

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-2023-239
:
vs. : CRIMINAL DIVISION
:
RANDY BAKER, :
Defendant. : Omnibus Pretrial Motion

OPINION AND ORDER

This matter came before the Court for an evidentiary hearing on November 8, 2024, on the Defendant’s Omnibus Pretrial Motion, filed September 9, 2024 (hereinafter the “Motion”). The Motion asserts ten (10) Counts seeking relief. At Count I, Defendant asserts that the Information is legally insufficient. At Count II, the Defendant asserts that the statute of limitations has expired. At Count III, the Defendant seeks to suppress the Commonwealth’s physical evidence. At Count IV, the Defendant seeks to preclude reference to the alleged victim as the “victim.” At Count V, the Defendant seeks to secure evidence from the Commonwealth regarding the Defendant’s admissible prior convictions. At Count VI, the Defendant seeks an Order that the Commonwealth identify any Commonwealth witness which has received immunity, leniency, or preference treatment. At Count VII, the Defendant seeks an Order compelling discovery. At Count VIII, the Defendant seeks an Order compelling production of Lycoming County Department of Children and Youth (hereinafter “CYS”) records. At Count IX, the Defendant seeks an Order compelling timely notice of Commonwealth expert testimony. At Count X, the Defendant seeks to reserve the right to amend the Motion.

A hearing was conducted before the Court on the Motion on November 8, 2024 (hereinafter the “Hearing.”). Thereafter, the parties submitted briefs, the last of which was due on January 16, 2025. The matter is now ripe for decision.

With regard to Count I of the Motion, the Commonwealth sought leave of Court to amend the Information, at the Hearing, to which the Defendant did not object (Notes of Testimony, hereinafter N.T., at 39-40). With regard to Count II, counsel for Defendant indicated at the Hearing that he intended to reexamine that claim. *Id.* at 42-43. Because Defendant did not brief that issue, the Court regards that issue as withdrawn. With regard to

Count IV, the parties agreed at the Hearing that the Commonwealth would not refer to the alleged victim as the victim at trial. *Id.* at 45. With regard to Count V, the Commonwealth agreed to provide the requested discovery. *Id.* With regard to Count VI, the Commonwealth agreed to provide the requested discovery. *Id.* With regard to Count VII, the Commonwealth agreed to provide the requested discovery. *Id.* With regard to Count VIII, Defense counsel advised the Court that the issue is moot. *Id.* at 46. With regard to Count IX, the Commonwealth agreed to provide the requested discovery. *Id.* With regard to Count X, the Commonwealth agreed not to object to amendment of the Motion if the discovery material provided to the Defendant by the Commonwealth revealed a need for amendment. *Id.* The Court notes that the parties only briefed Count III of the Motion, which appears to be the only claim which remains for resolution by the Court.

At the hearing on the Motion, the Commonwealth presented the testimony of Corporal Michael App (hereinafter “Corporal App”). *Id.* at 6. Corporal App testified that, on January 26, 2022, he prepared an application for a search warrant identified as Commonwealth Exhibit 1. *Id.* at 7. He testified that, on that evening, he was dispatched to UPMC Williamsport Hospital to speak with a 14-year-old female. *Id.* at 8. Based upon that interview, he prepared a search warrant application and affidavit seeking to seize two (2) cellular telephones located at 440 Tinsman Avenue, Loyalsock Township, Lycoming County. *Id.* at 9. Corporal App admitted that he made an error in the name block of the search warrant application, referring to the person who was the target of the search as “Roger Baker” rather than “Randy Baker.” *Id.* at 10. The Court took judicial notice of the contents of Commonwealth Exhibit 1. *Id.* at 11. Corporal App testified that, after he executed the search warrant, which he obtained from Magistrate District Judge Christian Frey, he advised Judge Frey of the error in the name. *Id.* at 25. He also testified that he amended the face of the affidavit to reflect the correct name. *Id.* at 21. Corporal App admitted that the search warrant affidavit listed the age of the alleged victim and her initials, but not her name. *Id.* at 26.

Both counsel subsequently agreed that Commonwealth Exhibit 1—the warrant application presented to Judge Frey—identified the alleged victim by initials and age, but age

information was redacted from the discovery provided to counsel for the Defendant. *Id.* at 31-32. Defense counsel admitted that the unredacted Exhibit would affect his Motion. *Id.* at 33.

The Commonwealth introduced the testimony of Trooper Matthew Miller (hereinafter “Trooper Miller”). *Id.* Trooper Miller testified that he prepared and filed the criminal complaint and affidavit against the Defendant, introduced as Commonwealth Exhibit 2. *Id.* at 34.

