

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-866-2011
vs. :
:
SHACCOOR TRAPP, :
Defendant : Motion to Suppress

OPINION AND ORDER

By Information filed on July 21, 2011, Defendant is charged with attempted homicide, aggravated assault by causing or attempting to cause serious bodily injury, aggravated assault by causing bodily injury with a deadly weapon, burglary, criminal trespass, person not to possess a firearm, possession of an instrument of crime, recklessly endangering another person, and simple assault.

On May 29, 2011 during the early morning hours, Defendant is alleged to have illegally entered 606 Maple Street and assaulted a 23 year old female in an upstairs bedroom by shooting, stabbing and choking her.

Jury Selection is set for the week of May 21, 2012

Before the Court is a Motion to Suppress filed on April 13, 2012 related to a search that was conducted at Defendant's residence located at 610 Maple Street. Defendant alleges that the search warrant that was issued was not based on probable cause and that the Affidavit of Probable Cause supporting it contained material misrepresentations and material omissions.

A hearing and argument were held on Friday, May 18, 2012. The parties stipulated to the admission of various police reports and argued their respective positions.

A warrant to search a residence must be based on probable cause.

Commonwealth v. Bonasorte, 337 Pa. Super. 332, 486 A.2d 1361, 1368 (1984). Probable cause is present 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.” Bonasorte, supra., quoting Commonwealth v. Thomas, 448 Pa. 42, 52, 292 A.2d 352, 357 (1972).

Whether probable cause exists for the issuance of the search warrant must be answered according to the “totality of the circumstances” test. Commonwealth v. Huntington, 924 A.2d 1252, 1255 (Pa. Super. 2007), citing Commonwealth v. Gray, 509 Pa. 476, 503 A.2d 921 (1985). The issuing authority must make a practical, common sense assessment of whether, given all the circumstances set forth in the affidavit, a fair probability exists that contraband or evidence of a crime will be found in a particular place. Huntington, supra., citing Commonwealth v. Murphy, 916 A.2d 697, 681-682 (Pa. Super. 2007).

A search warrant, however, is defective if the issuing authority has not been supplied with necessary information. Huntington, supra. Where an omission is the basis for a challenge to an affidavit for a warrant, the Court must inquire first, whether the officer withheld a highly relevant fact within his knowledge where any reasonable person would have known that his is the kind of thing the judge would wish to know, and second whether the affidavit would have provided probable cause if it had contained a disclosure of the omitted information. Commonwealth v. Taylor, 850 A.2d 684, 689 (Pa. Super. 2004).

Defendant asserts that the affiant omitted information that when the victim

was first interviewed she did not know the person who had entered her home, she did not know who committed the assault on her, that it was the victim's daughter that said the attacker was a dark black male and that it was only after the victim looked at a Facebook picture that she recognized who "did this to her."

While police officers should not be required to relate the entire history of the events leading up to a warrant application, they cannot make unilateral decisions about the materiality of information and merely inform the issuing authority of inculpatory evidence. Taylor, 850 A.2d at 688, citing Wilson v. Russo, 212 F.3d 781, 787-788 (3rd Cir. N.J. 2000). Clearly, this information was highly relevant in that it evidences the victim's lack of any knowledge whatsoever of the identity of the person who attacked her. This information is especially relevant in light of the fact that it was communicated to law enforcement officials shortly after the attack. This information is certainly the "kind of thing" that an issuing authority would wish to know.

While the omitted information was highly relevant, it does not contravene the fact that, subsequent to her initial statements and upon further reflection, the victim recalled other specifics including the familiarity of her attacker. Including the omitted information would not change these facts. The affidavit on its face would still meet the required showing of a mere probability that evidence of a crime would be discovered in Defendant's residence. A "common sense" determination of all of the facts clearly supports this conclusion.

The Court easily concludes, however, that the affidavit would have provided

probable cause even if it had contained the omitted information.

