

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 v. : **CR-369-2009**
 : **CRIMINAL DIVISION**
BETH CAMP, :
 Defendant :

COMMONWEALTH :
 :
 : **CR-370-2009**
 : **CRIMINAL DIVISION**
RANDALL CAMP, :
 Defendant :

COMMONWEALTH :
 :
 v. : **CR-371-2009**
 : **CRIMINAL DIVISION**
GERALD FISHER, :
 Defendant :

OPINION AND ORDER

Defendant Beth Camp's (Mrs. Camp) Request for a Bill of Particulars was filed April 20, 2009, Omnibus Motion on June 8, 2009, Defendant Randall Camp's (Mr. Camp) Omnibus Pre-Trial Motion was filed June 9, 2009, and Defendant Gerald Fisher's (Fisher) Omnibus Pretrial Motion was filed June 16, 2009. A hearing on all Defendants' Motions was held on July 31, 2009 and October 12, 2009. Following the hearings, Counsel was given an opportunity to brief the issues before the Court, and Defense Counsel and the Commonwealth timely filed their briefs.

Background

On January 8, 2009, Pa. State Police Troopers Tyson Havens (Havens) and Scott Davis (Davis) interviewed Ramon Weaver (Weaver) at his residence pertaining to the cultivation of marijuana inside his residence. During the interview with Havens, Weaver admitted to growing marijuana inside his residence. During a consensual search, the troopers seized 45 marijuana plants. Havens conveyed details of the interview with Weaver to Trooper David Burns (Burns), who then prepared the affidavit of probable cause for a search warrant. During the interview, Weaver admitted purchasing a pound or more increments of marijuana from Fisher at the Camp residence. The affidavit of probable cause reveals that Weaver told the troopers that on January 3, 2009, he went to the Camp residence located at McKee Road in Lycoming Township, Lycoming County, Pennsylvania. While at the residence, Weaver said Fisher brought him into a two story red barn located on the property. Once inside the barn, Fisher showed Weaver a 55 gallon drum with a large amount of marijuana in it. Weaver said the marijuana inside the drum was bagged in two pound increments. Fisher also showed Weaver four bales of marijuana wrapped in plastic secreted in shelves pushed against the wall of the barn. Weaver purchased one pound of marijuana that was taken from the marijuana located in the 55 gallon drum for the price of \$1650.00. Fisher told Weaver he would front him up to five pounds of marijuana if he needed it.

Discussion

Motion to Suppress Physical Evidence

The Defendants Mrs. Camp, Mr. Camp and Fisher argue that the evidence seized as a result of the search warrant should be suppressed. The Defendants contend that the search warrant affidavit failed to establish probable cause to believe that evidence of drugs and/or drug dealing would be found in the Camp/Fisher residence; the warrant authorizing the search of the property was fatally overbroad; the affidavit used to support the search was improper because it contained false and/or material omissions, including, but not limited to, the veracity and reliability of Weaver.

Pa. Const. Art. 1. § 8. provides security from searches and seizures:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

The Defendants contend that the search warrant affidavit lacked probable cause to believe that evidence of drugs and/or drug dealing would be found in the Camp/Fisher residence. “A search warrant indicates that the police have convinced a neutral magistrate upon a showing of probable cause, which is a reasonable belief, based on the surrounding facts and totality of circumstances that an illegal activity is occurring or evidence of a crime is present.”

Commonwealth v. Petroll, 738 A.2d 993 (1999) (citing Commonwealth v. Jones, 668 A.2d 114, 116-117 (1995)). It is clear from the facts of this case, which are stated above, that the search warrant affidavit contained enough information to meet the standard of probable cause.

The Defendants also contend that the search warrant was fatally overbroad. A warrant is unconstitutional for its overbreadth when it "authorizes in clear or specific terms the seizure of an entire set of items, or documents, many of which will prove unrelated to the crime under investigation." Commonwealth v. Berry, 83 Pa. D. & C. 4th 562 (2006) (citing Commonwealth v. Bagley, 596 A.2d 811, 814 (Pa. Super. 1991)). The search warrant specified the description of the premises to be searched as

A two story residence white in color with the physical address of McKee Road, Cogan Station, PA, Lycoming Township, Lycoming County. Located on said property is a wood frame barn, red in color with white trim with the [house] number on the exterior wall. Also to be searched is the surrounding curtilage along with all out buildings and vehicles located on the premises.

