

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-276-2018
vs.	:
	:
ANTHONY POTTER,	: Opinion and Order re Defendant's
Defendant	: Motion to Suppress contained in the
	: Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on March 2, 2018 with aggravated assault by vehicle while DUI, and related charges. On December 16, 2017, there was a multiple vehicle crash on South Route 44 Highway in Nippenose Township, Lycoming County. The defendant was determined to be a driver of one of the vehicles involved in the accident. Defendant was eventually taken into custody but released to EMS personnel after complaining of chest pains. Defendant was transported by ambulance to the Williamsport Hospital (UPMC Susquehanna Medical), hereinafter UPMC-Williamsport.

Subsequently, Sergeant Brian Fioretti of the Tiadaghton Valley Regional Police Department drafted an application for a search warrant along with an affidavit of probable cause. The documents were dated December 18, 2017. A magisterial district judge approved the application and a search warrant was served on UPMC-Williamsport on December 18, 2017. The search warrant identified the following items to be searched for and seized: a toxicology report and blood alcohol concentration for blood and urine drawn from [Defendant] on December 16, 2017. Any and all medical records for any findings of a medical condition [Defendant] may have been suffering from on December 16, 2017.

Sergeant Fioretti also drafted a second application and affidavit dated as well

on December 18, 2017. A magisterial district justice approved the application and search warrant on December 18, 2017. A search warrant was served on UPMC-Williamsport on December 18, 2017. The search warrant identified the following items to be searched for and seized: Any and all blood drawn from [Defendant] on December 16, 2017.

The Commonwealth intends on utilizing Defendant's seized medical records and the blood to support the charges against Defendant. Defendant contends, in his motion to suppress, that the medical records and blood must be suppressed because the affidavits in support of the warrant lacked probable cause.

Defendant contended at oral argument and in his written brief that the initial affidavit fails to set forth any facts that "would allow someone to find that evidence of [a] crime would be found in Defendant's medical records." Defendant argues that the affidavit and application for search warrant are based only on a "mere suspicion" and are sought as a "general investigative tool to determine whether a crime has been committed." Defendant argues that the warrant is overbroad and constitutes an impermissible fishing expedition. Defendant concludes that "having a medical condition is not a crime and therefore police may not use a search warrant to seek evidence of that medical condition."

With respect to the second search warrant, Defendant contends that the affidavit in support lacks probable cause "as there is no evidence presented...that would lead a reasonable magistrate to find there was any indication of impairment prior to the accident." Defendant further argues that it too is overbroad in that "it seeks to go on a fishing expedition to look for a cause to explain the accident." Finally, Defendant argues that it is a direct result of the illegally obtained medical records pursuant to the first search warrant and

thus “is fruit of the poisonous tree.”

A search warrant must be supported by probable cause. U.S. Const. Amend. IV; Pa. Const. Art. I, § 8. The United State Supreme Court established the “totality of the circumstances” test for determining whether a request for a search warrant under the Fourth Amendment is supported by probable cause...[The Supreme Court of Pennsylvania] adopted the totality of the circumstances test for purposes of making and reviewing probable cause determinations under Article I, § 8. *Commonwealth v. Jones*, 605 Pa. 188, 988 A.2d 649, 655 (2010).

The task of an issuing authority in deciding whether to issue a warrant is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit of probable cause before him, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921, 925 (1985). “The affidavit supporting the search warrant must set forth a substantial nexus between the crime and the place to be searched.” *Commonwealth v. Funds in Merrill Lynch Account Owned by Peart*, 777 A.2d 519, 523 (Pa. Cmwlth. 2001); see also *Commonwealth v. Torres*, 177 A.3d 263, 272-73 (Pa. Super. 2017). The duty of a court reviewing a probable cause determination “is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed.” *Gray*, 503 A.2d at 925.

In this particular case with respect to search warrant no. 1, the MDJ had a substantial basis for concluding that there was a fair probability that evidence of a crime would be found in Defendant’s medical records from the date of the incident.

