

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-338-2019
v.	:	
	:	
AMANDA KUHNS,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-339-2019
v.	:	
	:	
TIMOTHY KUHNS, II,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Amanda Kuhns (Ms. Kuhns) and Timothy Kuhns (Mr. Kuhns), collectively “Defendants,” were arrested by the Old Lycoming Township Police Department on February 13, 2019. Mr. Kuhns was arrested for Person Not to Possess a Firearm,¹ Criminal Conspiracy—Person not to Possess a Firearm,² and Firearms not to be Carried without a License.³ The charges arise from police conducting a search warrant on Defendants’ residence, 3650 Dewey Ave., Cogan Station, PA in Lycoming County. Mr. Kuhns filed an Omnibus Pretrial Motion on May 29, 2019 requesting suppression of the evidence yielded as a result of the search of his residence. Ms. Kuhns filed an Omnibus Pretrial Motion Nunc Pro Tunc on June 12, 2019 requesting suppression of the evidence yielded as a result of the search of her residence and disclosure of any information pursuant to Pa. R. Evid. 404(b).⁴ A hearing on the Motions was conducted by this Court on August 20, 2019. Defendants and the Commonwealth were given

¹ 18 Pa. C.S. § 6105(a)(1).

² 18 Pa. C.S. § 903(a)(1).

³ 18 Pa. C.S. § 6106.

⁴ The issue was adopted by Mr. Kuhns and handled at the time of the hearing. The Commonwealth has agreed to submit all pertinent information prior to jury selection.

an opportunity to brief the issue of suppression. Defendants submitted their briefs on September 6, 2019 and the Commonwealth submitted its briefs on September 10, 2019. In their Motions to Suppress, Defendants raise whether the information provided was stale, whether there was insufficient reliable information, and whether the search warrant was overbroad to establish the requisite probable cause for a search warrant to conduct a search of Defendants' residence.

Background

At the hearing on August 20, 2019, the parties provided no testimony and informed the Court the issue would be strictly decided based on the four corners of the search warrant and the briefs to be submitted. The Affidavit in Support of the Application for the Search Warrant (Affidavit) was constructed by Detective Sergeant Chris Kriner (Kriner) of the Old Lycoming Township Police Department. Kriner has arrested individuals for firearms related offenses and participated in investigations of the illegal acquiring and possessing of firearms. Affidavit 2/12/19, at 1. He also has worked in an undercover capacity purchasing firearms. *Id.* at 2. Additionally, Kriner has debriefed and utilized confidential informants during firearms investigations. *Id.* Based on this training and experience Kriner knows it to be

common for [an individual] who illegally acquire and possess firearms to maintain those firearms for extended periods of time, . . . frequently keep those illegally acquired and possessed firearms in close proximity to have ready access to them, many times keeping them secreted in their residences, . . . [and] frequently utilize[] the assistance of other individuals including family, relatives, significant others, and friends utilizing cellular and other electronic devices to arrange for the illegal sale and purchase of those firearms.

Id. at 2-3.

In the Affidavit, Kriner stated it has been his experience in the past “when suspects utilize cellular telephones and electronic devices to communicate with co-conspirators regarding the

illegal acquiring, purchasing, and possessing of firearms that records relating to those communications will be found within stored data of the cellular telephones and electronic devices.” *Id.* at 3. In addition, it is common for suspects and co-conspirators to take photographs and videos of illegally acquired and possessed firearms on their cellular telephones and other electronic devices. *Id.*

The Background of Investigation of the Affidavit constructed by Kriner states in its entirety:

Background of Investigation

On February 07, 2019 RAVEN DERR reported to Old Lycoming Township Police Department that she had knowledge of TIMOTHY KUHNS being in possession of a firearm.

