

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**KEVIN D. WEBSTER,
Defendant**

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**CR-2055-2009
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Motion on May 20, 2010. A hearing on the Motion was held July 2, 2010.

Background

On December 10, 2009, the Defendant, Kevin Webster (Webster), was arrested and charged with: three (3) counts of 35 P.S. §780-113(a)(30) Possession with Intent to Deliver; three (3) counts of 35 P.S. §780-113(a)(16) Possession of a Controlled Substance; two (2) counts of Delivery of a Controlled Substance 35 P.S. §780-113(a)(30); two (2) counts of 18 Pa.C.S. §7512 Criminal Use of Communication Facility; one (1) count of 35 P.S. §780-113(a)(35) Illegal Sale of Non-controlled Substance; and one (1) count of 35 P.S. §780-113(a)(32) Possession of Paraphernalia; and four (4) counts of Conspiracy. The charges against Webster arise from a series of controlled buys conducted with the help of a confidential informant (CI) and from the search of the residence located at Locust Street pursuant to a search warrant. Between the dates of 10/5/2009 and 12/3/2009, the Pennsylvania State Police Montoursville Vice/Narcotics Unit conducted an ongoing drug investigation in which the CI made ten (10) controlled purchases of heroin from three black males within the residence on Locust Street in the City of Williamsport,

Lycoming County; on the street one block from the residence on Locust Street with individuals that left the residential area of Locust Street and returned to the residential area of Locust Street after the controlled purchase; and/or individuals who frequent the residence on Locust Street and have been involved in one or more of the controlled purchases listed herein. The charges against Webster arise from four (4) separate controlled purchases described in detail below.

The affidavit of probable cause alleges that on October 13, 2009, the CI called Webster in order to purchase heroin. The CI went to purchase the heroin at the intersection of Cherry and High Street. During the transaction, Webster appeared to act as a look out while Eldrich Thompson (Thompson) delivered the heroin to the CI. The purchased substance tested positive for heroin.

The affidavit of probable cause also alleges that on November 3, 2009, the CI called Thompson to set up a purchase of heroin. The CI then received a phone call from Webster stating that he was waiting for the CI at the Locust Street residence to make the heroin transaction. The CI then went to the residence on Locust Street and purchased at least nine (9) packets of heroin. The substance field tested positive for heroin.

On November 10, 2009, Webster called to see if the CI needed anything because he was on his way out and could meet the CI at the intersection of Catherine and Sheridan Street. The CI met Webster, who was operating a black Chevrolet Monte Carlo, on the side of the Faxon Bowling lanes. The CI got into Webster's vehicle where she allegedly purchased ten (10) packets of heroin. However, the substance purchased did not test positive for heroin, so Webster was charged with Illegal sale of a Non-Controlled Substance.

On December 2, 2009, Webster contacted the CI and advised that he would be out of town and that if the CI needed anything while he was gone he should go to "L block," meaning

the residence on Locust Street. On December 3, 2009, the CI went to the Locust Street residence to purchase heroin. The CI gave money to Webster and received ten (10) packets of heroin from Michael Brown (Brown). The substance purchased tested positive for heroin.

On December 10, 2009, a search warrant was executed at the residence on Locust Street. During the search of the residence, Webster and Brown were found sleeping. Approximately 21.9 grams of packaged cocaine was seized along with empty Ziploc type bags, rubber bands, and electronic scales. The suspected crack cocaine field tested positive for cocaine.

Discussion

Motion to Suppress Physical Evidence

Webster contends that the search warrant affidavit failed to establish probable cause to believe that evidence of drugs and/or drug dealing would be found at the Locust Street residence because the confidential informant provided most of the information contained in the affidavit and the affidavit failed to demonstrate the informant's reliability and veracity. Webster also contends that the affidavit of probable cause contained false and/or material omissions including, but not limited to, the veracity and reliability of the informant, her criminal history, her basis for cooperation and promises by the Commonwealth, any facts regarding the prior cases she cooperated in and whether they led to arrests or convictions, and the fact that one of the recent transactions did not contain heroin.

In deciding whether to issue a search warrant, “[t]he task of the issuing magistrate is to consider the information contained within the warrant affidavit in a common sense, nontechnical manner and to determine whether there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Commonwealth v. Cramutola, 676 A.2d 1214, 1216

(Pa. Super. 1996) (See Commonwealth v. Miller, 483 A.2d 498 (1984)). The standard to determine whether probable cause exists is the totality of the circumstances test. Cramutola at 1216. (See Illinois v. Gates, 462 U.S. 213 (1983)). The reliability and veracity of an informant are to be considered “relevant considerations in the totality of the circumstances analysis....” Gates at 233. (See Adams v. Williams, 407 U.S. 143, 146-147 (1972)).

“An informant’s [sic] reliability is demonstrated by previous investigative leads that proved accurate.” Cramulota at 1217 n.3. In this case, the affidavit of probable cause states that the CI utilized proved her reliability in cooperation with both the Pennsylvania State Police and the FBI in investigations since 2008. At the hearing on the Defendant’s Omnibus Motion held before the Honorable Nancy L. Butts on July 2, 2010, Trooper Brett Herbst (Herbst) testified that the confidential informant in this case proved reliable in the past and that the information she provided led to eight (8) guilty pleas in federal court. Herbst also provided the names of the individuals for which the CI previously provided reliable information. Trooper John E. Whipple also testified at the hearing and provided names of individuals for which the CI previously provided reliable information. Furthermore, the information an informant provides can prove reliable if it is corroborated by police investigation. Cramutola at 1216 (See Commonwealth v. Silverman, 541 A.2d 9 (1988)). In this case, the affidavit of probable cause states that the information provided by the CI was corroborated by exterior surveillance of the residence while the CI was inside.

It is clear to the Court there was ample evidence to establish the confidential informant’s reliability and veracity. Not only did the confidential informant’s prove her reliability through cooperation with the Pennsylvania State Police and the FBI in investigations since 2008, the police in this case corroborated the confidential informant’s reliability and veracity through

exterior surveillance of controlled purchases. Furthermore, the Court notes that while suspected heroin purchased during the transaction on November 10, 2009, did not field test positive for heroin, the lab test proved that the substance was in fact positive for heroin. Based on the totality of the circumstances, it is clear that there was probable cause to justify the issuance of a search warrant. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

ORDER

AND NOW, this ____ day of July, 2010, based upon the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. As to the Defendant's Motion to Suppress Physical Evidence, said Motion is hereby DENIED.
2. As to the Defendant's Motion to Compel Discovery, as Defense Counsel received the requested discovery, said Motion is hereby DISMISSED.
3. As to the Defendant's Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency, or Preferential Treatment and Complete Criminal History from the National Crime Information Center ("NCIC") and/or the Pennsylvania Justice Network ("JNET") said Motion is GRANTED as the Motion provided notice prior to trial.
4. As to the Defendant's Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.Evid. 404(b), said Motion is hereby GRANTED as the Motion provided notice prior to trial.
5. As to the Defendant's Motion to Modify Bail, said Motion was DENIED per the July 2, 2010 Order of Court.

6. As to the Defendant's Motion to Reserve the Right to file any additional pre-trial motions pursuant to Rule 579 of the Pennsylvania Rules of Criminal Procedure, the Court notes that, at the time set for hearing, Defense Counsel did not state that they would need to file any additional motions. However, if Defense Counsel does file any additional motions, the Court will rule on any such motions as they arise.

By the Court,

Nancy L. Butts, President Judge

xc: Mary Kilgus, Esq.
Edward J. Rymysz, Esq.
Amanda B. Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)