

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-518-2015

vs.

:

:

:

: **Decision re Omnibus Pretrial Motion**

ROZELL JETT,

:

Defendant

:

OPINION AND ORDER

This matter came before the court on Defendant Rozell Jett's omnibus pretrial motion, which consists of a motion to suppress physical evidence; a motion to suppress statements; a motion for disclosure of other crimes, wrongs or acts pursuant to Pa. R. Evid. 404(b); a motion to compel discovery; a motion for the court to conduct a Brady colloquy; a motion to disclose existence of and substance of promises of immunity, leniency or preferential treatment and complete criminal history from the National Crime Information Center (NCIC) and/or the Pennsylvania Justice Network (JNET); and a motion to reserve right.

On January 22, 2015, Defendant was charged with possession with intent to deliver a controlled substance (PWID), possession of a controlled substance and possession of drug paraphernalia. The PWID charge was dismissed at the preliminary hearing, but the other two charges were held for court. These charges arose out of an investigation into a robbery, which in turn led to the issuance of a search warrant for a Mercury Villager and a residence at 683 Sixth Avenue in Williamsport, PA. Nothing related to the robbery was found in either the vehicle or the residence. During the search of the residence, however, the police found controlled substances and drug paraphernalia in a bedroom, which contained

male clothing and indicia of occupancy for Defendant.

Defendant first contends that the physical evidence must be suppressed because: (1) the search warrant affidavit was inadequate to establish probable cause; (2) the search warrant failed to provide the Magisterial District Judge (MDJ) with sufficient evidence to establish a nexus between the items sought and the place to be searched; and (3) the search exceeded the scope of the warrant.

In determining whether probable cause existed to support issuance of the warrant, the court is confined to the four corners of the affidavit of probable cause attached to the warrant. PA. R. CRIM. P. 203(D). The affidavit of probable cause in this case states:

On 08/27/2104, at approximately 0430 hrs, officers were triple-toned dispatched to the area of 427 Bridge St for shots fired. This was the second call on this night for a shooting that had taken place. The other shooting was at 915 Clark Street. In that shooting two 40 caliber shell casing[s were] recovered which had been fired, one was nickel and the other was brass. While officers were in route to Bridge Street, LCCC [Lycoming County Communications Center] advised that there was another call from 713 Center St. regarding the shooting. The caller stated that the victim of the incident was there. PO Hagan made contact with JOSHUA COLLEY seated on his front porch area. COLLEY indicated that he believed he was shot. PO Hagan found what appeared to be two holes, side to side, on the left/rear pocket of his [COLLEY's] blue jeans. COLLEY pants were now down and in the same location there were similar holes, but slightly closer together, on the rear/left area of his underwear. PO Hagan did not find any wounds to COLLEY's body at this time. COLLEY complained of being pistol-whipped on his head and that he had pain. COLLEY advised that he was robbed of his backpack and cellular phone.

COLLEY advised that the person that had robbed him was a black male and [he] gave officers a description of that male including his hairstyle. COLLEY indicated that he believed that he had seen this black male come from a red or maroon van with tinted windows and silver trim at the bottom of the vehicle. COLLEY stated that the vehicle (maroon van) was following him by circling the area while he was walking to work. COLLEY believed that it was persons inside the van who directed where the robbery should occur. COLLEY said that there were multiple persons inside the vehicle and that the suspect kept looking in the direction of this vehicle as if looking for direction on what to do next.

COLLEY advised that the suspect said, "Give me all your money" and that the suspect pointed a silver semi-automatic handgun at him. COLLEY advised that he gave the suspect the backpack off his back, his grey LG cell phone (...-Virgin Mobile) as well as emptying his pockets for the suspect. COLLEY recalled that he gave the suspect his

Percocet pills which he is prescribed.

COLLEY was backing up towards Center St just north of Park Ave, where there was a tree. He advised that he observed the B/M had the handgun pointed at his COLLEY'S waist and that the suspect looked towards the maroon van was parked on Cherry St in the 600 block facing toward Park Ave. He advised that when the suspect looked at the van, he then raised the gun towards COLLEY's chest. COLLEY said that he believed that he was about to be shot so he reached out and pushed the gun down towards the ground and then began to run evading the suspect around a tree. COLLEY advised that the suspect chased him around the tree while firing two shots at him. COLLEY saw the maroon van pull out and leave when the shooting occurred prior to COLLEY running away.

