

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1353-2023
	:	
vs.	:	
	:	OMNIBUS PRETRIAL MOTION
DEANDRE BENTLEY	:	
Defendant	:	

OPINION AND ORDER

This matter came before the court on April 14, 2024 for a hearing and argument on an Omnibus Pre-Trial Motion filed on behalf of Deandre Bentley (Defendant).

By way of background, Defendant is charged with three counts of Possession with Intent to Deliver (PWID) a controlled substance¹, one count of Delivery of a Controlled Substance,² one count of Possession of Firearm Prohibited³ and one count of Criminal Use of a Communication Facility.⁴ The charges arise out of a controlled purchase of cocaine with Defendant utilizing a confidential informant (CI). Through the course of the investigation, the Lycoming County Narcotics Enforcement Unit (LCNEU) discovered that Defendant was renting a storage unit at My Self Storage in South Williamsport. LCNEU obtained a search warrant for the storage unit and after execution of the warrant, they found 41 MDMA⁵ pills, 1.5 ounces suspected crack cocaine, 1.84 grams of suspected fentanyl and a black Glock Style .40 caliber handgun without a serial number. Once the firearm was discovered, the NEU obtained another search warrant to return to the unit for the handgun.

¹ 35 Pa. C.S.A. Section 780-113(a)(30).

² 35 Pa. C.S.A. Section 780-113(a)(30).

³ 18 Pa. C.S.A. §6105(a)(1).

⁴ 18 Pa. C.S.A. § 7512(a).

⁵ MDMA is Methylenedioxymethamphetamine (MDMA), commonly known as ecstasy which is a stimulant with psychedelic properties.

In his motion, Defendant requested the suppression of physical evidence contending that the warrant to search the storage facility lacked probable cause because there was no substantial nexus between the individual who delivered the controlled substances and the storage facility. Although the CI said that Defendant owed him/her two bags, the CI never saw drugs or paraphernalia in the storage unit when the CI had been there with Defendant. Additionally, Defendant argues that there is no independent corroboration of the CI or that the CI had been used before which resulted in convictions or arrests from the use of the CI. Also, if the first warrant was invalid then the second warrant to retrieve the firearm was the fruit of the poisonous tree.

At the hearing, the Commonwealth presented copies of the search warrants as Exhibits #1 and #2.

Was there probable cause to search the Self Storage facility

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).

Probable cause is a practical and fluid concept that turns on the assessment of probabilities in particular factual contexts, which cannot readily be reduced to a neat set of legal rules. *Commonwealth v. Rapak*, 138 A.3d 666, 671 (Pa. Super. 2016), quoting *Commonwealth v. Huntington*, 924 A.2d 1252, 1256 (Pa. Super. 2007). 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. Leed*, 646 Pa. 602, 186 A.3d 405, 413 (Pa. 2018). The issuing magistrate must apply the totality of the circumstances test which requires him or her to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit, 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. (Harve) Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012); *see also Commonwealth v. Fletcher*, 307 A.3d 742 (Pa. Super. 2023) (“probable cause is based on a probability, not a *prima facie* showing, of criminal activity and deference is to be accorded to a magistrate’s finding of probable cause”); *Commonwealth v. Manuel*, 194 A.3d 1076, 1081 (Pa. Super. 2018)(probable cause does not demand the certainty we associate with formal trials; rather, it requires only that the totality of the circumstances demonstrate a fair probability that contraband or evidence of a crime will be found in a particular place). A reviewing court’s duty is merely to ensure that the issuing authority had a substantial basis for concluding that probable cause existed. 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. (Lavelle) Johnson*, 240 A.3d 575, 584 (Pa. 2020).

The court finds that the affidavit does not set forth probable cause to believe that there was a sufficient nexus between Defendant’s drug dealing activities and the storage unit

to justify the issuance of a search warrant. The first warrant contains the following:

On Wednesday January 18, 2023 CI 23-03 contacted Detective Dent and advised that they could purchase crack cocaine from a black male that they knew as "R". This CI described "R" as being heavy set and driving a silver Minivan and that "R" was from the Lewisburg area. At the direction of Detective Dent , the CI contacted "R" and arranged a crack cocaine deal for \$100.00. This CI has been deemed reliable and NEU Detectives have independently corroborated information this CI has provided. All times are approximate.

At approximately 1852 hours, Detective Dent and I met the CI at a predetermined location. The CI was searched to negate the presence of any drugs, contraband or currency (none found). I then provided the CI with the prerecorded police currency. The CI then contacted "R" in my presence and I heard the CI speaking with a black male, who agreed to come and deliver us crack cocaine for \$100.00. The CI advised "R" to contact us once he had arrived.