DERR was employed by a local home health agency to provide home health aide to [redacted] year olds, [redacted] and [redacted], twin daughters residing with TIMOTHY KUHNS and their mother, AMANDA WINCHESTER-KUHNS. DERR provided home health services at the KUHNS residence located at 3650 Dewey Avenue, Lot #06, in Lycoming Township, Cogan Station, PA. 17728. Furthermore, DERR worked daily, Monday through Friday, 7:00 AM to 3:00 PM at the KUHNS residence. DERR has worked at the KUHNS residence for several months and quit as of February 05, 2019 because of concerns for the safety and care of KUHNS children. These issues were reported to Pennsylvania ChildLine and Lycoming County Children and Youth Agency.

DERR indicated to police that during the morning on a date in October 2018 she overheard conversation between AMANDA and TIMOTHY KUHNS about obtaining a firearm. DERR explained that AMANDA and TIMOTHY were concerned about AMANDA’S ex-husband, LEONARD WINCHESTER breaking into their residence. Later in the day DERR explained that TIMOTHY KUHNS had shown her a small, black colored handgun firearm. DERR stated that this occurred in the kitchen of the KUHNS residence and AMANDA KUHNS was also present. DERR stated that TIMOTHY said that AMANDA had purchased the gun for him earlier in the day. DERR stated TIMOTHY was bragging about having a gun and being a felon not allowed to possess a firearm. DERR stated the gun as originally in the box but TIMOTHY then put it on his hip.

DERR had observed TIMOTHY KUHNS in possession of the handgun several times over the next several months. At one point DERR explained that

TIMOTHY told her the gun would be kept above a gun cabinet inside the residence and was “loaded and ready to go” if LEONARD WINCHESTER ever came around.

DERR also indicated that a male only known to her as “ZAK” had been living at KUHNS residence for several months. DERR stated she had observed “ZAK” in possession of a handgun as well. DERR was unsure if the handgun she observed in “ZAK’S” possession with [sic] the same she observed TIMOTHY KUHNS with. Additional police investigation revealed that “ZAK” was ZAKARY REYNOLDS.

TIMOTHY KUHNS has several arrests for theft, receiving stolen property and burglary. TIMOTHY KUHNS has a 2006 conviction for felony 1 burglary, making him a convicted felon, unable to possess a firearm.

On February 07, 2019 at 2:13 PM TIMOTHY KUHNS was observed operating a 1995 GMC Sierra pickup truck with Pennsylvania registration ZHK3764 in Old Lycoming Township. Vehicle and TIMOTHY KUHNS and ZAKARY REYNOLDS were subsequently observed parking the vehicle at 3650 Dewey Avenue Extension Lot 6.

Witness, RAVEN DERR, has no documented criminal history, nor pending criminal charges. She has identified herself and established a willingness to provide information and testimony. DERR provided specific information as to the observation of a firearm by TIMOTHY KUHNS and KUHNS statements to her of his knowledge he was not permitted to possess a firearm.

Id. at 4-5.

Based on that information and Kriner’s relevant training and experience the items to be seized were:

Firearms, specifically a small, black colored handgun, unknown make/model or caliber; any firearm and ammunition not legally possessed under PACC Title 18, Chapter 61 Section 6105 A1, Persons Not to Possess Firearms; all items pertaining to the sale transfer or possess of firearms not legally possessed; photographs of individuals in possession of firearms they are not legally able to possess; cellular telephones and electronic devices and the contents and date therein pertaining to the sale and possession of illegally acquired firearms; indicia of occupancy; any safes, locked cabinets and secured containers or devices at the location capable of concealing or containing the aforementioned items to be searched for and seized.

Application for Search Warrant 2/12/19, at 1-2.

Discussion

When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-technical manner." *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a "totality of the circumstances." *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985) (adopting *U.S. v. Gates*, 462 U.S. 213 (1983)). The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause." *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. 2013). It is "not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location." *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978).

