

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**HAKIM HANDY,  
Defendant**

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**CR-1322-2016**

**PRETRIAL**

**OPINION AND ORDER**

On April 5, 2016, the Defendant, Hakim Handy, filed an Omnibus Pretrial Motion. The hearing was held on November 29, 2016. The only issue ripe for the Court's decision as a result of that hearing is whether the evidence seized in execution of the search warrant was seized in violation of Defendant's rights under the Article 1 Section 8 of the Pennsylvania Constitution and under the Fourth Amendment to the United States Constitution.

**Background**

Defendant is charged in a criminal information with Criminal Conspiracy (two counts)<sup>1</sup>; Possession with Intent to Deliver (two counts)<sup>2</sup>; Possession of a Controlled Substance (two counts)<sup>3</sup>; Possession of Drug Paraphernalia (two counts)<sup>4</sup>. The Defendant is alleged to have sold heroin to a confidential informant working with the Lycoming County Narcotics Enforcement Unit.

**I. Habeas Corpus**

At the preliminary hearing, the witness called by the Commonwealth was the affiant Officer Justin Snyder (Snyder). He testified to statements made by the confidential informant and by the alleged co-conspirator. The Defendant alleges that

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<sup>1</sup> 18 Pa. C.S. Section 903(a)(1).

<sup>2</sup> 35 P.S. Section 780-113(a)(30).

<sup>3</sup> 35 P.S. Section 780-113(a)(16).

<sup>4</sup> 35 P.S. Section 780-113(a)(32).

the hearsay statements were the only evidence presented at the preliminary hearing. Neither Defense Counsel nor the Commonwealth submitted a transcript of the preliminary hearing to the Court.

Though hearsay evidence is admissible at the preliminary hearing pursuant to Pa.R.Crim.P. 542(E), Defense Counsel argues that a prima facie case cannot be established solely by hearsay evidence but cites no case law for that proposition. In Commonwealth v. Ricker<sup>5</sup>, the Superior Court found that the rule [Pa.R.Crim.P. 542(E)] does allow hearsay evidence alone to establish a prima facie case. Nevertheless, at the time of the omnibus hearing, the Court ordered that Snyder must listen to the wire recording of the confidential information and share such information with Defense Counsel. A meeting was scheduled for December 2, 2016, for Defense Counsel, the Commonwealth's Attorney, and Snyder to listen to the audio recording, with leave for Defense Counsel to make further pretrial motions upon the completion of discovery.

## **II. Motion for Pretrial Discovery and Inspection**

Defense Motion was granted and the Court has been advised that discovery has been provided to Defense Counsel.

## **III. Motion to Suppress**

Defendant submits that the search warrant issued in this case was overbroad and there was an insufficient factual basis offered to the MDJ for him/her to believe there was probable cause to believe drug trafficking was occurring at 925 High Street.

The issue appears to be whether a search warrant can issue solely for a search of a residence based on information from a confidential informant that when he was in a home purchasing heroin that he saw what he believed to be a half ounce of package

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<sup>5</sup> 120 A.3d 349, 357, 2015 Pa. Super. LEXIS 410, \*18, 2015 PA Super 153 (Pa. Super. Ct. 2015).

of crack cocaine. Additionally, the police had received numerous phone calls from anonymous individuals reporting a high volume of foot traffic with short visits to 925 High Street. Phone calls included an anonymous tip on November 25, 2014, where the reporting party advised that 925 High Street “contained lots of guns and drugs”. Based on these police reports, officers were conducting surveillance at 925 High Street. Through observations at the residence, Officers were able to intercept and arrest a subject detained through a traffic stop that was found to possess heroin just purchased at 925 High Street.

Pa. R. Crim. P. 203 (D) sets forth the standard to determine whether probable cause exists to support issuance of a warrant. The Court is confined to the four corners of the affidavit of probable cause attached to the warrant.<sup>6</sup> The “Items to be Searched for and Seized” are set out prior to the Affidavit of Probable Cause. It includes physical items related to drug trafficking as well as the last and final request to search and seize “Any and all persons present during the service of the search 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)).

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<sup>6</sup> At any hearing on a motion for return of or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B). Paragraph (B) states “No search warrant shall issue but upon the probable cause of supported by one or more affidavits sworn to before the issuing authority....the issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.”

Snyder additionally laid out his background and experience in investigating drug trafficking cases. He has been a member of the Lycoming County Drug Task Force since 2008 and has served in various different roles including a Special Operations Group/Crime Suppression Unit and an undercover investigative position working in a full time capacity for the Williamsport Bureau of Police Vice/Narcotics Unit. He has been involved in numerous narcotics investigations including possession and possession with intent to deliver and delivery of controlled substances cases. He has authored numerous criminal complaints, affidavits of probable cause and search warrants resulting in the successful prosecution of offenders. He has testified as an expert at both the MDJ and the Common Pleas level during the prosecution of drug related offenses. He then went on to set out the nexus between each item listed in the "Items to be Searched for and Seized" and how they relate to a drug trafficking operation.

Pa.R.Crim.P. 200 allows for a search warrant that identifies only a place rather than a person to be searched. In Commonwealth v. Jones, 988 A.2d 649 (Pa. 2010) the court upheld a warrant for the apartment of a homicide victim that sought to obtain information to confirm his identity and to obtain "background" information for the investigation. In the case at bar, Snyder was also seeking identifying and background information to investigate ongoing criminal activity. Snyder explained the typical type of financial documents in any household and then went on to explain the particular financial management problems of drug traffickers and why he sought this information. He also sought indicia of occupancy of the residence, rental or ownership of the premises to further identify what individuals or co-conspirators were involved with the

apparent drug trafficking operation being conducted from 925 High Street. Snyder explained why he expected to find the evidence he listed as items to be seized in his affidavit of probable cause and explained how each item was connected to the drug trafficking investigation. The Court finds his statements as to why he believed drug trafficking was occurring at the residence to be sufficient to find probable cause to authorize the search.

**ORDER**

**AND NOW**, this 21st day of December, 2016, based upon the foregoing Opinion,

- (1) The Motion for Habeas Corpus is DENIED without prejudice to refile when Defense Counsel receives discovery.
- (2) The Motion for Pretrial Discovery and Inspection is GRANTED.
- (3) The Motion to Suppress is DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Peter Campana, Esq. Defense Counsel  
Nicole Ippolito, Esq. ADA  
Gary Weber, Esq. Lycoming Law Reporter  
Susan Roinick, Law Clerk