

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 :  
 **v.** : **CR-902-2015**  
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 :  
 **WILLIAM PAUL ANDREWS II,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

On July 23, 2015, the Defendant filed a Motion to Suppress Evidence. A hearing was scheduled for September 29, 2015. At the time scheduled for the hearing, neither the Commonwealth nor the Defendant called any witnesses. The Commonwealth presented two approved applications for search warrants. Both the Commonwealth and the Defendant offered argument.

**I. Factual Background**

On October 13, 2014, Officer Kenneth Brown obtained a warrant to search Apartment 14 of 653 Hepburn Street for a stolen television, amplifier, and phone. Attached to this Opinion is a copy the affidavit of probable cause in support of the warrant application. As a result of the search conducted pursuant to the aforementioned warrant, Officer Justin Snyder obtained a warrant to search Apartment 14 for controlled substances.

**II. Arguments**

The Defendant argues that “any evidence seized by the police pursuant to the execution of the search warrants in question was seized in violation of his rights under Article I, Section 8 of the Pennsylvania Constitution and under the Fourth Amendment to the United States Constitution.” The Defendant argues that his rights were violated for two reasons:

[First,] [t]he Defendant submits that the first warrant was issued upon the basis of an Affidavit of Probable Cause which failed to establish probable cause for a search of the residence. Specifically, the information set forth in the Affidavit of Probable for the first search warrant comes from an individual identified as Samuel Michael Pica, II. The only

basis upon which the magistrate could have concluded that the information from Mr. Pica was reliable was because he himself admitted to having stolen various items including a television and cellular phone. Thus, that part of Mr. Pica's statement is against his interest. Nevertheless, the part of Mr. Pica's statement wherein he alleges that he delivered the stolen property to certain individuals is not against his interest. It was certainly in his interest to give this information to the police.

Second, the Defendant argues that Mr. Pica made a material misstatement of fact because he delivered only the stolen television to Apartment 14, but he told police that he also delivered the stolen phone. The Commonwealth argues that Mr. Pica was reliable because he made statements against his interest, including the statement that he delivered stolen property to the apartment.

### **III. Discussion**

#### **A. There is Substantial Evidence Supporting the Decision to Issue the Warrant.**

“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.” Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)).

“A reviewing court may not conduct a *de novo* review of the issuing authority's probable cause determination. The role of both the reviewing court and the appellate court is confined to determining whether there is substantial evidence in the record supporting the decision to issue the warrant.” Commonwealth v. Huntington, 924 A.2d 1252, 1259 (Pa. Super. 2007) (internal citations omitted). “A grudging or negative attitude by reviewing courts towards warrants . . . is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant; courts should not invalidate warrants by interpreting affidavits in a hypertechnical, rather than a commonsense, manner.” Commonwealth v. Jones, 988 A.2d 649, 655-56 (Pa. 2010) (quoting Gates, 426 U.S. at 236). “In assessing an informant's reliability, a presumption

exists that the information is trustworthy when it has been provided by an identified witness.”  
Huntington, 924 A.2d at 1255.

Here, Pica was named in the affidavit of probable cause. He implicated himself by telling the police that he stole a television, amplifier, and phone. He further implicated himself by saying that he sold the stolen property to “Billy,” who took the property into Apartment 14. See 18 Pa.C.S. § 3925(a) (providing that “a person is guilty of theft if he intentionally . . . disposes of movable property of another knowing that it has been stolen”). Pica also said that “Billy” gave him crack cocaine in exchange for the stolen property. “Billy” providing crack cocaine is consistent with the statement of a “confidential reliable source,” who said that the person who Pica knew as “Billy” was selling crack cocaine. In addition, the affidavit provided that, in the affiant’s experience, it is common for drug sellers to exchange drugs for personal property. The above evidence provided the magistrate with a substantial basis for concluding that the television, amplifier, and phone would be found in Apartment 14.

**B. Even if Mr. Pica Made a Material Misstatement, the Defendant is not Entitled to Relief Under the Fourth Amendment Because He did not Make a Substantial Preliminary Showing that the Statement Knowingly and Intentionally, or With Reckless Disregard for the Truth, was Included by the Affiant in the Warrant Affidavit.**

“[W]here 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.” Franks v. Delaware, 438 U.S. 154, 155-56 (1978). “To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of

reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained.” *Id.* at 171. Here, the Defendant only argued that Pica made a material misstatement. Therefore, he did not make 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.

**C. Even if Mr. Pica Made a Material Misstatement, the Defendant is Not Entitled to Relief Under Article I, Section 8 of the Pennsylvania Constitution Because, in the Suppression Motion, the Defendant did not Argue that the Statement was Made Deliberately or Knowingly.**

“[Pennsylvania] Rule [of Criminal Procedure] 581(H) clearly states it is the Commonwealth’s burden to present evidence that the defendant’s constitutional rights were not infringed.” *Commonwealth v. Enimpah*, 106 A.3d 695, 701 (Pa. 2014). “Article I, Section 8 of the Pennsylvania Constitution protects the citizens of this Commonwealth from material misstatements made deliberately or knowingly in an affidavit of probable cause.” *Commonwealth v. Antoszyk*, 985 A.2d 975, 984 (Pa. Super. 2009).<sup>1</sup> “[A]s a matter of state law . . . a defendant is entitled to make an inquiry into the veracity of statements included in an affidavit supporting the warrant without conditioning that right upon a ‘substantial preliminary showing’ of the potential falsity of those facts.” *Commonwealth v. Miller*, 518 A.2d 1187, 1194-95 (Pa. 1986). Here, the Defendant argued only that Pica made a material misstatement. Under

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<sup>1</sup> *Antoszyk* was affirmed by an equally divided Pennsylvania Supreme Court. See *Commonwealth v. Antoszyk*, 38 A.3d 816 (Pa. 2012). “When a judgment of sentence is affirmed by an equally divided court . . . no precedent is established and the holding is not binding on other cases.” *Commonwealth v. Mosley*, 114 A.3d 1072, 1082 n.11 (Pa. Super. 2015) (citation omitted). Therefore, the Superior Court decision in *Antoszyk* is binding.

Antoszyk, a material misstatement does not necessarily entitle a defendant to relief under Article I, Section 8. The misstatement must also be made deliberately or knowingly.

#### **IV. Conclusion**

There is substantial evidence supporting the decision to issue the warrant. Under the Fourth Amendment, the Defendant is not entitled to relief for a material misstatement because he did not make the required preliminary showing. Under Article I, Section 8, the Defendant is not entitled to relief for a material misstatement because he did not argue that the statement was made deliberately or knowingly.

#### **ORDER**

AND NOW, this \_\_\_\_\_ day of December, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Motion to Suppress Evidence is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge