

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. CR-1550-2023**
 :
vs. :
 :
DOMINEEK QUANTAL CARTER, :
Defendant :

OPINION AND ORDER

This matter came before the court on May 14, 2024 for a hearing and argument on the Omnibus Pre-Trial Motion (OPTM) filed on March 12, 2024, on behalf of Domineek Quantal Carter (Defendant).

By way of background, Defendant was charged on November 1, 2023, with one count of Manufacture, Delivery, or Possession with Intent to Deliver (PWID) a controlled substance. A preliminary hearing was held on November 30, 2023, and the charge was bound over. The Defendant, through counsel, waived his arraignment. By stipulation of counsel, the deadline for the filing of the OPTM was extended to March 12, 2024, thereby making the instant motion timely filed.

By way of further background, Defendant was charged on July 14, 2023, under Docket #1023-2023, with three counts of Manufacture, Delivery, or Possession with Intent to Deliver and three counts of Criminal Use of a Communication Facility stemming from deliveries dated June 26, 2023, June 28, 2023, and July 13, 2023. A search warrant was executed on 623 ½ Green Street in the City of Williamsport on July 14, 2023, and Defendant was incarcerated from July 14, 2023, to August 24, 2023.

On November 20, 2023, detectives applied for a sealed search warrant on 623 ½ Green

Street, Williamsport, under this captioned case. The OPTM asserts that the Affidavit of Probable Cause for this search warrant alleges the majority of the same facts used to obtain the July 14, 2023, search warrant for the same property and cited the items seized during the execution of that search warrant.

On November 21, 2023, detectives applied for another sealed search warrant on 623 ½ Green Street, Williamsport, citing the majority of the same facts in the affidavit of probable cause that were used to secure the July 14, 2023, search warrant and listing the items seized in the execution of the November 20, 2023, warrant. Among the items listed on the search warrant application for November 21, 2023 was the Defendant's phone, which officers inspected during the November, 20, 2023 search. Officers filed the application for the November 21, 2023 search citing information regarding the cell phone discovered on November 20, 2023. According to Defendant's OPTM, the only new information included in the affidavits of probable cause for the November search warrants were two alleged buys: one on November 3, 2023, utilizing an unwitting or confidential informant in the area of 1st Avenue in Williamsport where Defendant was not surveilled back to his residence after the alleged buy; and, one on November 20, 2023, where detectives surveilled Defendant back to the rear entrance of 623 ½ Green Street, Williamsport, which has access to both apartments within the building.

The Defendant's OPTM asserts that the information in the November of 2023 affidavits of probable cause was stale, thus, the warrants were invalid. On the premise that the information was stale, the Defendant additionally asserts that the information remaining for the November of 2023 lacks probable cause, and the police/detectives did not have the information necessary to establish a nexus of criminal activity to the 623 ½ Green street address. The Defendant requests

that the Court suppress the November of 2023 search warrants, suppress the evidence obtained from his cell phone on November 20, 2023 and used to obtain a search warrant for the phone on November 21, 2023 on the premise that an unlawful search of the phone occurred on November 20, 2023.

I. MOTIONS TO SUPPRESS

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. Ct. 2002). Here, the Defendant's OPTM argues that the November of 2023 search warrants should be suppressed due to stale information and lack of probable cause. Next, the Defendant argues that due to an unlawful search of the Defendant's cell phone on November 20, 2023, the evidence obtained from the cell phone is fruit of the poisonous tree, and requests its suppression.

1. *Was the information used to provide probable cause for the November search warrants stale?*

The Defendant argues that the information contained in the July 14, 2023, search warrant pertaining to the three controlled buys that took place in June and July of 2023 was stale information and should not have been used as the basis for probable cause in the application of the November 20, 2023, search warrant. Defendant asserts that the search warrant obtained by detectives lacked probable cause within its four corners. Specifically, the Defendant alleges that the information contained in the November 20, 2023, search warrant was stale and could not be

relied upon to establish probable cause.