Police recovered two 40 caliber shell casing[s] where the robbery and shooting had taken place. The shell casings were fired with one of the casing being nickel and the other was brass.

All of this information was placed on the Hot Sheet for the oncoming shift of officers. PO Dockey read this information prior to his duty shift and immediately recognized the description of the vehicle as one that he had previously seen. PO Dockey went to the 600 block of Sixth Ave at the start of his shift and located the vehicle which fit the description given to the police parked on the street in front of 679 Sixth Ave with the front two windows completely down and it appeared that the vehicle had been parked hastily.

The vehicle was a Mercury Villager with PA registration JNL-2926. The vehicle was found to be registered to a Deborah Lopez Parker of 915 Clark St Williamsport, PA 17701. This is the same location which was involved in the earlier shooting. I drove COLLEY by to see this vehicle which was outside the police impound lot. COLLEY stated that he believed that this was same vehicle that he had seen when this incident occurred.

I spoke with Deborah Lopez PARKER to determine where the vehicle was and who had it currently. PARKER stated that the vehicle is actually owned by CYNTHIA JETT and JETT [sic] has left it in her [PARKER's] name to help out JETT. PARKER was able to contact JETT and bring her in to speak with me.

CYNTHIA JETT stated that she has had possession of the vehicle and that she had lost the primary set of keys to the vehicle two weeks ago. JETT stated that she lives on Brandon Place but that she has been staying at 683 Sixth Ave Williamsport PA 17701 with her mother and brother Rodney. JETT denied loaning the vehicle out to anyone last night and said that no one else was at the residence when she went [t]o bed at midnight on the morning of this incident.

I talked with PARKER who told me that JETT was lying about the keys that she had asked for the spare set two days ago. PARKER also stated that there is a lot of traffic going in and out of the residence on Sixth Ave¹ and that JETT "damn well knew that."

When I asked JETT why she lied to me about when she got the spare keys for the vehicle, she would not answer me.

I would request a search warrant be issued for the Mercury Villager PA Registration JNL-2926 currently at the police Impound garage as well as the residence

¹The affidavit does not indicate when the traffic was going in and out of 683 Sixth Avenue or how Ms. Parker became aware of such information. According to the affidavit, Ms. Parker resided at 915 Clark Street. Clark Street is not in the same neighborhood as Sixth Avenue.

located at 683 Sixth Ave Williamsport PA owned by Bryce Derr ... but occupied by Cynthia Jett.... The residence is a white single family dwelling with red trim and front porch on the west side of Sixth Ave just south of the Uni-Mart property (see Attachment A and B)

I would be searching for the stolen items including the backpack or the contents of that backpack as well as the cellular phone belonging to COLLEY. I would also be attempting to obtain forensic evidence from the vehicle to identify the suspects in this incident. This forensic evidence would be in the form of fingerprints, DNA or other trace elements. I would also be searching for firearms and ammunition in both locations as well as indicia of occupancy.

I spoke with District attorney Eric Linhardt by phone. He read and approved this Affidavit of Probable Cause for search warrants on both the residence and the vehicle.

Search Warrant Affidavit of Probable Cause (personal identifying information omitted).

The warrant identified the items to be searched for and seized as follows:

“‘Trail maker’ backpack, black in color with red tassels on the end of the zippers, [a] container of stuffed shells, a Virgin Mobile cellular phone #... which was gray in color with a photo of his girlfriend as the background. A silver semi-automatic handgun or any other firearms, firearm related materials and ammunition and indicia of occupancy.”

MDJ Kemp issued a search warrant for the vehicle and the residence at approximately 5:30 p.m. Agent Kontz, Officer Duck, and two or three members of the “Task Force”² went to the residence and executed the search warrant at approximately 7:36 p.m. Defendant Rozell Jett was at the residence. The police brought Defendant outside, asked him to have a seat, and explained what was going on. He was never detained, told he was under arrest, placed in custody or told he was not free to leave. In fact, he was encouraged to leave, but was allowed to roam freely while the residence was searched.

