

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1088-2023
v.	:	
	:	
STACEY COOLEY	:	OMNIBUS PRETRIAL MOTION
Defendant	:	

OPINION AND ORDER

Stacey Cooley (Cooley) was charged by the Lycoming County Narcotics Enforcement Unit (LCNEU) on May 19, 2023 with eleven counts of Delivery of a Controlled Substance, cocaine,¹ six counts of Criminal Use of a Communication Facility², one count of conspiracy to deliver a controlled substance and one count each of Fleeing or Attempting to Elude a Police officer and Resisting Arrest arising from eight controlled purchases utilizing a confidential informant (CI) on April 17, 19, 21, 25, May 5, 9, 10, and 18, 2023 in the City of Williamsport. On April 14, 2023 the LCNEU served a search warrant on 26 Washington Boulevard, rear in the City of Williamsport and found 157.53 grams of methamphetamine, 9.24 grams of cocaine, 23.45 grams of marijuana, 3 digital scales and packaging materials.

A preliminary hearing was held on August 24, 2023 where two Delivery charges, one Criminal use of a communication facility and the Conspiracy charge were dismissed. Cooley filed this timely Omnibus Pretrial Motion on October 10, 2023. This motion challenges the search warrant issued on May 18, 2023 for the search of 26 Washington Blvd on the same date. Cooley alleges that there was not a sufficient nexus of criminal activity at the 26 Washington Blvd location, claiming that there was more of a nexus between the vehicle used than the residence. Hearing was scheduled on the motion on February 5, 2024.

¹ 35 P.S. §780-113(a)(30).

² 18 Pa.C.S.A. §7512(a).

At the time of the suppression hearing, Defense Counsel alleged there were material misstatements contained in the affidavit attached to the search warrant; however, the Commonwealth was refusing to call the affiant to testify. Defense counsel was also asking for anything related to the CI including their prior record and whether or not they were offered anything in exchange for their cooperation with the Commonwealth. Since the Commonwealth was unwilling to provide anything about the CI and no testimony to refute the allegations by the Cooley about the material misstatements in the affidavit, the Court was unable to go forward with the hearing. The Court granted the Defense continuance and an additional Omnibus Motion setting forth in greater detail the challenge to the information contained in the affidavit of the search warrant was filed on February 15, 2024. A hearing on both motions was held on June 14, 2024. Because of a disagreement between the parties as to the need for additional testimony, the hearing was again rescheduled for July 24, 2024.

Background

The search warrant in question was issued May 18, 2023 and contained the following:

April 17th, 2023

CI contacted DINA DIMASSIMO to arrange the purchase of cocaine. DIMASSIMO agreed to the sale and told the CI that STIZ AKA STACEY COOLEY was bringing the cocaine. DIMASSIMO told the CI to go to Michael Ross Apartment Complex. CI was searched to negate the presence of any drugs, contraband or currency. None were found. CI was provided with prerecorded police funds. Surveillance units set up at the above location. COOLEY was observed entering the Michael Ross Apartment Complex in a silver Nissan Sedan. COOLEY parked and entered DIMASSIMO's apartment. A short period of time later DIMASSIMO exited, met with the CI and conducted a hand to hand delivery. DIMASSIMO handed the CI crack, cocaine. The CI handed DIMASSIMO prerecorded police funds. DIMASSIMO returned to her apartment.

COOLEY left shortly after and entered the Silver Nissan sedan and departed the complex where he traveled to a known persons house. This known person provided information regarding COOLEY. (This person stated that COOLEY paid his/her significant other to rent the vehicle for him.)
CI met with a detective and immediately turned over the crack, cocaine.

April 19th, 2023.

I met with the CI at a predetermined location
CI was searched to negate the presence of any drugs, contraband or currency. None were found.
CI contacted COOLEY at cellular number 717-460-1374 to arrange the purchase of crack, cocaine.
The CI was provided with \$ 250 in prerecorded police funds.
CI contacted COOLEY at cellular number 717-460-1374 to arrange the sale of crack, cocaine.
COOLEY agreed to the sale cocaine.
Under police surveillance, COOLEY met with the CI.
CI handed COOLEY \$ 250 in prerecorded police funds.
COOLEY handed the CI approximately 2 grams of crack, cocaine.
COOLEY departed the area. .1
CI met with a detective and immediately turned over the cocaine.