Transcripts from the Suppression hearing on October 12, 2009 reveal that Weaver told Havens that he purchased marijuana from Fisher from inside a barn on the residence of Fisher's mother's, Mrs. Camp's, house. This testimony appears to the Court to conform to the language of the search warrant. Furthermore, Defendants allege that the inclusion of "Attachment A, List of Items to be Searched for and Seized" in the search warrant amounts to the inclusion of a boilerplate document that makes the search warrant overly broad. During the Suppression Hearing on July 31, 2009, Defense Counsel questioned Burns about the inclusion of Attachment A in the search warrant. The discussion of Attachment A is as follows:

TROOPER BURNS: In this particular incident I would definitely use that because of what was reported as such a large quantity of drugs at the residence. You know when you do a large case like this you would want financial documents, you would want other things pertained in that attachment.

MR. TRAVIS: But as far as the information that Trooper Havens told you Ramon Weaver gave him, it had nothing to do with record keeping taking place on that piece of property, is that a fair statement?

TROOPER BURNS: I don't believe it would be a fair statement and I'm saying that because with such a large quantity that was reported that was there, you would expect there to be some type of documentation.

It appears to the court that the inclusion of Attachment A in the search warrant did not authorize the search and seizure of any material unrelated to the crime. Therefore, the search warrant was not fatally overbroad.

The Defendants also argue that the affidavit used to support the search was improper because it contained false and/or material omissions, including, but not limited to, the veracity and reliability of Weaver. The court in Franks v. Delaware, 98 S. Ct. 2674, 2676 (1978) allowed the defendant to challenge the affidavit in support of a search warrant,

...where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Burns was the affiant of the affidavit of probable for the search warrant in this case.

Transcripts of the Suppression Hearing on July 31, 2009, reveal that Burns received the information contained in the affidavit of probable cause from Havens. Burns testified that Havens relayed information to him about Weaver, and that that information was provided to Havens during an interview with Weaver. Defense Counsel questioned Burns in regards to discrepancies between his affidavit of probable cause and Havens' report of his interview with Weaver. However, when Weaver testified at the Suppression Hearing on October 12, 2009, his testimony revealed that the information he provided to Havens was

accurately reflected in the information laid out in the affidavit of probable cause authored by Havens. Therefore, it is evident that Burns did not include any false and/or material omissions in the affidavit of probable cause.

The Defendants question the veracity and reliability of Weaver's statements to Havens. The court in Commonwealth v. Ambers, 310 A.2d 347 (Pa. Super 1973) listed four factors for the court to consider when determining the reliability of hearsay from an informant: (1) Did the informant give prior reliable information? (2) Was the informant's story corroborated by any other source? (3) Were the informant's statements a declaration against interest? (4) Does the defendant's reputation support the informant's tip? (citing Commonwealth v. Falk, 290 A. 2d 125 (Pa. Super 1972)). The Ambers Court acknowledged that all of the factors do not need to be met for the court to find hearsay information from an informant reliable. Ambers at 350. Furthermore, the court in United States v. Harris, 91 S. Ct. 2075, 2082 (1971) reasoned why an informant's statements against interest should be found reliable,

Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility -- sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a "break" does not eliminate the residual risk and opprobrium of having admitted criminal conduct.

Weaver's statements were against his interest as the statements revealed that Weaver purchased marijuana from Fisher. Therefore, the Court can reasonably find the information provided by Weaver was reliable. While it is true that Havens told Weaver he would help himself by giving information, the Supreme Court made it clear in Harris that promises of leniency do not remove the consequences of admitting criminal conduct. Id.

Motion for a Bill of Particulars

The Defendants Beth Camp and Randall Camp request that the Commonwealth provide them with a Bill of Particulars.

Pa. R. Crim. P. 572 provides for a Bill of Particulars:

(A) A request for a bill of particulars shall be served in writing by the defendant upon the attorney for the Commonwealth within 7 days following arraignment. The request shall promptly be filed and served as provided in Rule 576.

(B) The request shall set forth the specific particulars sought by the defendant, and the reasons why the particulars are requested.

