

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-126-2020
 :
 NAFIS JONES, : Motion to Suppress
 Defendant :

OPINION AND ORDER

By Information filed on February 20, 2020, Defendant was charged with delivery of a controlled substance, possession with intent to deliver a controlled substance and related charges. Defendant’s present counsel entered her appearance on February 24, 2020, waived Defendant’s February 24, 2020 arraignment and scheduled a guilty plea for May 8, 2020. That guilty plea was continued to June 30, 2020.

On April 20, 2020, however, Defendant filed an Omnibus Pretrial Motion which was heard by the court on June 10, 2020. The charges against the defendant are based in part on items seized from Apartment 245, 2500 Federal Avenue, Williamsport, on October 24, 2019 pursuant to a search warrant. Those items include but are not limited to controlled substances such as heroin, cocaine and marijuana, as well as assorted paraphernalia.

Defendant claims that the items seized pursuant to the search warrant must be suppressed because it “was issued with no probable cause that illegal contraband would be found at 2500 Federal Avenue, Apt. 245.” (Omnibus Pretrial Motion, paragraph 7).

Defendant further contends that the Affidavit of Probable Cause was “devoid of any assertion that any criminal activity or items related to the sale and/or possession would be found at that address.” (Omnibus Pretrial Motion, paragraph 8).

At the hearing held on June 10, 2020, the Commonwealth introduced as Commonwealth's Exhibit "1", the Search Warrant Application and Authorization, an Affidavit of Probable Cause, and the attached Affidavit of Probable Cause to the Criminal Complaint. All of these documents were submitted together to Senior MDJ Allen Page for consideration in approving the application.

According to the Affidavit, there were two controlled buys of heroin. On October 23, 2019, undercover Detective Sarah Kinney of the Lycoming County District Attorney's office called an unknown male at 814-954-2869 to initiate a purchase of heroin. She was instructed to meet him at "Linn and Ridge Avenue." Upon arriving, she observed Defendant, who she knew, traveling north of the area of Newberry Estates "located at 2500 Federal Avenue." Upon Defendant entering her vehicle, she "knew him to be the male [she] was talking to via telephone." The transaction occurred. Defendant exited the vehicle. Detective Tyson Havens observed Defendant walk towards Newberry Estates and enter Apartment 245.

The following day, another transaction was arranged in the same manner. A phone call was made to Defendant. He instructed Detective Kinney to meet him at Linn Street and Wayne Avenue. After she arrived, she called Defendant. Detective Havens observed Defendant walk out of Apartment 245. Detective Kinney saw Defendant walk to her vehicle, get in and conduct the transaction. Prior to leaving Detective Kinney's vehicle, Defendant offered other controlled substances for sale. Detective Havens observed Defendant exit Detective Kinney's vehicle and proceed to enter Apartment 245.

Contrary to Defendant's argument, the facts and circumstances set forth in the Affidavit provided reasonable trustworthy information sufficient to warrant a man of reasonable caution in the belief that a search should be conducted at 2500 Federal Avenue, Apartment 245.

The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. *Commonwealth v. Glass*, 200 A.3d 477, 482-483 (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. (internal quotation marks omitted), quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983).

Accordingly, in deciding Defendant's claim, the court must restrict its analysis to the four corners of the affidavit. "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 the search should be conduct." *Leed*, supra., quoting *Commonwealth v. Johnson*, 42 A.3d 1017, 1031 (Pa. 2012).

In other words, the

task of the issuing magistrate is simply to make a practical, common sense 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 case.

Commonwealth v. Clark, 28 A.3d 1284, 1288 (Pa. 2011), quoting *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985).

The Commonwealth bears the burden of establishing that probable cause existed by a preponderance of the evidence. *Leed*, supra. Defendant's arguments as to a lack of probable cause are hyper technical and fail to recognize that the probable cause determination is one of a fair probability that contraband or evidence of a crime will be found in a particular place. *Clark*, supra.

In support of his argument, Defendant relies upon *Commonwealth v. Kline*, 234 Pa. Super. 12, 335 A.2d 361 (1975) and *Commonwealth v. Heyward*, 248 Pa. Super. 465, 375 A.2d 191 (1977). While those cases clearly support the conclusion that probable cause to believe that a man has committed a crime on the street does not necessarily give rise to probable cause to search his home, they are inapplicable. In this case, the probable cause affidavit sets forth evidence that links Defendant's drug dealing activity to his apartment.

In *Commonwealth v. Kemp*, 195 A.3d 269 (Pa. Super. 2018), the police twice observed the defendant leaving his home and proceeding directly to the site of the controlled buy. These facts connected the illegal transaction to the defendant's residence, in a common sense, non-technical way and permitted the issuing authority to conclude that drugs would likely be found in the residence. *Id.* at 276. The court noted that the information in the

affidavit did not require with absolute certainty that the object of the search would be found at the same location nor did it demand that the affidavit information preclude all possibility that the sought after article was not secreted in another location. *Id.*, citing *Commonwealth v. Clark*, 611 Pa. 2601, 28 A.3d 1284, 1291 (2011)(the defendant left his residence in his vehicle, drove to a location, conducted the transaction, and immediately returned to his residence.)

In this particular case, the affidavit sets forth the specific facts regarding two heroin transactions that allegedly took place in a matter of days. Contrary to what Defendant claims, there is clearly a nexus with 2500 Federal Avenue, Apartment 245. On both occasions, following the transaction, Defendant returned to that address. On the second occasion after the transaction was arranged, Defendant left the residence, conducted the transaction and then returned. He did not stop, nor did he travel to any other location between the time that the transaction was made and he returned to the residence.

Clearly, this establishes probable cause.

ORDER

AND NOW, this ___ day of June 2020, following a hearing and argument, Defendant's Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Devin Walker, Esquire (ADA)
Mary Kilgus, Esquire
Gary Weber, Esquire
Work File