The Commonwealth introduced the electronically filed version of the Information as Commonwealth Exhibit 3, and the printed and physically signed version of the Information as Commonwealth Exhibit 4. *Id.* at 36-37. As more fully set forth above, counsel for the Defendant asserted no objection to the Commonwealth’s motion to file an amended Information.

ISSUE PRESENTED:

1. WHETHER THE COURT SHOULD SUPPRESS THE COMMONWEALTH’S PHYSICAL EVIDENCE BASED UPON ALLEGED DEFECT IN THE AFFIDAVIT UPON WHICH THE SEARCH WARRANT WAS BASED.

RESPONSE TO ISSUE PRESENTED:

1. THE COURT WILL NOT SUPPRESS THE COMMONWEALTH’S PHYSICAL EVIDENCE.

DISCUSSION:

Search Warrants per the Pennsylvania Rules of Criminal Procedure

Chapter 2, Part A, of the Pennsylvania Rules of Criminal Procedure delineate the requirements of search warrants within the Commonwealth of Pennsylvania. PA. R. CRIM. P. 200-212.

In particular, Rule 203—Requirements for Issuance—of the Pennsylvania Rules of Criminal Procedure provides, in part, the following:

(B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

....

(D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B).

PA. R. CRIM. P. 203.

Rule 205—Contents of Search Warrant—of the Pennsylvania Rules of Criminal Procedure provides, in part, the following:

- (a) Each search warrant shall be signed by the issuing authority and shall:
 - (1) specify the date and time of issuance;
 - (2) identify specifically the property or person to be seized;
 - (3) name or describe with particularity the person or place to be searched;
 - (4) direct that the search be executed either:
 - (i) within a specified period of time, not to exceed 2 days from the time of issuance, or;
 - (ii) when the warrant is issued for a prospective event, only after the specified event has occurred....

PA. R. CRIM. P. 205.

Rule 206— Contents of Application for Search Warrant—of the Pennsylvania Rules of Criminal Procedure provides, in part, the following:

Each application for a search warrant shall be supported by a written affidavit signed and sworn to or affirmed before an issuing authority, which affidavit shall:

- (a) state the name and department, agency, or address of the affiant;
- (b) identify specifically the items, property, or person to be searched for and seized;
- (c) name or describe with particularity the person or place to be searched;

- (d) identify the owner, occupant, or possessor of the place to be searched;
- (e) specify or describe the crime which has been or is being committed;
- (f) set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe that the items, property, or person identified are evidence or the fruit of a crime, or are contraband, or are expected to be otherwise unlawfully possessed or subject to seizure, and that these items or property are or are expected to be located on the particular person, or that these items, property, or persons are or are expected to be located at the particular place described....

PA. R. CRIM. P. 206.

Rule 581—Suppression of Evidence—of the Pennsylvania Rules of Criminal Procedure provides, in part, the following:

(H) The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights. The defendant may testify at such hearing, and if the defendant does testify, the defendant does not thereby waive the right to remain silent during trial.

PA. R. CRIM. P. 581; *See Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Commw. Ct. 2002) (“Preponderance of the evidence is tantamount to a ‘more likely than not’ standard.”) (internal citation omitted).

Regarding searches and seizures in Pennsylvania, our Supreme Court, in *Commonwealth v. Leed*, opined as follows:

The Fourth Amendment states, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. CONST. amend. IV.

The Fourth Amendment, by its text, has a strong preference for searches conducted pursuant to warrants. *See id.*; *cf.* *Riley v. California*, — U.S. —, 134 S.Ct. 2473, 2482, 189 L.Ed.2d

430 (2014) (stating, “[i]n the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.”). “Such a warrant ensures that the inferences to support a search are drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Riley*, 134 S.Ct. at 2482 (internal quotation marks and citation omitted). **It is hornbook law that search warrants may only issue upon probable cause and “[t]he issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.”** Pa.R.Crim.P. 203(B). “Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted.” *Commonwealth v. Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012) (internal quotation marks and citation omitted). **The affidavit of probable cause “must provide the magistrate with a substantial basis for determining the existence of probable cause[.]”** *Illinois v. Gates*, 462 U.S. 213, 239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

....

