

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
:
v. : **CR-816-2011**
:
DANIEL BALLIET, : **CRIMINAL DIVISION**
Defendant :
:

OPINION AND ORDER

The Defendant filed a Motion to Suppress on July 26, 2011. The Court heard argument from both parties on the Motion to Suppress on September 1, 2011, during which both parties relied on the four corners of the search warrant application to support their respective positions: the Commonwealth asserting that the affidavit did contain probable cause, Defense Counsel that the affidavit lacked probable cause.

Background

Information contained in the Affidavit of Probable Cause provides that on August 18, 2007, Daniel Balliet (Defendant) and Rocky Statts (Statts) went to Norfolk Southern Railroad Crossings in Clinton Township, Lycoming County, PA with equipment to cut the number 9 copper wire located on poles along the railroad. The affidavit states that the Defendant and Statts used a weighted rope to string over the wires to pull them down and then proceeded to cut the wires, which sent a signal to Norfolk Southern. The Defendant and Balliet then rolled the wires into coiled bundles and bagged them in large military style duffle bags. By the time the individuals had cut about 10 poles, a Norfolk Southern

maintenance employee arrived at the scene and discovered the event in progress, at which time the Defendant and Balliet fled the scene. The Pennsylvania State Police (PSP) were advised of the incident and Troopers Mathew McDermott and Richard Holz responded to the scene at approximately 3:03 a.m., where they discovered two army duffle bags filled with cut and coiled wire, one camouflage rucksack, and four bundles of coiled wire not bagged, all located at the 2nd pole north of Bishop Lane. The troopers also observed “Wiss” wire cutters on top of the utility box, four bundles of coiled cut wire, and a desert style camouflage “Kelty” backpack with frame. Inside the backpack were a pair of work gloves, two 1 gallon containers of Turkey Hill brand iced tea, a Sony Ericksson 2550a cell phone with the number of (570) 777-1736, said number belonging to Statts, a black “O’Neal” zipper duffle bag, and an OD green military duffle bag with cut coiled wire in it. The troopers also discovered two cigarette butts on the ground next to one of the containers of iced tea, along with several packaging type duffle bags, and they observed a yellow, frayed, nylon rope which was strung over the copper wires between the 2nd and 3rd poles on Bishop Lane.

On September 8, 2007, Trooper Jennifer Jackson (Jackson) of the PSP spoke with a confidential informant at PSP Montoursville who advised Jackson that he/she was told by Statts on a couple of occasions that he and another individual were stealing copper wire from the railroad tracks in Clinton Township, Lycoming County, for some extra cash. On November 1, 2007, Jackson spoke with Sue Carter (Carter), an employee with Penn Recycling Incorporated (PRI), located at 2525 Trenton Avenue in Williamsport. Carter checked the company’s computer system and informed Jackson that on May 11, 2007, the Defendant sold PRI 464lbs of number 9 copper wire, valued at approximately \$1,206.40; on May 22, 2007, the Defendant sold PRI 778lbs of number 9 copper wire valued at

approximately \$1,945.00; on June 12, 2007, the Defendant sold PRI 670lbs of number 9 copper wire valued at approximately \$1,675.00; on June 21, 2007, the Defendant sold PRI 286lbs of number 9 copper wire valued at approximately \$715.00; on July 2, 2007, the Defendant sold PRI 122lbs of number 9 copper wire valued at approximately \$305.00; and on August 7, 2007, the Defendant sold PRI 302lbs of number 9 copper wire valued at approximately \$755.00. In total, the Defendant sold PRI copper wire valued at \$6,601.40. Carter relayed to Jackson that each time the Defendant sold copper wire to PRI, the Defendant presented her with his PA Driver's License number 16 240 620.

Jackson submitted the two cigarette butts, the two Turkey Hill green tea containers, and the work gloves recovered from the scene to the PSP Wyoming Laboratory for DNA analysis. Jackson also obtained a search warrant for Statts' DNA for analysis. Statts' DNA was found in the left work glove and on one of the green tea containers. The DNA found on the two cigarette butts and the DNA on the other green tea container were not identified, and the Affidavit of Probable Cause requested a warrant to obtain DNA from the Defendant in order for the PSP to compare the unidentified DNA with that of the Defendant. Jackson executed the search warrant and collected a sample of DNA from the Defendant which was then used to determine whether items found at the scene of the crime contained DNA matching the Defendant.

In his Motion to Suppress, the Defendant admits that he has not yet received a copy of the report, but that he was advised that at trial the Commonwealth intends to rely upon expert testimony based upon the analysis of the DNA seized from the Defendant's person. The Defendant was charged with Theft By Unlawful Taking, Receiving Stolen Property, Criminal Mischief, Risking Catastrophe and Recklessly Endangering Another Person.

Discussion

The Defendant contends that the evidence of his DNA and any fruits thereof should be suppressed as the search warrant that led to the seizure of the DNA was issued absent probable cause.

Article I, Section 8 of the Pennsylvania Constitution was drafted to protect persons from unreasonable searches and seizures conducted pursuant to general warrants. Commonwealth v. Castillo, 18 Pa. D. & C.5th 57 (Pa. D. & C.5th 2010). (See Commonwealth v. Edmunds, 586 A.2d 887, 896-97 (Pa. 1991)). “The linch-pin [sic] that has been developed to determine whether it is appropriate to issue a search warrant is the test of probable cause.” Castillo at 64. (quoting Edmunds at 899. “Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted.” Castillo at 64. (quoting Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010). “Probable cause is determined based on the totality of the circumstances and such ‘determinations must be based on common sense non-technical analysis.’” Castillo at 64. (See Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985)). “The determination of probable cause must be based on facts described within the four corners of the supporting affidavit.” Castillo at 64. (quoting Commonwealth v. Way, 492 A.2d 1151, 1154 (Pa. Super. 1985).

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, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the

duty of a reviewing court is simply to ensure that the magistrate had a ‘substantial basis ...for conclud[ing] that probable cause existed.’

Castillo at 65. (quoting Gray at 925).

This Court finds that the information contained within the four corners of the affidavit for the search warrant did provide the magistrate with sufficient probable cause to issue the warrant. The affidavit provided information that a theft of number 9 copper wire from the Norfolk Southern Railroad Crossings occurred, and that the Defendant and Statts were most likely the perpetrators of the crime. After being informed of the theft, the police went to the scene of the crime where they observed evidence indicating that individuals were cutting and coiling wire from Norfolk Southern. DNA evidence taken from the scene indicated that Statts and another unidentified individual were involved in the theft. The police also obtained information from PRI that the Defendant sold number 9 copper wire to the company on six (6) separate occasions for a profit of over six thousand dollars. The Court finds the affidavit provided more than sufficient information to conclude there was a fair probability that evidence of a crime would be found by issuing the warrant for the Defendant’s DNA. Therefore, the Court finds the Defendant’s argument to be without merit and the Motion to Suppress shall be denied.

ORDER

AND NOW, this ____ day of September, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: Aaron Biichle, Esq.
Peter T. Campana, Esq.