

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

**COMMONWEALTH**

v.

**BRIAN WILLIAMS,  
Defendant**

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**CR: 1391-2011, 1432-2011  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Suppress Evidence on February 16, 2012. After an initial continuance request by Defense Counsel, a hearing on the motion was held June 15, 2012.

***Background***

On September 27, 2011, the Williamsport Bureau of Police (WBP) received information about Brian Williams (Defendant) from a confidential informant. The informant told police that the Defendant was in possession of two (2) handguns and a large amount of marijuana, which were located in the Defendant's bedroom. The Defendant had two prior convictions for Possession with Intent to Deliver and Criminal Conspiracy, which would have made it illegal for him to possess a firearm.

On the same day, a search warrant was sought for the Defendant. Officer Tom Bortz (Bortz) of the WBP maintained surveillance on the Defendant's residence while the search warrant was pending. Bortz kept Defendant's residence under surveillance to learn whether there would be any children or women in the apartment when the search warrant would be executed. While Bortz was observing the residence he saw the Defendant exit the apartment and appear to hide something in a white Hyundai sedan before returning to the residence. Bortz's location was in close proximity to the Defendant so he was able to confirm his identity.

Afterwards, the Defendant, Melissa Saldivar (Saldivar), and a small child exited the residence and entered the vehicle. The Defendant was the operator of the vehicle. A few minutes after the vehicle left the premises, Bortz received word on the radio that the search warrant was issued. Shortly thereafter, the Defendant's vehicle was stopped by police and the vehicle was transported to the Williamsport Bureau of Police's impound lot.

Four search warrants were executed on the Defendant's property and all are the subject of Defendant's Motion to Suppress. The first search warrant was for the Defendant's apartment located above 631 Washington Boulevard. The warrant was signed by Magisterial District Judge (MDJ) Allen Page III and although it stated the time within which the warrant needed to be served, the time that the warrant was issued was left blank. The warrant stated that:

On this date, your affiant received information from a confidential informant deemed to be reliable. The informant stated that BRIAN WILLIAMS Jr. [d.o.b. 12/05/1977,] . . . is currently in possession of 2 handguns [one being a .45 automatic and the other a large caliber single shot pistol] and that they are currently locked in a black safe located in his bedroom. The informant also stated that WILLIAMS is also in possession of a large amount of marijuana located in a black shoebox.

In addition, the warrant stated that the informant saw the Defendant in possession of the marijuana within the past twenty-four (24) hours and that he was also packaging and selling the marijuana to persons out of the residence. Further, the informant stated that the Defendant shared the apartment with Saldivar and that the other residents at the apartment were minors. The warrant did not state by name who the informant was or how the informant was associated with the Defendant. After this warrant was executed, members of the WBP located the following items within Defendant's apartment: a shoebox containing eleven (11) small ziplock baggies of marijuana inside of a larger sandwich distribution bag; a pack of sandwich baggies; a large plastic container with a small amount of loose marijuana located within; a black electronic

scale; a separate small ziplock baggie of marijuana; a marijuana grinder; and fourteen (14) .40 caliber pistol cartridges.

Shortly after the execution of the first warrant, a second warrant was requested for the Defendant's vehicle. In this warrant the police identified the confidential informant as the Defendant's fifteen (15) year old son.<sup>1</sup> In addition to the information in the first warrant, the second warrant stated that Bortz saw the Defendant "stashing something" within the vehicle. Further, the warrant stated that a search of Defendant's residence found many objects that corroborated the information provided by the informant including gun ammunition. This warrant was issued on September 28, 2011 and produced no contraband in the vehicle. At the time of the motor vehicle stop, the Defendant had a cigar on his person that was determined to have had marijuana in it.

On September 28, 2011, the WBP requested a third search warrant to now search the Defendant's storage unit for any weapons or contraband which may be located inside. The warrant restated much of the information that was found in the first two search warrants. This warrant, however, stated that the informant contacted police again and told the police that Defendant rents a storage unit in the area of Penn Street just south of Washington Boulevard and visits it periodically. The only storage unit found in the area is located at Dincher's Auto Body. Police confirmed that the Defendant rented Unit #24. The search warrant was authorized by MDJ Page and a Sentry safe was found within the storage unit.