Under the “totality of circumstances” test set forth in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and adopted in *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921 (1985), the issuing authority is tasked with making a practical, common sense assessment that there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Commonwealth v. Murphy*, 916 A.2d 679, 682 (Pa. Super. 2007)(internal citations omitted). Barring blatant chronological inconsistencies, the issuing authority relies on the sworn testimony of an affiant that he is speaking of the present or immediate past. *Id.* When “staleness” is raised, common sense can determine what a reasonable age is under the circumstances. *Id.*, citing *Commonwealth v. Baker*, 518 A.2d at 804. Further, a search warrant must provide a time frame within which the issuing magistrate can determine there is a fair probability of evidence of a crime or contraband will be found in a particular place.

Commonwealth v. Murphy, 916 A.2d 679, 684 (Pa. Super. 2007).

The probable cause portion of the affidavit for November 20, 2023 provided:

This investigation involved (3) three controlled purchases of crack, cocaine from DOM CARTER and a search warrant conducted at his residence 623 ½ Green St in the City of Williamsport. This CI has purchased crack, cocaine from DOM CARTER on numerous occasions in the past. All weights are approximate. CARTER was recently released from Prison and immediately began selling crack, cocaine upon his release. Upon his release (2) two controlled purchases of crack, cocaine were conducted by an unwitting informant– [redacted?] –from DOM CARTER. This affidavit is a conclusive account of all (5) five controlled buys and the search warrant conducted on 623 ½ Green St.

Controlled Buy 1:

On 6/26/23 CI-23-24 purchased approximately 1.02grams of crack, cocaine (\$100) from DOM CARTER at his residence 623 ½ Green St in the City of Williamsport.

1. CI was searched to negate the presence of any drugs, contraband or currency. None were found.
2. CI was provided \$100 in prerecorded police funds.

3. CI contacted CARTER at cellular number 570-337-#### to arrange the purchase of \$100 worth of crack, cocaine. CARTER agreed to the sale and directed the CI to his residence (623 ½ Green St).
4. CI consented to the placing of an audio/video recording device on or about their person.
5. CI was transported to 623 ½ Green St.
6. CI made contact at the rear door of the above residence.
7. CARTER opened the door, reached his arm out of the residence and conducted a hand to hand exchange with the CI.
8. CI handed CARTER \$100 in prerecorded police funds.
9. Carter handed the CI crack, cocaine (1.02grams).
10. CARTER closed the door.
11. CI returned to UC vehicle and immediately turned over the crack, cocaine.
12. CI was searched to negate the presence of any drugs, contraband or currency. None were found.

Controlled Buy 2:

On 6/28/23 CI 23-24 purchased approximately 1.02grams of crack, cocaine (\$40) from DOM CARTER at his residence 623 ½ Green St in the city of Williamsport.

1. CI was searched to negate the presence of any drugs, contraband or currency. None were found.
2. CI was provided \$40 in prerecorded police funds.
3. CI contacted CARTER at cellular number 570-337-#### to arrange the purchase of \$100 worth of crack, cocaine. CARTER agreed to the sale and directed the CI to his residence (623 ½ Green St).
4. CI consented to the placing of an audio/video recording device on or about their person.
5. CI was transported to 623 ½ Green St.
6. CI made contact at the rear door of the above residence.
7. CARTER opened the door, reached his arm out of the residence and conducted a hand to hand exchange with the CI.
8. CI handed CARTER \$40 in prerecorded police funds.
9. Carter handed the CI crack, cocaine (.39).
10. CARTER closed the door.
11. CI returned to UC vehicle and immediately turned over the crack, cocaine.
12. CI was searched to negate the presence of any drugs, contraband or currency. None were found.

Controlled Buy 3

On 7/13/23 CI 23-24 purchased approximately .39grams of crack, cocaine (\$40) from DOM CARTER at his residence 623 ½ Green St in the City of Williamsport.

