IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-1514-2014**
v.	:	
	:	
SHARIFF ATO COLEMAN,	:	**CRIMINAL DIVISION**
Defendant	:	

OPINION AND ORDER

On July 28, 2015, the Defendant filed a Second Motion to Suppress Evidence. A hearing was scheduled for November 9, 2015. At the time scheduled for the hearing, neither the Commonwealth nor the Defendant called any witnesses. The Commonwealth presented an approved application for a search warrant. Both the Commonwealth and the Defendant offered argument.

I. Background

On February 23, 2015, the Court denied the Defendant's first suppression motion. On March 4, 2015, Pennsylvania State Police Trooper Tyson Havens (Havens) applied for and obtained a warrant to search the Defendant's smartphone. The warrant identifies the items to be searched for and seized as "all digital contents of [the smartphone], including; contacts; text message detail; call logs; photographs; videos; internet search history." Attached to this Opinion is a copy the warrant application and authorization. After the search pursuant to the warrant, Havens interviewed certain individuals who were identified in the Defendant's phone.

The Defendant argues that the evidence from the phone and the evidence from Havens' interviews should be suppressed because the evidence "was seized in violation of his rights under Article 1 Section 8 of the Pennsylvania Constitution and under the Fourth Amendment to the United States Constitution." He argues that his rights were violated for two reasons. First, he

argues that "the Affidavit of Probable Cause which led to the issuance of the search warrant for the cellular telephone fails to set forth sufficient facts which could have led the magistrate to conclude that evidence of the crime charged against [him] would be found on the cellular telephone in question." Second, the Defendant argues that "the search warrant authorizing the police to search the entire digital contents of the cellular phone in question is overly broad in violation of [Article 1 Section 8 of the Pennsylvania Constitution and the Fourth Amendment to the United States Constitution]." In support of the second argument, the Defendant cites Commonwealth v. Orie[1] and Commonwealth v. Melvin.[2] He contends that the description of the items to be seized from the smartphone is "basically the same description" as in Orie and Melvin.

The Commonwealth argues that the affidavit contained sufficient facts and circumstances for the magistrate to find probable cause that evidence of criminal activity would be found in the smartphone. The Commonwealth notes that the affidavit contained a description of Havens' extensive experience. It also notes that the affidavit stated that cell phones are often used by drug dealers and that the phone was found on the driver's seat of the Defendant's vehicle. Last, the Commonwealth argues that because the warrant states the particular phone and the particular files to be searched, it is not overbroad.

I. 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

[1] 88 A.3d 983 (Pa. Super. 2014).
[2] 103 A.3d 1 (Pa. Super. 2014).

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).

Here, the affidavit contained the information in the following paragraph. The Defendant had "marijuana residue all over the front of [his] shirt" and had $240 cash in his pocket. The following was found in his vehicle:

> $1917.00 cash; a large heat sealed sleeve of marijuana in driver's side door drawer (along with cash), marijuana dab on the gear shifter; a black backpack in the rear drivers [*sic*] side seat containing a butane torch and dabber; a Nike backpack in the trunk containing a second large heat sealed sleeve of marijuana, a large heat sealed bag of marijuana (between 1/2 and 1 lb) and an empty/used heat sealed sleeve containing marijuana residue; a black duffle bag in the trunk containing marijuana residue and a second container of marijuana dab; [Defendant's] Samsung smart phone was also found inside the vehicle on the driver's side seat.

Drug traffickers utilize cellular telephones . . . so as to make it more difficult for law enforcement authorities to identify and/or intercept their conversations. Drug traffickers often utilize electronic equipment such as computers to generate and store the following:

> Records of the transportation, ordering, sale, and distribution of controlled substances; records of drug transactions; evidence relating to the obtaining, secreting, transferring, concealing, and or expending of drug proceeds.

With knowledge of the amount of cash, the amount of marijuana, and the empty sleeve containing marijuana residue, the magistrate had a substantial basis to conclude that the Defendant was selling marijuana. With knowledge that drug traffickers often use computers to generate and store records of drug transactions, the magistrate had a substantial basis to conclude that evidence of the sale of marijuana would be found in the Defendant's smartphone. See United States v. Wurie, 728 F.3d 1, 8 (1st Cir. 2013) (equating a modern cell phone to a computer).

B. Any Evidence Obtained from or Acquired as a Consequence of the Search Pursuant to the Warrant is Suppressed Because the Warrant was Overbroad.

