IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-1353-2023**
	:	
vs.	:	
	:	
DEANDRE BENTLEY	:	
Defendant	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's grant of the Appellee's Omnibus Pretrial Motion in the nature of a suppression dated August 12, 2024.

As background, Appellee was charged with three counts of Possession with Intent to Deliver (PWID) a controlled substance[1], one count of Delivery of a Controlled Substance,[2] one count of Possession of Firearm Prohibited[3] and one count of Criminal Use of a Communication Facility.[4] The charges arose out of controlled purchases of cocaine with Appellant utilizing a confidential informant (CI). Through the course of the investigation, the Lycoming County Narcotics Enforcement Unit (LCNEU) discovered that Appellee 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 MDMA[5] pills, crack cocaine, fentanyl and a black Glock Style .40 caliber handgun without a serial number.

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[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.

Once the firearm was discovered, the NEU obtained another search warrant to return to the unit for the handgun.

In the Omnibus motion, the Court found that the warrant to search the storage facility lacked probable cause because there was no substantial nexus between Appellee's drug activity and his storage unit at the storage facility. Although the CI said that Appellee owed him/her two bags from the transaction, the CI neither saw drugs or paraphernalia in the storage unit nor made a purchase from Appellee when the CI had been there at an earlier time with him. This Court will rely upon the ruling and incorporate its opinion and order for the purposes of this appeal opinion and attach it to this opinion for ease of use.

The Commonwealth filed an appeal from the suppression decision dated August 27, 2024 certifying that the Court's ruling substantially handicaps its case.

After an initial misdirected request, this Court ordered the Commonwealth to file a concise statement of errors complained of on appeal on October 15, 2024. On November 4, 2024, the Commonwealth filed a concise statement in which they asserted three issues:

1. The trial court erred as a matter of law in granting Defendant's motion to suppress evidence seized as a result of the search warrant executed upon a storage unit wherein that search contained sufficient probable cause to search.

2. The trial court decision is to be limited to a review of the four-corners of the search warrant, however the trial court's decision contains statements that are not facts contained within the search warrant, but rather independent assumptions and conclusions drawn by the trial court.

3. The trial court erred as a matter of law despite law enforcement's independent corroboration, that there was not

> sufficient reliability in the information provided by the confidential informant and this could not contribute to the finding of probable cause for the storage unit search warrant.

The court erred as a matter of law to grant Appellee's motion to suppress

In its first issue, Appellant asserts that the court erred as a matter of the law in determining that the search warrant failed to contain sufficient probable cause to justify a search of the self-storage unit.

As cited in the Court's opinion, "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); s*ee 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)(emphasis added). 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). Opinion and Order, August 12, 2024, at 3.

The Court found on its face that the affidavit did 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. When viewed in a common-sense, nontechnical manner through the eyes of a trained narcotics officer, the affidavit did not set forth any facts to establish that Appellee was heading to the self-storage facility to retrieve the remaining two bags of drugs owed to the CI.

In the affidavit of probable cause for the initial search warrant, the CI did not tell the LCNEU that Appellee told him/her he was going to the self-storage area to get the drugs. As written in the affidavit, the CI mentioned that they had helped the Appellee move into the storage area the day before, but did not mention seeing drugs or paraphernalia in the self-storage area while they were inside. While driving south on Route 15 toward Lewisburg where the CI told LCNEU that Appellee lived which took him past the self-storage area, Appellee did not turn into the facility or activate his turn signal to indicate that he was going into the self-storage facility after the transaction which would lead a reasonable person to believe Appellee was going there to retrieve the drugs that were owed to the CI. As the Court stated in its original opinion, the LCNEU or the South Williamsport police would have been better served to have waited to stop [Appellee] until they had some indication the he was

going into the self-storage area." Opinion and Order, August 12, 2024 at 7. If they had, they could have included that detail in the affidavit of probable cause for the warrant to connect the self-storage facility with Appellee's drug dealing. There was no such information in the affidavit. 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. *Commonwealth v. Kline,* 355 A.2d 361, 364 (Pa. Super. 1975). At this point in the information available to all about the self-storage unit, all that is known by the LCNEU told to them by the CI is that Appellee is renting one. Again, drugs were not seen in the unit, the CI did not meet him there for a drug transaction and the Appellee did not mention needing to go there for the drugs to the CI that he owed the CI. The Court continues to find that a conclusion without any supporting evidence to substantiate the conclusion is not sufficient. There was not a fair probability that additional controlled substances would be found at the self-storage facility based upon the information provided in the affidavit.

In addition to the case of *Commonwealth. v. Way, 342 Pa. Super. 341, 347, 492 A.2d 1151, 1154 (1985)* among others cited in the initial opinion the court would also direct the Court's attention to *Commonwealth v. Nicholson*, 262 A.3d 1276, 1278 (Pa. Super. 2021).

In *Nicholson,* police began an investigation with a tip from a CI that Nicholson was selling controlled substances, driving a blue Dodge Caliber, and residing at 1235 6th Avenue, New Brighton, Pennsylvania. 262 A.3d at 1278. The officer verified the CI's information and worked with the CI to set up two controlled purchases of crack cocaine from Nicholson using marked bills. Both transactions occurred out of Nicholson's vehicle but prior to and after the transaction either came from or returned to his residence among other locations. *Id.* at 1280-

1281. The CI never reported to police that Nicholson was selling drugs from his home. *Id.* at 1281. The police did not corroborate any tip as to where a stash was being kept because no such tip was ever given. Additionally, as already noted, the police here did not observe Nicholson proceeding directly from his residence to the locations of the drug sales. *Id.* The Superior Court opined that "there must be something in the affidavit that links the place to be **searched** directly to the criminal activity". *Id.* at 1282. (emphasis in the original). The Superior Court found that the police did not establish a substantial nexus between Nicholson's house and drug delivery in the officer's search warrant and affirmed the lower court's suppression ruling.

