IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No's. CR-2186-2013; CR-1226-2014**
	:	**CR-1868-2014**
DAVID C. BEAN,	**:**	
Defendant	**:**	**Omnibus Pretrial Motion**

OPINION AND ORDER

Defendant is charged with numerous counts of Burglary and related offenses. Pursuant to a search warrant previously authorized and executed, police obtained data contained in Defendant's cell phone.

Defendant filed an omnibus pretrial motion on January 8, 2015 which included a motion to suppress alleging that the search warrant was constitutionally invalid because it was not sufficiently particular, was stale and lacked sufficient probable cause. The omnibus pretrial motion also included a motion for severance, motion for change of venue/venire and a motion to reserve right.

Defendant subsequently filed a supplemental motion to suppress on March 9, 2015 alleging that a subsequent search warrant dated March 3, 2015, to search Defendant's cell phone was also invalid because it was improperly tainted by the first "illegal" search warrant.

Argument and a hearing on both of Defendant's motions were held before the court on March 9, 2015. At the argument and hearing, the parties stipulated that with respect to Defendant's severance motion, the court would consider the respective affidavits of probable cause and address it in a subsequent opinion and order. The motion for change of

venue/venire will be deferred until jury selection although the Defendant entered, without objection, evidence related to pretrial publicity.

With respect to the motion to suppress and the supplemental motion to suppress, the parties stipulated that the sole issue, in light of the subsequent search warrant, related to the taint of said search warrant. While the Commonwealth did not concede that the first warrant was defective and while Defendant conceded that the second warrant was facially valid, they limited the issue to be decided by the court to whether the second warrant was improperly tainted and thus invalid. Depending upon the court's decision with respect to this issue, the parties might need to litigate the prior issues relating to the first search warrant.

The March 3, 2015 application for search warrant, attachment and affidavit of probable cause were collectively marked as Commonwealth Exhibit 1 at the March 9, 2015 hearing. It was authored by Corporal Brad Eisenhower of the Pennsylvania State Police.

Corporal Eisenhower testified at the March 9, 2015 hearing. He is employed by the Pennsylvania State Police as a Crime Supervisor for the Crime Investigative Unit. He was requested by the Lycoming County District Attorney to do an independent review of Defendant's case. Trooper Jeff Vilello was the affiant in connection with the first search warrant and the underlying charges against the Defendant. Corporal Eisenhower described his review as an "independent review," which consisted of reviewing all of Trooper Vilello's reports, the reports referencing witness statements, the actual audio tape of one witness interview, the actual audio/video tapes of two witness interviews and the initial search

warrant and affidavit of probable cause.

He then drafted the new search warrant affidavit and attachment and presented it to Magisterial District Judge (MDJ) Gary Whiteman. After the search warrant was approved, he executed it on Defendant's phone.

Defendant contends that the only difference between the first and second search warrants was the attachment portion. Specifically, Defendant alleges that the first attachment was boiler plate and overly broad while the second attachment identified the cellular telephone and the memory card as well as other electronic data storage devices contained within the phone. It also identified very specifically the items to be seized including any videos taken between specified dates depicting the alleged witnesses in sexual situations with Defendant.

Both parties contend that the controlling case law is set forth in the Pennsylvania Supreme Court case of *Commonwealth v. Henderson*, 616 Pa. 277, 47 A.3d 797 (2012). In *Henderson*, the Pennsylvania Supreme Court set forth the applicable standard for determining whether evidence obtained via a second warrant is admissible when the first warrant is legally insufficient.

In *Henderson*, law enforcement officers suspected that the defendant committed sexually related crimes. They sought samples of his DNA for comparison purposes. One detective prepared an affidavit in support of probable cause, secured an MDJ approval of a search warrant and collected samples of the defendant's blood, hair and saliva. The defendant filed a pretrial motion to suppress on the grounds that the affidavit was

insufficient to establish probable cause. Following the filing of said motion, another detective undertook an allegedly independent probable cause investigation. He spoke with the first detective, reviewed the existing case file and the victim's medical records, conducted an inquiry into the defendant's background and interviewed one collateral witness. He then applied for and secured a second warrant which was used to seize an additional sample of the defendant's blood.

