

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
	:	<b>CR-1407-2023</b>
vs.	:	
	:	
<b>DANIEL SNYDER,</b>	:	<b>MOTION TO SUPPRESS</b>
<b>Defendant</b>	:	

**OPINION**

This matter is before the Court on Defendant’s Motion to Suppress filed on December 4, 2023. A hearing on the Motion was held on January 16, 2024, after which counsel for the Defendant requested to submit briefs for the Court’s consideration. The Court stated on the record that briefs would be due within ten (10) days of the date of the hearing. It is noted that both counsel’s submissions were late, as the Defendant’s brief was filed just before the end of business on January 29, 2024, and the Commonwealth’s was filed on January 31, 2024. It is the Court’s expectation that all future submissions that counsel wishes to be considered will be provided within the timeframes imposed by the Court.

**Factual and Procedural Background**

On October 4, 2023, the Defendant was charged with two (2) counts of Possession with Intent to Deliver a Controlled Substance, two (2) counts of Possession of a Controlled Substance, and one (1) count of Possession of Drug Paraphernalia. These charges stem from illegal contraband located within the Defendant’s residence during the execution of a search warrant on September 14, 2023.

## **Discussion**

Defendant's filed Motion to Suppress is limited to claims that there was insufficient probable cause within the four corners of the search warrant to authorize the search of the Defendant's residence and subsequent seizure of the contraband. At the hearing, Officer Michael Engle of the Lycoming Regional Police Department testified that he was working on September 8, 2023, when officers were directed to check residences in the 100 block of Mill Hill Road to look for the home and owners of a lost dog that was in the possession of Officer Brandy Perchinski. He further testified that he went to 130 Mill Hill Road where he spoke to the homeowner about the lost dog, and the homeowner directed him to a property at 147 Mill Hill Road, where they believed the dog's owner resided. Upon arrival at 147 Mill Hill Road, Officer Engle testified that there were several vehicles parked around the residence and he observed muddy dog prints in front of the house. He testified that he knocked on a glass window, through which he could see dog bowls. No one answered the Officer's knock, but he testified that he believed someone was present so he walked around the sidewalk to the back of the house and yelled "hello." Officer Engel testified that as he walked to the back of the house, he smelled an odor of marijuana and then spotted multiple marijuana plants growing in what appeared to be an approximately 8'x8' mini garden. Officer Engel testified that he could identify these as marijuana plants based upon his training and experience. Finally, Officer Engel testified that he snapped a picture of the plants, took down the registration information for the white Cadillac parked in front of the house, and left the property.

Defendant, in his Motion to Suppress, argues that any evidence seized pursuant to

the execution of the search warrant of the residence on September 14, 2023, should be suppressed because the search warrant was issued without probable cause. The Defendant alleges that within the four corners of the warrant there lacked any reason to search the residence based upon the observance of three to four marijuana plants in the backyard and therefore the search warrant was issued in violation of his rights under Article 1 Section 8 of the Pennsylvania Constitution and under the Fourth Amendment to the United States Constitution.

“The issuance of a constitutionally valid search warrant requires that police provide the issuing authority with sufficient information to persuade a reasonable person that there is probable cause to conduct a search based upon information that is viewed in a commonsense manner.” *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021) (quoting *Commonwealth v. Housman*, 986 A.2d 822, 843 (Pa. 2009). “The issuing authority must determine whether, given the totality of the circumstances presented, there is a fair probability that evidence of a crime or contraband will be found in a particular location.” *Id.*

At the hearing on the Motion to Suppress, the Commonwealth called Officer Brandy Perchinski of the Lycoming Regional Police Department. Officer Perchinski testified that she has a long list of drug/DUI trainings and has worked with both the Lycoming County NEU and the FBI on drug related matters. Although under cross-examination Officer Perchinski testified that there was no surveillance conducted on the house from the time the plants were observed on September 8, 2023, until the execution of the search warrant on September 14, 2023, and there were no calls or reports from neighbors with concerns about drugs being sold, she indicated that the multiple marijuana growing operations she has been

involved in throughout her career in law enforcement led her to believe that there would be further evidence of a crime or contraband found inside the residence. Additionally, Officer Perchinski testified that, while she did not need to, she looked up the criminal record of the Defendant, who was the property owner, and found him to have a prior drug related offense, which supported her probable cause. This Court finds, given the totality of the circumstances presented, that there is a fair probability that evidence of a crime or contraband would be found inside the Defendant's residence and therefore there was sufficient probable cause to issue the search warrant.

