

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1676-2018  
vs. :  
: CRIMINAL DIVISION  
:   
:   
:   
DERRICK JOHNSON, :   
Appellant : Defendant's Omnibus Pretrial Motion

**OPINION AND ORDER**

Before the court is Defendant's Omnibus Pretrial Motion filed on March 19, 2019. By way of background, Defendant is charged by Information filed on November 16, 2018 with several controlled substance violations including, but not limited to, possession with intent to deliver 15 grams of heroin seized from 310 Kane Street, 2<sup>nd</sup> Floor, middle apartment, following a search on October 25, 2018. The suspected heroin was allegedly found in the apartment on the bathroom floor.

The hearing on the motion was scheduled for September 17, 2019 before this court. The parties stipulated that the court could consider the motion based on the averments set forth in it and a review of the relevant search warrant and affidavit of probable cause which were collectively marked as Commonwealth's Exhibit 1 and admitted into evidence.

Defendant's first motion is a motion to suppress physical evidence. Defendant argues that the warrant supporting the search warrant lacked sufficient probable cause to search 310 Kane Street. Accordingly, Defendant submits that all controlled substances, contraband and other incriminating evidence seized as a result of the search, must be suppressed.

Both the Fourth Amendment to the United States Constitution as well as

Article I, Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. *Commonwealth v. Glass*, 200 A.3d 477, 482-83 (Pa. Super. 2018). The Fourth Amendment has a strong preference for searches conducted pursuant to warrants. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018). Search warrants may only issue upon probable cause and the issuing authority may not consider any evidence outside of the affidavits. Pa. R. Crim. P. 203 (B). “The affidavit of probable cause ‘must provide the magistrate with a substantial basis for determining the existence of probable cause.’” *Leed*, supra. (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

“The affidavit supporting the search warrant must set forth the 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). 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. *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921, 925 (1985).

“Probable cause exists where the facts and circumstances within the affiant’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted.” *Leed*, supra. (quoting *Commonwealth v. Johnson*, 42 A.3d 1017, 1013 (Pa. 2012)). In other words, the “task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all of 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. Clark*, 28 A.3d 1284, 1288 (Pa. 2011) (quoting

*Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985)).

Although the Commonwealth bears the burden of establishing that probable cause existed by a preponderance of evidence, *Leed*, supra., a “grudging or negative attitude by reviewing courts towards warrants...is inconsistent with the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant; courts should not invalidate warrants by interpreting affidavits in a hypertechnical, rather than a common sense, manner.” *Commonwealth v. Jones*, 988 A.2d 649, 655-56 (Pa. 2010)(quoting *Gates*, 462 U.S. at 236)).

In reviewing the search warrant application and affidavit of probable cause, the court concludes that the magistrate had a substantial basis for concluding that probable cause existed. In this particular case, MDJ Whiteman had a substantial basis for concluding that there was a fair probability that evidence of a crime would be found at 310 Kane Street.

As was recently noted in *Commonwealth v. Bernard*, 2019 PA Super 271, 2019 WL 4180655, \*3 (September 4, 2019), probable cause is made out when the facts and circumstances which are within the knowledge of the officer, and of which he has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution in the belief [that evidence of a crime would be found in the location to be searched].” The question asked is not whether the officer’s belief was correct or more likely true or false. Rather, the courts require only a probability and not a prima facie showing. In determining whether probable cause exists, the courts apply a totality of the circumstances test. *Id.*

The affiant, Detective Curt Loudenslager, was a detective with the Lycoming County District Attorney’s office, Narcotics Enforcement Unit (NEU). As a detective and in his prior law enforcement capacities, he has gained substantial experience and training in drug investigations.

The drug investigation involving Defendant consisted of two successful controlled purchases of heroin from Defendant on October 2, 2018 and October 23, 2018. A confidential informant was utilized during the course of the investigation to purchase the narcotics. The confidential informant was previously deemed reliable based on information provided by the confidential informant as well as independent corroboration of information received.

With respect to the first controlled purchase, the confidential informant called a specific phone number and arranged to buy \$60.00 worth of heroin. The CI was instructed to wait in the parking lot of the Save a Lot grocery store in South Williamsport. Defendant was identified as the driver of a vehicle which met with the CI. Defendant is alleged to then have delivered to the CI the suspected heroin.

On October 23, 2018, both the confidential informant and the affiant acting in an undercover capacity initiated a controlled buy with the defendant. The same telephone number was called and the suspected heroin was allegedly delivered to the CI via the same means. Defendant drove to the parking lot and conducted the transaction.

The CI paid for the suspected heroin with pre-recorded police funds.

Furthermore, prior to the October 23, 2018 transaction, officers conducting surveillance observed Defendant deliver suspected heroin to another individual. This delivery was confirmed when the individual was stopped and interviewed by police.

Once Defendant left the area of the Save a Lot grocery store, he drove back to 310 Kane Street, South Williamsport and entered the premises. The vehicle that was used to deliver the heroin on October 2, 2018 and October 23, 2018 was parked at the residence of 310 Kane Street. Finally, the vehicle was also observed at the residence the following

morning on October 24, 2018.

These facts taken together and read in a practical common sense manner support the conclusion that there was a fair probability that contraband or evidence of a crime would be found at 310 Kane Street. At the very least, MDJ Whiteman had a substantial basis for concluding that there was a fair probability that evidence of a crime would be found at 310 Kane Street. Accordingly, Defendant's motion to suppress will be denied.

Defendant's remaining motions shall be granted as set forth below.

**ORDER**

**AND NOW**, this \_\_\_ day of September 2019, following a hearing, Count I of Defendant's Omnibus Pretrial Motion, titled Motion to Suppress Physical Evidence is **DENIED**.

Count II titled to Motion to Disclose Promises and Agreements is **GRANTED**. Within 30 days of today's date, the Commonwealth shall provide Defendant with the names and addresses of all persons who have been offered immunity, favorable consideration, leniency or favorable treatment, express or tacit, in this case. As well, the Commonwealth shall provide all evidence in its possession or available to it regarding any prior arrests or convictions of all persons the Commonwealth intends to call as a witness at trial.

Defendant's Count III, titled Motion for Disclosure of Rule 404 (b) Evidence is **GRANTED**. No later than thirty (30) days from today's date, the Commonwealth shall provide to Defendant a specific 404(b) written notice setting forth the general nature of any

evidence of a crime, wrong or other act that the Commonwealth intends to introduce at trial with respect to Defendant.

As for Count IV titled Motion to Reserve Right, said motion is **GRANTED**. If Defendant is provided with any additional discovery past the date of the hearing in this matter, Defendant is permitted leave to file any supplemental omnibus pretrial motion in a timely manner based on said additional discovery.

By The Court,

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Marc F. Lovecchio, Judge

cc: Jeana Longo, Esquire  
District Attorney (JG)  
Gary Weber, Lycoming Reporter  
Work File