

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1247-2021**
 v. :
 :
 COREY RINGKAMP, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Corey Ringkamp (Defendant) was charged on September 24, 2021, with two (2) counts of Delivery of a Controlled Substance¹ and two (2) counts of Criminal Use of a Communication Facility². The charges arise from two (2) controlled purchases of suspected crack cocaine between a confidential informant and Defendant. Defendant filed his Omnibus Pretrial Motion on January 14, 2022. A hearing was held on the Defendant's motion on April 22, 2022. In his Omnibus Pretrial Motion, Defendant first raises a petition for writ of habeas corpus³. Second, Defendant asserts a motion to compel additional discovery⁴. Third, Defendant requests the disclosure of the identity of the confidential informant. Fourth, Defendant argues that the statements Defendant made to law enforcement at Lycoming County Prison must be suppressed. Lastly, Defendant also contends that the search warrant obtained after the statements Defendant made must be invalidated and the evidence seized pursuant to that search warrant must be suppressed as fruit of the poisonous tree.

Background and Testimony

Detective Robert Anderson (Anderson) of the Lycoming County Narcotics Enforcement Unit (NEU), testified on behalf of the Commonwealth. Anderson testified that in the fall of

¹ 18 Pa.C.S. § 780-113(a)(30).

² 18 Pa.C.S. § 7512(a).

³ Defense counsel advised the Court at the time of the hearing that this motion is withdrawn.

⁴ The Commonwealth agreed to provide various evidentiary items to defense counsel. This Court issued a separate order addressing this issue and no further discussion of discovery will be included in this opinion and order.

2021, he was involved in an investigation into Defendant. A confidential informant (CI) had advised that they could buy crack cocaine from an individual named "TJ". TJ was a phone number rather than a single person. One of the people who utilized this phone number was a tall, black man. After a controlled buy was initiated, Defendant arrived in a Cadillac and sold suspected crack cocaine for two hundred (200) dollars. A second buy was organized and Defendant arrived in a Jeep and sold suspected crack cocaine for another two hundred (200) dollars. Defendant was later arrested on charges related to the controlled purchases.

Anderson made contact with Defendant on September 9, 2021 at Lycoming County Prison. When Anderson arrived at the prison, he asked for Defendant and provided Defendant with a sealed search warrant and an inventory sheet of items seized from the Jeep associated with one of the controlled purchases of crack cocaine. Anderson testified that Defendant was not handcuffed during their conversation that day. Anderson stated that he did not intend to question Defendant at this time and his sole purpose of arranging to see Defendant was to provide him with the aforementioned documents.

However, Anderson specified that Defendant began asking questions about his cellular phone and money that were in a vehicle. Defendant also informed Anderson that he had an additional cell phone. Anderson stated that he was aware that Defendant was not free to leave at the time of their conversation due to his imprisonment. Anderson also admitted that the information Defendant gave was incriminating but said that the questions he asked Defendant were only in conjunction with what Defendant was saying to him. Anderson admitted to not advising Defendant of his Miranda rights at that time and claimed that he did not do so because he was not there for the purpose of conducting an interrogation.

Nevertheless, following his visit with Defendant at the prison, Anderson used the information Defendant gave to obtain a search warrant for the Jeep associated with Defendant. Anderson included the information Defendant provided about possessing two (2) phones in the search warrant application. Yet, Anderson asserted that the search warrant was based on the delivery of crack cocaine, not the statements from Defendant. The next day, a canine was used on a vehicle associated with the controlled buys with Defendant and alerted on that vehicle.

Anderson further testified that in his experience as law enforcement, Anderson noted that drug traffickers use multiple phones to conduct their business. Anderson noted that Defendant utilized a home in which other dealers were using for drug transactions. Lastly, Anderson confirmed that Defendant was arraigned at the time of their conversation at the county prison.

Discussion

Identity of Confidential Informant

Defendant requests the identification of the confidential informant (CI) in this case. Pursuant to Pennsylvania Rule of Criminal Procedure 573, a trial court has the discretion to require the Commonwealth to disclose the identity of eyewitnesses including confidential informants upon the defendant making a showing of material need and reasonableness. However, the Commonwealth possesses a qualified privilege to withhold the identity of a confidential source. *See Commonwealth v. Bing*, 713 A.2d 56 (Pa. 1998). To overcome this privilege, “a defendant must first establish, pursuant to Rule 573(b)(2)(a)(i), that the information sought is material to the preparation of the defense and that the request is reasonable.” *Commonwealth v. Watson*, 69 A.3d 605, 607 (Pa. Super. 2013). “Only after the defendant shows that the identity of the confidential informant is material to the defense is the

trial court required to exercise its discretion to determine whether the information should be revealed by balancing relevant factors, which are initially weighted toward the Commonwealth.

Id.; *see also* Bing, 713 A.2d at 58.

The Court must consider the following principles.

A further limitation on the applicability of the privilege arises from the fundamental requirements of fairness. Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way. In these situations[,] the trial court may require disclosure and, if the Government withholds the information, dismiss the action.