April 21st, 2023

I met with the CI at a predetermined location
CI was searched to negate the presence of any drugs, contraband or currency. None were found.
CI contacted COOLEY at cellular number 717-460-13xx to arrange the purchase of crack, cocaine.
CI was provided with \$ 250 in prerecorded police funds.
Surveillance was set up in the above location.
COOLEY was observed operating the Silver Nissan driving into the Complex.
COOLEY was observed exiting the vehicle and meeting with the CI.
CI handed COOLEY \$ 250 in prerecorded police funds.
COOLEY handed the CI approximately 1.70 grams of crack cocaine.
COOLEY departed the Michael Ross Complex.
CI met with a detective and immediately turned over the suspected crack cocaine.

April 25th, 2023

I met with the CI at a predetermined location
CI was searched to negate the presence of any drugs, contraband or currency. None were found.
CI contacted COOLEY at cellular number 717-460-1374 to arrange the purchase of crack cocaine.

COOLEY agreed to the sale and directed the CI the area of Grimesville Rd and Round Hills Rd.
Det. Edkin transported the CI to that location
I observed COOLEY operating the Silver Nissan Sedan traveling to the above location
COOLEY parked.
CI exited the UC vehicle and met with COOLEY through the driver side window.
CI handed COOLEY approximately 1.62 grams of crack cocaine
COOLEY handed the CI \$ 250 in prerecorded police funds
COOLEY departed the area.
CI immediately turned over the crack cocaine.
CI was searched to negate the presence of drugs, contraband or currency.

May 5th, 2023

I met with the CI at a predetermined location
CI was searched to negate the presence of any drugs, contraband or currency. None were found.
CI contacted COOLEY at cellular number 717-460-1374 to arrange the purchase of crack cocaine.
COOLEY agreed to the sale and directed the CI to Sheridan and Grove St.
COOLEY was observed driving the Silver Nissan sedan.
COOLEY picked up the CI at Grove St and Sheridan St.
CI handed COOLEY \$ 250 in prerecorded police funds.
COOLEY handed the CI 1.57 grams of cocaine.
COOLEY let the CI out his vehicle.
CI met with detectives and immediately turned over the cocaine.

May 9th 2023

Prior to conducting the controlled buy. COOLEYS vehicle was observed parked on Sterling Ave directly west of 26 Washington Blvd.
I met with the CI at a predetermined location
CI was searched to negate the presence of any drugs, contraband or currency. None were found.
CI contacted COOLEY at cellular number 717-460-1374 to arrange the purchase of crack cocaine.
COOLEY agreed to the sale and directed the CI to the area of Sheridan and Grove St
COOLEY agreed to the sale and directed the CI to Sheridan and Grove St.
COOLEY was observed driving the Silver Nissan sedan.
COOLEY picked up the CI at Grove St and Sheridan St.
CI handed COOLEY \$ 200 in prerecorded police funds.

COOLEY handed the CI 1.63 grams of cocaine.
COOLEY let the CI out his vehicle.

May 10th, 2023

Prior to conducting the controlled buy. COOLEYS vehicle was observed parked on Sterling Ave directly west of 26 Washington Blvd.
Det Dent and Edkin met with the CI at a predetermined location.
CI was searched to negate the presence of any drugs, contraband or currency. None were found
CI contacted COOLEY at cellular number 717-460-1374 to arrange the purchase of crack cocaine.
COOLEY agreed to the sale and directed the CI to the 300 block of High St.
CI was provided with prerecorded police funds
Surveillance was maintained on the silver Nissan
COOLEY was observed exiting 26 Washington Blvd. The south facing door on the east side of the structure. COOLEY entered the vehicle and traveled to the above location.
COOLEY exited the vehicle and met with the CI
CI handed the CI (sic) prerecorded police funds
COOLEY handed the CI approximately 2 grams of cocaine.
COOLEY departed the area and was maintained under constant police surveillance.
CI met Detectives and immediately turned over the cocaine
COOLEY was observed under police surveillance exiting the silver Nissan and entering the rear south facing door of 26 Washington Blvd.
Surveillance was maintained on COOLEY after the buy. He was observed exiting the rear door of 26 Washington Blvd and entering the Silver Nissan. COOLEY traveled to the area of 5th Ave and Memorial Ave and parked. An unknown black male walked to the driver side window and conducted a hand to hand exchange with COOLEY. This transaction took under 30 seconds. COOLEY departed the area and returned to 26 Washington Blvd. He exited the silver Nissan and entered the rear south facing door of the residence.
COOLEYS vehicle was observed parked at Sterling Ave on Multiple occasions from May 10th until May 16th.
On May 17th a confidential source stated that COOLEY acquired a new vehicle a blue JEEP pick up truck.