1. CI was searched to negate the presence of any drugs, contraband or currency. None were found.

2. CI was provided \$40 in prerecorded police funds.
3. CI contacted CARTER at cellular number 570-337-#### to arrange the purchase of \$100 worth of crack, cocaine. CARTER agreed to the sale and directed the CI to his residence (623 ½ Green St).
4. CI consented to the placing of an audio/video recording device on or about their person.
5. CI was transported to 623 ½ Green St.
6. CI made contact at the rear door of the above residence.
7. CARTER opened the door, reached his arm out of the residence and conducted a hand to hand exchange with the CI.
8. CI handed CARTER \$40 in prerecorded police funds.
9. Carter handed the CI crack, cocaine (.39).
10. CARTER closed the door.
11. CI returned to UC vehicle and immediately turned over the crack, cocaine.
12. CI was searched to negate the presence of any drugs, contraband or currency. None were found.

Search Warrant 623 ½ Green St:

On July 14, 2023 I conducted a search warrant on CARTER'S residence. 623 ½ Green St. City of Williamsport. CARTER was apprehended inside the residence. The following items were seized from the residence.

SW: 1 Black Digital Scale with white residue on the weigh plate. Found by Det Rachael in kitchen above sink

SW 2: Cocaine and empty plastic distribution bags inside a Green in color Crown Royal Bad. Found by Det Anderson in top left drawer of dresser inside CARTER'S bedroom (Approx. 3.02grams)

SW 3: Black Digital scale. Found by Det Anderson. Located in top right drawer of dresser inside CARTER'S bedroom

SW 4: \$1,755 US Currency found by Det Anderson. Located in top left drawer of dresser inside CARTER'S Bedroom. **\$40 of CONFIRMED BUY was found in stacked with this money. The \$40 was removed from the stack and recirculated into NEU funds.**

SW 5: \$30 with CARTER'S wallet found by Det Anderson. Located on top of Dresser inside CARTER'S Bedroom.

SW 6: (1) Black in color cell phone "Blu" CONFIRMED to be the BUY PHONE. Found by Det Anderson. Located on bed in CARTER'S bedroom.

SW 7: (1) One Pill Bottle and razor blade both coated with cocaine reside. Found by Det Havens. Located on top of Dresser drawer directly above a dresser drawer that contained

loose cocaine inside.

SW 8: Contents of top right dresser drawer (loose cocaine). Found by Det Havens (Approx. 3.21 grams)

All items seized were secured and removed from the residence. They were transported to NEU Headquarters and I took custody of the items. All items were processed and secured into Evidence.

Cocaine seized from 623 ½ Green St provided a positive field test and weighed approximately 6.33 grams (Sw 2 and Sw 8) The money seized was counted (minus \$40 of confirmed buy money). The total amount was \$1745 (Sw 4 and Sw5)

Active LCNEU Investigation

On or about October 1, 2023, I received intel regarding a B/M selling cocaine from 623 ½ going by the street name “Andy” This CI was unable to personally buy from this individual. A few days later, this CI confirmed that ANDY was in fact DOM CARTER who was just recently released on bail from Lycoming County Prison. The CI stated that CARTER was operating the same way he was during the above investigation. This CI has provided information in the past that has resulted in numerous felony arrests, cocaine seizures and illegal firearm seizures. I deem this CI reliable and credible.

The following investigation involves an unwitting informant – [REDACTED?] And a separate confidential informant from the above. This investigation contains (2) two controlled purchases of cocaine from DOM CARTER. The following chain of events occurred.

Controlled Buy 1:

On 11/03/23 I utilized CI 23-45 to purchase approximately 0.96grams +/- of crack, cocaine (\$100) from [redacted] and DOM CARTER in the area of 1st Ave and Park Pl in the City of Williamsport. This buy is designated as Controlled Buy 3 of Active LCNEU CASE . The following chain of events occurred. All weights and times are approximate.