[N]o fixed rule with respect to disclosure is justifiable. The problem is that one calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors.

Commonwealth v. Carter, 233 A.2d 284, 287 (Pa. 1967) (quoting Roviaro v. United States, 353 U.S. 53, 60-62 (1957)). Defendant argues his need for the CI's name is that as an eyewitness, they could have favorable testimony on behalf of Defendant. The Commonwealth is opposed to providing this information at this point in time, stating that they do not want to jeopardize the safety of this individual. The Commonwealth did not believe that the CI had any exculpatory information but agreed to confirm. The Commonwealth also agreed to provide the CI's criminal history for purposes of *crimen falsi*.

This Court does not believe that Defendant has shown that the identity of the CI is material to their defense. In light of the privilege the Commonwealth enjoys regarding informants, the Court believes Defendant's blanket argument of possible exculpatory information does not show the requisite materiality to Defendant's case. Defendant has not

articulated a specific defense that would require knowledge of the CI's name. Additionally, the Commonwealth has already agreed to re-evaluate whether the CI has information favorable to Defendant and agreed to provide the CI's criminal history, if any such history exists. Since Defendant cannot articulate a specific defense where the identity of the CI is essential, this Court cannot undermine the privilege the Commonwealth is provided regarding this information at this stage of the proceedings. Therefore, the Commonwealth is not required to provide the identity of the CI to Defendant at this time.

Suppression of Statements

Next, Defendant believes that the statements he made to law enforcement at the county prison require suppression for a violation of his constitutional rights pursuant to the Fifth and Sixth Amendments of the United States Constitution. The Fifth Amendment provides the accused the right to counsel during a custodial interrogation. U.S. Const. amend. V; Miranda v. Arizona, 384 U.S. 436 (1966). A custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. at 444. "Interrogation is police conduct calculated to, expected to or likely to evoke admission." Commonwealth v. Johnson, 541 A.2d 332, 336 (Pa. Super. 1988). A Miranda interrogation "refers not only to express questioning, but also to any words or actions on the part of police (other than normally attendant to arrest and custody) that police should know are reasonably likely to elicit an incriminating response from the suspect." Commonwealth v. Whitehead, 629 A.2d 142, 145 (Pa. Super. 1993). "The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police." Commonwealth v. DeJesus, 787 A.2d 394, 401-02 (Pa. 2001).

Additionally, the Sixth Amendment guarantees a defendant the right to counsel at all “critical” stages of a criminal proceeding, which includes post-indictment interrogation by law enforcement. U.S. Const. amend. VI; United States v. Wade, 388 U.S. 218, 227-28 (1967). Admittedly, these distinct protections in the Fifth and Sixth Amendments are considered to substantially overlap by the United States Supreme Court. *See* Patterson v. Illinois, 487 U.S. 285 (1988). As such, the Supreme Court held that warnings that sufficiently apprise an individual of their rights and the consequences of abandoning said rights for Fifth Amendment purposes under Miranda generally also suffice for purposes of the Sixth Amendment. *Id.* at 298. In other words, if an accused is “made aware of the dangers and disadvantages of self-representation during post-indictment questioning, by use of the *Miranda* warnings, his waiver of his Sixth Amendment right to counsel at such questioning is knowing and intelligent.” Commonwealth v. Rawls, 256 A.3d 1226, 1234 (Pa. 2021) (internal citations omitted). Furthermore, no *per se* rule arising under the Sixth Amendment “invalidating such a waiver merely because an arrestee was not advised that charges had been filed” exists pursuant to the appropriate jurisprudence. *Id.*

In the instant case before this Court, Defendant argues that he was clearly in custody on the aforementioned charges at the time Anderson came to the county prison. Defendant is also of the position that Anderson interrogated him and that Anderson should have advised him of his rights under Miranda but failed to do so. Since Defendant was never warned of the “dangers and disadvantages of self-representation”, Defendant believes he did not waive his right to counsel or his right against self-incrimination. In addition, Defendant argues that since charges were filed, he had the right to counsel pursuant to the Sixth Amendment, which was violated. As a result, Defendant contends that the statements were unlawfully elicited and must be

suppressed. Alternatively, the Commonwealth concedes that Defendant was in custody because of his incarceration, but does not believe that this interaction rose to the level of interrogation. The Commonwealth argues that Miranda warnings are not needed for the administrative function Anderson was fulfilling on the day in question. Anderson did not move Defendant into a different room and gave him these materials as a courtesy. The Commonwealth asserts that Defendant chose to ask Anderson questions and Anderson merely replied.

This Court finds that Defendant was subjected to a custodial interrogation requiring him to be advised of his rights. There is no doubt that he was in custody due to his incarceration in the county prison. Despite Anderson's testimony that it was not his intention to interrogate Defendant at that time, it appears that Anderson was still able to illicit incriminating statements nonetheless. This Court does not have the benefit of knowing the particular questions Anderson asked Defendant. Anderson claims that he only asked questions in response to Defendant's questions, but ultimately Anderson chose to use the information Defendant gave against him in order to obtain a search warrant.

