

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-1095-2014
	:
vs.	:
	: Opinion and Order re
	: Defendant's Omnibus Pretrial Motion
BASIL BEY,	:
Defendant	:

OPINION AND ORDER

Defendant is charged by Information filed on July 11, 2014 with numerous controlled substance offenses including Delivery of a Controlled Substance, Possession with Intent to Deliver a Controlled Substance, Possession of a Controlled Substance, Criminal Use of a Communications Facility and Criminal Conspiracy. The charges arise out of events that allegedly occurred on May 9, 2014 and June 6, 2014 involving purchases of controlled substances by a confidential informant.

Defendant filed an omnibus pretrial motion on September 19, 2014. A conference was held on the motion on September 29, 2014. A hearing on the motion was held before the Court on December 15, 2014.

The omnibus pretrial motion includes a motion to suppress, a motion to disclose criminal justice information, a motion for Rule 404 (b) evidence, a motion to compel discovery and a motion to reserve right.

With respect to the motion to suppress, Defendant asserts that the police illegally searched his room at the Holiday Inn Express in Williamsport on June 6, 2014. Defendant asserts the following: the search warrant fails to establish probable cause; there is an insufficient nexus between the items sought and the place to be searched; and the search

warrant contained both false information and lacked material statements. As a result, Defendant claims that all evidence seized as a result of the alleged illegal search must be suppressed.

Trooper Brett Herbst filed the charges against Defendant. Trooper Herbst is employed by the Pennsylvania State Police and currently assigned to their vice and narcotic unit. He has worked in that unit for the past 15 years. He has extensive experience and training in drug interdiction, undercover buys, working with confidential informants, obtaining and executing search warrants, and arresting individuals for controlled substance offenses. During his career, he has been involved in over 500 undercover operations and has “handled” over 100 confidential informants.

In June of this year, he was involved in an undercover investigation utilizing a confidential informant. He had previously utilized the confidential informant in connection with “three or four other targets.” He was aware of the confidential informant’s criminal background. He believed that the confidential informant was, at some point in the past, participating in a Suboxone maintenance program, although at the time that he was utilizing the confidential informant in June he did not specifically inquire when the confidential informant last used heroin.

Utilizing the confidential informant, a controlled purchase of heroin was made. As a result, Trooper Herbst subsequently authored a search warrant application and affidavit to search Room 541 of the Holiday Inn Express. The application was granted by Magisterial District Judge (MDJ) Page and the search warrant was executed later that same day.

The Commonwealth admitted Commonwealth's Exhibit No. 1, which consisted of the search warrant application, attachment and affidavit of probable cause signed by Trooper Herbst.

Defendant introduced three exhibits. Defendant's Exhibit No. 1 was a Pennsylvania State Police property record dated June 6, 2014 with the receiving officer being identified as Trooper Thomas. Defendant's Exhibit No. 2 was an additional Pennsylvania State Police property record dated June 6, 2014 with the receiving officer being identified as Trooper Whipple. Defendant's Exhibit No. 3 was a return and service of inventory form, as well as a receipt/inventory and attached property record containing on its first page the signature of Trooper Herbst.

According to Trooper Herbst, Defendant's Exhibit No. 1 is a Pennsylvania State Police (PSP) property log. It sets forth evidence related to Defendant's arrest. This document was prepared before the search warrant was executed.

According to the affidavit of probable cause in support of the search warrant, a hotel room key to Room 541 at the Holiday Inn Express was discovered on Defendant in a search incident to arrest. Trooper Herbst explained during the hearing that the PSP property log did not reference the room key because it was kept and maintained by Officer Justin Snyder of the Williamsport Police.

Defendant's Exhibit No. 2 also is a PSP Property Log. This log sets forth the items that were seized from or found inside Room 541 in relation to the search warrant. The key was not referenced because it was not seized in relation to the search warrant.

With respect to Defendant's Exhibit No. 3, the receipt/inventory referenced

those items actually seized and inventoried with respect to Room 541. There is no room key on this document, again because it was not seized from the room.

Officer Justin Snyder has been employed by the Williamsport Bureau of Police since January of 2006. For the past five years, he has worked in the Narcotics Investigation Unit. On June 6, 2014, he was working in connection with the undercover purchase being conducted by Trooper Herbst and his confidential informant. He secured Defendant, arrested him and searched him incident to arrest.

He located a room key from the Holiday Inn Express in Defendant's left, front pants pocket. He subsequently contacted the Holiday Inn Express on Pine Street in Williamsport. He was advised that the key belonged to Room 541 and that Defendant was the registered guest.

Commonwealth's Exhibit No. 2 was a Holiday Inn Express Guest Information Form verifying that Defendant was the registered guest with respect to Room 541 and that he arrived on June 6, 2014 with a departure date of June 7, 2014.

Following securing of the key and obtaining information regarding Room 541, the search warrant was obtained and executed. Officer Snyder held on to the room key until the search was over and then handed it to Trooper Herbst.

Defendant's Exhibit No. 4 was a Williamsport Bureau of Police report authored by Officer Snyder detailing his involvement in the above-captioned matters. Officer Snyder noted the following in the report:

"I searched Bey and located a Holiday Inn Express room access card in his front-left pant pocket. I took possession of the card. Subsequent to the arrest, PO J. Brown went to the Holiday Inn Express and made contact with hotel personnel. I provided them with the card taken off of Bey and learned that the

card belonged to Room 541. It was learned that Room 541 was in Basil Bey's name and purchased with Bey's credit card. I received paperwork regarding Bey's room purchase that was later provided to Trooper Herbst."

He also noted that following the execution of the search warrant, he "provided Herbst with the original room key taken off of Bey during his arrest."