Under my direction, the CI contacted [REDACTED] via Facebook Messenger to arrange the purchase of \$100 worth of crack, cocaine. Shana Hill agreed to the sale and directed the CI to her apartment 325 Bridge St. (Furthest eastern door) City of Williamsport. Shana Hill told the CI she would take the money and go get the crack, cocaine from her “folks” Shana Hill ordered the CI to wait at her apartment while she was getting the crack, cocaine.

1040hrs: I met the CI at the predetermined location. I searched the CI to negate the presence of any drugs, contraband or currency. None were found. I provided the CI with \$100 in prerecorded police funds.

1045hrs: The CI exited the predetermined location and walked to Shana Hill's residence. I maintained constant line of sight on the CI as he/she walked to Shana Hill's apartment.

1046hrs: The CI entered the Shana Hill's apartment. Det Havens maintained clear line of sight on the apartment door.

1047hrs: Det Havens observed Shana Hill exit the apartment and enter a blue in color minivan. I observed the mini van travel west bound on High St. I was parked in the east bound lane in the 300 block of High St. As Shana Hill traveled west bound she was driving slow as she came up to traveling speed. As Shana Hill passed me, she was still driving well under the speed limit as she came up to speed. The driver side of her vehicle was directly facing/parallel to the driver side of my vehicle. I was able to clearly identify Shana Hill as the driver of the minivan as she passed my parked position. Det Edkin was following Shana Hill. I immediately turned around and also followed Shana Hill.

Shana Hill was maintained under constant police surveillance as she traveled to the area of Par Ave and 1st Ave.

1050hrs: Det Dent observed a black male wearing all black clothing enter the front passenger seat of Shana Hill's minivan. Det Dent observed Shana Hill and B/M travel east on Horton Alley.

1051hrs: I observed Shana Hill travel south on Herdic St. Moments later I observed the black male wearing all black walking south on Herdic from Horton Alley. The B/M continued walking south and stopped at Park Ave and Herdic St. I drove to the intersection of Herdic St and Park Ave. The B/M was standing on the northwest corner of the intersection. I was able to positively identify the B/M as DOM CARTER who I just recently arrested for operating a cocaine enterprise from his residence at 623 ½ Green St City of Williamsport. Reference incident number 23-05715.

Det Dent maintained surveillance on Shana Hill as she returned to her residence.

1052hrs: Det Edkin, Det Anderson and I observed CARTER walked east on Park Ave towards Campbell St. I drove east and stopped at the intersection. As CARTER approached me, from west to east, I was able to capture still pictures of his face []. I was stationary at the red light at Park and Campbell. CARTER walked within approx. 10ft of my vehicle and I could clearly see his face.

Det Anderson and Det Edkin observed CARTER continue walking east on Park Avenue and then South on Green St. Line of sight was lost on GREEN directly in the area of his residence 623 ½ Green St.

1053hrs: Det Dent observed Shana Hill park at 325 High St. Det Havens observed Shana Hill enter her residence (furthest east door)

1054hrs: Det Havens observed the CI exit Shana Hill's residence. Det Havens met the CI at the same predetermined location. CI immediately turned over approximately 0.96grams crack, cocaine contained in (2) two small tied off plastic bags. Det Havens searched the CI to negate the presence of any drugs, contraband or currency. None were found. Det Havens transported the crack, cocaine to NEU HQ.

Controlled Buy 2:

On Nov 20th 2023 I utilized a CI to purchase approximately (1) one gram of crack, cocaine from Shana Hill and DOM CARTER in the City of Williamsport

I met the CI at a predetermined location. CI was searched to negate the presence of any drugs, contraband or currency. None were found. I provided the CI with \$100 in prerecorded police funds.