"[N]o Warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. "[N]o warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause . . . ." Pa. Const. Art. I § 8. In Orie, the Pennsylvania Supreme Court explained the "as nearly as may be" requirement of Article I, Section 8:

> It is a fundamental rule of law that a warrant must name or describe with particularity the property to be seized and the person or place to be searched. . . . The particularity requirement prohibits a warrant that is not particular enough and a warrant that is overbroad. These are two separate, though related, issues. A warrant unconstitutional for its lack of particularity authorizes a search in terms so ambiguous as to allow the executing officers to pick and choose among an individual's possessions to find which items to seize. This will result in the general 'rummaging' banned by the [F]ourth [A]mendment. A warrant unconstitutional for its overbreadth authorizes in clear or specific terms the seizure of an entire set of items, or documents, many of which will prove unrelated to the crime under investigation . . . An overbroad warrant is unconstitutional because it authorizes a general search and seizure.
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> The language of the Pennsylvania Constitution requires that a warrant describe the items to be seized "as nearly as may be . . . ." The clear meaning of the language is that a warrant must describe the items as specifically as is reasonably possible. This

> requirement is more stringent than that of the Fourth Amendment, which merely requires particularity in the description. The Pennsylvania Constitution further requires the description to be as particular as is reasonably possible . . . . Consequently, in any assessment of the validity of the description contained in a warrant, a court must initially determine for what items probable cause existed. The sufficiency of the description must then be measured against those items for which there was probable cause. Any unreasonable discrepancy between the items for which there was probable cause and the description in the warrant requires suppression. An unreasonable discrepancy reveals that the description was not as specific as was reasonably possible.

88 A.3d at 1002-03 (quoting Commonwealth v. Rivera, 816 A.2d 282, 290-291 (Pa. Super. 2003)).

"[T]he Pennsylvania Supreme Court has instructed that search warrants should 'be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description will suffice.'" Id. at 1003 (quoting Commonwealth v. Rega, 933 A.2d 997, 1012 (Pa. 2007)). "[W]here a search warrant adequately describes the place to be searched and the items to be seized the scope of the search 'extends to the entire area in which the object of the search may be found and properly includes the opening and inspection of containers and other receptacles where the object may be secreted.'" Commonwealth v. Waltson, 724 A.2d 289, 292 (Pa. 1998) (quoting Commonwealth v. Reese, 549 A.2d 909, 911 (Pa. 1988)).

In Orie, police had probable cause to believe that evidence of criminal activity would be found in a flash drive. 88 A.3d at 1008. A warrant authorized the search and seizure of "any contents contained [in the flash drive], including all documents, images, recordings, spreadsheets or any other data stored in digital format." Id. at 1004. The Pennsylvania Superior Court held that the warrant was overbroad because it sought any contents contained in the flash drive "without limitation to account for any non-criminal use of the flash drive." Id. at 1008.

Also in Orie, police had probable cause to believe that evidence of criminal activity would be found in messages in an email account of the defendant. Id. at 1008-09. A warrant authorized search and seizure of "all stored communications and other files [in the account] . . . between August 1, 2009 and the present." Id. at 1005-06. The court held that the warrant was overbroad because it "did not justify the search of all communications for [the time period]." Id. at 1008-09.

In Melvin, a warrant authorized the search and seizure of "[a]ll stored communications and other files reflecting communications to or from" three email accounts of the defendant. 103 A.3d at 17, n.7. The Pennsylvania Superior Court held that, pursuant to Orie, "the warrant authorizing the seizure of [the defendant's] personal emails at [the accounts] was overbroad." Id. at 19.

The warrant here, like the warrants in Orie and Melvin, authorized the search and seizure of all content without limitation to account for any non-criminal use. Therefore, the warrant was overbroad, and any evidence obtained in the search pursuant to the warrant must be suppressed. "The 'fruit of the poisonous tree' doctrine excludes evidence obtained from, or acquired as a consequence of, lawless official acts." Commonwealth v. Johnson, 68 A.3d 930, 946 (Pa. Super. 2013). The evidence from Havens' interviews of individuals identified in the phone was acquired as a consequence of the overbroad warrant. Under the fruit of the poisonous tree doctrine, this evidence must also be suppressed.

There is an argument that the breadth of the warrant was necessary and reasonable because the smartphone had a large storage capacity, and Havens did not know precisely the location and the format of the sought information. This argument, however, does not hold water under Orie and Melvin, where the warrants were overbroad because they "permitted the seizure

of every email . . . without any attempt to distinguish the potentially relevant emails from those unrelated to the investigation . . . ." Melvin, 103 A.3d at 18-19. The scope of a search extends to the entire area in which the object of the search may be found, but only when the warrant adequately describes the items to be seized. See Waltson, 724 A.2d at 292 (stating that where a search warrant adequately describes the items to be seized, the scope of the search extends to the entire area in which the object of the search may be found). Here, the warrant described the items to be seized as "all digital contents of [the smartphone]," which is not an adequate description under Orie and Melvin. Therefore, the search was not constitutional.

III. Conclusion

There was substantial evidence supporting the decision to issue the warrant. The warrant was overbroad because it sought all digital content of the phone without limitation to account for any non-criminal use. Because the warrant was overbroad, the Court will suppress the evidence from the phone and the evidence from Havens' interviews of individuals identified in the phone.

ORDER

AND NOW, this _____ day of December, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Second Motion to Suppress Evidence is hereby GRANTED. It is further ORDERED and DIRECTED that the evidence from the Defendant's smartphone and the evidence from Havens' interviews of individuals identified in the phone is hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge