

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No's. CR-256-2019  
: CR-422-2019  
vs. :  
: **Opinion and Order re**  
ARTHUR SMITH, : **Defendant's Omnibus Pretrial Motion**  
Defendant :

**OPINION AND ORDER**

Under Information 256-2019, the defendant is charged with two counts of possession with intent to deliver controlled substances (cocaine and heroin) and related charges. Under 422-2019, the defendant is charged with persons not to possess. Pursuant to order of court dated June 10, 2019, the Informations were severed for trial purposes.

Before the court is the defendant's omnibus pretrial motion filed on June 3, 2019. The first hearing in this matter was scheduled on July 31, 2019. The second hearing in this matter was held on November 4, 2019. The third hearing was held on March 11, 2020. The parties filed briefs on May 11, 2020, and June 22, 2020.

On January 14, 2019, Officer Joshua Bell, of the Williamsport Bureau of Police, was on duty with his partner, Officer Clinton Gardner. Officer Bell has substantial training and experience in controlled substance activities, interdiction, arrests, investigation and prosecution. At approximately 4:30 p.m. while patrolling the 1400 block of Memorial Avenue in Williamsport, which is "pretty busy with drug activity," he observed two male individuals walking away from him toward a car. The car was parked on Memorial Avenue and a driver was in the driver's seat. One male got into the front passenger seat while the other male got into the back passenger seat.

The vehicle then pulled from its parked position into the flow of traffic

without utilizing a turn signal. Recognizing this vehicle code violation, Officer Bell followed the vehicle. The vehicle first turned onto Cemetery Street but at the intersection of Park Avenue, it again turned without using its turn signal. After observing these two traffic violations, Officer Bell conducted a stop of the vehicle at the Conoco gas station on Wildwood Boulevard.

Officer Bell and Officer Gardner approached the vehicle. The driver was a female identified as Ms. Rachel Hamilton. The front passenger was a male identified as Mr. Charles Buday. The back passenger was identified as the defendant.

While speaking with the driver, Officer Bell observed scattered throughout the front and back of the vehicle torn brillo padding and metal screening which is typically used as a filter for crack cocaine stems. He also observed torn plastic baggies scattered throughout the vehicle. These baggies were described as being partially clear, some cellophane with "corners" and being "worn." These baggies are typically used to package small amounts of crack cocaine.

All of the occupants were removed from the car. Officer Bell spoke briefly with Ms. Hamilton while Officer Gardner spoke briefly with the front seat passenger, Mr. Buday.

Based on his observations of the above-referenced paraphernalia, Officer Bell searched the vehicle. In the front, passenger door compartment, he found one or two plastic pens used to smoke or snort cocaine as well as one cutoff straw used to snort cocaine.

As a result of locating this paraphernalia throughout the vehicle, he took all of the passengers as well as the driver into custody. They were arrested and searched pursuant to the arrests.

The officers found paraphernalia on Ms. Hamilton and a cell phone and currency on the defendant. Officer Bell testified that the defendant possessed \$186.00, which included three \$20.00 bills, five \$10.00 bills and the rest were \$5.00 and \$1.00 bills. Officer Bell testified that \$20.00 bills were commonly used in connection with drug transactions.

After the occupants were taken to City Hall, they were subject to a full search but no additional contraband was found on them.

Officer Bell spoke with Ms. Hamilton. She indicated that she knew the defendant for approximately one month prior to the incident. She knew him as "Art." Approximately five times previously, she purchased cocaine from him. Normally, they would pick up the defendant at his residence, take a ride under the ruse of going to a "store" and then return to the area of the defendant's residence. The transaction would take place toward the end of the trip. According to Ms. Hamilton, the defendant previously asked both her and Mr. Buday if they could locate cartridges for a .44 caliber handgun.

The defendant's residence was identified as 1438 ½ Memorial Avenue, which is in the immediate vicinity of where the two males were seen entering the vehicle.

Officer Gardner interviewed Mr. Buday. Mr. Buday admitted that he was in the defendant's house on Memorial Avenue "just prior" to the vehicle stop. He went to the residence with Ms. Hamilton for the purpose of purchasing cocaine. While in the residence just prior to the vehicle stop, he observed packaged cocaine. While at the residence in the past, Mr. Buday had observed approximately ½-ounce of cocaine, which was the largest amount of cocaine he had seen at the residence. Mr. Buday discussed conversations he had with the defendant. In these conversations, the defendant admitted that he possessed a sawed-off shotgun. Mr. Buday also confirmed the discussions regarding the defendant

requesting .44 caliber cartridges.

Based upon a host of reasons, Officer Bell concluded that both Ms. Hamilton and Mr. Buday were reliable. In large part, the information that they provided was consistent with Officer Bell's experience with drug trafficking activity.

Officer Bell prepared an application for a search warrant, which included an affidavit of probable cause. The search warrant was authorized, and a search was conducted at the defendant's residence on January 14, 2019.

The search yielded among other things, seven grams of cocaine, heroin, pills, what is known as a "works kit" for using heroin, small bags, scales and indicia of occupancy by the defendant. Many, if not most, of these items were found in the defendant's bedroom.

Additionally, officers found empty used bags of heroin and used syringes in the two other bedrooms and in the closet area of the living room. A firearm was found in the attic.

Following the first hearing, the court directed that the Commonwealth provide to defense counsel a copy of Officer Bell's dash cam recording of the incident, a copy of the audio visual recording of the interview with Mr. Buday as well as photographs or access to the items that were observed in the vehicle and the items seized from the defendant's residence.

During the second hearing, the dash cam recording was played and the parties questioned Officer Bell about it. The Commonwealth began to question Officer Gardner about Mr. Buday's statements, but the hearing could not be completed.

During the third hearing, the parties completed their questioning of Officer Gardner, which included playing the taped interview he conducted with Mr. Buday.

While the defendant concedes that the stop of the defendant's vehicle was lawful, the defendant argues that the search of the vehicle was not based on probable cause. The defendant argues that the observations of Officer Bell of two men entering the car, the steel wool and plastic bag pieces, combined with their training and experience, "falls short of the standard for conducting the search based on probable cause."

The defendant argues that if the search of the vehicle was without sufficient probable cause then all subsequent evidence seized not only during the search but as a result of the search warrant must be suppressed pursuant to the "fruits of the poisonous tree" doctrine.

"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 conducted." *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018), quoting *Commonwealth v. Johnson*, 42 A.3d 1017, 1031 (Pa. 2012).

The court rejects the defendant's argument that the police lacked probable cause to search the vehicle. The officers observed pieces of metal screening and torn clear plastic bags on the floor of the vehicle. In their training and experience, they were aware that shredded pieces of metal screening or wire brillo were commonly utilized for filtering crack stems or pipes and the clear plastic bags were commonly utilized in packaging cocaine. Based on the officers' training and experience, they reasonably believed that these items were drug paraphernalia. The officers observed these items in plain view. Considering these facts and circumstances in a practical, commonsense manner, there was a fair probability that a search of the vehicle would uncover contraband, such as controlled substances or additional

drug paraphernalia. Accordingly, the court concludes that there was probable cause to search the vehicle.

Alternatively, the defendant argues that the affidavit in support of the search warrant fails to establish probable cause. The search warrant as well as the application were submitted as Commonwealth's Exhibit 1.

Probable cause is determined by applying the totality of the circumstances test. *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). Pursuant to the totality of the circumstances test,

the task of an issuing authority 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.... It is the duty of a court reviewing an issuing authority's probable cause determination to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In so doing, the reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner.

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[Further,] a reviewing court [is] not to conduct a de novo review of the issuing authority's probable cause determination, but [is] simply to determine whether or not there is substantial evidence in the record supporting the decision to issue the warrant.

*Id.* (quoting *Commonwealth v. Torres*, 764 A.2d 532, 537-38, 540 (Pa. 2001)). “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 commonsense, manner.” *Id.* at 655-656 (quoting *Illinois v. Gates*, 462 U.S. 213, 236, 103

S.Ct. 2317 (1983)(citation and quotation marks omitted)).

In reviewing the four corners of the affidavit of probable cause, clearly Officer Bell has substantial training and experience in controlled substance interdiction and investigations. (paragraphs 1 through 6). Further, through this experience, Officer Bell has extensive knowledge regarding how drug transactions are executed and what items are relevant to substantiating drug trafficking activities. (paragraphs 7A through 7J).

Further, the affidavit of probable cause notes that after he observed the two unknown males approaching the vehicle, they both entered the vehicle and the vehicle began pulling from the curb. Following the stop and while speaking with the driver, he observed several shredded pieces of wire brillo within the front of the vehicle commonly utilized for filtering crack stems or pipes. He also observed clear pieces of plastic bag commonly utilized in packaging cocaine.

The subsequent search of the vehicle yielded additional metal brillo pieces, a plastic straw for snorting controlled substances, additional pieces of plastic and cellophane which were scattered between the front and rear seats and plastic pens hollowed out for using “narcotics.”