Under my direction, with the anticipation that Shana Hill would obtain crack, cocaine from DOM CARTER, I directed the CI to contact Shana Hill to purchase crack, cocaine. Shana Hill agreed to the sale and directed the CI to her residence.

1348hrs: the CI left the predetermined location on foot. (Approximately 1 house length away from Shana Hill's residence) I maintained constant line of sight on the CI as they walked to Shana Hill's residence (325 High St furthest east door)

1349hrs: the CI knocked on the door and was let inside. CI met Shana Hill at her residence and provided her with \$100 in prerecorded police funds. Shana Hill told the CI she had to drive to the area of 1st Ave and Park pl to meet her "guy" to get the crack, cocaine. Shana Hill directed the CI to wait at her residence until she obtained the crack, cocaine and returned.

1355hrs: I observed Shana Hill exit her residence and enter her blue minivan (same minivan from CB 1) Shana Hill traveled west on High St. Det Edkin, Det Anderson and Det Havens followed Shana Hill maintaining constant police surveillance to the area of 1st Ave.

1358hrs: Det Havens observed CARTER appear in the area in foot. Det Havens observed CARTER enter the front passenger door of Shana Hill's minivan. Det Loudenslager observed Shana Hill and CARTER travel west on [P]ark Ave, North on 2nd Ave, east on [H]igh St and south on Herdic St.

1359hrs: Det Edkin observed the minivan stop and CARTER exit the front passenger seat. CARTER walked south on Herdic St. Det Edkin followed Shana Hill back to 325 High St.

1400hrs: Det Anderson observed CARTER walking east from Herdic on Park Ave.

1401hrs: Det Loudenslager observed CARTER walk south on Kaupp Pl. This alley runs directly behind (to the west) of his residence.

1402hrs: Det Havens observed CARTER walking south on Kaupp and then cut east into the backyard of his residence. Det Havens then observed CARTER enter the back door of his residence. This is the same door he conducted numerous cocaine deliveries from in the past.

1402hrs: I observed Shana Hill exit her minivan and enter her residence.

1403hrs: I maintained constant line of sight on the CI as he/she eited Shana Hill's residence and returned to my UC vehicle. I was parked outside of Shana Hill's residence on High St (1) one house length to the west. CI immediately turned over (2) two tied off plastic bags containing crack, cocaine. I searched the CI to negate the presence of any drugs, contraband or currency. None were found. I returned to NEU Headquarters and se[c]ured the crack, cocaine into evidence.

Commonwealth's Exhibit #1.

Here, a fair reading of the affidavit conveys that the information from the June and July of 2023 controlled buys was used to corroborate the information from the November of 2023 controlled buys. Detectives conducted further surveillance and two additional controlled buys in November of 2023 to utilize for the search warrant application. The "stale" information confirmed that the Defendant lived at the Green Street address and had previously gone to and from the address in alleged buys. Based upon the information in the affidavit of probable cause, the Court finds that the Lycoming County Narcotics Enforcement Unit (LCNEU) established a fair probability that evidence of a crime would be found in 623 ½ Green Street. The Defendant was under investigation and out on bail at the time that the LCNEU received information that he was continuing sales of crack cocaine. After conducting additional surveillance and controlled buy procedures, the detectives submitted their affidavit of probable cause for a search warrant.

Thus, the Defendant's motion to suppress the search warrants on a finding of stale information is **denied**.

2. Did the information remaining in the search warrant for the November 20, 2023, lack probable cause?

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). As the Court has denied the Defendant's argument that the information contained in the affidavit was stale, the information in the search warrant establishes probable cause to search the property of 623 ½ Green Street. Applying the totality of the circumstance test and a common sense, nontechnical approach, conveys that the warrant for November 20, 2023, contains sufficient information. Thus, the Defendant's motion to suppress the search warrant on a finding of insufficient probable cause is **denied**.

