

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1355-2019
:
vs. :
:
:
: **Omnibus Pretrial Motion**
LIONEL HARRIS, :
Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on September 27, 2019 with numerous counts of Delivery of a Controlled Substance, Possession with Intent to Deliver (PWID), Criminal Use of a Communications Facility and Criminal Conspiracy. The Commonwealth alleges that Defendant delivered Fentanyl on three separate occasions to a Confidential Informant (CI) and on another occasion delivered cocaine. Defendant has had three different attorneys assigned to represent him in this matter with the most recent being assigned on May 20, 2021. By Order dated August 3, 2021, Defendant was permitted to file a Motion to Suppress, nunc pro tunc. Said motion was heard before this Court on October 12, 2021.

Defendant seeks suppression of any and all contraband and any and all other items that were seized from the residence at 821 Baldwin Street on or about August 28, 2019. Defendant claims that the affidavit of probable cause attached to the search warrant application was constitutionally defective. Defendant claims more specifically that the facts were insufficient to establish a nexus with the property and, alternatively, that there were no facts to support the reliability or credibility of the CI.

A copy of the search warrant application and affidavit of probable cause was marked as C-1 and admitted into evidence during the hearing. Both parties agree that the determination of probable cause for the issuance of a search warrant must be based on facts described within the four corners of the supporting affidavit. *Commonwealth v. Way*, 492 A.2d 1151, 1154 (Pa. Super. 1985).

The issuance of a constitutionally valid search warrant requires that police provide the issuing authority with sufficient information to persuade a reasonable person that there is probable cause to conduct a search based upon information that is viewed in a common sense manner. *Commonwealth v. Nicholson*, 2021 PA Super 193, 2021 WL 4398316 *2 (Pa. Super. 2021)(citing *Commonwealth v. Housman*, 986 A.2d 822, 843 (Pa. 2009)). The issuing authority must determine whether, given the totality of the circumstances presented, there is a fair probability that evidence of a crime or contraband will be found in a particular location. *Id.*

However, 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. *Nicholson*, at *3 (citing *Commonwealth v. Wallace*, 42 A.3d 1040, 1049-50 (Pa. 2002)). The affidavit of probable cause must establish a “substantial nexus” between the suspect’s home and the criminal activity or contraband sought, to permit the search of the home. *Id.* The task of the reviewing court is to ensure that the issuing authority had a substantial basis to conclude that probable cause existed. *Id.*

In other words, there must be something in the affidavit that links the place to be searched directly to the criminal activity. *Id.* at *4. Drug dealers often store drugs in

places other than their homes. *Id.* at *5. The premise that “[e]vidence of drug dealing unconnected to a home, does not, without more, give probable cause to believe that additional contraband will be found in the home is based on a common sense notion, reinforced by experience, that drug dealers often take pains to store their drugs away from their homes.” *Id.* (citing *Commonwealth v. Torres*, 177 A.3d 263, 278-79 (Pa. Super. 2017)).

According to the affidavit of probable cause, the investigation in this case involved four controlled buys between the dates of August 13 and August 27, 2019 to a specific CI. According to the CI, the CI could buy pills from Defendant “of 821 Baldwin Street, Williamsport, PA 17701.”

The first controlled buy allegedly occurred on August 13, 2019 but there was no information set forth in the affidavit describing the surrounding circumstances.

As for the August 19, 2019 alleged transaction, detectives saw Defendant on Brandon Place, a street that runs along 821 Baldwin Street, prior to the controlled buy. The CI contacted Defendant and picked him up on Brandon Avenue. They were followed by law enforcement and according to the affidavit, the delivery occurred between where Defendant was picked up on Brandon Avenue and 1238 Memorial Avenue.

