

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1676-2018  
vs. :  
: CRIMINAL DIVISION  
: **DERRICK JOHNSON,**  
: **Appellant** : **Amended Motion to Suppress Evidence**

**OPINION AND ORDER**

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.

On March 19, 2019, Defendant through prior counsel filed an omnibus motion which included a motion to suppress. The basis for the motion to suppress was that the search warrant affidavit for 310 Kane Street lacked probable cause. By Opinion and Order dated September 27, 2019, Defendant’s motion to suppress was denied. The court specifically found that in reviewing the search warrant application and affidavit of probable cause, the magistrate had a substantial basis for concluding the probable cause existed. More specifically, the court concluded that the MDJ had a substantial basis for concluding that there was a fair probability that evidence of a crime would be found at 310 Kane Street.

On February 28, 2020, Defendant filed a Praecipe to allow a motion to suppress nunc pro tunc. Defendant argued that “a true hearing of the facts leading up to the officer’s obtaining a search warrant will bring to light that the police did not have probable

cause to obtain a search warrant” and that “the search was illegal.” Following the argument on said motion, the court entered an Order dated May 4, 2020 granting defense counsel twenty (20) days to file an amended suppression motion alleging a basis for suppression other than that set forth in the original suppression motion.

Defendant filed an amended motion to suppress on May 26, 2020. In Defendant’s amended motion, he first argued that the search warrant was facially invalid as it was based upon faulty information that lead the magistrate to conclude that there was sufficient probable cause for a search of 310 Kane Street. Defendant asserted that the basis for finding probable cause was on a search warrant that contained “material misstatements.” Defendant also argued that the search warrant failed to establish any nexus between the defendant’s residence and the sale or storage of drugs.

A hearing on Defendant’s amended motion was held on August 5, 2020. Contrary to Defendant’s arguments, the court did not permit the defendant to argue probable cause based on the four corners of the search warrant. This issue, including Defendant’s “nexus” issue, were previously litigated and decided by the court in its September 27, 2019 Opinion and Order.

With respect to the portion of the amended motion that sought to invalidate the search warrant based upon material misstatements, the Commonwealth introduced as Commonwealth Exhibit 1, the transcript of the preliminary hearing held on October 29, 2018, the application for search warrant and affidavit with respect to Warrant Control No.: SW-31-18 as Commonwealth’s Exhibit 2, and the application for search warrant and affidavit relating to Warrant Control No.: SW-33-2018 as Commonwealth’s Exhibit 3.

The Commonwealth also introduced the evidence of Detective Curt

Loudenslager of the Lycoming County District Attorney's office. As to the alleged material misstatements, Defendant argued in his motion that following the alleged controlled buys, the police did not actually follow the defendant to the 310 Kane Street property "although that is what the police lead the Magistrate Judge to believe in their application for a search warrant." (Amended Motion to Suppress Evidence, p. 3). Defendant further argued that even though the search warrant affidavit indicated that the defendant left the area after the October 2, 2018 buy, "there is no indication that he was even followed." As to the October 23 alleged transaction, Defendant argued that although the search warrant affidavit indicated that the defendant left the area and was followed directly back to 310 Kane Street and was seen entering it, that the defendant was actually pulled over by the South Williamsport Police prior to traveling to any residence.

Detective Loudenslager testified that on October 2, 2018, following the controlled purchase, which allegedly occurred at the Save-a-Lot grocery store in South Williamsport, the defendant left the area in a white Sedan and was under constant surveillance by members of the team until he was stopped by the South Williamsport Police near one of "the bridges." Following the stop, the defendant was released and not followed.

With respect to the October 23 alleged transaction, the defendant was observed traveling by foot to the Save-A-Lot. Following the alleged transaction, the defendant was followed by a "combination of Detective Rachael and Detective Caschera" leaving the Save-A-Lot on foot, walking back to Kane Street and entering the building at 310 Kane Street.

Defendant has failed to meet its burden with respect to its amended motion and in particular its argument that the affidavit of probable cause contained material

misstatements. There is no evidence whatsoever to support the defendant's claim that there were material misstatements that lead the magistrate to determine there was probable cause to issue a search warrant.

While the defendant alleged that the affidavit contained material misstatements, Defendant failed to make a preliminary showing that the affiant knowingly and intentionally, or with reckless disregard for the truth, included a false statement in the affidavit. Where a defendant makes such a showing, the Fourth Amendment requires a hearing to be held at the defendant's request. *Commonwealth v. James*, 620 Pa. 465, 69 A.3d 180 (2013).

Alternatively, if the defendant made such a preliminary showing, the Commonwealth has rebutted any presumption by coming forward with evidence elucidating the validity of the facts in question. While the facts established by the Commonwealth were technically hearsay, they were not objected to and constitute sufficient evidence at this stage.<sup>1</sup> *Commonwealth v. Moore*, 323 A.2d 25, 26 (Pa. Super. 1974)(unobjected to hearsay is competent evidence); see also *Smith v. Com., Dep't of Transp, Bureau of Driver Licensing*, 747 A.2d 1247, 1249 n.4 (Pa. Cmwlth. 2000)("This testimony was admitted without objection and so, although hearsay, may be fully considered as substantive evidence by the

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<sup>1</sup>The court notes that Detective Cashera was sequestered and waiting outside of the courtroom to testify, but was not called as a witness once Detective Loudenslager testified without a hearsay objection being made.

trial court.”).

Accordingly, the search was lawful and the court will deny the defendant’s motion.

**ORDER**

**AND NOW**, this \_\_\_ day of September 2020, following a hearing and argument, Defendant’s Amended Motion to Suppress Evidence is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Paul Petcavage, Esquire  
Devin Walker, Esquire (ADA)  
Gary Weber, Lycoming Reporter  
Work File