3. Did the officer's inspection of the cell phone on November 20, 2023 constitute an unlawful search, and should the evidence be suppressed as fruit of the poisonous tree?

a. Was the inspection of the cell phone on November 20, 2023 an unlawful search?

Generally, people have the right to a reasonable expectation of privacy in themselves and their homes, papers, and effects against unreasonable searches by the government. U.S. Const. amend. IV, and Pa. Const. art. I, §8. The Fourth Amendment of the United States Constitution provides:

"The 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."

(emphasis added). Article 1 Section 8 of the Pennsylvania adds protection from unreasonable

searches and seizures, providing:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution, an unreasonable search occurs when the government intrudes on a constitutionally protected area without the individual's implicit or explicit consent. *Commonwealth v. Fulton*, 179 A.3d 475, 487 (Pa. Super. 2018) citing *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Moreover, any steps taken by police that are unrelated to an otherwise authorized intrusion resulting in the exposure of concealed portions of an area in which a person has a protected privacy interest is a search. *Commonwealth v. Fulton*, 179 A.3d 475, (Pa. Super. 2018). Accordingly, in a constitutionally protected area, even a small, seemingly insignificant act of information gathering by police is a search, and without a proper warrant, it is an unlawful search. *Id.* In recent opinions, the Supreme Court has expanded its definition of "constitutionally protected areas" to include cell phones. *Riley v. California* and *United States v. Wurie*, 573 U.S. 373 (2014) (hereinafter, *Riley/Wurie*). The Supreme Court describes cell phones as "...a pervasive and insistent part of daily life." *Riley/Wurie*. The relevant principle regarding the search of cell phones requires the acquisition of a search warrant before conducting any "seemingly insignificant act of information gathering" thereof. In *Riley/Wurie*, the Court concluded that data stored on a cell phone is entirely distinguishable from any physical evidence counterpart. Due to the quantity and quality of data stored on a cell phone, they are placed in a different class for purposes of a search. *Id.* According to the decision in *Riley/Wurie*, the only

plausible exception to a warrantless search of a cell phone is a finding of exigent circumstances.

Regarding cell phones, exigent circumstances encompass the imminent destruction of evidence, a fleeing suspect, or assisting individuals facing imminent or sustaining serious injuries. *Id.* However, the exigent circumstances exception requires a reviewing court to examine if an emergency justified a warrantless search. *Riley/Wurie*. Exigent circumstances are the only exception to a search of a cell phone that constitute a warrantless search to be evaluated on a case by case basis. *Id.* Accordingly, it is well established in the Commonwealth that officers shall not justify a warrantless entry or search on exigencies created by their own conduct. *Commonwealth v. Walker*, 836 A.2d, 978, 981 (Pa. Super. 2003). Here, the Commonwealth did not raise any exigent circumstances when Defendant's cell phone was inspected on November 20, 2023.

The fact that an arrestee has diminished privacy interests does not nullify the protective rights against unlawful searches within the Fourth Amendment. *Riley/Wurie*. The Court in *Riley/Wurie* contends that a categorical rule regarding cell phones is necessary to provide the police clear guidance while balancing competing interests in obtaining information. To prevent officers from determining on a case-by-case basis what they may obtain by inspecting a cell phone a search warrant is still generally required, even when a cell phone is seized incident to arrest. *Id.* Accordingly, accessing any information on a cell phone incident to an arrest without a warrant to search the cell phone is an unlawful search. *Id.*

Finally, the plain view doctrine excepts the seizure of property otherwise not outlined in a search warrant when the evidence is clearly visible. The plain view doctrine allows admission of evidence without a warrant when: (1) an officer views the object from a lawful vantage point; (2) it is immediately apparent to him that the object is incriminating; and, (3) the officer has a lawful

right of access to the object. *Commonwealth v. Smith*, 285 A.3d 328, 332 (Pa. Super. 2022).