Whether the Information Provided was "Stale," therefore Eliminating Probable Cause

Defendants claim that the information provided was stale as Ms. Derr's observations spanned from October 31, 2018 to February 5, 2019, but the search warrant was not approved until February 12, 2019. The age of the relevant information is a factor in determining probable cause and information that is too old, or stale, may terminate probable cause. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018). "However, staleness is not determined by age alone, as this would be inconsistent with a totality of the circumstances analysis." *Id.* When evaluating staleness "[t]he determination of probable cause is not merely an exercise in counting the days

or even months between the facts relied on and the issuance of the warrant. Rather, we must also examine the nature of the crime and the type of evidence.” *Commonwealth v. Gomolekoff*, 910 A.2d 710, 713 (Pa. Super. 2005).

In *Commonwealth v. Green*, the Pennsylvania Superior Court found a search warrant was not stale when the last alleged criminal activity occurred more than two weeks prior. 204 A.3d 469, 484 (Pa. Super. 2019). The Court determined that the contraband in the case, child pornography, was of the type an individual was likely to keep for a long period of time due to its illegality and difficulty to obtain. *Id.* Importantly, the Court took in to consideration the affiant’s determination that the contraband would likely be stored for a long period of time based upon his training and experience. *Id.*; see also *Commonwealth v. Janda*, 14 A.3d 147, 159 (Pa. Super. 2011) (“[The Court] cannot conclude that the issuing authority was unreasonable in authorizing a search of Janda's residence for footwear seven months after the Berks County burglary,” because “shoes . . . are not an item commonly disposed of soon after they come into their owner's possession.”).

Based on the above this Court disagrees with Defendants’ contention that the information was stale and therefore there was no probable cause. Kriner in the Affidavit stated that based on his training and experience individuals who illegally acquired and possessed firearms did so for an extended period of time, even for a lifetime, and that the individual would keep the firearm close in proximity to have ready access to it. *See Green*, 204 A.3d at 484 (consideration of affiant’s opinion based his training and experience weighed into the court’s determination). Ms. Derr’s worked in the residence until February 5, 2019, and observed the firearm on multiple occasions from October 31, 2018, until she terminated her employment. Although Defendants contend this shows staleness because an ambiguous range

with no set dates, this Court disagrees. *See Commonwealth v. Murphy*, 916 A.2d 679, 684-86 (Pa. Super. 2011) (Although no specific time frame, evidence was sufficient to show that a criminal offense was ongoing). This Court finds that the fact cuts in favor of the Commonwealth's position and shows a likelihood of an ongoing criminal offense by Defendants. Over a period of almost four months Ms. Derr stated that she saw Mr. Kuhns with the firearm on multiple occasions and Defendants spoke of the firearm on multiple occasions and the Search Warrant was obtained only seven days after the date that she terminated employment. Kriner alleged in the Affidavit that an illegally acquired firearm is a piece of contraband that would not normally be quickly discarded under these circumstances and Ms. Derr established an extended period of possession, which establishes a likelihood of an ongoing criminal offense, therefore the information provided was not stale as to terminate probable cause.

Whether Information Provided was Reliable as Required to Establish Probable Cause

Defendant claims that police did not independently corroborate Ms. Derr's information and reliability and therefore probable cause was not sufficient to search the residence. Probable cause can be established by an informant's tip when "police independently corroborate the tip, or where the informant has provided accurate information of criminal activity in the past, or where the informant himself participated in the criminal activity. The corroboration by police of significant details disclosed by the informant in the affidavit of probable cause meets the *Gates* threshold." *Commonwealth v. Sanchez*, 907 A.2d 477, 488 (Pa. 2006). It is well established that "where an informant is not a paid, unknown tipster but instead an identified eyewitness to a crime who voluntarily reports his observations to the police, the trustworthiness of such a person may be presumed." *Commonwealth v. Weidenmoyer*, 539 A.2d 1291, 1295

(Pa. 1988); *see also Commonwealth v. Lyons*, 79 A.2d 1053, 1064-65 (Pa. 2013) (“This Court has repeatedly rejected the argument that an officer relying on statements from an ordinary citizen, in contrast to a police informant, must establish the citizen's credibility and reliability.”).