As in this case no such evidence existed. Although the CI told LCNEU about the storage unit having been inside of it, the affidavit of probable cause does not state that the CI ever told the LCNEU about observing any drugs inside or drug dealing out of the self-storage unit. The affidavit also does not state that the LCNEU had surveillance of Appellee coming out of or into the self-storage unit at anytime let alone immediately before or after a controlled purchase. Therefore, *Way* and *Nicholson* support this Court's finding that there was no substantial nexus between the Appellant and the self-storage facility and the drug activity to support the issuance of the warrant.

The trial court did not limit its decision to a review of the four-corners of the search warrant, however the trial court's decision contains statements that are not facts contained within the search warrant, but rather independent assumptions and conclusions drawn by the trial court.

The Commonwealth alleges that the Court in its ruling considered independent assumptions rather than facts set forth in the affidavit of probable cause in making its

determination. The Commonwealth does not list what those assumptions and conclusions are in order to address them directly.

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. *See Commonwealth v. Housman*, 604 Pa. 596, 986 A.2d 822, 843 (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.*** The task of the issuing authority in approving a warrant is to "to make a practical, common[-]sense assessment of whether, given all the circumstances set forth in the affidavit, a fair probability exists that contraband or evidence of a crime will be found in a particular place." *Commonwealth v. Harlan*, 208 A.3d 497, 505 (Pa. Super. 2019) (citation omitted). "The reviewing court is not to conduct a *de novo* review of the issuing authority's probable cause determination[ ] but is simply to determine whether or not there is substantial evidence in the record supporting the decision to issue a warrant." *Commonwealth v. Mendoza*, 287 A.3d 457, 463 (Pa. Super. 2022) (citation omitted). "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." ***Id.*** (citation omitted). *Commonwealth v. Kurtz*, 294 A.3d 509, 523, *appeal granted*, 306 A.3d 1287 (Pa. 2023).

In making a commonsense review of the information in the affidavit, this Court found that there was not sufficient evidence in the affidavit that there was a fair probability that

evidence of a crime would be present in the self-storage unit. As highlighted above, the CI did not tell the LCNEU that he or she saw drugs or conducted a drug transaction using the self-storage unit. There was no evidence in the affidavit that Appellee was using the self-storage unit in his drug transactions. And specifically, there was no evidence immediately after the last transaction that the Appellee was heading to the self-storage unit to retrieve controlled substances to complete the sale.

It is possible that Appellant is referring to the fact that the Court made note of the area where the self-storage unit was located to demonstrate that there was no indication that the Appellee was going there to complete the drug sale. From the affidavit, the Appellant described that the South Williamsport police pulled the Appellee over by McDonald's which is a location south or away from the facility, more in line with Appellee travelling back to his residence in Lewisburg, and not to turn into the facility.

The best evidence of Appellee intending to go into the facility would have been to note in the affidavit that he activated his turn signal to turn into or to have actually turned into the facility. The point the Court was making in its opinion was that there was no evidence of the Appellee intending to head into the facility which would have showed a substantial nexus between the drug activity and the self-storage unit. This Court was merely taking a commonsense approach to the review of the facts presented rather than independent assumptions or conclusions.

The trial court erred as a matter of law despite law enforcement's independent corroboration, that there was not sufficient reliability in the information provided by the confidential informant and this could not contribute to the finding of probable cause for the storage unit search warrant.

Appellee alleges that the Court erred as a matter of law **despite law enforcement's independent corroboration** that there was not sufficient reliability in the information provided by the CI to contribute to the finding of probable cause for the warrant. Once again, Appellant asserts that they established a connection between the drug transaction and the self-storage facility.

In its opinion, the Court found that the CI's information that Appellee offered to the LCNEU was not reliable in that the CI could not offer evidence that connected the self-storage facility with the drug activity.[6] The affidavit did not state that the CI saw controlled substances in the storage unit or heard Appellee say there were controlled substances or paraphernalia in the storage unit. Without that information, the CI was merely guessing that was where Appellee was going to get the two bags that were owed to the CI. When the police stopped Appellee without him turning into or even activating a turn signal to drive into the storage unit, the CI was making a conclusion that Appellee would be going to his unit for drugs without any connecting evidence the LCNEU could have included in their warrant.

6 In *Way* and *Nicholson*, the police corroborated the address of the defendant's residence and that he delivered controlled substances but there was insufficient information in the affidavit of probable cause to show that the drugs came from the defendant's residence. Similarly, the police may have corroborated that Appellee had a storage unit at the facility but there was nothing in the affidavit of probable cause to show or corroborate a nexus between Appellee's storage unit and his drug activity.

The Court in its decision found that a conclusion without evidence is just a guess which is not sufficient under the law.

Date: December 9, 2024

By the Court,

Nancy L. Butts, President Judge

xc: Lindsay Sweeley, Esquire (ADA)
Andrea Pulizzi, Esquire
Jerri Rook
Gary Weber, Esq.