May 18th, 2023

I met with the CI at a predetermined location

CI was searched to negate the presence of any drugs, contraband or currency. None were found
CI contacted COOLEY at cellular number 717-460-1374 to arrange the purchase of crack cocaine.
COOLEY directed the CI to Sheridan and Grove St
Surveillance was set up on the blue JEEP truck at 849 Park Ave.
COOLEY was observed exiting 849 Park Ave and entering the blue JEEP.
COOLEY was surveilled under constant police surveillance to 26 Washington Blvd. COOLEY exited the JEEP and entered the rear south facing door of the residence. While he was inside, COOLEY contacted the CI and said, " I don't have hard. Only soft is that cool?" COOLEY was referring to the cocaine, meaning powder cocaine not crack cocaine.
A short period of time after, COOLEY was observed exiting the same door. He entered the JEEP and traveled to Sheridan and Grove.
COOLEY picked up the CI at Grove St and Sheridan St.
CI handed COOLEY \$ 180 in prerecorded police funds.
COOLEY handed the CI 1.50grams of cocaine.
COOLEY let the CI out his vehicle.
Constant police surveillance was maintained on the COOLEY.
COOLEY returned to 26 Washington Blvd, exited the JEEP and entered the residence.

I ASK THIS WARRANT BE SEALED
MULTIPLE CONFIDENTIAL INFORMANTS ARE BUYING INTO
COOLEY
IF THERE (sic) IDENTITIES ARE REVEALED NUMEROUS ACTIVE
CASES WILL BE COMPROMISED(sic).

On May 18, 2023, the search warrant was served on the 26 Washington Blvd, rear address. The search revealed multiple quantities of methamphetamine, cocaine, crack cocaine and pills in various locations along with items of drug paraphernalia used in preparing drugs for sale around the residence. No paperwork or indicia of occupancy was obtained to show that Cooley was a resident or had any connection to 26 Washington Blvd, rear.

In the omnibus motion, Cooley asserted that the search warrant obtained by Caschera lacked probable cause within its four corners in that the warrant failed to establish a nexus of

the deliveries made on the street to 26 Washington Blvd. At the first hearing, scheduled for February 5, 2024, defense counsel mentioned material misstatements or omissions in the affidavit of probable cause based on a report prepared by Detective Dent. As that type of issue was not apparent from the omnibus pretrial motion and thus did not put the Commonwealth on notice that the issue was anything more than an examination of the “four corners” of the warrant, the Court continued the hearing and granted the defense leave to file a supplemental omnibus pretrial motion to assert these issues. In the supplemental motion filed on February 16, 2024, Cooley alleged that affidavit for the search warrant contained misstatements and failed to contain material facts which misled the Court to the degree that the warrant is invalid. The alleged omissions and/or misstatements revolved around the following information which was not contained in the affidavit of probable cause: (1) the CI informed the detectives that Cooley’s address was 849 Park Avenue; (2) Detective Dent’s report indicated that Cooley was surveilled at various locations in Williamsport on May 10, including the Randall Circle and English Manor Apartments, the Hepburn Plaza, and a residence at Sterling Avenue and Seventh Avenue (as opposed to 26 Washington Blvd). The locations on May 18 included the Michael Ross Apartments and the Williamsport Home. Despite discussions at the first hearing regarding the affiant being subject to questioning regarding the alleged omissions if the defense filed a supplemental motion, the Commonwealth did not present any witnesses and the affiant was not present in the courtroom for the second hearing on June 16, 2024. As a result, the hearing had to be continued to July 23, 2024.

