

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : CP-41-CR-1671-2018
v. :
 :
RASHEEM JOHNSON, :
Defendant : MOTION TO SUPPRESS
 :
OPINION AND ORDER

Rasheem Johnson (Defendant) was charged on October 24, 2018 with two counts of Delivery of a Controlled Substance,¹ three counts of Possession of a Controlled Substance with the Intent to Deliver,² two counts of Possession of a Controlled Substance,³ and two counts of Criminal Use of a Communication Facility.⁴ The charges arise from two controlled purchases and a subsequent search warrant conducted on Defendant’s residence in Williamsport, Pennsylvania. Defendant filed this Motion to Suppress and Petition for Writ of Habeas Corpus on October 9, 2019.⁵ A hearing on the Motion was held by this Court on October 14, 2019. Defendant argues that his cellular telephones were illegally obtained by Officers Joshua Bell (Bell) and Clinton Gardner (Gardner), which is how Detective Michael Caschera (Caschera) obtained the Steven Floyd’s (CI) contact information.⁶ Therefore the evidence obtained should be suppressed because the CI’s contact information was obtained through unlawful means.⁷

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 18 Pa. C.S. § 7512.

⁵ It is important to note a jury has already been selected and Defendant is scheduled to proceed to a one day jury trial on October 15, 2019. Although the Motion is facially untimely, as raised by the Commonwealth at the hearing, the Court heard the Motions in the interest of justice. *See* Pa. R. Crim. P. 581(B); *Commonwealth v. Williams*, 323 A.2d 862, 864 (Pa. Super. 1974).

⁶ Defendant’s Motion to Identify the Confidential Informant was granted by Order of this Court on October 3, 2019.

⁷ Defendant’s Petition for Writ of Habeas Corpus argues that because the search was unconstitutional and must be suppressed, the Commonwealth cannot satisfy its *prima facie* burden of proof absent such evidence.

Based on the following Opinion this Court denies Defendant's Motion to Suppress Evidence and Petition for Writ of Habeas Corpus.

Background and Testimony

Caschera of the Lycoming County Narcotics Enforcement Unit (NEU) testified on behalf of the Commonwealth. Defendant also submitted a copy of the transcript from a hearing on a Motion for Return of Property in a civil matter involving Defendant as an exhibit. Based on this evidence the following was established. The District Attorney's office notified Caschera that CI wanted to cooperate. CI's attorney, Michael Morrone, Esq., reached out to the District Attorney's office expressing such information. CI was then interviewed by Caschera on November 4, 2018 and was used to conduct a controlled buy from Defendant on November 11, 2018. Caschera testified that he had not spoken with either Bell or Gardner in regards to this case prior to that controlled buy. The Commonwealth additionally had the Court take notice of Commonwealth v. Steven Floyd, CR-315-2018 out of the Lycoming County Court of Common Pleas. The Commonwealth contends that this is the case in which CI was receiving consideration in exchange for cooperation. On cross examination Defense counsel pointed out that Caschera testified he was given the number by Williamsport Bureau Police at the preliminary hearing. Additionally, Caschera testified that Bell and Gardner did assist him in identifying Defendant after the first controlled buy. On redirect, Caschera admitted he is not aware of every investigation that comes through the NEU. Defendant argues that Caschera obtained CI's information by means of Bell and Gardner's alleged illegal search Defendant's cellular telephone. The Commonwealth argues that Caschera obtained the information by legitimate means and did not have contact with Bell and Gardner in regards to the above matter until after the execution of the first controlled purchase on October 11, 2018.

Whether the Controlled Buys and Subsequent Search Warrant Must be Suppressed

“A criminal defendant with standing to pursue a motion to suppress in this Commonwealth has a right to compel the prosecution to prove its evidence was not obtained in violation of his constitutional rights, without having to present evidence of his own.”

Commonwealth v. Enimpah, 106 A.3d 695, 703 (Pa. 2014); *see also* Pa. R. Crim. P. 581(H).

The Commonwealth has the burden of production and persuasion to show by a preponderance of the evidence that such evidence was not obtained through a violation of a defendant’s constitutional rights. *Commonwealth v. Kane*, 210 A.3d 324, 329 (Pa. Super. 2019).

The Commonwealth presented evidence contrary to Defendant’s position that the CI’s information was obtained via an unconstitutional search of Defendant’s cellular telephone. Caschera testified that Bell and Gardner, the alleged perpetrators of the illegal search, were not involved until after the first controlled buy was conducted. Additionally, Caschera testified that Michael Morrone, Esq. indirectly gave Caschera the information through the District Attorney’s office. As for Caschera’s testimony at the preliminary hearing stating he received the information for CI by the Williamsport Bureau of Police, this Court finds it just as likely that Officer Andrew Stevens the arresting officer in CI’s case could have provided the information. CI was arrested on February 1, 2018, nearly five months prior to the alleged illegal search. CI was represented by Michael Morrone, Esq. as Caschera testified. In addition, it seem CI did receive a benefit for his cooperation as he took a plea to Possession of Drug Paraphernalia in exchange for a \$200 fine, while facing a felony charge for Possession with the Intent to Deliver.

Conclusion

This Court finds Caschera's testimony credible and finds the Commonwealth met its burden of a preponderance of the evidence. The CI was arrested prior to the alleged impermissible search of Defendant's cellular telephone and the CI's case shows consideration was given and aligns with the testimony of Caschera. Therefore, Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus shall be denied.⁸

ORDER

AND NOW, this 14th day of October, 2019, based upon the foregoing Opinion, Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus are hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JG)
Timothy Reitz, Esquire
PD (JH)

NLB/kp

⁸ Additionally the Court notes that it does not believe that Defendant would be *per se* permitted to relief if Defendant's contact information was taken from an illegal search of Defendant's cellular telephone. Police already had prior contacts and the contact information of CI. The evidence Defendant is attempting to suppress is controlled buys, which CI had to voluntarily agree to conduct after the fact. Based on the nature of the evidence attempting to be suppressed, controlled buys, the Court believes the evidence is far attenuated from Defendant's cellular telephone search and it is information that police could have and most likely did obtain through independent sources.