On the same day, after executing search warrant number three on the storage unit, and discovering a safe, the WBP sought a fourth search warrant for the police to gain access to the contents of the safe and any potential forensic evidence both inside and outside of the safe. The

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<sup>1</sup> Only the first warrant did not disclose the identity of the fifteen (15) year old son and treated him as a confidential informant. All subsequent Affidavits of Probable Cause identified the fifteen (15) year old son as the informant.

information contained in this search warrant was consistent with that found in the previous search warrants and associated affidavit of probable cause. Search warrant number four also contained information about the safe itself including the fact that when the safe was lifted to secure it, it was determined that the contents of the safe were consistent with a “sizable object.” After the search warrant was issued the contents of the safe included two guns, ammunition, and marijuana seeds.

As a result of the items discovered by police, the Defendant was charged under docket number 1391-2011 with Person Not to Possess Firearms (two counts), Possession of Firearm with Altered Manufacturing Number, and Possession of Drug Paraphernalia. Under docket number 1432-2011 the Defendant was charged with Possession with Intent to Deliver, Possession of a Controlled Substance, and Possession of drug Paraphernalia. On February 16, 2012, the Defendant filed a Motion to Suppress Nunc Pro Tunc. The Defendant raises six (6) issues challenging in some way the validity of each warrant, which include: 1) there was no time listed on the first search warrant; 2) the first search warrant was improper because it did not include any information on the reliability of the informant; 3) the search warrant for the motor vehicle search did not have probable cause; 4) there was no probable cause for the search warrant on the storage unit because the informant did not specifically state that there was a gun located in the unit; 5) the search warrant for the safe did not have probable cause; and 6) the WBP engaged in a “fishing” expedition in the execution of the search warrants.

*Motion to Suppress*

*The first search warrant was improper because it did not include any information on the reliability of the informant*

The Defendant alleges that the first search warrant was not valid because it did not include any information on the reliability of the confidential informant. A magistrate's finding of probable cause must be based on facts described within the four corners of the affidavit. Commonwealth v. Stamps, 427 A.2d 141, 143 (Pa. 1981). The standard for evaluating whether probable cause exists for the issuance of a search warrant is the "totality of the circumstances" test. Illinois v. Gates, 462 U.S. 213 (1983); Commonwealth v. Gray, 503 A.2d 921 (1985) (adopting the ruling of Gates to be applied within the Commonwealth of Pennsylvania). In a brief summary:

The linch-pin that has been developed to determine whether it is appropriate to issue a search warrant is the test of probable cause. Probable cause exists where the facts and circumstances within an 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.

Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010).

A determination of probable cause based upon information received from a confidential informant depends upon the informant's reliability and basis of knowledge viewed in a common sense, non-technical manner. Commonwealth v. Luv, 735 A.2d 87, 90 (Pa. 1999). An informant's tip may constitute probable cause where police independently corroborate the tip, or where the informant has provided accurate information of criminal activity in the past, or where the informant himself participated in the criminal activity. Id. Moreover, reliability of the informant will be more credible if the defendant's reputation supports the informant's tip. Commonwealth v. Gindlesperger, 706 A.2d 1216, 1225 (Pa. Super. 1997).

The Pennsylvania Supreme Court has stated in the case In the Interest of O.A., that “we do not believe that an assertion by a police officer as to an informant’s reliability with no objective facts to substantiate this assertion is sufficient to support a finding of probable cause.” In the Interest of O.A., 717 A.2d 490, 496 (Pa. 1997). The Court stated that if the reliability of the informant was not established, then the facts and circumstances surrounding the tip must provides sufficient indicia of reliability to support a finding of probable cause.<sup>2</sup>

In Smith, a trooper provided no information to support that a confidential informant was reliable. Commonwealth v. Smith, 784 A.2d 182, 187 (Pa. Super. 2001). There was no information on the informant’s history or where the informant obtained their information. Id. Further, there was no indication that the informant was used in the past. Finding that the reliability of the informant was not established the court then reviewed the facts and circumstances surrounding the tip to see if it provided sufficient indicia of reliability. Id. The court found that the police did not corroborate the informant’s tip adequately and that in fact some of the tip was proven incorrect. Id.

