8, 2010.

## ***Background***

The following is a summary of the facts presented at the Suppression hearing on February 8, 2010. Trooper Dennis Haines (Haines) of the Pennsylvania State Police (PSP) testified that in June of 2008 he discussed Defendant Gregory Barto (Barto) with confidential informant number 2410-08-0235 (CI). That particular CI had knowledge of individuals in Lycoming County and the states of Virginia and Florida that sold illegal narcotics. Haines related that CI was determined reliable prior to June 2008 as he was utilized in April and May 2008 making controlled narcotic purchases in Florida. Subsequent to June 2008, arrests were made in the Florida cases in which CI was used. CI related to Haines that Barto sold marijuana and stored it at his place of business. CI also made references to Barto having sex with younger females.

Trooper Douglas Sversko (Sversko) also of the PSP, testified that he wrote the affidavits of probable cause and applied for the two search warrants in this case: one for the Barto residence and the other of the Tire & Auto business. Another confidential informant number 24110080239, who was mentioned in the affidavit of probable cause was actually never utilized as a confidential informant but was in fact the victim in case number 1079-2008. The confidential informant number was only used as a way to safeguard the identity of the victim as her status as confidential informant was never authorized. The affidavit of probable cause also included information that Barto was charged with drug offenses in 1986.

## ***Discussion***

### ***Defendant Gregory Barto and Defendant Amber Barto's Motion to Suppress***

Both Defendants allege that the reliability of the confidential informant's is not established and therefore, the search warrant should be invalidated and all evidence obtained as a

result of the search should be suppressed. Further, Barto asserts that the inclusion in the affidavit of the 1986 drug charges against him prejudiced him by swaying the Magisterial District Justice's (MDJ) decision to grant the search warrant.

Pa. R. Crim. P. 203 states in relevant part that:

(B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B).

Courts should not “take an overly technical approach on evaluating the information supplied to the magistrate in a search warrant application but should evaluate it in a common sense and practical manner.” Commonwealth v. Gannon, 454 A.2d 561, 564 (Pa. Super. Ct. 1982) (and cases cited therein). The Pennsylvania Supreme Court states that the determination in to “whether a warrant was supported by probable cause . . . is confined to the four corners of the affidavit.” Commonwealth v. Coleman, 830 A.2d 554, 560 (Pa. 2003) (citing Commonwealth v. Stamps, 427 A.2d 141, 143 (Pa. 1981)). Pennsylvania Courts employ the totality of the circumstances analysis to determine whether a search warrant was sufficiently supported by probable cause. See Commonwealth v. Tiffany, 926 A.2d 503,506 (Pa. Super. Ct. 2007); Commonwealth v. Gray, 503 A.2d 921 (Pa. 1985) (adopting the Illinois v. Gates, 462 U.S. 213 (1983) totality of circumstances test). According to the Superior Court,

[t]he ‘totality of the circumstances’ test has been summarized as follows: The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and

'basis of knowledge' of persons supplying hearsay information, that there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Tiffany, 926 A.2d at 506.

Information gained from confidential informants can “form the basis for probable cause to issue a search warrant, provided there is adequate evidence of the informant's reliability.”

Commonwealth v. Gindlesperger, 706 A.2d 1216, 1225 (Pa. Super. Ct. 1997) (quoting

Commonwealth v. Lemanski, 529 A.2d 1085, 1095 (1987)). The reliability of the information provided by the informant is determined by looking at the facts provided by the police officer.

Gindlesperger, 706 A.2d at 1225. “[I]n determining the credibility of an unidentified informant and the reliability of his information”, the MDJ must consider the following four factors:

(1) Did the informant give prior reliable information? (2) Was the informant's story corroborated by another source? (3) Were the informant's statements a declaration against interest? (4) Does the defendant's reputation support the informant's tip?

Id. However, the affidavit does not have to satisfy all four of the factors.

“Moreover, the statements of different informants may corroborate each other.” Commonwealth v. Jones, 484 A.2d 1383, 1388 (Pa. 1984).