After a search warrant is issued, and the search conducted, an aggrieved defendant may file a motion to suppress evidence on the basis that the search warrant lacked probable cause. *See generally* Pa.R.Crim.P. 581. **The burden is on the Commonwealth to show that the magistrate had a substantial basis for concluding probable cause existed.** *Id.* at 581(H), cmt.; *Gates*, 462 U.S. at 238–39, 103 S.Ct. 2317; *Commonwealth v. Enimpah*, 630 Pa. 357, 106 A.3d 695, 703 (2014)....

The Supreme Court of the United States has instructed “that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review.” *Gates*, 462 U.S. at 236, 103 S.Ct. 2317. **Indeed, a magistrate's probable cause determination should receive deference from the reviewing courts. *Id.* In keeping with the Fourth Amendment's strong preference for warrants, “courts should not invalidate ... warrants by interpreting affidavits in a hyper[-]technical, rather than a commonsense, manner.”** *Id.* (some brackets omitted)....

Commonwealth v. Leed, 186 A.3d 405, 412-13 (Pa. 2018) (emphasis added) (footnotes omitted); see *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. Ct. 2013) (“We must limit our 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.”) (quoting *Commonwealth v. Taylor*, 850 A.2d 684, 687 (Pa. Super. Ct. 2004)).

The affidavit by Corporal App and the facial validity of the search warrant in question

Counsel for Defendant first contends that “the search warrant on its face was fatally defective[,]” that the owner of the residence to be searched was misidentified, that the same error persisted throughout the affidavit, and that Corporal App conceded that error at the November 8th Hearing. Def.’s Br. at 3-5.

Our Superior Court, in *Commonwealth v. Irvin*, opined the following regarding the particularity requirement of a search warrant application:

The Rules of Criminal Procedure include a particularity requirement: “Each search warrant shall be signed by the issuing authority and shall...requir[e] that searches be directed only towards the specific items, persons, or places set forth in the warrant. **Such warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations.**” Similarly, the Supreme Court has held a “**practical, common-sense**” approach should be taken in determining whether the place to be searched is specified with sufficient particularity. *Commonwealth v. Carlisle*, 517 Pa. 36, 534 A.2d 469, 472 (1987).

Commonwealth v. Irvin, 134 A.3d 67, 73 (Pa. Super. Ct. 2016) (emphasis added) (citing *Commonwealth v. Belenky*, 777 A.2d 483, 485-86 (Pa. Super. Ct. 2001)); cf. *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. Ct. 1978) (“[T]he law does not require 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.”).

Here, Corporal App testified that, on January 26, 2022, he prepared an application for a search warrant identified as Commonwealth Exhibit 1. N.T. at 7. He testified that, on that evening, he was dispatched to UPMC Williamsport Hospital to speak with a 14-year-old female. *Id.* at 8. Based upon that interview, he prepared a search warrant application and affidavit seeking to seize two (2) cellular telephones located at 440 Tinsman Avenue,

Loyalsock Township, Lycoming County. *Id.* at 9. Corporal App admitted that he made an error in the name block of the search warrant application, referring to the person who was the target of the search as “Roger Baker” rather than “Randy Baker.” *Id.* at 10. Corporal App testified that, after he executed the search warrant, which he obtained from Magistrate District Judge Christian Frey, he advised Judge Frey of the error in the name. *Id.* at 25. He also testified that he amended the face of the affidavit to reflect the correct name. *Id.* at 21. Because Corporal App corrected the mistake, advised the magistrate judge of that error, and “courts should not invalidate ... warrants by interpreting affidavits in a hyper[-]technical, rather than a commonsense, manner[,]” the search warrant was not invalid on its face. 186 A.3d at 413.

The required probable cause of the search warrant in question

Counsel for the Defendant next contends that “the search warrant lacked the required probable cause” because the warrant did not include the alleged victim’s full name (nor other identifiers of the alleged victim), because the information provided by the alleged victim was uncorroborated, because the information was unrecorded and obtained while the alleged victim was in an emergency room (and in the absence of the alleged victim’s mother), and because the warrant affidavit is silent on whether the Defendant “[a]ctually received and viewed” the images sent to him by the alleged victim, “or that [the images] were still on [Defendant’s] phone.” Def.’s Br. at 5-7.