Testimony

At the hearing on July 24, 2024 the Commonwealth rested on the documents. Cooley called Detective Michael Caschera (Caschera) to testify. Caschera is a member of the

Lycoming County Narcotics Enforcement Unit (LCNEU). For this investigation he testified that the entire unit worked the case. One detective, Dent, would have relayed information about Cooley which he thought was prior to the preparation of the affidavit by Caschera. On April 17, 2023, LCNEU members entered the Michael Ross Complex, saw the silver Nissan and observed where it was parked. The information Caschera received about the vehicle was from the CI. They did not see the vehicle between 4/17 and 4/19/2023. Caschera testified that the first CI dealt directly with the Cooley through phone calls, not at the 26 Washington Blvd. location. On April 26, 2023, they had not learned about the 26 Washington Blvd. location yet and they believed that Cooley was delivering drugs through the silver Nissan. Caschera believed that information was important to develop his modus operandi of using a phone number and the vehicle. Caschera was also asked about the vehicle being seen in a location on Grimesville Road near Round Hills school on April 25, 2023, near the Sheridan School on 5/5/2023, and near Sheridan and Grove Street. Caschera testified that they saw the silver Nissan parked near 26 Washington Blvd on May 9, 2023. Caschera explained that on May 10, 2023 Dent was running surveillance on 26 Washington Blvd and the vehicle was observed prior to the purchase on that date but Caschera could not remember who saw the Cooley leaving 26 Washington Blvd.

When Caschera was asked about Defense exhibit #2 the report Dent authored, it described all of his surveillance on May 10, 2023. In his report, Dent other members of the NEU and PSP Vice seeing the silver Nissan at the English Manor Apartments, on Four Mile Drive, and Grampian Blvd with the Cooley entering a residence on 7th and Sterling.

Discussion

Did the search warrant have probable cause?

When a defendant files a motion to suppress evidence, the Commonwealth shall have the burden of proving to a preponderance of the evidence that the challenged evidence was not obtained in violation of the defendant's rights. Pa. R. Crim. P. 581(H). A preponderance of the evidence standard is tantamount to a "more likely than not" burden of proof. *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. 2002).

Both the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens from unreasonable, searches and seizures. *Commonwealth v. Burgos*, 64 A.3d 641, 648 (Pa. Super. 2013). The Fourth Amendment has a strong preference for searches conducted pursuant to warrants. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018). Search warrants may only issue upon probable cause and the issuing authority may not consider any evidence outside of the affidavits. Pa. R. Crim. P. 203 (B). The affidavit of probable cause must provide the magistrate with a substantial basis for determining the existence of probable cause. *Leed*, supra (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

In considering Cooley's claim that there was insufficient probable cause, the parties agree that the Court must restrict its analysis to the information contained in the affidavit of probable cause attached to the warrant, or its "four corners." 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).

“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.” *Leed*, supra (quoting *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[.]” *Gates*, 462 U.S. at 239, 103 S.Ct. 2317. In a case where the information from a confidential informant (CI) is used as the basis of information to form the totality of circumstances “...the task of the issuing magistrate is simply to make a practical, common-sense decision whether, given **all 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. And the duty of a reviewing court is simply to ensure that the magistrate had a “substantial basis for ... conclud[ing] that probable cause existed.” *Commonwealth v Gray*, 503 A.2d 921, 925 (quoting *Gates*, supra at 238–39, 103 S.Ct. 2317) (emphasis added). 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, 418 (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).

Cooley asserts that the LCNEU did not have probable cause to search the Washington Blvd address since the drug transactions took place at other locations. The Commonwealth

argues that the information available to the Commonwealth at the time reasonably lead to the conclusion that Cooley was storing his cocaine at 26 Washington Blvd, rear.

The Court finds that the affidavit established probable cause to search the residence located at 26 Washington Blvd, rear. Although the actual drug transactions occurred in Cooley's vehicle at various locations in the City of Williamsport, the information available to law enforcement was sufficient to establish probable cause to believe that the residence at 26 Washington Blvd, rear was Cooley's "stash" house.

