

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1955-2019
:
vs. :
:
:
RASHAUN FLEMING, : Motion to Suppress
Defendant :
OPINION AND ORDER

Defendant is charged by Information filed on January 30, 2020 with delivery of controlled substance, two counts of possession with intent to deliver, criminal use of a communications facility, possession of a controlled substance, persons not to possess and receiving stolen property. These charges arise out of alleged controlled buys of narcotics from Defendant as well as a search of Defendant’s residence on November 22, 2019.

On November 18, 2020, Defendant filed a Motion to Suppress. Defendant submits that the search warrant authorizing the search of his residence was fatally defective in that it incorrectly listed Defendant’s address and the place to be searched as 1045 Freed Place instead of the correct address of 1245 Freed Place. As well, Defendant argues that the search warrant should have included additional details describing the property.

At the hearing, Detective Havens of the Lycoming County Narcotics Enforcement Unit (NEU) testified that based upon his prior investigations, he procured and obtained an arrest warrant for Defendant. On November 22, 2019, Marshals and other law enforcement officers served the arrest warrant on Defendant who was located at his residence of 1245 Freed Place in Williamsport.

While executing the arrest warrant, they observed in plain sight marijuana,

cash and a holster for a gun. Trooper Denucci of the Pennsylvania State Police advised Detective Havens of what was observed. Detective Havens requested that law enforcement hold the residence until Detective Havens obtained a search warrant.

While Detective Havens was securing the search warrant, members of the NEU went to the residence to relieve the Marshals and to continue holding it.

In summary, he testified that following one or two controlled buys, he obtained the arrest warrant for Defendant. Defendant's address of 1245 Freed place was placed on the arrest warrant, because Detective Havens knew Defendant lived there. Detective Havens directed the Marshals to execute the arrest warrant at 1245 Freed Place.

In executing the warrant, the Marshals observed contraband. They advised Detective Havens of such, and held the premises while Detective Havens obtained a search warrant.

In the search warrant, Detective Havens mistakenly wrote 1045 instead of 1245 Freed Place. 1045 Freed Place does not exist. There was never any doubt as to where the premises were located. No law enforcement officer ever went to 1045 Freed Place (it does not exist).

The application for search warrant in this case introduced into evidence and marked as Commonwealth Exhibit 1 describes the premises to be searched as 1045 Freed Place in the City of Williamsport. The Affidavit of Probable Cause includes a statement in Paragraph 15 that Defendant "was observed by Detective Kevin Dent exiting 1045 Freed Place" prior to a controlled purchase that day. A map of the area introduced into evidence as

Commonwealth's Exhibit 2 verifies that Freed Place ends at Rose Street. Consistent with the testimony of Detective Havens, the last building on Freed Place is 1245 Freed Place and not 1045 Freed Place.

An investigation report prepared by Detective Havens on November 27, 2019 notes that Defendant was taken into custody at 1245 Freed Place and probable cause for a search warrant was established. It further notes that a search warrant was "also served on 1045 Freed Place and illegal drugs, cash and firearms were found."

Defendant argues that because the address in the warrant was incorrect, the police did not have a valid warrant and accordingly, the search was illegal.

The Rules of Criminal Procedure include a requirement of particularity with respect to search warrants. Specifically, an application for a search warrant must name or describe with particularity the place to be searched. Pa. R. Crim. P. 206(3).

The purpose of this requirement is to prohibit general or exploratory searches by requiring that searches be directed only towards specific places set forth in the warrant. *Commonwealth v. Washington*, 858 A.2d 1255, 1258 (Pa. Super. 2004), *citing* Pa. R. Crim. P. 205, cmt.

In *Commonwealth v. Belenky*, 777 A.2d 483 (Pa. Super. 2001), the court concluded that a search conducted at "4251 Frankford Avenue" pursuant to a search warrant for "4252 Salem Street" was valid "where there was no ambiguity about the location where the criminal activity occurred as well as no question that probable cause for the search existed at the location that was searched." *Id* at 486-87.

As the Superior Court noted, “a house number is neither a touchstone or talisman that ends the inquiry.” *Id.* at 486. The error did not mislead the issuing authority’s assessment of probable cause, impede the officer’s assessment of the proper venue to be searched or hamper a reviewing court’s ability to determine the scope of the search. *Id.*

In *Commonwealth v. Washington*, 858 A.2d 1255 (Pa. Super. 2004), *appeal denied*, 582 Pa. 439, 872 A.2d 1126 (2005), the search warrant listed the place to be searched as “123 West Locust Way” whereas Washington’s apartment’s postal address was “123 West 10th Avenue, Rear.” 858 A.2d at 1256.

The Superior Court concluded that the search warrant was valid. The court reasoned that, although the listed postal address was an error on the part of the affiant officer, “there was no ambiguity about the location of the residence to be searched and that, indeed, criminal activity was afoot at that location.” *Id.* at 1258. Further, the court noted that there was no dispute that the police entered the residence they intended to search and to hold the search warrant invalid “would elevate form over substance.” *Id.*

Such is the case here. There was no ambiguity about the location of the residence to be searched. The police knew exactly which residence they intended to search and in fact, had conducted surveillance at the residence previously. Furthermore, law enforcement had entered the location to arrest Defendant pursuant to an arrest warrant and observed contraband in plain view. Clearly, criminal activity was afoot at that location. Following Defendant’s arrest, the residence was held until the search warrant could be obtained.

As the court in *Belenky* noted, “We do not have a situation where the police went to the wrong location. Rather they simply did not properly describe the right location.” *Belenky*, 777 A.2d at 487. Mistakes happen and this mistake was reasonable. There simply was a inadvertent error in the second digit of the house number.

As noted previously, the particularity requirement seeks to preclude general or exploratory searches. *Id.* This search was neither. Furthermore, this search did not violate the aim of protecting of privacy nor the requirement that warrants be based on probable cause. The incorrect address does not invalidate the warrant under the circumstances.

ORDER

AND NOW, this ___ day of February 2021, following a hearing and argument, Defendant’s Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Howard Gold, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Judge Marc F. Lovecchio