

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
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v. :
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WILLIAM THOMAS, :
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 :
Defendant :

CP-41-CR-1294-2021

OMNIBUS MOTION

OPINION AND ORDER

William Thomas (Defendant) was charged with Possession with Intent to Deliver¹ and Persons Not to Possess a Firearm². The charges arise from an incident that occurred on September 28, 2021. Defendant filed this timely Omnibus Pre-trial Motion on December 30, 2021. This Court held a hearing on the motion on April 25, 2022.

In his Motion, Defendant raises three issues. The first issue Defendant asserts is a petition for writ of habeas corpus.³ Second, Defendant argues that the search of his home was in violation of his rights pursuant to the Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution and any evidence found pursuant to the search warrant should be suppressed. Lastly, Defendant asserts a motion to return property.⁴

Background and Testimony

Detective Tyson Havens (Havens) of the Lycoming County Narcotics Enforcement Unit (NEU) testified on behalf of the Commonwealth. Defendant stipulated to entering Havens as an expert on possession with intent to deliver. Havens testified that he was involved in an investigation into Defendant. On September 28, 2021, a search warrant was executed on 2324

¹ 35 Pa.C.S. § 780-113(a)(30).

² 18 Pa.C.S. § 6105(a)(1).

³³ Defense counsel advised the Court at the time of the hearing that this motion is withdrawn. Therefore, no discussion of the habeas issue shall be discussed in this opinion and order.

⁴ The Court determined that this issue would not be decided until Defendant's suppression issue had been resolved.

W. 4th Street in the city of Williamsport. Havens' role was to establish a surveillance position on the house at 8 p.m. prior to the search warrant. Havens stated that this house is three (3) stories and confirmed that the only number listed on the home is 2324. The home has a house side and an apartment side but they are all contained within the same structure. Defendant lives on the first floor. At approximately 8:15 p.m., Havens observed Defendant exit the first floor apartment onto 4th Street. When the door was open, Havens could see into the house, including the front and middle rooms and a TV and folding chair in the middle room. When Defendant left the house, he travelled to the Minimart and was gone about fifteen (15) minutes. Defendant returned with a plastic bag and food containers and used keys to reenter the residence.

While Havens conducted surveillance, the search warrant team was preparing to make entry from the rear of the house. Two (2) officers were sent to relieve Havens from the front and Havens moved to the rear to assist with the entry. The police knocked and announced their presence and Havens heard the officers in the front of the residence say that there was a runner. Havens ran to the front and caught Defendant in underwear and a t-shirt. Havens testified that a CI had informed them there was a safe that looked like a book located in a corner cupboard in the kitchen. Havens stated the home had a round window with a seat in the dining room. There was a door under the seat and Havens could see a plastic bag and a book inside the seat. Havens forcibly opened the book and found that it was a safe instead of a book. Inside was cocaine and a digital scale. Havens used Defendant's keys to open another safe found in the kitchen and a firearm was discovered in that safe.

Sergeant McGee conducted a canine sniff of the home and the canine was interested in an attic blanket. Havens went upstairs into the attic, which was empty. He kicked a blanket, thought he heard metal, and found another safe tucked inside the blanket. Inside this safe was

eight (8) one hundred (100) gram bags of powder cocaine. Havens knew the substance was cocaine by looking at it, but was unaware of any lab results at the time of this hearing. In total, 880 grams of cocaine were recovered. Four (4) safes were located throughout the house, two (2) on the first floor, one (1) empty safe in the bedroom, and one (1) safe upstairs.

Detective Jonathan Rachael (Rachael) of the NEU also testified on behalf of the Commonwealth. The Commonwealth presented Defendant's criminal history, marked as Commonwealth's Exhibit 1. Rachael testified that Defendant had a charge from 2014 that makes him a person not to possess a firearm. Rachael stated that the informant in this case was Quante Hanes (Hanes), although Hanes was not the CI used here. The Commonwealth presented the search warrant for the residence, marked as Commonwealth's Exhibit 2. Hanes is listed on the search warrant as the informant and Rachael testified that he personally met with Hanes earlier that day. Hanes informed Rachael that he had driven to Defendant's home and said where he would go to buy cocaine. Rachael further testified that Defendant's home has "2324" on the front and no number on the rear. Hanes had told Rachael to be careful because the home had multiple cameras in the area. Rachael stated that Hanes was explicit in the warrant, noting that he personally bought cocaine, saw at least two hundred (200) grams of cocaine each time at least nine (9) out of ten (10) times he visited for drugs, saw a Glock and extended magazine as well as a pump shotgun and another handgun.

Hanes also told Rachael that he knew the two (2) individuals who lived in the residence, "Rell", who lived upstairs, and "Eric", who lived downstairs. Hanes said that these two (2) people only sold large amounts of narcotics. Rachael set up surveillance of the home and wanted to gain entry as quickly as possible because of the drugs and firearms still located in the residence. Rachael stated that he drafted the search warrant application mere minutes after

speaking with Hanes, but did not know the real names of the occupants. Rachael notified Hanes that his name would be listed in the warrant because Hanes was not a CI and had not been used in that capacity by law enforcement. Rachael admitted that Hanes incriminated himself with the information he provided to Rachael.

Analysis

Defendant takes issue with the search warrant for his residence claiming that the search warrant application failed 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.3 1076, 1081 (Pa. Super. 2018).