At approximately 1910 hours, a silver van arrived in the area of the 300 block of Park Court, in the city of Williamsport. The CI advised that that was "R" and the CI approached the driver's side window of the vehicle. I observed the CI conduct a hand-to-hand transaction through the window of the vehicle. The vehicle then left and travelled east on Park Court, toward Hepburn Street. The CI immediately returned to me and turned over four (4) small pink zip lock bags. Each bag contained a white chunky substance that, based upon my training and experience, was consistent with crack cocaine. The CI also told me that "R" was going to get two more bags of crack cocaine and immediately bring them to us because he owed us two more. The CI was then searched again to negate the presence of any drugs, contraband or currency (none found).

NEU detectives tailed the silver minivan that "R" was operating to the area of McDonald's on Route 15 in South Williamsport, where South Williamsport Police conducted a traffic stop. The driver and sole occupant was identified as Deandre Laquan Bentley. BENTLEY was found to have an active arrest warrant and was taken into custody. During a search incident to arrest, BENTLEY was found in possession of the prerecorded buy money. The CI then relayed that BENTLEY was most likely going to a storage unit he has in South Williamsport, by the McDonalds, to get the rest of the crack cocaine he owed us. The CI advised us that they had personally helped BENTLEY move belongings into the storage unit the previous day. BENTLEY was also in possession of an access code for My Self Storage, which is located at 50 W. Eighth Avenue, South Williamsport and two grey keys. A local law enforcement officer who is known to me and that I have worked with since I've been employed with the NEU and who is involved in this investigation, has had multiple storage units at My Self Storage and advised that the grey keys are provided by the business and are used to access the lock on the particular storage unit. The law

enforcement officer also advised that the gate access code that is provided to a person renting a storage unit consists of the storage unit number and the last four numbers of the customer's phone number. The card that BENTLEY was in possession of had a gate code of "2030656". The phone number that the CI contacted to arranged this drug transaction with BENTLEY was XXX-X88-0656. Based on the information provided by the law enforcement officer, BENTLEY'S storage unit would be number 203. The CI also advised that the storage unit was a larger unit and it was attached to the 200 building and was the third, fourth, fifth or sixth unit. Unit number 203 is the third storage unit on the 200 building and is a larger unit.

I would submit based upon the following facts;

- The controlled crack cocaine buy conducted by the CI from BENTLEY
- BENTLEY's statements to the CI that he was going to get two more bags of crack cocaine and bring them right back to us
- The traffic stop conducted on BENTLEY in the area of My Self Storage
- BENTLEY being in possession of the prerecorded buy money, a gate access code card and lock keys from My Self Storage, identifying his storage unit as 203.
- The CI's statements that they helped BENTLEY place belongings into the storage unit the previous day and their knowledge that the unit was a larger one on the 200 building and that the unit was between the third and sixth units (Unit 203 later identified as the third unit on building 200)

Probable cause exists that currently within unit number 203 of My Self Storage, 50 W. Eighth Avenue South Williamsport is crack cocaine, related paraphernalia and proceeds of illegal drug sales, to include US currency.

Based upon the above-mentioned factors, I respectfully request a daytime search warrant be issued for Unit 203 at My Self Storage, 55 W. Eighth Avenue South Williamsport to seize crack cocaine, related paraphernalia, and proceeds of illegal drug sales, to include U.S. currency.

Commonwealth's Exhibit #1. Paragraphs 1 through 4 set forth Detective Anderson's training and experience regarding drug traffickers. Detective Anderson applied for the search warrant on January 18, 2023, and MDJ Gary Whiteman granted it on that date at 9:25 p.m.

The second search warrant was identical to the first, except that there was an

additional paragraph which set forth the following:

Based on the above affidavit, a search warrant was granted by MDJ Gary Whiteman for Unit 203 at My Self Storage, 55 W. Eighth Avenue South Williamsport. During the search of the unit, a black polymer style handgun with an obliterated serial number was located inside a backpack with extended magazines for a 9mm firearm. A check of BENTLEY's criminal history shows that he is a person not to possess a firearm based upon a previous convictions for 780-113 A 30. Based upon the above-mentioned factors, I respectfully request a daytime search warrant be issued for Unit 203 at My Self Storage, 55 W. Eighth Avenue South Williamsport to seize any and all firearms within unit number 203.

Commonwealth's Exhibit #2. The second search warrant was also applied for and obtained later that same night January 18, 2024.