After a review of the search warrant, the Court is satisfied that there was sufficient information for the Magisterial District Judge to conclude that a search should be conducted of both Defendant's residence and business. The Court finds the CI credible and his information reliable as the CI has personal knowledge. The Affidavit of Probable Cause contains information from the CI that states the CI has “within the past three (3) months, . . . seen BARTO store controlled substances at BARTO's Tire and Auto Center” . . . and that BARTO told CI that he has sexual relationships within younger females and videotapes those encounters. Further, the

Affidavit of Probable Cause included information from one of the victims that Barto took her in his Corvette to his residence and business, where she was groped by Barto, offered narcotics, and told he had pornographic videos involving sexual intercourse with younger females. The victim's information corroborates that of the CI's information, thus providing sufficient reliability for the granting of the search warrant. See Jones, 484 A.2d at 1388 (information provided by the first informant corroborated the second informant's information making it "more probable than not that the later informant's statement . . . was true.").

This Court also finds the information regarding Barto's 1986 drug charge did not prejudice the MDJ's decision. In reviewing the facts set forth in the affidavit, the Court finds there was sufficient information to establish probable cause absent that information. Therefore, considering the totality of the circumstances, the Motion to Suppress is denied.

### ***Commonwealth's Motion to Consolidate***

The Commonwealth asserts that all of the above captioned cases against Gregory Barto and Amber Barto should be consolidated for trial as all cases have similar victims, locale, types of crimes, and all occurred in either Defendants' residence or place of business.

"Offenses charged in separate . . . informations may be tried . . . together if . . . the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion." Commonwealth v. Judd, 897 A.2d 1224, 1231 (Pa. Super. Ct. 2006) (quoting Pa.R.Crim.P., Rule 582(A)(1)(a) and 42 Pa. Cons. Stat. Ann.). Further, "Defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same act or transaction or in

the same series of acts or transactions constituting an offense or offenses.” Pa.R.Crim.P., Rule 582(A)(2). According to the Pennsylvania Supreme Court,

‘Evidence of distinct crimes is inadmissible solely to demonstrate a defendant's criminal tendencies. Such evidence is admissible, however, to show a common plan, scheme or design embracing commission of multiple crimes, or to establish the identity of the perpetrator, so long as proof of one crime tends to prove the others. This will be true when there are shared similarities in the details of each crime.’

Commonwealth v. Andrulewicz, 911 A.2d 162, 168(Pa. Super. Ct. 2006) (quoting

Commonwealth v. Keaton, 729 A.2d 529, 537 (1999)).

The Court finds that all of above captioned cases against both Defendants shall be consolidated for trial. The offenses charged in each of the separate informations against each Defendant would be admissible in a separate trial for the other. The offenses all include victims of similar age and all similar types of sexual crimes. Further, the informations allege that Barto perpetrates the sexual acts and Amber also partakes. Therefore, both Defendants are alleged to have participated in the same series of acts. Further, all of the alleged acts occurred in the residence or business of both Defendants. Therefore, the Commonwealth’s Motion shall be granted and the above captioned cases consolidated for trial.

**ORDER**

AND NOW, this \_\_\_\_day of March, 2010, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. Defendant Gregory Barto's Motion to Suppress is hereby DENIED.
2. Defendant Amber Barto's Motion to Suppress is hereby DENIED.
3. As for both Defendant Gregory Barto's and Amber Barto's Motion to Quash Informations/Motion to Dismiss, the Court reserves decision on these motions unless and until Defense Counsel is able to find transcripts of the Preliminary Hearing;
4. As to Defendant Gregory Barto's Motion for Extension of Time to File Pre-Trial Motions, Defense Counsel has indicated that if after obtaining any Preliminary Hearing transcript he feels there are issues that need to be raised he will file any necessary motions;
5. As to Defendant Gregory Barto's Motion to Reveal Identity of Confidential Informants, this Motion is moot as Defense Counsel has informed the Court at the Suppression Hearing that no additional information was needed;
6. As to Defendant Gregory Barto's Motion for Impeaching Information as to Confidential Informants said Motion is GRANTED. It is ORDERED and DIRECTED that the Commonwealth is to provide to Defense Counsel the criminal history of the confidential informant and any benefit provided to the informants to the extent it complies with Brady; and



7. The Commonwealth's Motion to Consolidate is hereby GRANTED. It is ORDERED and DIRECTED that the following cases be consolidated for trial: 1079-2008, 110-2009, 844-2009, 896-2009, 1606-2009, 1613-2009, 845-2009, 1632-2009, and 1633-2009

By the Court,

Nancy L. Butts, P.J.

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