IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-90-2017**
v.	:	
	:	
JOSEPH S. COLEMAN,	:	**SUPPRESSION**
Defendant	:	

OPINION AND ORDER

Joseph Coleman (Defendant) filed a Motion to Suppress based on Franks v. Delaware, 438 U.S. 154, 155 (1978) on June 8, 2017. A hearing was held on August 31, 2017.

Procedural Background

Defendant is charged with two Counts of Criminal Homicide[1], a felony of the first degree; Criminal Conspiracy (Criminal Homicide)[2], a felony of the first degree; Robbery[3], a felony of the first degree; Conspiracy (Robbery)[4], a felony of the first degree; Criminal Attempt (Robbery)[5], a felony of the first degree; Persons Not to Possess Firearms[6], a felony of the second degree; Firearms not to be Carried Without a License[7], a felony of the third degree; and Possession of a Weapon[8], a misdemeanor of the first degree. The charges arise out of the shooting deaths of Kristine Kibler and Shane Wright in Williamsport, PA, on October 31, 2016.

Agent Trent Peacock (Affiant) of the Williamsport Bureau of Police filed criminal charges against Defendant on November 1, 2016. The Defendant was arrested and

[1] 18 Pa.C.S. § 2501.
[2] 18 Pa.C.S. § 903.
[3] 18 Pa.C.S. § 3701.
[4] 18 Pa.C.S. § 903.
[5] 18 Pa.C.S. § 901.
[6] 18 Pa.C.S. § 6105(c)(2).
[7] 18 Pa.C.S. § 6106(a)(1).
[8] 18 Pa.C.S. § 907(b).

arraigned on November 18, 2016. On December 12, 2016, Peacock filed the following Affidavit of Probable Cause supporting the criminal charges:

> On 10/31/2016 @ 21:50 hrs, Lycoming County Communications (LCC) received a 911 call reporting a shooting at 613 Poplar St, Williamsport, Pa. 17701. The caller identified himself as Nathan Daniel and stated that his girlfriends [sic] mother had been shot by somebody wearing a mask. While LCC was questioning Daniels [sic] for details a second gunshot victim was discovered.
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> The first WBP units on the scene discovered a deceased male victim lying in the open front doorway of the house with an apparent gunshot wound to the head. The female victim was discovered on the second floor with a gunshot wound to the abdomen. She was transported to Williamsport Hospital where she succumbed to her wounds.
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> Nathan Daniel and his girlfriend Cheyanna Wright, were transported to WBP HQ to be interviewed. Cheyenne [sic] Wright identified the victims as her mother KRISTINE KIBLER, and her brother SHANE WRIGHT. Cheyanna indicated that they all live at 613 Poplar St.
>
> Cheyanna Wright reported that she and Daniels [sic] heard a scuffle outside their bedroom and discovered a masked gunman holding onto her mother. The suspect pointed the gun at them and they retreated back into the bedroom before hearing a gunshot. They then discovered KIBLER lying in the hallway and the suspect was gone. Nathan Daniel called 911 and while on the phone Cheyanna discovered her brother in the front doorway.
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> Nathan Daniel was interviewed at WBP HQ and gave the same account as Cheyanna. Information obtained from Nathan indicated that SHANE WRIGHT sold marijuana from the house and that robbery may be a motive.
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> Witnesses in the neighborhood reported seeing a black Chevy sedan with only one working headlight parked on Trenton Ave just north of 613 Poplar St shortly before hearing gunshots. One of those witnesses recognized the car as being frequently driven by CASEY WILSON.
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> The information was put out to patrol units who were familiar with the car. The car was subsequently located and CASEY WILSON was detained for questioning.
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> CASEY WILSON was transported to WBP HQ where he was advised of his rights and waived them. WILSON related that he was being coerced by “CRACK”, who he positively identified as JOSEPH COLEMAN JR., because WILSON has testified against Jamal Cook in a 2013 robbery, resulting in his conviction and incarceration.

WILSON stated that COLEMAN had threatened his life as well as the lives of his family and girlfriend if he did not make monetary restitution. WILSON said that COLEMAN called him by phone earlier in the evening and told WILSON to pick him up. WILSON picked up COLEMAN in the Scott St area and then was directed to pick up an unidentified B/M, "JOHN DOE" in Race St area. WILSON provided a physical description of JOHN DOE as a dark skinned B/M, mid-late 20's, about 5'10", medium build with facial stubble.