According to the affidavit, on May 10, 2023, law enforcement officers observed Cooley leaving that residence, making a drug transaction with the CI, returning to the residence, leaving again, making a hand to hand transaction with unknown black male and again returning to the residence.

On May 18, 2023, the CI contacted Cooley and arranged a purchase of crack cocaine. Cooley directed the CI to Sheridan Avenue and Grove Street. According to the affidavit, law enforcement officers observed Cooley leave his residence on Park Avenue, enter his vehicle, and travel to the residence at 26 Washington Blvd. While inside the residence, Cooley called the CI and told the CI that he didn't have "hard", he only had soft and he asked the CI if that "was cool." In the affidavit, Detective Caschera explained that hard was crack cocaine and soft was powder cocaine. After conferring with the CI, Cooley did the following: exited the residence, entered his vehicle, drove to Sheridan Avenue and Grove Street, delivered cocaine to the CI, drove back to 26 Washington Blvd, exited his vehicle, and again entered the residence.

Based on the information contained in the affidavit, it was reasonable for the law enforcement officers to infer that the residence at 26 Washington Blvd was Cooley's "stash" house. Cooley was exiting from and returning to that residence for the May 10 and May 18

deliveries to the CI. Cooley was also observed exiting the residence, conducting what appeared to be a drug transaction with an unknown black male, and returning to the residence. Cooley's vehicle was seen parked on Sterling Avenue multiple times between May 10 and May 18.³ Additionally, and what particularly tips the scales in the Commonwealth's favor in this case, is Cooley's phone call to the CI on May 18 while inside the residence at 26 Washington Blvd that he didn't have crack cocaine, he only had powder cocaine. If Cooley already had the drugs in his residence on Park Avenue or in his vehicle on May 18, he could have checked his drug supply immediately and told the CI that he did not have "hard" during the initial call. Instead, he called the CI and provided that information after he entered the residence at 26 Washington Blvd. Viewing the totality of circumstances set forth in the affidavit, the Court finds that there was a sufficient nexus between Cooley's drug activities and the residence for law enforcement to conclude there was a fair probability that Cooley was storing drugs at 26 Washington Blvd. *See Commonwealth v. Gagliardi*, 128 A.3d 790 (Pa. Super. 2015); *Commonwealth v. Davis*, 595 A.2d 1216 (Pa. Super. 1991).

Was there a nexus of criminal activity to 26 Washington Blvd, rear?

"Probable cause to believe that a man has committed a crime on the street does not necessarily give rise to probable cause to search his home." *Commonwealth v. Wallace*, 615 Pa. 395, 42 A.3d 1040, 1049–50 (2012) (citing *Commonwealth v. Heyward*, 248 Pa. Super. 465, 375 A.2d 191, 192 (1977)) (emphasis added); see also *Commonwealth v. Kline*, 234 Pa. Super. 12, 335 A.2d 361, 364 (1975). The affidavit of probable cause must establish a "substantial nexus" between the suspect's home and the criminal activity or contraband sought to permit the

³ 26 Washington Blvd is the east side of a double residence located at the corner of Washington Blvd and Sterling Avenue. Sterling Avenue is west of the residence.

search of the home. *Id.* The task of the reviewing court is to ensure that the issuing authority had a substantial basis to conclude that probable cause existed. *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021).

For the same reasons that the court found that the affidavit established probable cause, it also established a sufficient nexus to 26 Washington Blvd.

Were there material misstatements or omissions in the affidavit of probable cause?

Lastly, Cooley alleges the affidavit of probable cause contained misstatements and omissions in the affidavit, which negated probable cause and rendered the warrant invalid. Cooley relied on the police report of Detective Kevin Dent which was admitted as Cooley's Exhibit #2. Dent's police report dated July 3 indicates that the residence Cooley entered on May 10 was referred to as the Sterling Avenue residence and a residence in the area of Sterling Avenue and Seventh Street. It also indicates that surveillance of Cooley and his vehicle showed that Cooley drove to several locations after his phone call with the CI and before meeting with the CI to deliver cocaine. Cooley contends that, based on Dent's police report, Caschera's assertion in the affidavit that Cooley entered 26 Washington Blvd on May 10 was demonstrably false. He also asserts that Cooley's travels to other locations negated any alleged nexus between the alleged criminal activity and 26 Washington Blvd.

