

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-661-2021**
 v. :
 :
 DAVID LOPEZ, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

David Lopez (Defendant) was charged on May 28, 2021 with Persons not to Possess a Firearm¹, Receiving Stolen Property², and Possession with Intent to Deliver³. The charges arise from the execution of a search warrant on Defendant’s residence. Defendant filed a timely initial Omnibus Pretrial Motion on July 16, 2021. This Court held a hearing on the motion on August 20, 2021. In his Omnibus motion, Defendant challenges law enforcement’s search of his residence, arguing that the affidavit of probable cause in the search warrant for Defendant’s home does not properly support the warrant. As such, Defendant believes all evidence found because of this search should be suppressed.

Background and Testimony

At the hearing on this motion, the Commonwealth presented the search warrant at issue, marked as Commonwealth’s Exhibit 1. On April 27, 2021, Narcotics Enforcement Unit (NEU) Detective Tyson Havens (Havens) obtained a search warrant for 1037 Dewey Avenue, Apartment #2, City of Williamsport. It was alleged that the apartment belonged to Defendant and Kirsten Clark (Clark). Prior to executing the warrant, Havens initiated a traffic stop of Defendant in his girlfriend’s vehicle. Defendant was searched and police found \$3000.00 in cash, two (2) cellular phones along with house and safe keys. After the warrant was executed,

¹ 18 Pa.C.S. § 6105(A)(1).

² 18 Pa.C.S. § 3925(A).

³ 35 Pa.C.S. § 780-113(A)(30).

NEU found two (2) ounces of crack cocaine along with a safe, additional cocaine found in other places in the residence, cash, a cutting plate with razor blade, and a Ruger 9mm pistol which had been reported stolen. Because of the Defendants prior record of drug deliveries, he was a person unable to possess a firearm. Clark was interviewed and she confirmed to the police that Defendant was the owner of the safe and cocaine found in the residence.

Analysis

Defendant challenges the issuance of the search warrant of the residence claiming the results of search of the residence needs to be suppressed because the affidavit of probable cause did not allege sufficient facts to establish probable cause. When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-technical manner." Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a "totality of the circumstances." Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985) (adopting U.S. v. Gates, 462 U.S. 213 (1983)). The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause." Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013). It is "not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location." Commonwealth v. Forster, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that "there is a fair probability that contraband or evidence of a

crime will be found in a particular place.” Commonwealth v. Manuel, 194 A.3d 1076, 1081 (Pa. Super. 2018).

The search warrant for Defendant’s apartment, entered as Commonwealth’s Exhibit 1, was obtained by Havens on April 26, 2021. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

CI#18-15 has been cooperating with LCNEU since 2018. The CI has made approximately 16 controlled crack cocaine, metamphetamine, and opiate transactions from approximately 10 drug dealers in the Williamsport area...The CI’s information has always been proven reliable through electronic surveillance, undercover officer observations, search warrants, and arrests.

On 4/26/21, I met with CI#18-15 who provided the following information: That on 4/24/21 at approximately 1600 hrs, he/she provided his/her family members a ride to 1037 Dewey Ave to purchase crack cocaine and powder cocaine. Upon arrival at the residence, the CI and his/her family member walked onto the front porch. The family member knocked on the door, and it was answered by David LOPEZ. The CI recognized LOPEZ from the Lycoming County Prison. The CI watched the family member step inside the front door and hand LOPEZ a large amount of cash. LOPEZ then handed the family member something in return. While the front door of 1037 Dewey Ave was opened, the CI observed what he/she believed was an AR-15 rifle with “banana clip,” and a hunting rifle leaned against a staircase just inside the door. Following the transaction, the CI and the family member returned to the CI’s vehicle, at which time the family member removed four plastic sandwich bags from his/her pocket and displayed them to the CI. The CI advised that the family member showed him/her four ounces of crack cocaine and powder cocaine (two ounces each). The family member advised the CI that he/she bought the crack and powder cocaine for \$1800.00 per ounce. The family member also told the CI that LOPEZ has two AR-15’s. Approximately 20 minutes later, the CI transported another family member to 1037 Dewey Ave. Prior to doing so, the family member placed a telephone call to someone and asked that they provide him/her with crack cocaine. Upon arrival at 1037 Dewey Ave, the CI watched the family member go up onto the front porch and meet with LOPEZ, who handed him/her something. Once the family member returned to the vehicle, he/she showed the CI that LOPEZ provided them with four “50’s” of crack cocaine packaged in small green bags.

While speaking with the CI, I drove him/her to the area of the 1000 block of Dewey Ave, at which time he/she pointed out 1037 Dewey Ave, north door, facing east, as the door where the drug/gun activity took place...Several minutes later (after I dropped the CI off), I observed LOPEZ and Lindsay

WILLIAMS exit the front, north, east facing door for 1037 Dewey Ave and converse on the side walk. I am familiar with WILLIAMS and have been part of a previous investigation where he was arrested for delivering heroin to a CI...

A criminal history check of David LOPEZ revealed the following...LOPEZ's previous convictions make him a person not to possess firearms...Based on the above information, I have probable cause to believe that David LOPEZ is currently utilizing 1037 Dewey Ave to store and distribute crack and powder cocaine, and is currently in possession of at least two firearms while being a person not to possess.

Defendant argues that the affidavit is insufficient because it is "latent with hearsay and no first hand knowledge." Defendant's Omnibus Motion 7/16/2021, at 3. Defendant also takes issue with the fact that the CI in question has not been made available for questioning. The Commonwealth relies on the affidavit in the application for the search warrant and believes that the search warrant was lawfully issued.

Following a four-corners review of solely the affidavit of probable cause, this Court agrees with the Commonwealth on this particular issue. Although some hearsay was included in the application for the search warrant, Havens also incorporated information that the CI personally observed two (2) firearms in the home, albeit they were not completely certain of the types of firearm they saw, but they did not waiver in their assertion that firearms were inside the apartment against the staircase. Havens detailed the convictions he found in Defendant's criminal history and confirmed that Defendant, regardless of type or model, is prohibited from owning firearms. For the first encounter, the CI personally saw their family member hand Defendant a large amount of cash and watched Defendant exchange the cash for something. After they returned to the CI's vehicle, the CI observed the narcotics that their family member bought from Defendant, specifically two (2) ounces of crack cocaine and two (2) ounces of powder cocaine, and communicated this to Havens. During the second encounter, the CI

remained in their vehicle but was able to see Defendant hand their family member something and confirmed once the family member showed it to the CI that it was also crack cocaine. Havens indicated that the CI had successfully been cooperating with law enforcement since 2018 and listed the ways in which this particular CI had assisted the police. The CI identified Defendant from a prior encounter and Havens saw Defendant speaking with a known drug dealer in the area. Therefore, the Defendant's argument fails and the four corners of the affidavit of the search warrant establish sufficient probable cause.

Conclusion

The Court finds that the affidavit of probable cause for the search warrant of 1037 Dewey Avenue, Apartment 2 provided sufficient evidence to establish probable cause for law enforcement to search. As a result, Defendant's Motion to Suppress the evidence seized pursuant to the search warrant is denied.

ORDER

AND NOW, this 11th day of March, 2022, based upon the foregoing Opinion, Defendant's Motions to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Andrea Pulizzi, Esq.
Law Clerk (JMH)