As the Commonwealth cogently argues, the affidavit of probable cause clearly provides enough information to believe that the criminal acts of reckless driving and assault by motor vehicle occurred as a result of Defendant's unsafe driving. The court agrees.

Reckless driving occurs when a person drives any vehicle in willful or wanton disregard for the safety of persons or property. 75 Pa. C.S. §3736. Aggravated assault by motor vehicle occurs when a person recklessly or with gross negligence causes serious bodily injury to another while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the use or operation of a vehicle or the regulation of traffic other than DUI.¹ 75 Pa. C.S. §3732.1.

The affidavit indicates that the victim's vehicle was stopped to make a left turn, and Defendant was driving a white truck. A witness told the police that Defendant "came flying up" behind the victim and "just drove up over her car", and it didn't look like Defendant hit his brakes. The victim was entrapped in her vehicle.

The affidavit also details Defendant's unusual behavior with his family prior to the vehicle crash and his combative behavior after the crash while he was attempting to leave the scene. These details include information that Defendant was "acting different all day;" he told a friend that his house was possessed and then left the house, slid down his friend's driveway and took off in a hurry; and he was having chest pains and breathing difficulty at the scene of the accident. The cumulative behavior by Defendant on the day in question, read in a common sense manner, supports a probable cause determination that Defendant was on something, i.e., under the influence of a controlled substance or alcohol, or

¹ There is a separate statute for aggravated assault by vehicle while DUI, 75 Pa. C.S. §3735.1.

was experiencing a medical or mental health episode, evidence of which one would reasonably expect to be found in Defendant's medical records from the date of the incident.

The court agrees that it is not a crime to merely have a medical condition. Depending on the circumstances, however, it could be reckless or grossly negligent to drive a motor vehicle after one has exhibited signs that he is experiencing a medical or mental health episode. The court would analogize such to falling asleep at the wheel, which depending on the circumstances can constitute recklessness or gross negligence. See *Commonwealth v. Huggins*, 575 Pa. 395, 836 A.2d 862 (2003)(Commonwealth presented *prima facie* evidence for involuntary manslaughter where the appellee fell asleep at the wheel of an overloaded van, which was full of children who were not wearing seatbelts).

The court makes the same ruling with respect to the second search warrant. The facts set forth in the affidavit of probable cause read in a common sense manner and not being interpreted in a hypertechnical manner clearly demonstrate that Defendant was at the very least responsible for the accident, likely was experiencing an event that caused the accident and afterwards exhibited consciousness of guilt by attempting to leave the scene of the accident.

Moreover, and contrary to what Defendant claims, a warrant may be used as an investigative tool to search for and seize property that may constitute "mere evidence" concerning a crime that has been committed. Pa. R. Cr. P. Rule 201 (3); *Commonwealth v. Jones*, 605 Pa. 188, 988 A.2d 649, 657 (2010). Here, it was clear that the police could, with fair probability, expect to find evidence related to the crimes that had probably been committed.

Defendant’s overbreadth argument also fails. “[N]o warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be....” Pa. Const. Art. I, § 8. In *Commonwealth v. Orié*, the Pennsylvania Supreme Court explained the “as nearly as may be” requirement of Article I, § 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 prohibits a warrant that it is not particular enough and a warrant that is overbroad. 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.

Commonwealth v. Orié, 88 A.3d 983, 1002-3 (Pa. Super. 2014).

Contrary to what Defendant argues, the court is satisfied that the scope of the warrants were sufficiently narrow. The warrants did not seek all of Defendant’s medical records; they only sought his medical records from the date of the incident.

ORDER

AND NOW, this ___ day of October 2018, following a hearing and argument, Defendant’s Motion to Suppress based on the search warrants is DENIED. The hearing and argument on Defendant’s remaining motions as set forth in his Omnibus Motion is scheduled for the 30th day of November, 2018 at 10:00 a.m. in Courtroom No. 4 of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney

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Work File