The search warrant, entered as Commonwealth's Exhibit 2, was obtained by law enforcement and executed on September 28, 2021. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On Tuesday September 28th, 2021, I interviewed [REDACTED] related that he has information regarding a large-scale drug enterprise within the City of Williamsport. [REDACTED] has knowledge of a B/M in his 30s that goes by "RELL" who lives in the upstairs apartment of 2324 W. 4th Street. [REDACTED] related to me that he has been inside 2324 W. 4th Street at least 10 times, [REDACTED] has also observed large amounts of cocaine (at least 200 grams) 9 out of 10 times he has been inside the residence. Approximately one month ago, [REDACTED] was inside the residence and observed what he believed to be a large Ruger handgun. Approximately 2 weeks ago, [REDACTED] was inside the residence and observed a pump action shotgun in the upstairs apartment.

The most recent time [REDACTED] was in the residence was Sunday September 26th, 2021. On this day [REDACTED] observed a GLOCK 19 Handgun, 3 standard size magazines and 1 extended magazine. This firearm was located in a cabinet just inside the downstairs door to the residence. On this day, [REDACTED] also observed in excess of 300 grams of cocaine that was located in a small book safe in the dining room.

[REDACTED] stated that "RELL" and "ERIC" are partners and only deal to other drug dealers in large amounts. [REDACTED] also stated that he gets his cocaine from "RELL" and "ERIC". On today's date, a search warrant was served at [REDACTED] residence and approximately 1 ounce of crack cocaine, a scale, packing material and over \$3,000 was found.

[REDACTED] also admitted that all of narcotics and paraphernalia within his house was his. Furthermore, [REDACTED] provided me with cell phone numbers for "RELL" and "ERIC" that he would use to facilitate cocaine transactions. Based on my training and experience I know it to be true that drug dealers utilize cell phones to arrange drug transactions.

Commonwealth's Exhibit 2, at 5.

Defendant argues the search warrant lacks the requisite probable cause and takes issue with the credibility of the informant. Defendant cites to multiple cases to support his argument. *See Commonwealth v. Jacoby*, 170 A.3d 1065 (Pa. 2017); *Commonwealth v. Irvin*, 134 A.3d 67 (Pa. Super. 2016); *Commonwealth v. Gindlesperger*, 706 A.2d 1216 (Pa. Super 1997). In particular, Defendant cites the Pennsylvania Superior Court's decision in *Gindlesperger* where

the Court listed factors a magistrate must consider to determine the credibility of an unidentified informant and the reliability of the information given. Gindlesperger, 706 A.2d at 1225. These factors include: (1) did the informant give prior reliable information? (2) Was the informant's story corroborated by another source? (3) Were the informant's statements a declaration against interest? (4) Does the defendant's reputation support the informant's tip? Id. (citing Commonwealth v. Gray, 469 A.2d 169, 174 (Pa. Super. 1983)). Defendant asserts that the informant in this case never gave prior information to police and his story was never corroborated. Defendant contends that the magistrate who issued the search warrant did not know Defendant or his reputation and there was no corroboration of the connection between the phone number used to buy drugs and Defendant. Therefore, Defendant believes that the affidavit did not include enough information to reach the level of probable cause.

The Commonwealth argues that proper probable cause exists in this case after considering the totality of the circumstances and a common sense determination of a fair probability that evidence of a crime would be found in the house. The Commonwealth is of the position that the caselaw Defendant provided does not apply in this situation because the cases only discuss the reliability of a confidential informant. In the case *sub judice*, the informant's name, Hanes, was listed specifically in the warrant application. Additionally, Hanes exposed himself to prosecution with the information he provided to law enforcement. Hanes gave police specific details about the exact gun model that would be found in the house as well as articulating that the home contained significant amounts of cocaine. The Commonwealth is of the position that the informant's real name in the warrant and the fact that the informant gave self-incriminating information is sufficient for the issuance of a search warrant under the totality of the circumstances present here. The Commonwealth also provided several cases to

support their position. *See* Commonwealth v. Cruz, 21 A.3d 1247 (Pa. Super. 2011); Commonwealth v. Wright, 702 A.2d 362 (Pa. Super. 1997); Commonwealth v. Belenky, 777 A.2d 483 (Pa. Super. 2001); Commonwealth v. Matthews, 285 A.2d 510 (Pa. 1971); Commonwealth v. White, 457 A.2d 537 (Pa. Super. 1983). The Commonwealth argues that Hanes should be considered sufficiently reliable because his real name was included in the warrant application, the information he gave included a penal interest, and he articulated specific details.

This Court agrees with the Commonwealth on this issue, especially because the precedent Defendant offered would support a case with different facts. This particular case did not include a tip from a confidential informant within the affidavit, but focused on information from a known and listed source. This informant fell within the boundaries of determining reliable information from a known informant, specifically that the information Hanes gave incriminated him and made him vulnerable to prosecution, but was also very specific. Therefore, the four corners of the affidavit establish probable cause for the issuance of a proper search warrant and the evidence seized from Defendant's residence shall not be suppressed.

Conclusion

The Court finds that the affidavit of probable cause for the search warrant of Defendant's residence provided sufficient evidence to establish probable cause for law enforcement to search the room pursuant to the warrant.

ORDER

AND NOW, this 2nd day of June, 2022, based upon the foregoing Opinion,
Defendant's Motion to Suppress is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
PD (TC)
Law Clerk (JH)