WILSON said that the three of them spent the rest of the evening together as COLEMAN planned to rob Shane Wright, who is known by COLEMAN to sell marijuana and MOLY. At about 21:30 the three of them drove to the area of Wright's home and parked on Trenton Ave. COLEMAN directed WILSON, a friend of Shane Wright's, to go into the house and determine where Wright and the other occupants of the house he located, specifically where the children were. WILSON said that after about 10 minutes in the house he returned to the car and informed COLEMAN and DOE of their whereabouts of the persons in 613 Poplar St.

WILSON said that COLEMAN and DOE were each armed with a semi-auto handgun and proceeded to the rear of the residence. WILSON said that they were gone for about 10 minutes when he heard two gunshots and COLEMAN and DOE came running back to the car. WILSON said he drove them back to his apartment in the 2000 block of W. 3rd St where COLEMAN and DOE remained for about 10 minutes before left on foot.

JOSEPH SENTORE COLEMAN JR. has prior felony convictions of Title 35 CS13A30 which preclude him from legally possessing a firearm or obtaining a license to carry a firearm.

Based on the above information, arrest warrants are requested for JOSEPH SENTORE COLEMAN JR. and "JOHN DOE" to answer to the attached charges of Criminal Homicide and related charges. Felony charges approved by DA Linhardt.

Affidavit of Probable Cause, 12/12/2016, Affiant Agt. T.R. Peacock/AGT #9

Discussion

In Franks v. Delaware, 438 U.S. 154, 155 (1978) the United States Supreme Court held that (1) where a defendant made a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by an affiant in his affidavit for a search warrant, and if the alleged false

statement was necessary to the finding of probable cause, the Fourth Amendment required that a hearing be held at the defendant's request so that he might challenge the truthfulness of factual statements made in the affidavit, and (2) if at such hearing the defendant established by a preponderance of the evidence the allegation of perjury or reckless disregard, and, with the affidavit's false material set to one side, the affidavit's remaining content was insufficient to establish probable cause, the search warrant had to be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

> To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant. Finally, if these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required. On the other hand, if the remaining content is insufficient, the defendant is entitled, under the Fourth and Fourteenth Amendments, to his hearing. Whether he will prevail at that hearing is, of course, another issue.

Franks v. Delaware, 438 U.S. 154, 171-72 (1978).

In Pennsylvania, where omissions are the basis for a challenge to an affidavit of probable cause in arrest warrant, the Court applies the following test:

> (1) 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
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> (2) whether the affidavit would have provided probable cause if it had contained the omitted information.

Commonwealth v. Taylor, 850 A.2d 684, 689 (Pa. Super. 2004).

The Defendant presents to the Court the following as material misstatements and/or omissions from the information provided to the issuing authority in making its probable cause determination:

1. Omission: The eyewitness to the masked gunman in her home that evening, Cheyanna Wright, described the shooter as "light skinned", and slightly taller than her mother. Interview of Cheyanna Wright, 10:30 pm, 10/31/2016, at 16. Motion to Suppress, 8/31/2017, at 17. At an interview less than two hours later she told police that she had a gut feeling Casey Wilson was her mother's shooter. Interview of Cheyanna Wright, 12: 13 am, 11/1/2016, at 3, at 12 "the light skin. The light skin part is what gets me. So you could see on the ski mask had the eyes cut out and the lips. And it was that light color. That's what I keep thinkin' of because Casey is a lighter color."
2. Misstatement: "WILSON said that they were gone for about 10 minutes when he heard two gunshots and COLEMAN and DOE came running back to the car." Next to last paragraph, Affidavit of Probable Cause. He said at the time of his police interview at 2:35 am on 11/1/2016 that Coleman was at the car prior to hearing the gun shots:

> **AGENT KONTZ**: Okay. Hold on. Let's slow down just a second. We had asked you earlier about you knew who pulled the trigger.
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> **CASEY WILSON**: Yes.
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> **AGENT KONTZ**: Okay. You kinda told us about something that happened. Why don't you explain that.
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> **CASEY WILSON**: That Crack [sic] ran past the car 'cause he saw somebody coming up the street. So when he ran this way he ran in a alleway and then stopped right there. And then his friend came around this way after the two gunshots –

AGENT KONTZ: Did they both come this way?

CASEY WILSON: Yup. And after the two gunshots went off –

AGENT KONTZ: Okay. Let's slow down a minute. So you saw Joe come out, run – he come [sic] up Poplar Street and came into Trenton Avenue; but then he turned down Trenton Place?

CASEY WILSON: Yup.

AGENT KONTZ: Okay. And then you heard –

CASEY WILSON: Two gunshots.

AGENT KONTZ: Two gunshots. And when you heard the two gunshots what did you do? You're still in the car or you're outside of the car?

CASEY WILSON: Yeah, I'm still in the car.

AGENT KONTZ: Okay.