The defendant filed a second suppression motion asserting that the evidence secured under the second warrant was not the product of an independent source and remained tainted by the original illegally seized evidence.

Contrary to what the parties claim in this case, the specific issue addressed by the Pennsylvania Supreme Court was whether a second investigation conducted by a police officer from the same department, in and of itself, violated the independent source doctrine and invalidated the second search warrant. While noting that "no one could seriously contend that [the] investigations were 'truly independent' under a conventional understanding of those words, where the two [detectives] conferred about the case and the latter worked directly from the case file previously maintained by the former", the Court concluded that the proper standard was whether law enforcement exploited the fruits of their own willful misconduct. 47 A.3d at 804. The Court noted that "suppression is not required on account of [one detective's] status as a member of the same police department as [the other detective]. Rather, in light of the factual circumstances before the Court…we deem it appropriate to limit the independent police team requirement to situations in which the rule prevents police

from exploiting the fruits of their own willful misconduct." *Id*. at 805. Further, citing *Commonwealth v. Lloyd*, 948 A.2d 875 (Pa. Super. 2008), the Court noted that in the absence of egregious police misconduct, the issue is whether the decision to seek a warrant a second time was prompted by something obtained as a result of unlawful government conduct.

In this particular case, there is nothing of the sort. There is no evidence of any police willful misconduct or malfeasance. There is no evidence that law enforcement officers were dishonest or reckless in preparing the respective affidavits. There is no evidence that the officers could not have harbored an objectively reasonable belief in the existence of probable cause. There is no evidence that the second affidavit was at all tainted by the first search warrant.

Finally, and perhaps determinatively, the facts of this case are distinguishable from the facts of those cases which discuss subsequent affidavits, probable cause determinations and taint. In this particular case, the second search warrant essentially corrects any alleged error with respect to the items to be searched and the items to be seized. Corporal Eisenhower reviewed the evidence and drafted an affidavit of probable cause and a far more specific attachment. He ostensibly narrowed the request to make it particular to the circumstances of this case. There is nothing to suggest that his conduct was in any way related to any willful misconduct of any other officer.

The independent source rule was adopted to prevent police from exploiting the fruits of their own willful misconduct. *Henderson*, 47 A.3d at 805. Such is clearly not the case here. Moreover, in balancing the respective interests between the parties, there is no

intrusiveness at all in connection with the second search warrant. As noted in *Henderson*, supra., "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial cost of exclusion." 47 A.3d at 804, citing *United States v. Leon*, 468 U.S. 897, 922 (1984).

In this particular case, it is clear that Corporal Eisenhower at the very most corrected an honest mistake, assuming that it even was one, by another trooper. Case law recognizes that "[search warrants] are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area." *Commonwealth v. Jones*, 229 Pa. Super. 224, 323 A.2d 879, 882 (1974), citing *United States v. Ventresca*, 380 U.S. 102, 108 (1965).

Accordingly, Defendant's supplemental motion to suppress shall be DENIED.

ORDER

AND NOW, this ___ day of March 2015, following a hearing and argument, Defendant's motion to suppress filed on March 9, 2015 is **DENIED**. Defendant's motion to suppress filed on January 8, 2015 is deemed MOOT in light of this order.

Defendant's motion for severance shall be decided via a separate opinion and order.

A decision on Defendant's motion for change of venue/venire shall be

deferred until jury selection.

Defendant's motion to reserve right is **GRANTED**. Should additional discovery be provided to Defendant, he shall have thirty (30) days from the date of receipt of said discovery to file any additional omnibus pretrial motions related to said additional discovery.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Josh Bower, Esquire (APD)
Gary Weber, Lycoming Reporter
Work File