As for the August 23, 2019 incident, Defendant was surveilled at his residence going in and out of the house immediately prior to the controlled buy. The CI contacted Defendant at Defendant’s telephone number. Defendant was at the residence and left immediately from there to meet the CI at Aaron’s Rental on River Avenue. Detectives followed Defendant as he drove throughout the city but detectives lost sight of him for approximately five minutes before he contacted the CI and informed the CI to meet him at

Aaron's. The CI picked up Defendant from Aaron's and they drove to the intersection of High Street and Hepburn Street. It was there that the transaction allegedly took place.

As for the August 27, 2019 incident, the CI and Defendant again first spoke on the phone. Defendant directed the CI to meet him at the corner of Market Street and Seventh Street. Prior to meeting the CI, the detectives surveilled Defendant at 821 Baldwin Street. He was inside the residence for approximately five minutes before leaving to meet the CI. He was then surveilled by detectives as he left the residence and walked on Brandon Place and then south on Market Street before ultimately meeting the CI. According to the CI, Defendant informed him that he had the cocaine but needed to go to another residence to weigh it. Surveillance was maintained on the CI and Defendant as they drove on West Seventh Street, south on High Street and west on Bridge Street. Defendant was surveilled going into 326 Bridge Street. He was inside the apartment for approximately four minutes before returning to the CI vehicle. The transaction then allegedly took place.

To sum up the information set forth in the affidavit of probable cause and reading it in a practical, common sense manner, there was nothing in the affidavit about the August 13 transaction that linked 821 Baldwin Street to the controlled buy.

As for the August 19, 2019 incident, there was nothing that linked 821 Baldwin Street to the criminal activity. The CI picked Defendant up on Brandon Place, drove to Memorial Avenue where the CI gave Defendant money and another individual provided the controlled substance.

As for the August 23, 2019 incident, Defendant was seen leaving the residence at 821 Baldwin Street after being contacted by the CI. Law enforcement lost

surveillance of Defendant for approximately five minutes and there is nothing indicated in the probable cause affidavit where or what he did during that five minutes. Defendant told the CI to meet him at Aaron's. The CI picked up Defendant at Aaron's and the delivery allegedly occurred while they were driving to High Street and Hepburn Street.

As for the August 27, 2019 incident, following the telephone call, Defendant allegedly remained in his residence for five minutes before leaving. He was then seen walking on Brandon Place and another street before ultimately meeting the CI. Constant surveillance was maintained as they drove to a Bridge Street residence where Defendant went into the residence. He was in the residence for approximately four minutes before returning to the vehicle. The transaction then allegedly occurred.

The question to be determined is whether there was probable cause or a sufficient nexus to search the residence of Defendant. As our highest appellate court has aptly noted, "probable cause to believe a [person] has committed a crime on the street does not necessarily give rise to probable cause to search [the person's] home. *Commonwealth v. Wallace*, 615 Pa. 395, 42 A.3d 1040, 1049-1050 (2012).

While this case is not completely analogous to the facts in *Nicholson, supra.*, the facts more closely resemble those facts than otherwise. In none of the alleged transactions did Defendant in this case go directly from his home to the location of the controlled buy. The CI never reported that Defendant was selling drugs from his home. All of the controlled buys took place in a car nowhere near the home. While the Commonwealth argues that it observed Defendant proceeding directly from his residence to the location of the drug transactions, on the two occasions that the law enforcement observed Defendant

leave his home, they either lost sight of him for five minutes or he stopped at another residence prior to the alleged drug transactions.

While certainly, the police had suspicions, the affidavit of probable cause does not establish a substantial nexus between the home searched and the criminal activity. See *Commonwealth v. Nicholson, supra., Commonwealth v. Way, supra., Commonwealth v. Kline*, 335 A.2d 361 (Pa. Super. 1975).

ORDER

AND NOW, this 21st day of October 2021 following a hearing and argument, Defendant's motion to suppress is GRANTED. All contraband or any other items seized from Defendant's residence as a result of the search warrant utilized in this matter are suppressed.

By The Court,

Marc F. Lovecchio, Judge

cc: Kirsten Gardner, Esquire (ADA)
Matthew A. Diemer, Esquire
Gary Weber, Esquire
Judge Marc F. Lovecchio