When viewed in a common-sense, nontechnical manner through the eyes of a trained narcotics officer, the affidavits do not set forth sufficient facts to establish that the Defendant was heading to the self-storage facility to retrieve the remaining two bags of drugs owed to the CI. The CI did not state that the Defendant was going to the self-storage area to get the drugs. When the CI mentioned that they had helped the Defendant move into the storage area the day before, s/he did not mention seeing drugs or paraphernalia for dealing drugs in the self-storage area while they were inside. There was not a fair probability that additional controlled substances would be found at the self-storage facility since the South Williamsport police officers pulled the Defendant over "in the area of McDonalds" which is located south of the area where the storage facility is located and in the direction of Lewisburg.⁶ From the Defendant's location at the time of the stop, he could have just as easily have been headed to Lewisburg, where the CI said that he lived. Perhaps it would have been better to have waited

⁶ In other words, Defendant was pulled over past the self-storage facility without ever having pulled into the parking lot for the self-storage facility.

to see where the Defendant was heading before he was pulled over.

These facts are similar to the case of *Commonwealth v. Way*. In *Way*, the informant arranged a drug transaction by phone which occurred in a blue van along a country road. After the alleged transaction, police followed the blue van to a driveway of a property at the intersection of Douglas Dr. and Glendale Rd., Berks County. The informant identified appellant as the driver of the blue van. A police source told the affiant that appellant lived at the intersection of Douglas Dr. and Glendale Rds. The police then found Way's address and applied for a search warrant. The affidavit to search the Defendant's house for drugs did not contain sufficient facts to believe that they would be found on the premises to be searched. "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. Way*, 342 Pa. Super. 341, 347, 492 A.2d 1151, 1154 (1985), quoting *Commonwealth v. Kline*, 355 A.2d 361, 364 (Pa. Super. 1975). When a conclusion is used to form the basis of probable cause, an affidavit must set forth how information leading to such a conclusion was obtained. *Id.*; see also *Commonwealth v. Ambers*, 225 Pa. Super. 381, 310 A.2d 347 (1973); *Commonwealth v. Soychak*, 221 Pa. Super. 458, 289 A.2d 119 (1972). Although the storage unit is not Defendant's residence, it is a protected area requiring a fair probability that controlled substances would be found there.

There were not facts set forth in the affidavit of probable cause to support the conclusion that Defendant was dealing drugs from or storing drugs within the storage unit. The CI did not observe any drugs or drug paraphernalia inside the storage unit and law enforcement officers did not surveil Defendant stopping at the storage unit before or after the

delivery to the CI. Defendant did not pull into the parking lot of the storage unit. The police stopped his vehicle in the area of the McDonald's, which is located beyond the self-storage facility. It is unclear whether the police activated their lights and sirens before Defendant reached the storage facility or after he passed it. Regardless, there is nothing in the affidavit of probable cause to connect Defendant's drug dealing activities with the storage unit. Therefore, as in *Way* and *Kline*, the affidavit lacked probable cause to search the storage unit.

Reliability of the CI

Defendant challenges the reliability as it relates to the information provided to the LCNEU to justify the search. Defendant alleges that there was not sufficient reliability in the information provided by the CI for the officers to believe that there would have been controlled substance in the storage unit. The Court agrees with Defendant.

Other than knowing that Defendant lived in Lewisburg and had rented a local storage unit, the CI had no other information to believe that Defendant would be returning to the storage unit after the delivery of drugs to the CI to retrieve the additional controlled substances promised. Again, no information was provided that the CI saw or heard the Defendant discuss the presence of controlled substance or paraphernalia in the storage unit. Without that information, the CI was merely guessing that was where Defendant was going to get the two bags owed. When the police stopped Defendant past the area of the storage unit heading toward Lewisburg without going inside the storage unit to retrieve the bags, it would appear that the CI's guess was wrong.

Conclusion

An allegation of the presence of drugs based on an assumption not supported by the facts is insufficient to establish an inference of criminal activity to justify a search of the self-storage unit even if it is clear the Defendant is engaging in criminal activity. Although the CI had been in the storage unit a day earlier, the CI did not tell police that Defendant was storing additional controlled substance or paraphernalia in the unit. In conjunction with the fact that Defendant did not return to the unit after the delivery and was stopped in an area beyond the unit, makes the CI's conclusion that the Defendant was storing drugs in the unit unreliable.

ORDER

AND NOW, this 12th day of August 2024, the Court GRANTS the Motion to Suppress contained in Defendant's Omnibus Pre-Trial Motion. It is ORDERED AND DIRECTED that the items found in the storage unit after the search are hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge

cc: Lindsay Sweeley, Esquire (ADA)
Andrea Pulizzi, Esquire
Jerri Rook
Gary Weber, Esquire