Officer Jeremy Brown also participated in the search. In Defendant’s bedroom, he and County Detective Diaz found a box of drug paraphernalia, two boxes of

² Members of the Williamsport Bureau of Police typically use the term “Task Force” as shorthand to refer to the Lycoming County Drug Task Force or Narcotics Enforcement Unit.

sandwich bags, a black bag containing empty heroin bags, a digital scale, a prescription bottle containing pills, cocaine and heroin, and indicia that Defendant occupied that bedroom. Officer Brown also asked Defendant if he occupied that room; he said that he did. With respect to the prescription bottle, Officer Brown testified that Defendant's name was on the bottle. Officer Brown did not remember if the bottle had a lid on it. It was a yellowish bottle that Officer Brown could "kind of see through." He could see that there was a bag inside the pill bottle, and he could tell that the bottle did not contain ammunition. He thought that the bag contained narcotics, but he was not sure until he looked. The prescription bottle contained cocaine and pills.

After Defendant heard the evidence the Commonwealth presented with respect to his motion to suppress statements, Defendant withdrew that portion of his omnibus motion.

Defendant asserts that the search warrant affidavit was insufficient to establish probable cause to search either the van or the residence and/or to establish a sufficient nexus between the items the police were searching for and the place being searched.

Probable cause is determined based on the totality of the circumstances.

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 2332 (1983); *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921, 925-926 (1985).

The task of the issuing magistrate is simply to make a practical, commonsense 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.

Gray, 503 A.2d at 925 (quoting *Gates*, supra).

Probable cause is based on a finding of the probability, not a prima facie showing of criminal activity. *Commonwealth v. Dean*, 693 A.2d 1360, 1365 (Pa. Super. 1997). The duty of a reviewing court is simply to “ensure that the magistrate had a substantial basis for concluding that probable cause existed.” *Commonwealth v. Jones*, 605 Pa. 188, 988 A.2d 649, 655 (2010)(quoting *Commonwealth v. Torres*, 564 Pa. 86, 764 A.2d 532, 538 (2001)).

The court has no difficulty in finding that probable cause existed to search the van. The victim told the police that the suspect came from a red or maroon van with tinted windows and silver trim on the bottom. The victim also stated that it appeared persons in the van were directing where the robbery would occur and directing the suspect’s actions. Officer Dockey recognized the description of the van. He went to the 600 block of Sixth Avenue and saw a maroon van with silver trim parked in front of 679 Sixth Avenue. The front windows were completely down and it appeared that the van had been parked hastily. The police impounded the van. The victim was brought to the impound lot and shown the van. The victim believed the van was the one that he had seen when the incident occurred. There was a fair probability that this was the van the victim saw during the incident. Therefore, there was a fair probability that evidence related to the crime would be found therein.

In the alternative, even if the affidavit lacked probable cause, there is no evidence to suppress as the search did not yield any evidence related to the robbery or the current charges against Defendant.

The more difficult question is whether there was probable cause or a sufficient

nexus to search the residence where Cynthia Jett was staying. As our highest appellate court has aptly noted, “probable cause to believe a [person] has committed a crime on the street does not necessarily give rise to probable cause to search [the person’s] home.”

Commonwealth v. Wallace, 615 Pa. 395, 42 A.3d 1040, 1049-1050 (2012).

In *Wallace*, a confidential informant (CI) told police about sales of cocaine from a black male who was known to the CI as “Greg” and operated a gold colored Mercedes to deliver narcotics. The CI indicated that he could purchase cocaine from “Greg” between the hours of 7:00 and 10:00 p.m. on 9-08-05. The CI also provided the police with the cellular and home phone number of “Greg”. Later the CI told the police that the location of the sale would be 635 Morris Street.

The police investigated that address and determined that an individual named Gregory Wallace was a registered voter and licensed driver at that address. Additionally, a criminal history check of Philadelphia Photo #0978274 gave the address of 635 Morris Street and the same phone number as the home phone number for “Greg” that the CI provided to the police.

The CI had been used in the past in a case that yielded 60 grams of cocaine with a street value of \$6,000.00 and drug paraphernalia.

The police obtained a warrant to search 635 Morris Street before the sale took place. The affidavit included the information from the CI, the police investigation and the CI’s use in the prior case. In finding that the affidavit failed to provide the magistrate with a substantial basis to find probable cause that a controlled buy of drugs at Appellant’s house would occur, the Pennsylvania Supreme Court specifically noted:

This affidavit of probable cause stated that, according to the confidential informant, a man named “Greg” was making cocaine sales, and he used his car – a gold colored Mercedes – to ‘deliver narcotics.’ However, the confidential informant made no allegation that drugs were being sold by “Greg” at Appellant’s home... Moreover, these averments did not establish that “Greg” or anyone else was using his home for selling or storing drugs....There is nothing in this affidavit which would establish any nexus between Appellant’s house and the sale or storage of drugs.