Upon being taken into custody, the defendant was found in possession of a large amount of U.S. currency “largely consisting of \$20.00 bill denominations.” Officer Bell knows that the \$20.00 bill is the most common bill used during drug transactions in Lycoming County. In light of Officer Bell’s concession during his testimony that \$186.00 was found on the defendant and only three bills were actually \$20.00 bills, which runs contrary to his statement in the affidavit of probable cause that “a large amount of currency largely consisted of \$20.00 bill denominations,” this portion of the affidavit shall be excised

for review purposes.

The affidavit includes verification of the interview with Ms. Hamilton. Ms. Hamilton indicated that she had known the defendant for approximately one month and during that time had purchased crack cocaine from him approximately five times. On the date in question, she was intending to have the defendant front her some cocaine without payment. During the prior transactions, the defendant would normally have her pick him up at his residence, which was in the immediate area where she picked up the defendant on the date in question, drive the defendant to a nearby store and then return at which time the defendant would deliver the cocaine. She also indicated that the defendant made mention to her of a request for .45 caliber cartridges.

The affidavit also sets forth a summary of the interview with Mr. Buday. He indicated that he was inside of the defendant's residence immediately prior to entering the vehicle. Inside the residence in the defendant's bedroom, he observed a large chunk of cocaine totaling approximately ½ ounce. Mr. Buday also indicated that the defendant "commonly talks about" a .45 caliber pistol which he is believed to possess. Mr. Buday also indicated that within the residence were several females who were conducting prostitution activity out of the residence. He also indicated that he had observed heroin and a sawed off shotgun within the residence which were located in the attic of the residence during past drug transactions with the defendant.

After review of Officer Gardner's recorded interview of Mr. Buday, there were some misstatements in the affidavit prepared by Officer Bell regarding the information provided by Mr. Buday. Although Mr. Buday had seen cocaine inside the residence immediately prior to entering the vehicle, he did not see a ½ ounce of cocaine on that date.



Rather, that was the most he had seen in the defendant's residence in the past. Mr. Buday also never observed the sawed-off shotgun. Instead, the defendant had described a saw-off shotgun and a "Dirty Harry" gun/.45 caliber revolver to Mr. Buday, and Mr. Buday had observed a leather holster in the defendant's bedroom.

In its brief, the Commonwealth concedes that there were three factually incorrect statements, which were "the denomination of the currency, the weight of the observed narcotics in Defendant's house immediately prior to the stop and the fact that [Mr.] Buday never personally observed a sawed-off shotgun in Defendant's house but was rather only told about it by Defendant." The Commonwealth argued that this was unintentional and not knowing or deliberate. The Commonwealth claimed these inaccuracies were simply the result of a breakdown in communication between Officer Gardner, who interviewed Mr. Buday and Officer Bell, who authored the search warrant.

In this particular case, the court does not believe that it needs to determine whether the inaccuracies were deliberate or unintentional, as it finds that probable cause exists notwithstanding the misstatements.<sup>1</sup> See *Commonwealth v. Burno*, 154 A.3d 764, 782 (Pa. 2017)(if a warrant is based on misstatements made deliberately and knowingly, or with reckless disregard for the truth, the search warrant is invalid, unless the affidavit's remaining content is sufficient to establish probable cause).

In addition to Officer Bell's training and experience, the affidavit of probable cause for the search warrant (with the misstatements redacted by striking through that text)

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<sup>1</sup> In the event an appellate court would find such a determination necessary, the court agrees with the Commonwealth that the discrepancies in the recitation of Mr. Buday's statements were likely the result of a miscommunication between Officer Gardner and Officer Bell, as Officer Gardner testified that there was no conscious effort to hyperbolize or exaggerate and if there was any mistake it would have been unintentional.

stated the following:

On 01/14/2019 I was on patrol in the City of Williamsport operating an unmarked police vehicle in full duty uniform partnered with PO GARDNER. At that time we observed two unknown males approaching a tan Honda sedan bearing PA registration KTJ8493 from the north side of the street. After both males entered the sedan, the vehicle began pulling from the curb in the 1400 Blk of Memorial Ave. While doing so, the operator failed to utilize a turn signal while entering the flow of traffic. As the vehicle turned west onto Park Ave from Cemetery St the operator again failed to utilize a signal until negotiating the turn. Based upon the traffic violation a traffic stop was conducted at the Conoco Station located at the corner of Wildwood Blvd and High St.

While I spoke with the operator identified as RACHEL HAMILTON, PO GARDNER spoke with the front passenger CHARLES BUDAY. While speaking to BUDAY, PO GARDNER observed several shredded pieces of wire brillo within the front of the vehicle commonly utilized for filtering crack stems or pipes. Also observed were clear plastic pieces of plastic bag commonly utilized in packaging of cocaine. At this time the occupants were removed from the vehicle and a search of the sedan was conducted.