Furthermore, this Court is required to view the situation from the perspective of the accused and not the intent of law enforcement. In this particular situation, Defendant's freedom is restricted by his incarceration and he is directed to interact with a police officer after Anderson requests his presence. Defendant has questions about his alleged belongings and instead of only providing answers, Anderson has follow up questions for Defendant based on the topic of Defendant's questions, namely, potentially incriminating evidence. Anderson never informs Defendant that he has a right to counsel or any of the other rights enumerated in Miranda and instead prolongs the conversation with added questions of his own. Following this incident, Anderson immediately uses the information Defendant provided to assist in obtaining

a search warrant for one of the vehicles involved in the controlled purchases Defendant is charged with.

This Court is of the opinion that Anderson should have known that inquiring about Defendant's belongings in the prison where Defendant was incarcerated was reasonably likely to elicit an incriminating response from the suspect. The intent in Miranda was to "spare the accused from having to reveal, directly or indirectly, his knowledge of facts relating him to the offense or from having to share his thoughts and beliefs with the Government." Pennsylvania v. Muniz, 496 U.S. 582, 596 (1990). The protections of Miranda and the Fifth and Sixth Amendments do not only apply to egregious, violent, or manipulative interrogation by police, but are similarly meant for the less extreme situations as demonstrated in the case *sub judice*. Upon viewing these circumstances from Defendant's viewpoint, it is reasonable to assume that he would not feel as though he could refuse to answer Anderson's questions, was not informed of his rights, and inadvertently revealed supplementary evidence beneficial to the Commonwealth's prosecution without an attorney present. Lastly, Anderson was aware that Defendant had been charged on the previously mentioned counts and was entitled to counsel under the Sixth Amendment. Therefore, this Court finds that Defendant's constitutional rights were violated and the statements made at Lycoming County Prison shall be suppressed.

Search Warrant

Defendant challenges the issuance of the search warrant for Defendant's residence, claiming that the evidence seized pursuant to the warrant should be suppressed as fruit of the poisonous tree. The Commonwealth argues that the proper remedy would be to remove the unlawful statements from the affidavit of probable cause and make a determination of legality

on the remaining information. This Court agrees with the Commonwealth on the remedy following this Court's holding that Defendant's statements must be suppressed.

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.3 1076, 1081 (Pa. Super. 2018).

In his Omnibus motion, Defendant included the search warrant application, marked as Exhibit A. The affidavit of probable cause describes two (2) controlled buys of suspected crack cocaine from Defendant during July of 2021. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On Tuesday September 8, 2021, I applied for a search warrant to seize a 2018 Jeep Cherokee SRT...which is owned by Cory Ringkamp. I applied

for this warrant to seize this vehicle as evidence of a felony drug delivery that occurred in July 2021. During that incident, this vehicle was used by RINGKAMP to deliver crack cocaine to a confidential informant. This warrant was granted by President Judge Butts.

On this same date RINGKAMP was observed leaving a known drug house in this vehicle and a traffic stop was conducted on him on Commerce Park Drive. RINGKAMP was placed into custody by DET. Caschera and DET. Havens and was found to be in possession of a large amount of U.S. currency and a cellular phone. A tow truck was summoned to the scene and towed the vehicle to Williamsport Bureau of Police Impound Lot...where it remains...On Friday September 10, 2021, SGT. McGee...deployed his certified narcotics detection canine on the exterior of the Gray Jeep SRT...SGT. McGee advised that his canine did alert to the odor of narcotics coming from the vehicle, specifically the front passenger side door area.

Exhibit A, at 3-4.

Defendant does not specifically aver that the affidavit of probable cause is insufficient. However, the Court will presume that Defendant takes issue with the showing of probable cause. Regardless, this Court believes that a proper demonstration of probable cause has been alleged in the search warrant application. The application includes information about a controlled purchase of suspected crack cocaine from Defendant, Defendant's whereabouts at a known drug trafficking house, possessing a large amount of currency, and the positive canine alert for narcotics on the vehicle that the application seeks to search. Therefore, the information in the affidavit establishes probable cause that additional evidence of drugs or drug trafficking would be found in the vehicle.

Conclusion

This Court finds that the Commonwealth is not mandated to provide Defendant with the identity of the confidential informant. The Court also finds that Defendant's constitutional rights pursuant to the Fifth and Sixth Amendments were violated at the county prison during the interaction between Defendant and Anderson and these statements shall be suppressed. This

Court further finds that the information in the search warrant is sufficient to establish probable cause to support the issuance of a search warrant for Defendant's vehicle.

ORDER

AND NOW, this 24th day of May, 2022, based upon the foregoing Opinion, the Defendant's Motion to Disclose the Identity of the Informant is **DENIED**. Furthermore, the Defendant's Motions to Suppress are hereby **GRANTED IN PART AND DENIED IN PART**. With respect to the statements made by Defendant at the county prison, those statements shall be **SUPPRESSED**. As to all other issues raised, the motion is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Michael J. Rudinski, Esq.
Law Clerk (JMH)

NLB/jmh