The Commonwealth disputes Cooley's contentions. The Commonwealth argues that Cooley's travels to other areas or locations is irrelevant and does not have any impact on the probable cause contained in the affidavit.

Where a defendant details the alleged defects in the affidavit in his motion and supports his allegations with an offer of proof, the Commonwealth cannot simply rely on the affidavit of

probable cause. *See Commonwealth v. James*, 69 A.3d 180 (Pa. 2013). Rather, “it is still the Commonwealth’s burden to establish the validity of the statements contained in the affidavit and this can only be done with real, live witnesses who are subject to cross-examination by the defendant.” *Id.* at 189 (quoting *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. 1979)).

While we have recognized that the veracity of facts establishing probable cause recited in an affidavit supporting a search warrant may be challenged and examined, *Commonwealth v. Hall*, 451 Pa. 201, 302 A.2d 342 (1973); *Commonwealth v. D'Angelo*, 437 Pa. 331, 263 A.2d 441 (1970), we have not suggested that every inaccuracy will justify an exclusion of evidence obtained as a result of the search. *Commonwealth v. Baker*, 24 A.3d 1006, 1017 (Pa. Super. 2011), *aff'd*, 621 Pa. 401, 78 A.3d 1044 (2013). “[M]isstatements of fact will invalidate a search warrant and require suppression of the fruits of the search *only if the misstatements of fact are deliberate and material.*” *Id.* (quoting *Commonwealth v. Tucker*, 384 A.2d 938, 941 (Pa. Super. 1978)(emphasis added)). The question of whether a misstatement was deliberately made is a credibility question for the lower court. *See Baker, id.* “A material fact is one without which probable cause to search would not exist. The inclusion of false evidence will not invalidate a search warrant if the warrant is based upon other information which is valid and sufficient to constitute probable cause.” *Tucker, id.* (citations omitted).

Cooley heavily relies on Detective Dent’s report, which detailed Cooley’s activities in the late morning and early afternoon on May 10. In his report, Detective Dent states that the CI contacted Cooley on May 10, 2023 and Cooley indicated he was eating breakfast and would deal with them after he was done. Members of the NEU and PSP VICE surveilled Cooley to the area of Randall Circle and English Manor Apartments in Loyalsock Township.

At approximately 11:09 a.m., Det. Sarah Edkin and Det. Dent picked up the CI. The CI was searched and provided with \$100 in pre-recorded currency. The CI indicated that they usually purchase \$100 worth of crack cocaine from Cooley at a time. The CI remained with the detectives until Cooley was ready to meet.

At approximately 11:35 a.m. the CI attempted to contact Cooley to determine when he would meet them but Cooley did not answer. The CI followed up with a text message. Surveillance units continued to monitor Cooley as he was in a vehicle in the area of English Manor Apartments. Trooper Martin relayed that Cooley appeared to be looking at his phone at which point Cooley texted the CI back stating he was on a jail call and would call the CI back.

At approximately 11:44 a.m., Tpr. Martin observed Cooley depart the area of English Manor and travel west on Four Mile Drive. Det. Caschera surveilled Cooley travel west on Four Mile Drive which turned into Grampian Boulevard to the Hepburn Plaza⁴ where Cooley dropped off a passenger. The CI was sent to the 300 block of High Street to wait for Cooley.

At approximately 11:54 a.m. Cooley left the Hepburn Plaza, drove north on Hepburn Street to Seventh Street where he drove east across Market Street to Sterling Avenue where he parked and entered a residence in the area of Seventh Street and Sterling Avenue.

At approximately 12:03 p.m., the CI texted Cooley asking him to hurry up as the CI had plans. At 12:14, after not hearing from Cooley, the CI returned to Detective Dent's vehicle. At approximately 12:18 p.m. Cooley contacted the CI and said he was on his way.

