

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-848-2020
vs. :
: :
: :
DERON SHADD, :
Defendant :
: Motion to Suppress

OPINION AND ORDER

By Information filed on July 31, 2020, Defendant is charged with with four counts of a delivery of a controlled substance and two counts of a criminal use of a communications facility. The charges arise out of Defendant’s alleged sales of heroin and/or cocaine to a Confidential Informant (CI) on January 16, 2020, February 20, 2020, and February 26, 2020.

Andrea Pulizzi, Esquire, originally represented Defendant. The court granted Ms. Pulizzi’s petition to withdraw by Order of Court dated February 22, 2021. While Defendant indicated that he was going to hire Michael Morrone, Esquire, he had not yet done so and accordingly, the Public Defender’s Office of Lycoming County was appointed to represent the defendant.

Previously, by Orders of Court filed on January 28, 2021 and February 26, 2021, the court denied Defendant’s motion for writ of habeas corpus with respect to all counts. Defendant’s Omnibus Pretrial Motion filed on October 30, 2020, included a motion to suppress. A hearing on the motion was held on January 25, 2021. Defendant’s motion to suppress alleges that the CI utilized in the alleged transactions either skimmed the money or skimmed controlled substances and the affiant knew such and that the affiant failed to include the information in the affidavit of probable cause supporting the criminal charges. In addition, Defendant asserted that the law enforcement personnel who were conducting these controlled buys knowingly violated their

procedures in permitting the CI to skim the money and/or controlled substances as set forth above and failed to include such in the affidavit of probable cause.

Following the hearing, the court entered a briefing schedule, which the court extended on a subsequent request of the parties. Defendant submitted his brief in support of the motion to suppress on May 21, 2021. The Commonwealth elected not to submit a brief.

In Defendant's brief, Defendant concedes that there is no support for the motion to suppress. While certain inferences could be made, Defendant notes that "upon review of the facts presented in discovery by the Commonwealth", Defendant "finds no material issues to support the previously filed motion to suppress."

The court will take this representation as a motion to withdraw the motion to suppress.

ORDER

AND NOW, this ___ day of July 2021, following a hearing and the submission of a brief, Defendant's Motion to Suppress is marked **WITHDRAWN**.¹

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Williams, Esquire (ADA)
Eric Birth, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Judge Marc F. Lovecchio

¹ A defendant may challenge omissions or misstatements in an affidavit. *Commonwealth v. James*, 69 A.3d 180, 189 (Pa. 2013). If a warrant is based on an affidavit containing deliberate or knowing misstatements of material fact, the warrant is invalid, unless the affidavit's remaining content is sufficient to establish probable cause. *Commonwealth v. Burno*, 154 A.3d 764, 782 (Pa. 2017). Where omissions are the basis for a challenge to an affidavit of probable cause, the court must decide whether the officer withheld a highly relevant fact or, more importantly in this case, whether the affidavit would have provided probable cause if it had contained the omitted information. *Commonwealth v. Taylor*, 850 A.2d 684, 689 (Pa. Super. 2004). Even if this issue was not withdrawn, it has no merit. The inferences drawn are not supported by the record. There is no proof that any misstatements of fact or omissions were part of the affidavit. Moreover, even if the information had been included, the affidavit would have provided probable cause.