This search yielded additional metal brillo pieces., a plastic straw cut for snorting controlled substances, additional pieces of plastic and cellophane which were scattered between the front and rear seats. Also located in plain view were pieces of plastic pens hallowed for the use of narcotics. The rear passenger was identified as ARTHUR SMITH of 1438½ Memorial Ave. This address is in the immediate vicinity of our initial observation of BUDAY and SMITH. At this time all occupants were taken into custody and transported to WBP where they were searched. ~~At this time SMITH was found in possession of a large amount of US currency largely consisting of twenty dollar bill denominations.~~ I know that the twenty dollar bill is the most common bill used during drug transactions in Lycoming County.

BUDAY and HAMILTON were both provided Miranda Warnings and waived those rights agreeing to speak with PO GARNDER and I.

HAMILTON indicated that she has know SMITH fro approximately one month and during this time has purchased crack cocaine from SMITH approximately five times. On this date, HAMILTON indicated that she was intending to have SMTIH "front" her some cocaine without payment. HAMILTON also indicated that during the transactions with SMITH, SMITH normally has HAMILTON pick him up at his residence which she knows to be in the immediate area where she picked SMITH up on this date, drive SMITH to a nearby store and return at which time SMITH would

deliver cocaine to HAMILTON. HAMILTON also indicated that SMITH has made mention to HAMILTON to request .45 caliber cartridges from HAMILTON.

BUDAY also provided a statement indicating that immediately prior to entering the sedan with SMITH, BUDAY was with SMITH inside the residence which he described as being a white building. BUDAY indicated that within the bedroom of SMITH'S residence he observed a large chunk of cocaine ~~totally approximately~~  $\frac{1}{2}$  ounce. BUDAY also indicated that SMITH commonly talks about a .45 caliber pistol which he is believed to possess. BUDAY also indicated that within the residence are several females who are conducting prostitution activity out of the residence with SMITH. BUDAY further indicated that he has also observed heroin ~~and a sawed-off shotgun~~ within the residence ~~which were located in the attic of the residence~~ during past drug transactions with SMITH.

I know from my experience in narcotics trafficking both at the street level and through the use of controlled purchases that it is common for narcotics traffickers to keep larger amounts of controlled substances within their residence from which they deliver. This practice allows the dealer to minimize the likelihood of being detected by law enforcement with large amounts of controlled substances in their possession.

I also know that it is common for narcotics traffickers to possess firearms illegally to protect themselves and their controlled substances and proceeds from other narcotics traffickers.

Based upon the information contained within this Affidavit of Probable Cause I submit that currently contained within 1438  $\frac{1}{2}$  Memorial Ave there are controlled substances to include but not limited to cocaine and heroin, related drug paraphernalia, firearms and related firearm ammunition and US currency as proceeds of controlled substances distribution.

I respectfully request a daytime search warrant to search for and seize these controlled substances, paraphernalia, currency and firearms.

Based on the officers' training and experience, their observations of various items of drug paraphernalia within the vehicle, Ms. Hamilton and Mr. Buday's statements regarding their past experiences with the defendant with respect to purchasing controlled substances from the defendant, the defendant statements to Ms. Hamilton and Mr. Buday about a .45 caliber pistol and ammunition, Ms. Hamilton and Mr. Buday's statements that they were intending to obtain cocaine from the defendant on the date in question, and Mr. Buday's observations of cocaine inside the defendant's residence immediately prior to them

entering the vehicle, there was a fair probability that controlled substances and a .45 caliber firearm would be found within the residence located at 1438 ½ Memorial Avenue.

The court rejects the defendant's argument as to the lack of reliability of Ms. Hamilton and Mr. Buday. They were identified, in custody, Mirandized and were making statements against their own penal interests. *Commonwealth v. Wright*, 702 A.2d 362, 366 (Pa. Super. 1997)(the reliability of an informant may be based on declarations against his or her penal interest); see also *Commonwealth v. Cruz*, 21 A.3d 1247, 1251 (Pa. Super. 2011)(knowledge of the identity of person providing information heightens the reliability, for where the identity of the person is known, he or she risks prosecution for providing false information). Furthermore, the statements of each tended to corroborate the other. *Commonwealth v. Goldsborough*, 31 A.3d 299, 306-307 (Pa. Super. 2011).

### **ORDER**

**AND NOW**, this \_\_\_ day of September 2020, following hearings in this matter and argument of counsel, Defendant's Omnibus Pretrial Motion is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)/Devin Walker, Esquire (ADA)  
Matthew Welickovitch, Esquire, (APD)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
CR-422-2019