CASEY WILSON: I turned on the car. Then his – because I was gonna pull off. And his friend came up around and tapped the window with the gun and said hurry up, open up the gun [sic] before I shoot.

...

AGENT KONTZ: Okay. All right. And when you heard the second gunshot Joe was down this alleyway. Could you see him?

CASEY WILSON: No.

AGENT KONTZ: He was now out of your view?

CASEY WILSON: Yup.

AGENT KONTZ: All right. And then what happened?

CASEY WILSON: He – 'um, his friend came around and tapped the window with the gun and said start the car, hurry the fuck up, let us in. And then Crack [sic] hopped back in the car when he got in.

Transcript of Video Recording, Interview of Casey Wilson, Agent Kontz, Peacock and Lucas, November 1, 2016; 2:35 am.

3. Omission: Casey Wilson was under duress at the time of his police interview at 2:35 am on November 1, 2016.

4. Misstatement: Casey Wilson told police that Coleman and Rawls "came out at like 9:55." Id. at 30. The 911 call in the APC is at 9:50 pm (21:50).

5. Misstatement: "Nathan Daniel was interviewed at WBP HQ and gave the same account as Cheyanna. Information obtained from Nathan indicated that SHANE

WRIGHT sold marijuana from the house and that robbery may be a motive." Fifth paragraph of APC. Cheyanna denied knowledge of her brother being a drug dealer in her interview so she and Daniel's accounts were not the same, as affiant wrote in APC. Transcript of Interview, Cheyanna Wright, 10/31/2016, 10:30 pm at 22. Transcript of Interview, Cheyanna Wright, 11/1/2016, at 6.

6. Misstatement: Regarding the type of vehicle parked on Trenton Avenue.
7. Omission: that "two witnesses told him [Officer Gardner, a responding officer at the scene] that the car had parked on Trenton Avenue, two males got out of the car and went into the house and then they heard gunshots." Motion to Suppress, 08/31/2017, at 18.
8. Omission: that Casey Wilson had tried to hide and that his girlfriend did not tell police where he was. Id. at 20. Then Casey Wilson was transported to Williamsport Bureau of Police HQ, advised of his rights and waives them. He was told that he was being taken into protective custody. Id. at 20.
9. Omission: that Casey Wilson had been convicted of crimes of dishonesty. Id. at 20.
10. Omission: that Casey Wilson's girlfriend had told police that she went to pick Defendant up not Casey Wilson. Id. at 21.

Applying the Taylor test to the omissions/misstatements presented by Defense Counsel, the Court finds that only one, the first, was a material omission that the issuing authority would have liked to have known prior to issuing an arrest warrant. TO WIT: that the eyewitness to a masked gunman in her home said that the shooter was a light skinned individual and that she believed the shooter was Casey Wilson. Though

an omission, the affidavit would still have provided probable cause even if the statement had been included. Casey Wilson himself was intimately involved in the incident that evening. He admits to that. Other witnesses put his vehicle in the area at the time of the shooting, which he admits that he was. Witnesses saw two people return to Casey Wilson's vehicle. Casey Wilson told police who those individuals were. Wilson's statements are sufficient to establish probable cause that Defendant participated in the commission of those crimes.

Whether probable cause exists for a warrant to issue is determined by the totality of the circumstances. Illinois v. Gates, 462 US 213, 238 (US 1983). In Illinois v. Gates the Supreme Court of the United States abandoned the two pronged test that had been in place regarding probable cause determinations and reaffirmed the totality of the circumstances approach. The Court reasoned that the two pronged test of separately evaluating "reliability" and "basis of knowledge" was excessively technical "with undue attention being focused on isolated issues that cannot sensibly be divorced from the other facts presented to the magistrate":

> 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.
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> (1) If, for example, a particular informant is known for the unusual reliability of his predictions of certain types of criminal activities in a locality, his failure, in a particular case, to thoroughly set forth the basis of his knowledge surely should not serve as an absolute bar to a finding of probable cause based on his tip.
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> (2) Likewise, if an unquestionably honest citizen comes forward with a report of criminal activity -- which if fabricated would subject him to criminal liability -- we have found rigorous scrutiny of the basis of his knowledge unnecessary.

> (3) Conversely, even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case.

Id.