Our Supreme Court, in *Commonwealth v. Torres*, opined the following regarding probable cause for search warrants:

Pursuant to the “totality of the circumstances” test set forth by the United States Supreme Court in *Gates*, the task of an issuing authority is “simply to make a practical, common-sense decision whether, **given all of the circumstances** set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a **fair probability** that contraband or evidence of a crime will be found in a particular place.” *Commonwealth v. Gray*, 509 Pa. 476, 484, 503 A.2d 921, 925 (1986)(quoting *Gates*, 462 U.S. at 238–39, 103 S.Ct. at 2332). Thus, the totality of the circumstances test “permits a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an

informant's tip....” *Gates*, 462 U.S. at 234, 103 S.Ct. at 2330. It is the duty of a court reviewing an issuing authority's probable cause determination to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Gray*, 509 Pa. at 484, 503 A.2d at 925. In so doing, **the reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner.** *Commonwealth v. Jones*, 542 Pa. 418, 668 A.2d 114, 117 (1995) (opinion announcing the judgment of the Court).

Commonwealth v. Torres, 764 A.2d 532, 537–38 (Pa. 2001) (emphasis added); *see, e.g., Commonwealth v. Jones*, 668 A.2d 114, 117 (Pa. 1995) (“The totality of circumstances test was adopted to do away with rigid, precise determinations of probable cause...To require corroboration in every situation would be contrary to the purpose of the totality of circumstances test: allowing a flexible, common sense approach to all the circumstances of an affidavit.”) (internal citations omitted); *cf. Commonwealth v. Singleton*, 603 A.2d 1072, 1074 (Pa. Super. Ct. 1992) (“[A] ‘tip’ from an unnamed informant can properly form the basis for probable cause, provided there is adequate evidence of the informant's credibility.”) (internal quotation marks and citations omitted).

By way of example, regarding the reliability of confidential informants, our Supreme Court—in *Commonwealth v. Jones*—opined that “basis of knowledge” may be established when “[t]he information provided by the informant is not a rumor or speculation, but is based upon direct, personal observation[,]” and that 2) “veracity” may be established by independent corroboration under certain limited circumstances. *Commonwealth v. Jones*, 668 A.2d 114, 117 (Pa. 1995) (noting also that if “[t]he affidavit provides a sufficient basis of knowledge, no corroboration is required[.]” and “[a]s to the informant's veracity, although *Gates* recognized the importance of police corroboration, it did so in the limited circumstance of anonymous tips because the veracity of persons supplying such tips is unknown.”) (internal citation omitted); *cf. Commonwealth v. Reisinger*, 380 A.2d 1250, 1253 (Pa. Super. Ct. 1977) (“[W]e agree, that the statements made by the informant...were declarations against penal interest and that alone supplied a sufficient basis for crediting those statements....”).

Here, the alleged victim who provided the information to Corporal App is not a confidential informant. Corporal App testified that, on January 26, 2022, he prepared an

application for a search warrant identified as Commonwealth Exhibit 1. N.T. at 7. He testified that, on that evening, he was dispatched to UPMC Williamsport Hospital to speak with a 14-year-old female. *Id.* at 8. The alleged victim disclosed to Corporal App the details of the allegation against the Defendant, how she knew the Defendant, when she sent the alleged images and videos to the Defendant, and where to locate those alleged images and videos. *Id.* at 8-11, 16-19. Not only did the alleged victim identify herself and provide details based on her own personal observations and conduct (e.g., the act of sending those images and videos), she provided those details to Corporal App against her own penal interest. *Cf.* 380 A.2d at 1253 (Pa. Super. Ct. 1977) (“[W]e agree, that the statements made by the informant...were declarations against penal interest and that alone supplied a sufficient basis for crediting those statements....”). Further, it does not appear to this Court that Corporal App or the Magistrate District Judge should doubt the information provided by the alleged victim here, simply because the alleged victim was a minor. Because “[t]he reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner[,]” the Court is not convinced that there was insufficient probable cause for the issuance of the search warrant in question. 764 A.2d at 538.

As to the issue of staleness, our Superior Court opined the following:

Settled Pennsylvania law establishes that stale information cannot provide probable cause in support of a warrant. *Commonwealth v. Gomolekoff*, 910 A.2d 710, 713 (Pa.Super.2006). In particular: [A]ge of the information supporting a warrant application is a factor in determining probable cause. If too old, the information is stale, and probable cause may no longer exist. Age alone, however, does not determine staleness. **The determination of probable cause is not merely an exercise in counting the days or even months between the facts relied on and the issuance of the warrant. Rather, we must also examine the nature of the crime and the type of evidence.** *Id.* (quoting *United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir.1993)).

Commonwealth v. Janda, 14 A.3d 147, 158–59 (Pa. Super. Ct. 2011) (emphasis added); *see generally Commonwealth v. Vergotz*, 616 A.2d 1379, 1382 (Pa. Super. Ct. 1992) (“The applicable standard for determining the time limits to be placed on search warrants is one of reasonableness.”).