Defendant first argues that the search warrant should be invalidated because of misstatements of fact. Specifically, Defendant argues that, contrary to what Trooper Herbst sets forth in his Affidavit, the hotel room key to Room 541 was not discovered until after the search warrant was executed.

"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). "A material fact is one without which probable causes to search would not exist." Commonwealth v. Tucker, 252 Pa. Super. 594, 384 A.2d 938, 941 (1978).

In this case, the Court need not consider if any misstatement of fact was deliberate or material because the Court concludes that there was no misstatement of fact. The Court finds the testimony of Trooper Herbst and Officer Snyder to be credible. Moreover, and contrary to Defendant's claim that said testimony is "totally incredible," Commonwealth's Exhibit No. 2 corroborates the testimony of both Trooper Herbst and Officer Snyder. Indeed, had Officer Snyder not obtained the key, he would have had no reason to inquire of the Holiday Inn Express representatives.

Defendant also argues that the search warrant is defective because the issuing authority was not supplied with necessary information.

"A search warrant is defective if the issuing authority has not been supplied

with the necessary information.” Commonwealth v. Huntington, 924 A.2d 1252, 1255 (Pa. Super. 2007). Where an omission is the basis for a challenge to an affidavit for a warrant, the Court must inquire whether the officer withheld a highly relevant fact within his knowledge, where any reasonable person would have known that this is the kind of thing the judge would wish to know, and whether the affidavit would have provided a probable cause if it had contained the disclosure of the omitted information. Commonwealth v. Taylor, 850 A.2d 684, 689 (Pa. Super. 2004).

Defendant asserts that Trooper Herbst omitted the following: the confidential informant was a prior heroin user; law enforcement personnel did not witness any transaction; the confidential informant did not know the name of the person who delivered the drugs; or any specific information regarding the reliability of the confidential informant. Defendant argues further that the affidavit uses conclusory and self-serving statements without furnishing necessary facts as required.

The affidavit sets forth the relevant facts within Trooper Herbst’s knowledge. The Court cannot conclude that Trooper Herbst withheld any “highly relevant fact.” Moreover, and perhaps determinatively, the Court cannot conclude that if the facts alleged by Defendant would have been included, the probable cause determination would have been different. In fact, the Court concludes that if the information would have been included, the affidavit would on its face still meet the required showing of a fair probability that evidence of a crime would be discovered in Defendant’s hotel room.

Defendant next asserts that the warrant fails to establish probable cause. 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.”

Commonwealth v. Bonasorte, 337 Pa. Super. 332, 486 A.2d 1361, 1368 (1984).

Whether probable cause exists for the issuance of a search warrant must be answered according to the “totality of the circumstances.” Commonwealth v. Huntington, 924 A.2d at 1255. The issuing authority must make a practical, common sense assessment of whether, given all of 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. Id. (citing Commonwealth v. Murphy, 916 A.2d 697, 681-682 (Pa. Super. 2007)). Further, 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).

Defendant argues in connection with his probable cause issue that there is an insufficient nexus between the contraband to be seized and the place to be searched.

In reviewing the affidavit of probable cause as well as the application itself, the Court finds that there is both probable cause as well as a sufficient nexus. Initially, Trooper Herbst sets forth in detail his training and experience in vice and narcotics matters. Among other things, he notes that he has managed and successfully utilized confidential informants for the furtherance of investigations and that he has been involved in undercover operations. He is uniquely familiar with the tactics, methods of communications and

language utilized by drug traffickers to conduct illegal drug distributions.

He notes that he conducted a controlled purchase of heroin using a reliable State Police confidential informant. He notes specifically that the confidential informant has in the past proven reliable such that search warrants and arrests have resulted. As well, he notes that the confidential informant provided information related to individuals that were known by the police to deliver controlled substances.

Trooper Herbst details the controlled buy that occurred on June 6, 2014. Of significance, the confidential informant was searched prior to the transaction, the entire transaction was under visual surveillance and following the transaction, the confidential informant was searched again at which time 50 bags of suspected heroin were turned over.

Once the transaction was completed, Defendant and other individuals involved in the transaction were arrested. Defendant was found to have a room key to Room 541 of the Holiday Inn Express. It was confirmed that Defendant was staying at the room through not only independent verification from the hotel, but also through an admission by one of Defendant's accomplices.

Finally and determinatively, law enforcement discovered that Defendant expected to stay in the room for only one night and that Defendant resided in the city of Philadelphia. Based on the officer's experience and training, it was not uncommon for drug dealers to use hotel rooms as a base of operation to package and store evidence. The trooper noted as well that they were used to avoid detection from police. Trooper Herbst concluded further that it was common for drug dealers from source cities such as Philadelphia to come to Williamsport, rent a hotel room for a few days and then sell the controlled substances.

Clearly, there was probable cause to obtain the search warrant and a sufficient nexus between the illegal activity and what was being sought as evidence or further contraband.

ORDER

AND NOW, this ____ day of January 2015, it is ORDERED and DIRECTED as follows:

The Court DENIES Defendant's motion to suppress physical evidence.

The Court GRANTS Defendant's motion to disclose criminal justice information. The Commonwealth shall disclose to Defendant the requested information.

The Court DENIES Defendant's motion for disclosure of "bad acts" evidence. The Commonwealth, however, is obligated to provide reasonable notice of its intent to introduce such evidence in accordance with Rule 404(b) of the Pennsylvania Rules of Evidence.

The Court DENIES Defendant's motion to compel discovery as moot.

The Court GRANTS Defendant's motion to reserve right. If Defendant is provided any additional discovery past the date of the hearing in this matter, Defendant is permitted leave to file any supplemental omnibus pretrial motion based on said additional discovery.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Edward J. Rymsha, Esquire
Gary Weber, Esquire (Lycoming Reporter)

Work file