

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT A. TUCK,
Defendant

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CR: 283-2013; 284-2013
CRIMINAL DIVISION

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on April 25, 2013. A hearing on the motion was held on July 18, 2013.

Background

On January 16, 2013, Trooper Mitchell McMunn (McMunn) of the Pennsylvania State Police (PSP) did surveillance on a controlled buy involving an informant and Robert Tuck (Defendant). Subsequently, on February 4, 2013, the informant set up another controlled buy with the Defendant. McMunn observed text messages between the informant and the Defendant, which established that the buy would occur near a yellow house on Park Avenue in Williamsport. The informant was searched prior to the controlled buy and given money to be used in the purchase, which had been photocopied and recorded by PSP.

McMunn drove the informant to the location of the controlled buy and observed him enter the Defendant's van near the intersection of Maple Street and Park Avenue. McMunn lost sight of the vehicle when it turned east on Memorial Avenue. Other PSP officers, however, continued to do surveillance on the vehicle. The informant was dropped off by the Defendant and he began walking back to McMunn's vehicle. McMunn picked up the informant, who handed over cocaine he purchased from the Defendant.

The Defendant's vehicle was then stopped by PSP and he was taken into custody. Due to the public location of the vehicle and the amount of time it would take to get a search warrant, PSP seized and towed the vehicle to the Montoursville impound lot. PSP conducted an inventory search of the Defendant's vehicle before a search warrant was issued.

The Defendant was charged with various drug related offenses, including Possession with Intent to Deliver, Delivery of a Controlled Substance, and Criminal Use of a Communication Facility. The Defendant has alleged that the seizure of the vehicle was done unlawfully prior to the warrant being granted. In addition, the Defendant contends that the search warrant was obtained utilizing false and/or misleading information in the Affidavit of Probable Cause.

Motion to Suppress

a. Whether the Defendant's vehicle was improperly seized prior to the issuance of a search warrant

The Defendant contends that police improperly seized his vehicle while they waited for a search warrant to be issued. Generally, a search warrant is required before police may conduct any search or seizure. Commonwealth v. White, 669 A.2d 896, 900 (Pa. 1995). The Pennsylvania Supreme Court, however, has determined that the requirement of a search warrant for vehicles may be excused under exigent circumstances. Commonwealth v. Holzer, 389 A.2d 101, 103 (Pa. 1978). This is because one's expectation of privacy with respect to an automobile is significantly less than one's home. Id. In addition, vehicles are mobile and there is a likelihood that the contents of the vehicle may never be found if the vehicle is not stopped until a warrant can be obtained. Id. Consequently, the Pennsylvania Supreme Court has stated that:

It is reasonable, therefore, for constitutional purposes, for police to seize and hold a car until a search warrant can be obtained, where the seizure occurs after the user or owner has been placed into custody, where the vehicle is located on public property and where

there exists probable cause to believe that evidence of the commission of a crime will be obtained from the vehicle.

Id. at 103-04.

In Griffin, a defendant was arrested based on an arrest warrant for impersonating a police officer. Commonwealth v. Griffin, 24 A.3d 1037 (Pa. Super. 2011). After the defendant was arrested, police towed his vehicle from a public parking lot to police headquarters while they waited for a search warrant. A search warrant was subsequently issued and a search resulted in incriminating evidence against the defendant. The Superior Court of Pennsylvania followed the decision in Holzer and found that the seizure of the vehicle was lawful. The vehicle was seized and towed after the defendant was placed into custody, the vehicle was taken to a secured area, and the vehicle was seized while a search warrant was obtained.

Here, the Court does not find any issue in regards to the vehicle being seized and towed to PSP's lot in Montoursville. The vehicle in question was parked on a public street, in a neighborhood with a reputation for criminal activity, and would have required two officers to supervise the vehicle for over twenty-four (24) hours while the search warrant was being obtained. Further, the Defendant had been taken into custody and PSP had probable cause to believe that evidence of his crimes would be obtained in the vehicle. The recorded money given to the informant was not found on the Defendant and would have likely been in the vehicle used in the commission of the crime. Therefore, the Court finds that PSP legally seized and towed the vehicle while a search warrant was being obtained.

b. Whether the search warrant was invalid.

The Defendant has alleged that that the search warrant of the Defendant's vehicle had false and/or misleading information and therefore the search was done without a valid warrant.

When determining whether there is probable cause for the issuance of a search warrant a court is to evaluate the totality of the circumstances. “[T]he test of an issuing authority is ‘simply to make a practical, common-sense decision whether, given all of 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.’” Commonwealth v. Smith, 784 A.2d 182, 187 (Pa. Super. 2001) (citing Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985)).

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).

Here, the Defendant calls into question the portion of the search warrant that discusses the reliability of the informant:

The Confidential Informant (CI) utilized in this case has proven his/her reliability in cooperation with PA State Police investigations since December 2012. During this investigation the CI has provided the PA State Police with information about an individual know to the CI as Robert Alfred TUCK A.K.A. “Uncle Buck” a black male, dob 08/07/65 selling cocaine from his vehicle, a silver Chevrolet Uplander bearing PA registration JBV-3797. Information provided by the CI has also been [corroborated] through other intelligence sources, additional confidential informants and surveillance conducted by members of the PA State Police.

Defense counsel alleges that the search warrant improperly used “reliability” and that the word legally means that the informant has led to past convictions. Because the informant’s use has not

yet resulted in convictions, defense counsel has alleged that PSP has placed false and/or misleading information in the search warrant.

First, the Court disagrees that the search warrant was misleading or false. While there may be many definitions for “reliability,” the usage by PSP is well within the common meaning. Further, PSP actually defined their definition of “reliability” by stating their reasoning for using the word. This is not an example of police stating that an informant is reliable without adding any additional information. PSP did surveillance on two controlled buys with the informant, the informant followed directions, and following the investigation it was determined that all the information provided by the informant was true. The search warrant was unambiguous, clear, and factually supported.

Second, even without the information about the informant being reliable, the search warrant had probable cause. The police had corroborating evidence when they conducted surveillance on the two controlled buys. The police searched the informant before each controlled buy, watched him get into the Defendant’s vehicle, and then return with narcotics that he did not have prior to entering the vehicle. Based on the statements of the informant and the corroborating evidence, there was probable cause for the search warrant of the Defendant’s vehicle without the need for the informant’s past information to have led to convictions. The Court does not find that the search warrant was invalid.

ORDER

AND NOW, this _____ day of August, 2013, after a hearing and based upon the foregoing Opinion, the Court finds that the Pennsylvania State Police did not improperly seize and move the Defendant's vehicle. In addition, the Court finds that the search warrant was not misleading and/or false and in fact had probable cause for the search of the Defendant's vehicle. Therefore, the Defendant's Motion to Suppress is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Michael Morrone, Esq.
Eileen Dgien, Dep. CA