(C) Upon failure or refusal of the attorney for the Commonwealth to furnish a bill of particulars after service of a request, the defendant may make written motion for relief to the court within 7 days after such failure or refusal. If further particulars are desired after an original bill of particulars has been furnished, a motion therefore may be made to the court within 5 days after the original bill is furnished.

(D) When a motion for relief is made, the court may make such order as it deems necessary in the interests of justice.

“The function of a bill of particulars, rather, is to give notice to the accused of the offenses charged in order to permit him to prepare a defense, avoid surprise, and be placed on notice as to any restrictions upon the Commonwealth's proof.” Commonwealth v. Jones, 586 A.2d 433 (citing Commonwealth v. March, 551 A.2d 232, 235-36 (Pa. Super. 1988), *alloc. den'd* in 568 A.2d 1246 (1989) (Citations omitted)). The Defendants Mrs. Camp and Mr. Camp’s remaining requests in the Bill of Particulars are as follows; (c) whether the alleged possession is alleged to be actual or constructive; (d) specifically how the Defendant’s are alleged to have exercised dominion or control over the marijuana; (e) whether Mrs. Camp is being charged as a principal, aider/abettor, accessory or accomplice; (f) if the Defendant’s are alleged to be accomplices, state in what way they allegedly solicited,

requested, commanded, importuned or intentionally aided another person in the commission of the alleged acts; (g) whether the Commonwealth intends to offer at trial any testimony regarding any observation of Mrs. Camp, either at the time or place of the alleged commission of the offense, or upon some other occasion relevant to the case, to be given by a witness who has previously identified her as such. If so, specify the time, locations, and circumstances of such observations and/or identifications; (h) the exact material facts which allegedly constitute the offense in Count 1, i.e., how Mrs. Camp is alleged to have unlawfully and feloniously possessed with the intent to deliver marijuana; (i) the name and addresses of those persons, if any, to whom Mrs. Camp allegedly intended to sell or deliver marijuana as described in Count 1 and; (j) whether it will be alleged at trial that Mrs. Camp distributed marijuana or possessed with the intent to distribute or both. The Court finds the information requested is necessary to enlighten the accused as to the charges against them and to enable the accused to form their defense. Therefore, the Court grants the Defendant's request for a Bill of Particulars as to (c), (d), (e), (f), (g), (h), (i) and (j).

The Disclosure of Trooper Havens' disciplinary records are discoverable and should be disclosed.

The Defendants Mrs. Camp, Mr. Camp and Fisher add to their original request for criminal histories to include a request for the disclosure of disciplinary records relating to Havens. The Defendants assert that such records are discoverable and should be disclosed. The Court recognizes that "A defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to the guilt of the defendant

or relevant to the punishment to be imposed.” Commonwealth v. Rutledge, (2006 Pa. Dist & Cnty). However, the Court does not believe the disciplinary records of Havens are material to the guilt of the Defendants, nor are the records relevant to any punishment that may be imposed. Havens did interview Weaver in this case, and Weaver’s statements led to the arrest of the Defendants. However, Weaver’s testimony reveals that the information Havens provided to Burns was accurate, as reflected in the search warrant affidavit. As it appears that Havens provided accurate information in this case to Burns, any disciplinary records relating to his duties as a trooper are not relevant here. Therefore, the Defendant’s request for Havens’ disciplinary records is denied.

Petition for Writ of Habeas Corpus

The Defendants Mrs. Camp and Mr. Camp petition the Court for Writ of Habeas Corpus on the ground that the Commonwealth’s evidence at the preliminary hearing was insufficient as a matter of law to establish a prima facie case of the remaining drug-related charges. The Defendants were charged with one count each of Possession with the Intent to Deliver, Possession of a Controlled Substance and Possession of Drug Paraphernalia. It is well settled in this Commonwealth that "a petition for writ of habeas corpus is the proper vehicle for challenging a pre-trial finding that the Commonwealth presented sufficient evidence to establish a *prima facie* case." Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003) (citing Commonwealth v. Kohlie, 811 A.2d at 1013 (Pa. Super. 2002); see Commonwealth v. Hetherington, 311 A.2d 209 (1975); Commonwealth v. Fountain, 811 A.2d 24, 25 n.1 (Pa. Super. 2002); Commonwealth v. Saunders, 691 A.2d 946, 948 (Pa. Super. 1997), *appeal denied*, 705 A.2d 1307 (1997)). “While the weight and credibility of the evidence are not factors at this

stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal.” Commonwealth v. Wojdak, 466 A.2d 991, 997 (1983) (See Commonwealth v. Prado, 393 A.2d 8 (1978); Commonwealth ex rel. Scolio v. Hess, 27 A.2d 705 (Pa. Super. 1942)). The Court believes that the evidence presented at the preliminary hearing on March 4, 2009, before Magisterial District Justice James Sortman, provides sufficient evidence to meet the prima facie standard. The facts specified at the preliminary hearing confirmed that the address of McKee Road in Lycoming Township, Lycoming County, is the residence of Mrs. and Mr. Camp. The evidence further showed that Burns, along with members of the Troop F vice Unit from Montoursville, and two uniformed troopers from Troop F Montoursville, conducted a search of Mrs. Camp and Mr. Camp’s residence on January 9, 2009. At the time of the search, no one else lived at the residence besides Mrs. Camp, Mr. Camp, and their son. Mrs. Camp and Mr. Camp were both present at the time the search warrant was carried out. Upon executing the search, the troopers found in the house of the residence, a bag of marijuana on the person of Mr. Camp, marijuana stored above the refrigerator, marijuana underneath a small mattress in the master bedroom and marijuana in a locked freezer in the basement. The search further revealed, in the barn on the residence, two large bales of marijuana, a bag of marijuana stored inside a 55-gallon drum and a bag of marijuana on a table. The barn also stored scales, rubber bands, packaging material and a vacuum. Burns’ testimony was that all of the paraphernalia found was consistent with packaging and selling marijuana. Burns testified that the marijuana found at the residence tested positive for marijuana and weighed a total of about seventy-two pounds. As Mrs. Camp and Mr. Camp were residents of the property where the marijuana was found, they would have had access to the locations where the marijuana was

stored. In addition, marijuana was found in the bedroom that Mrs. Camp indicated to the troopers searching the residence was her bedroom. Therefore, the Court believes that the circumstantial evidence presented at the preliminary hearing meets the prima facie standard for the charges against Mrs. Camp and Mr. Camp. Therefore, the Defendant's petition for Writ of Habeas Corpus is denied.

ORDER

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

1. As to Defendants Beth Camp, Randall Camp and Gerald Fisher's Motion to Suppress said Motion is hereby DENIED.
2. As to Defendants Beth Camp and Randall Camp's Motion for a Bill of Particulars, said Motion is Hereby GRANTED as to (c), (d), (e), (f), (g), (h), (i) and (j). As to (a) and (b), this Motion is moot as Defense Counsel already received this information through discovery. It is ORDERED and DIRECTED that the Commonwealth must provide the requested information within 14 days of this Order.
3. As to Defendants Beth Camp, Randall Camp and Gerald Fisher'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 in part and DENIED in part. It is ORDERED and DIRECTED that the Commonwealth is to provide to Defense Counsel the criminal history of witnesses and any benefit provided to the witnesses to the extent it complies with Brady; The Court denies the Defendant's request

for disciplinary records relating to Trooper Havens, these records will not be provided to the Defense as the Court determines the information is not relevant in this case. It is ORDERED and DIRECTED that the Commonwealth must provide the requested information within 14 days of this Order.

4. As to Defendants Beth Camp, Randall Camp and Gerald Fisher's Motion for Disclosure of Other Crimes, Wrongs or Acts pursuant to Pa. R. E. 404(b), said Motion is hereby GRANTED. It is ORDERED and DIRECTED that the Commonwealth must provide the requested information within 14 days of this Order.
5. As to Defendants Beth Camp and Randall Camp's Petition for a Writ of Habeas Corpus, said Motion is hereby DENIED.
6. The Defendants Beth Camp, Randall Camp and Gerald Fisher's Reserve the Right to file any additional pre-trial motions pursuant to Rule 579 of the Pennsylvania Rules of Criminal Procedure. The Court will rule on any such motions should they arise in the future.

By the Court,

Nancy L. Butts, P.J.

xc: Melissa Kalas, Esq.
Edward J. Rymzsa, Esq.
Peter Campana, Esq.
Ronald Travis, Esq.
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)