At approximately 12:26 p.m., Det. Tyson Havens observed Cooley exit the residence on Sterling Avenue, enter his vehicle and travel west on Washington Boulevard.

⁴ To get to the Hepburn Plaza, Cooley would have turned off Grampian Blvd onto Hepburn Street and traveled South on Hepburn Street to the Hepburn Plaza.

At approximately 12:28 p.m., Cooley arrived at the CI's location. The CI was equipped with a recording device. Cooley was heard telling the CI "the small one's yours." After a brief conversation about \$10, Cooley departs and the CI returns to Det. Dent's vehicle and turns over a small baggie containing crack cocaine. The CI was debriefed and confirmed purchasing crack cocaine from Cooley for \$100.

From this report, it is unclear whether Cooley remained in his vehicle or entered apartments or residences at Randall Circle. It appears that Cooley remained in his vehicle using his telephone while at English Manor Apartments for nearly ten minutes. More importantly, Det. Dent's report does not mention Cooley ever entering or exiting 26 Washington Boulevard on May 10. Instead, it indicates that he parked his vehicle on Sterling Avenue and entered a residence in the area of Sterling Avenue and Seventh Street. Approximately one-half hour after arriving there, Det. Havens observed Cooley exiting the Sterling Avenue residence to travel to meet the CI.

Rather than call any witnesses to establish that Cooley was entering and exiting 26 Washington Boulevard on May 10, the Commonwealth simply relied on the affidavit of probable cause and argued that the other locations where Cooley was seen were irrelevant. Instead, defense counsel called Det. Caschera as a witness to introduce Det. Dent's report, to show that the residence was a duplex or double house, and to show that Det. Caschera did not personally observe Cooley entering or exiting the rear of 26 Washington Boulevard.⁵ In response to the law clerk's confusion regarding the location of Sterling Avenue and its relationship to Washington Boulevard, Det. Caschera drew a diagram depicting Washington Boulevard, Sterling Avenue, and the duplex on the corner of Washington Avenue and Sterling

⁵ Det. Dent also did not personally observe Cooley entering or exiting 26 Washington Boulevard as he was with Det. Edkin and the CI according to his report.

Avenue,⁶ and he contended that the Sterling Avenue residence and the residence at 26 Washington Boulevard were one and the same.

The Court is constrained to find that the Commonwealth failed to satisfy its burden of proof with respect to the veracity of the statements in the affidavit of probable cause that Cooley was seen entering and exiting 26 Washington Boulevard on May 10. **The Commonwealth failed and refused to call any witnesses and insisted on relying solely on the affidavit of probable cause.** Neither Det. Caschera nor Det. Dent personally observed Cooley entering or exiting 26 Washington Boulevard. Det. Caschera testified that he could not remember who actually observed Cooley doing so. From Dent's report, it appears that Det. Havens was the law enforcement officer who observed Cooley on May 10 in the area of Sterling Avenue. The Commonwealth could have easily called Det. Havens as a witness to establish the residence or residences in that area that Cooley entered on May 10.

With regard to the surveillance showing Cooley traveling around the City of Williamsport, the Court finds that the affidavit of probable cause need not set forth all of the locations where Cooley was seen driving in the City or Loyalsock Township. This information is only relevant if Cooley exited his vehicle and entered other locations. If he never exited his vehicle, he was not accessing or obtaining drugs from those locations. If he entered other locations, the affidavit of probable cause should state the locations he entered because to exclude such evidence could render the affidavit misleading to the issuing authority; it would make it appear that a defendant went directly to and from one location whereas if he stopped at several locations on May 10, any one of them could be the "stash" house. Given the preliminary showing by the defense with respect to May 10 and the amount of time that Cooley

⁶ The duplex is 24 and 26 Washington Boulevard with 24 Washington Boulevard being on the westside and closest to Sterling Avenue and 26 Washington Boulevard being on the eastside of the single structure.

allegedly was at various locations, the Commonwealth should have called witnesses to clarify whether Cooley remained in his vehicle the entire time or whether he entered a residence or establishments at Randall Circle, the English Manor Apartments area or the Hepburn Plaza.