Here, the Court would liken the statements made by Casey Wilson to be most closely analogous to the situation in (3). Though Wilson's motives may be unclear, his admissions are against his penal interest and therefore have the indicia of reliability ("a person's interest against being criminally implicated gives reasonable assurance of the veracity of his statement made against that interest". Commonwealth v. Honigman, 264 A.2d 424, 427 (1970).) Casey Wilson was intimately involved in the events of the evening and made statements with specific detail that corroborated other witnesses of statements. Pa.R.Crim.P.513 requires that an arrest warrant be supported by an affidavit that supplies the issuing authority sufficient information to support an independent judgment of probable cause. Commonwealth v. Flowers, 369 A.2d 362, 366 (1976). Here the Court finds that the information provided to the Magisterial District Justice was sufficient for the issuing authority to find probable cause to issue a warrant for Defendant.

"Probable cause" to arrest exists if "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief" that the suspect had committed or is committing a crime..."While it is true that suspicion and conjecture do not constitute probable cause, it is equally true that probable cause means less than evidence which would justify conviction: It is only the probability, and

not a prima facie showing, of criminal activity that is the standard of probable cause. Commonwealth v. Murray, 263 A.2d 886, 888 (1970) (internal citations omitted).

Misstatements/omissions #2 - #9 the Court addresses *seriatim*:

2. Whether Defendant was at the car before or after hearing gunshots is not relevant to the probable cause determination and even if Defendant was at the car after shots were fired, probable cause still existed to charge the crimes listed above.

3. It was not necessary for the affiant to indicate explicitly that Casey Wilson was under duress when he made his statements. That is obvious given the situation within which he found himself, by his admission an accomplice to what appears to be a double homicide. The affiant explicitly stated that Wilson was read his rights before he made his statements so there can be no question that Wilson was aware that the police believed he would be incriminating himself and needed to advise him of his rights. Wilson's state of mind while giving his statements to police is not something the issuing authority would consider when making a probable cause determination.

4. The discrepancy of five minutes in time between when Wilson said he drove away from crime scene and when the 911 call was placed is not information relevant to the issuing authority's decision and including would not have changed the probable case determination.

5. The suggestion that Cheyanna Wright and her boyfriend Nathan Daniel differed in their opinion regarding whether victim Shane Wright was a drug dealer and therefore the statement in the affidavit of probable cause that "Nathan Daniel gave the same account as Cheyanna" was somehow misleading is not a material misstatement that effects a probable cause determination.

6. The make of the black vehicle witnesses saw parked on Trenton Avenue is not the type of specific information that is required in making a probable cause determination. Again the standard is not even a prima facie one to issue an arrest warrant let alone a beyond a reasonable doubt where cumulative discrepancies could cause hesitation in decision making.

7. Applying the Taylor test to omission seven, the Court finds that it is information the issuing authority would have liked to have known before making the probable cause determination. Witnesses told a Williamsport Bureau of Police officer responding at the scene that they had seen a car parked on Trenton Avenue, that two males got out of the car, and went into the house, and then they heard gunshots. However, in the Court's evaluation, if the issuing authority had been told this it would bolster the statements of Wilson, especially the last paragraph of the affidavit of probable cause relating to Wilson's statements to police. Thus, the chance of a probable cause determination being made would be greater, not less.

8. The Court does not find that the omission presented is information that the issuing authority needed to know in making its determination. Though the information casts doubt on Wilson's motives, as indicated above, the other information of which he had knowledge lends credence to his account of events.

9. The crimen falsi information is also not relevant to the probable cause determination. Commonwealth v. Taylor, 850 A.2d 684, 689 (Pa. Super. 2004) (citing Commonwealth v. Ceriani, 600 A.2d 1282, 1285 (Pa. Super. 1991) (omission of an informant's prior record and possible drug addiction was not fatal, because the affidavit would have provided probable cause even if this information had been included),

appeal denied, Commonwealth v. Yerger, 482 A.2d 984, 990-991 (Pa. Super. 1984), appeal denied, (where officer's statements in an affidavit were technically correct but "misleading by omission," and where the omission was deliberate, invalidation of the warrant was not necessary because the omission was "not an attempt to create probable cause where none existed" and because the affidavit still would have presented probable cause if the full information had been included).

10. Like the above omissions, whoever initially picked Defendant up on the day in question, whether Casey Wilson, or his girlfriend, is not a fact relevant to the probable cause determination and as such its omission is without consequence.

Conclusion

Though Defendant has presented various discrepancies between what was reported to police and what was reported in the affidavit of probable cause, the discrepancies are de minimis and do not rise to the level of being false statements made knowingly or with reckless disregard for the truth such that further hearing would be required.

ORDER

AND NOW, this 9th day of November, 2017, based upon the foregoing Opinion, the Court finds that Defendant has not met the Franks standard to require further hearing and the Motion to Suppress is hereby DENIED.

By the Court,

_____
Nancy L. Butts, President Judge

cc: Nicole Spring, Esq. Defense Counsel
DA
Gary Weber, Esq.