As in this case, the Affidavit of Probable Cause did not provide any information upon which the issuing authority could find the confidential informant was reliable. The Affidavit stated that “On this date, your affiant received information from a confidential informant deemed to be reliable.” There was not a single word on the informant’s history, how the informant

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<sup>2</sup> The Pennsylvania Supreme Court stated:

When police are relying on an informant’s tip, it is important that the tip provide information that demonstrates inside information, a special familiarity with the defendant’s affairs. If the tip provides inside information, then police corroboration of this inside information can impart additional reliability to the tip. If the facts that are supplied by the tip itself are no more than those easily obtained, then the fact that the police corroborated them is of no moment. It is only where the facts provide inside information, which represent a special familiarity with the defendant’s affairs, that police corroboration of the information imparts indicial of reliability to the tip to support a finding of probable cause. In the Interest of O.A., 717 A.2d 490 (Pa. 1997) (citations omitted).

obtained the information, or if the informant was used in the past. As there is no information to determine the reliability of the informant this Court must look at the facts and circumstances of the tip to see if there is, within the four corners of the document, sufficient indicia of reliability.

Upon review, this Court finds the Affidavit of Probable Cause does not sufficiently disclose the facts and circumstances of the informant's tip to create the required indicia of reliability for the first search warrant. While corroboration of the details of an informant's tip by independent police work, a history of an informant providing accurate information, and an informant actually participating in the criminal activity can provide reliability, there is none disclosed in this case. See Commonwealth v. Wilkinson, 647 A.2d 583 (Pa. Super. 1994) (determining that the police did not corroborate any of the information by the informant and therefore there was no probable cause); Commonwealth v. Lechner, 685 A.2d 1014 (Pa. Super. 1996) (finding that no probable cause when police failed to corroborate informant's tip). Bortz was doing surveillance on the Defendant but only while the first search warrant was already pending. There is no indication in the supporting affidavit that the police attempted to corroborate the confidential informant's tip. The informant's tip included that the Defendant was selling marijuana to persons out of his residence. The Police, however, gave no indication that independent surveillance corroborated the statement. This Court has no choice but to find that the first search warrant on Defendant's residence lacked the required probable cause.

***The search warrant for the motor vehicle search did not have probable cause***

The Defendant argues that the second search warrant for the motor vehicle also did not have probable cause. In the Affidavit of Probable Cause attached to this warrant, police now disclose for the first time that the confidential information is actually the fifteen (15) year old son of the Defendant. The Affidavit also relies on the information found through the execution of

the first search warrant, which this Court has determined to be lacking in probable cause. Further, the evidence that the informant said would be there in the first search warrant was not found upon the execution of that warrant. The informant said that the Defendant was in possession of two (2) handguns located in a black safe in his bedroom and a large amount of marijuana located in a black shoebox. Police, however, did not locate any of the items that the informant described, only ammunition and a small amount of marijuana. The items found were not consistent with the information provided by the informant's tip, thereby undermining the reliability of the informant.

The relevant part of the Affidavit of Probable Cause for the search warrant on the Defendant's vehicle states:

While officers were obtaining the warrant to search the premises, P.O. Bortz was conducting surveillance of the WILLIAMS' residence located at 633 Washington Blvd. P.O. Bortz stated that at approx. 1120 hrs he observed WILLIAMS leave the residence and enter a white Hyundai sedan [Pa# HSM-5305] parked out front. P.O. Bortz said that he watched as WILLIAMS sit in the passenger seat, moved furtively about the car "as if stashing something," then re-entered the apartment. At approx. 1200 hrs WILLIAMS, SALDIVAR and a small child got into the sedan, and WILLIAMS drove from the scene. Officers conducted a stop on that vehicle shortly thereafter in the 600 block of Market St. P.O. Bortz stated that from the time he began to observe the vehicle until the traffic stop no persons other than WILLIAMS and SALDIVAR had entered or exited the vehicle.