Following the hearing on the Motion to Suppress, the Defendant filed a brief in which he raises two additional claims in support of suppression of the evidence. The Court would note that these additional issues, having not been raised in the Motion to Suppress that the Defendant filed, and having not been argued at the time of the hearing on the motion and affording the Commonwealth the opportunity to respond, have been waived by the Defendant. However, the Court also notes that these additional claims in support of Defendant's argument that the search and seizure of the items was illegal are without merit and will briefly address them herein.

First, Defendant argues that the search was illegal because the plants were not in plain view of the officers during their visit to the Defendant's home, as the officers were not at a "lawful vantage point" to view the marijuana plants because they were searching for the home of a lost dog, acting within a community caretaking capacity. Defendant further argues that trespassing or investigating Defendant's constitutionally protected property without additional cause is not within the scope of such actions. Defendant cites the case of

*Commonwealth v. McCree*, 924 A.2d 621 (Pa. 2007), in support of his position. However, the *McCree* case deals with warrantless searches, where in the present case the officers observed the marijuana plants in plain view while attempting to locate the owner of the dog and subsequently obtained a search warrant for the residence, believing that there was a fair probability that there would be additional evidence of a crime or contraband inside. Furthermore, the Defendant's brief merely offers the conclusory statement that the officer was not at a legal vantage point to view the plants despite the officer's testimony that he walked to the back of the residence believing that someone was present. Defendant's brief fails to provide any case law that supports that the officer was not at a legal vantage point when making such an observation. For these reasons, even if it had been properly raised, the Defendant's claim would be denied.

The Defendant's second additional claim, although waived for failure to include it in his original motion, questions whether the search warrant issued eight days after the observance of the marijuana plants in the Defendant's backyard would be considered stale. The Defendant cites *Commonwealth v. Bove*, 293 A.2d 67 (Pa. 1972), which held that there was no probable cause to issue a search warrant based upon an alleged isolated sale of drugs which occurred more than a month prior to that search. Defendant further argues that during the eight days in between the officer's viewing the plants and the application for the search warrant, there was no additional surveillance of the Defendant or the residence, and the items sought to be seized were of such a nature that they could have easily been destroyed.

This Court finds that an eight-day delay in applying for the search warrant after the officer's observation of marijuana plants was not unreasonable. The marijuana plant(s)

growing in the back yard were observed to be more than three feet tall, indicative of the fact that they had been growing in that location for quite some time with no indication that they would be moved immediately or at all. Any contraband inside the residence being moved is a risk that the police assumed in waiting eight days before obtaining the search warrant, however, the length of time was not so unreasonable as to remove the probable cause stated in the affidavit such that it would be considered “stale.”

For all of the foregoing reasons, the Defendant’s Motion to Suppress Evidence is **DENIED**. The Court declines to suppress the evidence seized during the execution of the search warrant on September 14, 2023, as there was probable cause to issue the warrant for the search of the residence. There was a substantial nexus between the marijuana plant(s) observed to be growing in the backyard in close proximity to the residence to be searched, where the totality of the circumstances indicated there was a fair probability that there would be more drugs and drug related items inside the residence.

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of **May, 2024**, upon consideration of Defendant’s Motion to Suppress, the argument of counsel on January 16, 2024, and the written submissions by counsel, and for the reasons set forth above, the Motion to Suppress Evidence is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/jel  
CC: DA (LS)  
Christian Lovecchio, Esquire  
Gary Weber, Esquire  
Jennifer Linn, Esquire