

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2139-2017
 :
 KASAN SANDERS, : Motion to Suppress
 Defendant :

OPINION AND ORDER

This matter came before the court on October 8, 2018 for a hearing and argument on Defendant's motion to suppress.

By way of background, on December 12, 2017, Defendant was charged with four counts of persons not to possess firearms, two counts of possession with intent to deliver a controlled substance, and two counts of possession of a controlled substance as a result of a search of 513 High Street on November 9, 2017. A preliminary hearing was held on December 27, 2017, and all of the charges were held for court. Defendant's arraignment was scheduled for January 8, 2018.

On April 17, 2018, this case was consolidated with case 1972-2017, but the firearm charges in this case were severed for trial from all of the other charges.

On September 27, 2018, Defendant was present before a visiting senior judge for jury selection, at which time Defendant complained that his attorney had not filed any pretrial motions on his behalf. The judge told defense counsel to file any motions by Monday, October 1, 2018.¹ A jury was selected for the trial of the firearm charges, and trial

¹ Absent certain exceptions not present in this case, the Rules of Criminal Procedure require such a motion to be filed within 30 days after arraignment. Pa. R. Crim. P. 581(B); Pa. R. Crim. P. 579(A). The court typically

was scheduled for October 12, 2018.

On October 1, 2018, defense counsel filed a motion to suppress in which he asserted that the search warrant failed to include sufficient information or facts to support the reliability of the confidential informant.

The court scheduled a hearing and argument on the motion for October 8, 2018. Neither party presented any testimony, although Defendant did make some statements during the proceedings. The Commonwealth asked to admit the affidavit of probable cause for the search warrant as Commonwealth Exhibit 1, but the court indicated such was not necessary as defense counsel had attached a copy of the affidavit of probable cause to the motion to suppress.

Probable cause is a practical, non-technical conception requiring a consideration of the totality of the circumstances. The task of the issuing authority 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. And the duty of a reviewing court is simply to ensure that the magistrate had a ‘substantial basis...for conclude[ing] that probable cause existed.’”

Commonwealth v. Coleman, 574 Pa. 261, 830 A.2d 554, 560 (2003).

The affidavit indicates that a confidential informant (CI) made four successful controlled buys from Defendant at 513 High Street. Each controlled buy was conducted in the same manner. The CI met detectives from the Narcotics Enforcement Unit (NEU). The

would not grant a hearing on a motion filed so close to trial and nearly 8 months late, particularly where a defendant has been represented by the same counsel throughout the proceedings.

detectives strip searched the CI and searched his vehicle to negate the presence of controlled substances, contraband or currency. The detectives provided the CI with pre-recorded funds. The CI placed a call to Defendant to purchase heroin. Defendant directed the CI to 513 High Street. Detectives set up surveillance in the area of 513 High Street. They observed the CI enter 513 High Street. After a very short period of time, the CI exited that location and met the detectives at a pre-determined location. The CI provided waxen bags of heroin to the detectives. The CI and the CI's vehicle were again searched and no controlled substance, contraband or currency was found. In the first controlled buy, the CI exited the residence with a black male identified as Defendant. Additionally, the CI informed the detectives that he observed a chrome handgun while inside 513 High Street. Another confidential source also stated that Defendant has been seen with a firearm in his possession.

The detectives applied for and obtained the search warrant of 513 High Street on November 7, 2017, following the fourth controlled buy. The search was conducted on November 9, 2017.

When two independent informants both supply the same information about a particular crime to law enforcement, each source tends to corroborate the reliability of the other. *Commonwealth v. Dukeman*, 917 A.2d 338, 342 (Pa. Super. 2007); *Commonwealth v. Singleton*, 603 A.2d 1072, 1074-75 (Pa. Super. 1992). The CI's statement regarding Defendant's firearm possession was corroborated by another source.

Similarly, a CI's statements about a defendant's drug activities are corroborated by controlled buys. See *Commonwealth v. Baker*, 532 Pa. 121, 615 A.3d 23, 26

(1992); *Commonwealth v. (Felix) Hawkins*, 45 A.3d 1123, 1129 (Pa. Super. 2012); *Commonwealth v. Dean*, 693 A.2d 1360, 1366 (Pa. Super. 1997). Here, the CI's statements about the deliveries were corroborated by the detectives hearing the CI set up the buy during the phone call, the confirmation of the lack of controlled substances on his person and in his vehicle through the searches conducted by the detectives, the surveillance of the CI entering and exiting 513 High Street, and the CI providing heroin to the detectives upon the completion of each controlled buy. Furthermore, each controlled buy was corroborated by the others.

Finally, regardless whether the affidavit establishes sufficient probable cause to search 513 High Street, Defendant is not entitled to the remedy of suppression because he has not established that he had a legitimate expectation of privacy in that address.

In order to prevail on a suppression motion, a defendant is required to establish a subjective personal privacy interest in the area searched or effects seized and that society objectively recognizes such interest as legitimate or justified. *Commonwealth v. (Raphieal) Hawkins*, 553 Pa. 76, 718 A.2d 265, 267-68 (1998); see also *Commonwealth v. Peterson*, 535 Pa. 492, 636 A.2d 615, 617 (1993).

In paragraph 12 of his motion, Defendant asserts that he was not listed on the lease for 513 High Street; in fact, there were no leased or rent paying tenants at that address according to the property management. Defense counsel verified, subject to the penalties relating to unsworn falsifications, that the statements contained in the motion were true and correct to the best of his knowledge, information and belief. Furthermore, during the

proceedings Defendant made statements to the effect that everybody just went to that address to get high; if that made the place his house, it was the confidential informant's and numerous other individuals' house as well. Since Defendant has not shown an objectively reasonable privacy interest in the premises searched, he is not entitled to the remedy of suppression. *Rakas v. Illinois*, 439 U.S. 128, 99 S. Ct. 421, 430 n.12 (1978); *Commonwealth v. Gordon*, 546 Pa. 65, 683 A.2d 253, 258 (1996)(no legitimate expectation of privacy in abandoned house, despite the fact that the appellant separated his mattress and working television from the rest of the house by hanging up a sheet); *Peterson*, 636 A.2d at 617-18 (no legitimate privacy interest in an abandoned storefront used as a "gate house" to deliver drugs); *Commonwealth v. Cameron*, 385 Pa. Super. 492, 561 A.2d 783 (1989)(no legitimate expectation of privacy in an abandoned house out of which a drug operation was conducted), *alloc. denied*, 525 Pa. 576, 575 A.2d 108 (1989).

ORDER

AND NOW, this ____ day of October 2018, the court DENIES Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File