Basically Bortz saw the Defendant act as if he was "stashing something." There is no indication what was being "stashed." Bortz saw the Defendant leave the residence but did not indicate if the Defendant was carrying anything with him and if it was consistent with any illegal objects. Shortly after the Defendant appeared to be stashing something, the Defendant, Saldivar, and a small child got into the vehicle. It appears that a possible and arguably likely explanation for the Defendant moving objects within his car was to make room for passengers since the informant never said there was any contraband. The police also did not state any articulable information

that the Defendant possessed/kept illegal objects in the vehicle. As a result, this Court must find that the second search warrant on the Defendant's vehicle did not have probable cause.

In anticipation of the invalidity of the second search warrant, the Commonwealth argues that the Defendant's vehicle search would still be valid as a search pursuant to a lawful motor vehicle stop. Under Pennsylvania law, a vehicle stop requires reasonable suspicion to believe it was engaged in violation of the law. Commonwealth v. Feczko, 10 A.3d 1285, 1288 (Pa. Super. 2010). The police officer must be able to point to specific and articulable facts which taken together with rational inferences from those facts reasonably warranted the intrusion. Police may also make an investigative stop of a vehicle if, based upon objective facts, there is reasonable suspicion that the detained motorist is presently involved in criminal activity.

Here, the police only saw the Defendant "stashing something" in his vehicle. As there is no indication by anyone that the object was illegal and the Commonwealth cannot supply this Court with articulable facts to support reasonable suspicion to stop the vehicle, the Court must find that the stop of the vehicle was not lawful, and therefore the search of the vehicle and Defendant were not incidental to a lawful motor vehicle stop.

***There was no probable cause for the search warrant on the storage unit because the informant did not specifically state that there was a gun located in the unit***

The Defendant contends that the police additionally failed to establish probable cause for a search warrant of the storage unit because there was no information possessed by the police that a gun would be located in the storage unit. In Wallace, an informant stated that a man named "Greg" made cocaine and sold it from his car. Commonwealth v. Wallace, 42 A.3d 1040 (Pa. 2012). The court noted that there was no allegation that "Greg" was using his home for selling or storing drugs. There was nothing in the "affidavit which would establish any nexus

between Appellant's house and the sale or storage of drugs." Id. see also Commonwealth v. Heyward, 375 A.2d 191, 192 (Pa. Super. 1977) (finding that there was insufficient information to justify search a defendant's apartment based off of crimes that took place in two automobiles); Commonwealth v. Kline, 335 A.2d 361, 364 (Pa. Super. 1975) ("Probable cause to believe that a man has committed a crime on the street does not necessarily give rise to probable cause to search his home"); Commonwealth v. Clark, 28 A.3d 1284 (Pa. 2011) (upholding a search warrant of a home when a defendant leaves his home, conducts an illegal transaction and then immediately returns to his home).

The relevant part of the third Affidavit of Probable Cause states that:

On the evening of 9/27/2011 your affiant was again contacted by the source and was informed that WILLIAMS rents a secure storage unit located in the area of Penn St just south of Washington Blvd and does visit it periodically. This affiant knows that storage units at Dincher's Auto Body at 404 E. Fourth St. are the only ones in that area. This affiant contacted the business and confirmed that WILLIAMS does currently rent Unit #24.

The Affidavit does not state any reason to believe that any criminal conduct has taken place at the storage unit. The Court can find no justification to search the storage unit for evidence of a crime. Therefore, the Court finds there was no probable cause to conclude that a gun or any drugs would have been found at the Defendant's storage unit.

***The search warrant for the safe did not have probable cause***

When the police searched the storage unit with the third warrant, they found a safe.

Without alleging any information that evidence of criminal activity would be found inside the safe within the Affidavit of Probable Cause, a fourth search warrant was obtained by the police. This Court can find no testimony or evidence to support the issuance of the search warrant for the contents of the safe as well.

**ORDER**

AND NOW, this \_\_\_\_\_ day of August, 2012, after a hearing and based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby GRANTED. The Court finds that the four search warrants against the Defendant's residence, vehicle, storage unit, and safe did not have probable cause and were invalid. Further, the police did not have articulable facts to support reasonable suspicion to stop the vehicle. Accordingly, it is ORDERED and DIRECTED that all of the items seized by police after execution of the warrants, as well as anything discovered from the stop of the vehicle, are hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)  
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