

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-865-2020  
 :  
 EMMANUEL MILLS-DELARGE, :  
 Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

Defendant was charged by Information filed on August 7, 2020 with possession with intent to deliver and related counts arising out of a search of 674 Grier Street in Williamsport on July 10, 2020. The case is presently on the trial list with call of the list scheduled for August 6, 2021.

Before the court is Defendant's Omnibus Motion filed on December 1, 2020. A hearing and argument were held on April 6, 2021

Myra Teasley testified that on multiple occasions during the summer of 2020 she purchased crack cocaine from a "black lady" who lived at 674 Grier Street in Williamsport. She didn't know the woman's name but referred to her as her "little young girl."

Detective Tyson Havens of the Lycoming County Narcotics Enforcement Unit (NEU) testified that in July of 2020, the NEU was conducting surveillance on Ms. Teasley. For over a year, the NEU was investigating suspected drug activity at 674 Grier Street. Over that year, law enforcement conducted many controlled buys "from the house." Within a few days prior to July 10, 2020, an undercover detective with the NEU arranged with Ms. Teasley to purchase crack cocaine. The agent drove to Ms. Teasley's residence, picked her

up and at her direction, drove to 674 Grier Street. Ms. Teasley entered 674 Grier Street and within minutes exited and returned to the vehicle. At that time, she provided the undercover detective with an amount of crack cocaine.

On July 10, 2020, Havens drafted an affidavit of probable cause in support of a search warrant application for 674 Grier Street. The search warrant and affidavit of probable cause were admitted as Commonwealth's Exhibit 3.

Paragraphs 21 and 22 referenced the undercover transaction involving Ms. Teasley as set forth above. She was referenced as an "unwitting informant." The transaction was the fourth buy that Ms. Teasley was involved in at the residence. While the undercover detective with Ms. Teasley had utilized an audio/visual recording device, neither he nor Ms. Teasley were mentioned by name in the affidavit of probable cause because revealing their identities would compromise the investigation.

Defendant was not the target of the search warrant or investigation. A female named Cabria Reed was the target. Detective Havens included in the affidavit of probable cause all information that he thought was relevant to probable cause. Nonetheless, it was critical to him to protect the confidentiality of Ms. Teasley and law enforcement officers acting in an undercover capacity as well as any confidential informants.

Paragraphs 15, 16, 17, 18, 19 and 20 all referenced prior control purchases at 674 Grier Street, from August 13, 2019 through June 18, 2020. While Detective Havens did not include specific language that the purchases were successful, according to him the language "inferred" such. Names were not used to protect confidentiality and the integrity of

the investigation. The information was included according to Detective Havens, to help establish probable cause by showing a pattern of controlled purchases throughout the past seven months.

Defendant argues that the search warrant was stale, overbroad, insufficiently particularized, and failed to establish the requisite probable cause “to believe that evidence of drugs and/or drug dealing would be found in the residence.” While withdrawing his argument that the affidavit contained false and/or material omissions, Defendant asserts that probable cause is lacking because it is devoid of any indicia of reliability of the confidential informants, it “mentions nothing” about corrupting motives of the confidential informants, or any corroboration by independent sources.

With respect Paragraphs 15 through 20, Defendant argues that more information was required to establish an “air of reliability” including whether the confidential informants were drug users, drug traffickers, had prior criminal histories, or had engaged in successful purchases for law enforcement in the past. Defendant argues that the paragraphs were inserted in the affidavit of probable cause for “a reason that can’t be ignored.”

As for Paragraphs 21 and 22, Defendant concedes that the information is not stale but again argues that more details were required to establish probable cause such as the amount of money exchanged, the weight of the drugs and other “salient details.”

The standard for evaluating a search warrant is the “totality of circumstances” test as set forth in *Illinois v. Gates*, 462 U.S. 213 (1983), and adopted in *Commonwealth v.*

*Gray*, 503 A.2d 921 (Pa. 1985). *Commonwealth v. Carey*, 249 A.3d 1217, 1223 (Pa. Super. 2021).

A magistrate is to make a practical common sense decision whether, given all the circumstances set forth in the affidavit before him, including the voracity and basis of knowledge of person supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The information offered to establish probable cause must be viewed in a common sense, non-technical manner.

*Id.* at 1223-24 (internal quotation marks omitted), citing *Commonwealth v. Manuel*, 194 A.3d 1076, 1081 (Pa. Super. 2018).

After the fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. *Carey*, 249 A.3d at 1223-24, citing *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018). A magistrate's probable cause determination should receive deference from the reviewing courts. In keeping with the Fourth Amendment's strong preference for warrants, courts should not invalidate warrants by interpreting affidavits in a hyper-technical, rather than a common sense manner. *Carey*, 249 A.3d at 1224, citing *Leed*, *supra*.

As for information received from an informant, it may be sufficient to create probable cause where there is some independent corroboration by police of the informant's information. *Carey*, *id.*

The first issue, however, that the court must address is whether Defendant is entitled to the relief of suppression. While he has standing to file for suppression because he is charged with a possessory offense, he may not be entitled to the relief of suppression if he

does not have a legitimate expectation in the place searched.

Standing to challenge the admissibility of evidence entitles a defendant to review of the merits of his suppression motion without a preliminary showing of ownership or possession in the premises searched. *Commonwealth v. Enimpah*, 106 A.3d 695, 698 (Pa. 2014).