Defendant next argues that the search warrant should be invalidated because of misstatements of fact. Specifically, Defendant argues that the affiant misstated in the affidavit that the victim stated the following:

“The room was lit only by the television, she saw that the male was black, the male was wearing a light colored (light or grey) hooded sweatshirt and the male looked vaguely familiar to her.”

Misstatements of fact will invalidate a search and require a suppression only if they are deliberate and material. Commonwealth v. Bonasorte, 337 Pa. Super. 332, 486 A.2d 1361, 1369 (1984); Commonwealth v. Tucker, 252 Pa. Super. 594, 384 A.2d 938, 941 (1978). A material fact is one without which probable cause to search would not exist. Commonwealth v. Jones, 229 Pa. Super. 224, 323 A.2d 879, 881 (1974).

The Court will deal with each alleged misrepresentation separately. There is no evidence whatsoever that the victim ever stated that the room was lit only by a television. Indeed, on May 29, 2011 shortly after the incident occurred, the victim stated that the room was dark. Commonwealth Exhibit 4. The only information relating to the room being lit by a television is when Officer Smith saw, during his initial investigation, that the “TV was on” in the room. Commonwealth Exhibit 5. There is, however, no evidence to suggest that this misstatement was deliberate or intended to mislead. Furthermore, under all of the circumstances, the Court cannot conclude that it is material. While the Defendant said the room was dark, clearly the television was on when the assault occurred. It could certainly be

inferred that the room was lit only by the television. The misstatement in the affidavit was at best a minor discrepancy. See, for example, Jones, supra.

Technically, the victim also never stated that the male who attacked her was “black.” Initially, she indicated that she was unable to describe the person and stated that she could not provide the race of the attacker. Commonwealth Exhibit 4. On the other hand, the alleged victim’s daughter informed the police that the attacker was a dark black male, see Commonwealth Exhibit 9, and the alleged victim subsequently told her mother prior to the application for a search warrant that the assailant was “dark skinned.” Commonwealth Exhibit 10.

The Court cannot conclude that the statement was a misstatement or that it was deliberate. While certainly material, prior to the issuance of the application, the alleged victim did tell her mother that the assailant was dark skinned. This is, for all practical purposes, no different than the alleged victim stating that the male was “black.”

Moreover, coupled with the statements from the alleged victim’s daughter, the race of the assailant was at the very least probable and accordingly, the search warrant would have issued.

While, initially, the alleged victim stated that she was unable to describe the person who attacked her and could not provide a description of the clothing he was wearing (Commonwealth Exhibit 4), she subsequently stated that the assailant was wearing a light-colored, hooded sweatshirt, either grey or white. Commonwealth Exhibit 10. In her handwritten notes, however, she noted that the Defendant had a hoodie, which was white or

grey. Commonwealth Exhibit 1. Accordingly, it was clearly not a misstatement for the affiant to note that the victim stated that the assailant was wearing a light colored (white or grey) hooded sweatshirt.

While Defendant raises issues which on their face may appear to have some merit, his argument failed to pass muster in light of the controlling case law. Such case law recognizes that: “[Search warrants] are normally drafted by nonlawyers in the midst of haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area.” Jones, 323 A.2d at 882, citing United States v. Ventresca 380 U.S. 102, 108 (1965).

In looking at the totality of the circumstances and conceding that the affidavit of probable cause could have been more particularly drafted, the Court cannot conclude that any misstatements of fact were deliberate or material. As well, the Court cannot conclude that any omissions involved either highly relevant facts within the affiant’s knowledge or if the omission had been included in the affidavit such would have impacted the probable cause determination.

The Commonwealth has established the validity of the search warrant under the circumstances and, accordingly, Defendant’s Motion will be denied.

ORDER

AND NOW, this 21st day of May 2012, following a hearing and argument,

Defendant's Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: CA
A. Melissa Kalaus, Esquire (ADA)
Nicole Ippolito, Esquire (APD)
Work File
Gary Weber, Esquire