42 A.3d at 1049-1050.

Here, the robbery suspect was a black male. Clearly, Cynthia Jett was not the robber. There also is nothing in the affidavit of probable cause to suggest that Defendant or anyone else residing at 683 Sixth Avenue met the description of the robbery suspect. Furthermore, there is nothing in the affidavit of probable cause to indicate that the suspect ever went back to the maroon van after he robbed the victim. In fact, the affidavit suggests that the van left prior to the completion of the incident, as it indicates the victim “saw the maroon van pull out and leave when the shooting occurred....”

The Commonwealth argued that it was reasonable to believe that the stolen property would be located in the residence where Ms. Jett was staying, because robbers frequently taken their ill-gotten gains into their homes.

The court cannot agree. Ms. Jett clearly was not the individual who robbed Mr. Colley. The court recognizes that Ms. Jett may have lied to the police about when she lost the keys to the van or when she retrieved the spare set of keys from Ms. Parker. While this may strengthen the probable cause with respect to the van and/or lead one to believe Ms. Jett may have had more information about who had the primary set of keys or who had the van on the night in question, than she was telling Agent Kontz, it doesn’t show that she was

inside the van during the robbery or that she ever received any of the proceeds of the robbery. Such also does not establish a nexus between the residence at 683 Sixth Avenue and the property taken or the firearm and ammunition utilized during the robbery.

The Commonwealth's argument also does not comport with case law that probable cause to believe a person committed a crime on the street doesn't necessarily give rise to probable cause search the person's home. One might reasonably think that if a drug dealer is seen selling drugs on the street that evidence of his drug dealing such as controlled substances, proceeds from the sales, owe sheets, firearms and the like would be found in his residence. However, probable cause to believe the person sold drugs on the street without more -- such as evidence to show that the drug dealer traveled from his residence to the location of the drug deal or returned to his residence from the location of the drug deal -- is insufficient to establish probable cause to search his residence. Compare *Wallace*, supra; *Commonwealth v. Way*, 342 Pa. Super. 341, 492 A.2d 1151 (1985)(a statement that an informant bought drugs from appellant and knew appellant's address did not give rise to probable cause to search appellant's residence); *Commonwealth v. Heyward*, 248 Pa. Super. 465, 375 A.2d 191, 192 (1977)(fact that two stolen certificates of title were found in an individual's vehicle did not provide probable cause to believe that additional stolen certificates of title would be found in the individual's residence); and *Commonwealth v. Kline*, 234 Pa. Super. 12, 335 A.2d 361, 364 (1975)(en banc)(although information in affidavit sufficient to believe individual was selling drugs and lived at a certain apartment, there was no information to show that the individual had gone to the apartment to get the drugs) with *Commonwealth v. Clark*, 611 Pa. 601, 28 A.3d 1284 (2011)(affidavit of

probable cause sufficient where it set forth that defendant left residence, made drug transaction, and returned to residence, which was consistent with informant's description of defendant's manner of delivering drugs) and *Commonwealth v. Davis*, 407 Pa. Super. 415, 595 A.2d 1216 (Pa. Super. 1991)(observations of defendant returning to a certain residence after each of three drug transactions and defendant's statement that he had just received a shipment of drugs were sufficient to establish probable cause to search the residence).

The only nexus to 683 Sixth Avenue was that Ms. Jett was staying there. Ms. Jett clearly was not the robber, and no one else at the residence matched the description of the robber. No one saw the robber get back into the van or meet up with the van after the robbery. In fact, from the statements attributable to the victim in the affidavit of probable cause, it appears that the van left the area when the robber was chasing the victim and firing shots at him. After considering the totality of the circumstances and *Wallace*, the court finds that the magistrate did not have a substantial basis to conclude that evidence of the robbery would be located inside the residence located at 683 Sixth Avenue.

In light of this ruling, the court does not need to address Defendant's remaining claims.

ORDER

AND NOW, this ___ day of February 2016, the court grants Defendant's Omnibus Pretrial Motion. The court finds that the search warrant affidavit lacked probable cause and/or there was an insufficient nexus to the residence at 683 Sixth Avenue. The fruits of said search are hereby suppressed.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Edward J. Rymza, Esquire
Work file