Ms. Kuhns contends that because police did not independently corroborate Ms. Derr’s information her veracity and basis of knowledge is unknown and therefore cannot be considered reliable. This contention is in opposition to Pennsylvania Supreme Court precedent, which presumes Ms. Derr’s trustworthiness as “an identified eyewitness to a crime who voluntarily reports [her] observations to the police.” *Weidenmoyer*, 539 A.2d at 1295. Mr. Kuhns contends that because Ms. Derr quit due to safety and care concerns of Defendants’ children she has an ulterior motive for reporting. Assuming this contention is true, Ms. Derr still corroborated to police that Mr. Kuhns was a felon not to possess based on what she observed and witnessed and she observed an individual she only knew as “Zak” that was staying with Defendants, which was independently corroborated by officers two days after she terminated her employment. Ms. Derr has no criminal history, and “established a willingness to provide information and testimony.” Affidavit 2/12/19, at 4-5. Based on the totality of the circumstances, in light of Ms. Derr’s presumed reliability and truthfulness, sufficient information was presented to allow a neutral and detached magistrate to determine there was reliable information sufficient to establish probable cause.

Whether Search Warrant’s Items to be Searched for and Seized was Overbroad

Defendants contend that the language in the items to be searched and seized specifically “cellular telephones and electronic devices and the contents and data therein pertaining to the sale and possession of illegally acquired firearms” is too broad and therefore the search warrant

should be suppressed. To bolster their arguments both parties rely on *Commonwealth v. Orie*. “[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. Therefore a search warrant “must name or describe with particularity the property to be seized and the person or place to be searched.” *Commonwealth v. Orie*, 88 A.3d 983, 1002 (Pa. Super. 2014). A warrant is impermissibly overbroad if it authorizes the seizure of an entire set of items, or documents, many of which will prove unrelated to the crime under investigation. *Commonwealth v. Rivera*, 816 A.2d 282, 290 (Pa. Super. 2003). “However, search warrants should be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description will suffice.” *Commonwealth v. Kane*, 210 A.3d 324, 332 (Pa. Super. 2019) (quoting *Commonwealth v. Rega*, 933 A.2d 997, 1012 (Pa. 2007)). Because the requirements are more stringent under Article I Section 8 of the Pennsylvania Constitution if its requirements are satisfied the federal Constitution is also satisfied. *Orie*, 88 A.3d at 1003.

This Court finds the warrant is not overbroad. The items at contention, photographs, cellular devices, and other electronic devices, are not overly broad as to allow investigation to turn into a fishing expedition. Specifically the items to be searched for and seized stated “photographs of individuals *in possession of firearms they are not legally able to possess*; cellular telephones and electronic devices and the contents and date therein *pertaining to the sale and possession of illegally acquired firearms*.” Application for Search Warrant 2/12/19, at 1 (emphasis added). As outlined in *Orie*, curtailing the items to be searched for and seized in this way keeps the search warrant from being overbroad. *Orie*, 88 A.3d at 1007-08 (search warrant stating “email content regarding: illegal political campaigning and/or fundraising by

Jane Orie, Joan Orie Melvin and/or staff or supporters, information regarding the ongoing criminal investigation, any attempts to thwart or circumvent the investigation” defined items with the required particularity so that the search warrant was not overbroad); *see also Green*, 204 A.3d at 483 (“warrant contain[ing] a general description of electronic items to be seized, but permitt[ing] the seized devices to be searched only for evidence relating to the possession and/or distribution of child pornography” was constitutionally permissible). As the items to be seized and subsequently searched were properly curtailed the Court finds the search warrant is not overbroad and therefore shall not suppress the evidence obtained as a result of the search of Defendants’ residence.

ORDER

AND NOW, this 19th day of September, 2019, based upon the foregoing Opinion, both Defendants’ Motions to Suppress Evidence in their Omnibus Pretrial Motions are hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JG)
Robert Hoffa, Esquire
Trisha Hoover Jasper, Esquire