Det. Dent's report does not contain any allegations regarding the activities that occurred on May 18. In his Amended Omnibus Motion, Cooley asserted that officers observed him at the Michael Ross Apartment Complex and the Williamsport Home on Ravine Road, as well as Cooley's residence on Park Avenue on May 18. He asserted that this information came from the discovery and reports of the NEU agents, however, he did not offer or submit any such documents as an offer of proof. He also did not assert that Cooley made the phone call about not having "hard" from any of those locations. Therefore, the Court finds that Cooley failed to satisfy the preliminary showing required to trigger the Commonwealth's obligation to produce evidence about Cooley's activities on May 18.

If the Court disregards the portion of the affidavit of probable cause regarding 26 Washington Boulevard on May 10, but considers the information on May 18, the Court finds that there is just barely enough information to establish probable cause that drugs would be found at 26 Washington Boulevard. Key to this finding is that Cooley called the CI while inside 26 Washington Boulevard and told the CI that he did not have hard (crack) cocaine; he only had soft (powder) cocaine.

Should the delay which required a second hearing run against the Commonwealth?

As previously noted, when a defendant challenges the veracity of the statements contained within the affidavit of probable cause, the Commonwealth cannot simply rest on the averments in the affidavit but must provide testimony. *James*, 69 A.3d at 189 ("it is still the Commonwealth's burden to establish the validity of the statements contained in the affidavit

and this can only be done with real, live witnesses who are subject to cross-examination by the defendant.”).

The original omnibus motion made a generic challenge that probable cause was lacking; it did not specify that there were misstatements within or omissions from the affidavit of probable cause. Based on the generic motion, the Commonwealth was not put on notice that witnesses needed to be present to testify. The original motion could be decided on the four-corners of the affidavit in support of the search warrant. Once the Court became aware that Cooley wished to challenge more than the four corners of the affidavit of probable cause, the Court granted Cooley leave to file a supplemental motion and continued the hearing from February 5, 2024 to June 14, 2024. *See* Order dated Feb. 5, 2024. This time is attributable to the defense because the original motion did not mention misstatements or omissions or otherwise challenge the veracity of the facts contained in the affidavit of probable cause.

On February 15, 2024, Cooley filed his Supplemental or Amended Omnibus Motion, which challenged the veracity and omission of facts in the affidavit. The omissions and misstatements related to the CI informing the detectives that Cooley’s residence was on Park Avenue near Fifth Avenue and the detectives’ surveillance of Cooley showing him going to other locations (Randall Circle, English Manor Apartments, and the Hepburn Plaza) and being at a residence on Seventh Street and Sterling Avenue on May 10, 2023 and being seen at the Michael Ross Apartments and the Park Home on May 18. Despite discussions on the record about witness testimony for the June hearing, however, the Commonwealth did not have any witnesses present at the hearing either for it to call on direct or for Cooley to call as on cross-examination. As a result, the hearing was continued from June 14, 2024 to July 23, 2024. The Court finds that this delay of 39 days is attributable to the Commonwealth.

Conclusion

In order for an affidavit of probable cause supporting a search warrant to be valid it must contain information to establish that there is a fair probability that contraband or evidence of a crime will be found in a particular place. A common sense reading of the affidavit of probable cause of the search warrant establishes a fair probability that contraband would be contained within the residence as Cooley's call to the CI while he was inside 26 Washington Boulevard that he did not have any crack cocaine but he had powder cocaine tended to show that Cooley was storing his cocaine at that residence. Therefore, Cooley's motion to suppress will be denied.

Due to the Commonwealth not having any witnesses at the June 14, 2024 hearing, the 39-day delay from June 14, 2024 to July 23, 2024 is attributable to the Commonwealth.

ORDER

AND NOW, this day of June, 2025, for the reasons set forth in the foregoing Opinion, Cooley's Motion to Suppress is hereby **DENIED**. Cooley's Motion to attribute the delay from 6/14/2024 until 7/23/2024 for Rule 600 purposes is **GRANTED**. These 39 days shall be attributable to the Commonwealth's lack of due diligence.

By the Court,

Nancy L. Butts, President Judge

cc: DA(PY)
 Robert A. Hoffa, Esq.
 Jerri Rook