Regarding factors to consider in determining staleness, our Superior Court provided the following guidance:

In particular, the chief factors to consider when determining whether the information supporting the issuance of a warrant has grown stale are the quality and nature of the seized evidence, the ease with which the evidence may be disposed of, and the lapse of time between the information and the warrant. *Commonwealth v. Klimkowitz*, 331 Pa.Super. 75, 81, 479 A.2d 1086, 1089 (1984). Other considerations may be: the character of the crime (chance encounter in the night or regenerating conspiracy?), of the criminal (nomadic or entrenched?), of the thing to be seized (perishable and easily transferable or of enduring utility to its holder?), of the place to be searched (mere criminal forum of convenience or secure operational base?), etc. W. LaFave, “Search and Seizure” § 3.7(a) p. 77 (2d ed. 1987) quoting *Andresen v. State*, 24 Md.App. 128, 331 A.2d. 78 (1975), aff’d sub nom. *Andresen v. Maryland*, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627. The continuity of the illegal scheme may be established by the inherent nature of the criminal activity itself or evidence that the activity has extended over a period of time. LaFave, *supra* at § 3.7(a) p. 81.

Commonwealth v. Alewine, 558 A.2d 542, 543–44 (Pa. Super. Ct. 1989); see *Commonwealth v. Murphy*, 916 A.2d 679, 689 (Pa. Super. Ct. 2007) (“‘Staleness’ when raised must not be determined by rigorous exactitude, but rather by the experience of reasonable men, cognizant that events in the real world, and more specifically criminal events, have a life of their own, in which hours and days are measured not by clocks and calendars, but rather by who will be watching, and when the coast will be clear.”) (citing *Commonwealth v. Baker*, 518 A.2d 802, 804 (Pa. 1986)).

Here, Corporal App testified that, on January 26, 2022, he prepared an application for a search warrant identified as Commonwealth Exhibit 1. N.T. at 7. He testified that, on that evening, he was dispatched to UPMC Williamsport Hospital to speak with a 14-year-old female. *Id.* at 8. Corporal App testified that the alleged victim provided both a timeframe of when the alleged images were sent in (and during) the year prior to the interview of the alleged victim, as well as that the alleged images were sent “[w]ithin the last week or so of the interview with [the alleged victim] at the hospital.” *Id.* at 17-18. Based upon that interview, he prepared a search warrant application and affidavit seeking to seize two (2) cellular telephones

located at 440 Tinsman Avenue, Loyalsock Township, Lycoming County. *Id.* at 9. Based on the timeframes indicated by the alleged victim, the proximity (and duration) of those timeframes and Corporal App's application for a search warrant, the nature of the alleged evidence, and the type of repository in which that evidence was located, the Court is not convinced that "[t]he information supporting the issuance of a warrant has grown stale...." 558 A.2d at 543.

ORDER

AND NOW, this 11th day of February, 2025, for the reasons more fully set forth above, Defendant's Omnibus Pretrial Motion, filed September 9, 2024, is **GRANTED** in part and **DENIED** in part as follows:

1. The Court regards the request for relief asserted at Count I of the Motion as withdrawn by the Defendant.
2. The Court regards the request for relief asserted at Count II of the Motion as withdrawn by the Defendant.
3. The relief request at Count III of the Motion, suppression of the Commonwealth's evidence, is denied.
4. The relief request at Count IV of the Motion is granted. The Commonwealth will not refer to the alleged victim as "the victim" at trial.
5. The relief request at Count V of the Motion is granted. The Commonwealth will provide the requested discovery within the time agreed at the Hearing.
6. The relief request at Count VI of the Motion is granted. The Commonwealth will provide the requested discovery within the time agreed at the Hearing.
7. The relief request at Count VII of the Motion is granted. The Commonwealth will provide the requested discovery within the time agreed at the Hearing.
8. The relief request at Count VIII of the Motion is now moot.
9. The relief request at Count IX of the Motion is granted. The Commonwealth will provide the requested discovery within the time agreed at the Hearing.
10. The relief request at Count X of the Motion is granted, in part. If the Defendant seeks to file an Amended Motion, Defendant shall do so with ten (10) days after receipt of the Commonwealth discovery which caused the amendment, or within ten (10) days of the date of filing of this Order, whichever last occurs.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Lycoming County District Attorney's Office (MW)
Edward J. Rymza, Esquire