In addition to standing, however, the defendant must show that he had a privacy interest in the place invaded that society is prepared to recognize it as reasonable. *Id.*, citing *Commonwealth v. Hawkins*, 718 A.2d 265, 267 (Pa. 1998).

With respect to the burden allocation regarding this issue, it is clear. The Commonwealth must prove the constitutional rights of the accused were not violated by the search. *Enipah*, 106 A.3d at 701. If the evidence shows there was no expectation of privacy in the area searched, the prosecution has met its burden and need not go further. *Id.* The lawfulness of the detention becomes irrelevant, as constitutional error cannot inure to the benefit of the expectation-less accused. *Id.* To overcome that result, the accused has the burden of showing such an expectation did exist. If the accused does so, the search is again at issue and the prosecution must prove its constitutionality. *Id.*

In other words, the Commonwealth has the burden of production to show that the defendant lacked such a privacy interest. *Id.* The burden of establishing the contrary is on the defendant. *Id.*

In this case, the Commonwealth's evidence established that Cabria Reed, was the owner, occupant or possessor of 674 Grier Street. It also established, and Defendant

concedes, that he was a “social visitor in the residence.” (Omnibus Motion, Paragraph 11).

Defendant argues that as a social guest, he had a legitimate expectation of privacy in the residence. In support of his argument, Defendant cites *Commonwealth v. Ardestani*, 736 A.2d 552 (Pa. 1999). *Ardestani*, however, is factually distinguishable. The record established that Defendant Metts did not maintain a permanent residence and had been staying for several days at the residence that was searched with the permission of his sister, who owned the residence.

Indeed, the evidence establishes that the defendant was present in the home at the time of the search as a guest. The court has reviewed the cases cited in *Ardestani*. See, for example, *Commonwealth v. Evans*, 410 A.2d 1213, 1215 (1979) (overnight guest had legitimate expectation of privacy when staying at residence with the host’s permission); *Commonwealth v. Brundidge*, 620 A.2d 1118 (1980) (guest in motel room had legitimate expectation of privacy in room during period of time it is rented); *Commonwealth v. Rowe*, 249 A.2d 911 (Pa. 1969) (defendant had reasonable expectation of privacy in home of co-defendant’s father)<sup>1</sup>; *Commonwealth v. Rodriguez*, 679 A.2d 1320 (Pa. Super. 1996), appeal denied, 704 A.2d 637 (Pa. 1997) (defendant had legitimate expectation of privacy in sister’s

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<sup>1</sup> This decision was a per curiam affirmance of a Superior Court decision by an evenly divided court. The Opinion In Support of Affirmance (OISA) stated that Rowe had standing as a person legitimately on the premises based on *Jones v. United States*, 362 U.S. 257 (1960). *Jones*, however, was overruled in *United States v. Salvucci*, 448 U.S. 83 (1980).

home). All of these cases which were cited in *Ardestani* are factually distinguishable.

Indeed, it appears that case law is clear that under the circumstances before the court, the defendant did not possess a reasonable expectation of privacy. *Minnesota v. Carter*, 525 U.S. 83, 90 (1998)(an overnight guest in home may claim the protection of the Fourth Amendment but one who is merely present with the consent of the householder may not); *Commonwealth v. Peterson*, 596 A.2d 172, 177-178 (Pa. Super. 1991)(no reasonable expectation in an abandoned storefront being used as a ‘gate house’); *Commonwealth v. Ferretti*, 577 A.2d 1375, 1381 (Pa. Super. 1990)(no reasonable expectation of privacy in apartment where appellant was mere friend, guest or visitor).

Accordingly, Defendant’s Motion to Suppress shall be denied.

With respect to Defendant’s other motions as set forth in the Omnibus, the court enters the following:

**ORDER**

**AND NOW**, this \_\_\_\_ July 2021, following a hearing and argument, Defendant Motion to Suppress is **DENIED**.

With respect to Defendant’s Motion for Disclosure of Confidential Informant, it is deemed moot. If the Commonwealth will be utilizing unnamed confidential informants at the trial in this matter, it shall notify the defendant within thirty (30) days of today’s date and the defendant may file an appropriate motion within thirty (30) days of receipt of the information from the Commonwealth.

With respect to Defendant’s Motion for Hall Materials, it too is deemed moot.

With respect to promises, leniency, or any form of benefit to any witness the Commonwealth intends to call at trial, the Court DIRECTS the Commonwealth to contact law enforcement and provide to defense counsel within thirty (30) days of the date of this Order any agreement, promise, leniency, benefit or the like, including but not limited to, monetary payments or even statements made to witnesses that the District Attorney or Court would be notified of the witness's cooperation.

The court GRANTS the defendant's motion for a specific written 404 (b) notice. No later than thirty (30) days from today's date, the Commonwealth shall provide to the defendant a specific 404 (b) written notice setting forth the general nature of any evidence of a crime, wrong or other act that the Commonwealth intends to introduce at trial with respect to the defendant.

Defendant's Motion for Discovery is deemed moot.

Defendant's Motion to Reserve Right is GRANTED, but only to the extent that any motion is based on information or discovery provided by the Commonwealth after April 6, 2021.

By The Court,

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Marc F. Lovecchio, Judge

cc: Michael Sullivan, Esquire (ADA)  
Edward J. Rymysza, Esquire  
Judge Marc F. Lovecchio  
Gary Weber, Esquire