Pursuant to the decision in *Riley/Wurie*, an officer is required to obtain a search warrant for a cell phone to inspect or monitor any of the information on the cell phone. Regarding cell phones, the plain view doctrine may only apply insofar as an arrestee has a cell phone or a cell phone is present on the premises and it does not pose a physical threat to the safety of the scene. Otherwise, an officer is not authorized to inspect the cell phone without a search warrant.

The Commonwealth posited the argument that the inspection of the Defendant's cell phone pursuant to the authorized search of the apartment qualifies under the plain view doctrine. The Defendant avers that while the cell phone was in plain view, the likelihood that the phone's screen spontaneously activated is slim. The Defendant argues that a spontaneous activation of the cell phone is suspect considering the most recent notification preceded the search by approximately six (6) hours. In his reliance on the decisions in *Riley/Wurie* and *Commonwealth v. Fulton*, the Defendant argues that any monitoring of his cell phone is an unlawful search. The Commonwealth contends that there was no monitoring of the cell phone, and asserts this case is distinguishable from the case law because in *Riley/Wurie* and *Commonwealth v. Fulton*, the officers powered the cell phones on, scrolled through contacts and other private data, and waited for incoming text messages and calls. The categorical rule in *Riley/Wurie* succinctly states that "if law enforcement wishes to obtain information from a cell phone, get a warrant." *Commonwealth v. Fulton*, 179 A.3d 475 (Pa. Super. 2018) citing *Riley/Wurie*. A failure to obtain a warrant violates a defendant's rights under the Fourth Amendment of the Constitution. *Id.* Here, reasonableness dictates that the inspection and subsequent photograph of the Defendant's cell phone lock screen dictates a far greater invasion of a privacy interest than the plain view

exception can justify under the Fourth Amendment of the United States Constitution, Article 8, Section 1 of Pennsylvania's Constitution, and the Supreme Court's holding in *Riley/Wurie*.

Without the knowledge of the text message on November 20, 2023, the officers did not provide probable cause in the search warrant for the cell phone on November 21, 2023. The Defendant's Motion to Find an Unlawful Search was executed on the Defendant's cell phone on November 20, 2023 is **granted**.

b. Is the evidence obtained from the Defendant's cell phone fruit of the poisonous tree?

When the police obtain evidence of any kind through an unlawful search it may not be used in any respect, including as evidence at trial against the defendant. *Commonwealth v. Fulton*. The inquiry relies on whether the evidence was obtained via exploitation of the initial illegality. *Id.* Such evidence is only permitted if an independent source provided knowledge of the evidence, or the evidence would have been inevitably discovered without reference to the police error or misconduct. *Id.* The Commonwealth bears the burden of proving by a preponderance of the evidence that the illegally obtained evidence would have been inevitable discovered by legal means. *Id.*

Here, the Defendant argues that the information obtained by police from the lock screen of his cell phone is fruit of the poisonous tree from the unlawful search. Additionally, in finding the authority to search the cell phone from the November 21, 2023 search warrant invalid, it is unlikely the discovery of the cell phone and any of its information was inevitable. Thus, the Defendant's Motion to Suppress the evidence obtained from the cell phone as fruit of the poisonous tree is **granted**.

II. MOTION TO COMPEL DISCOVERY

In the Defendant's Omnibus Pretrial Motion, he requests all material required to be disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and Pennsylvania Rule of Criminal Procedure 573 (B)(1)(a) which has not been disclosed. Specifically, the Defendant requests a copy of any surveillance from officers regarding the alleged buys, any consensual recordings, interviews with the unwitting informant or confidential informant, including any post buy debriefs. At the time for the hearing, the Commonwealth was provided twenty (20) days to provide a list of the quantity and length of each video with bodycam footage. Moreover, the Commonwealth bears the burden to request any discovery from law enforcement regarding interviews with informants it has not received. The Commonwealth asserted its plan to provide informant interviews closer to trial, if the discovery has not already been provided. The Court ORDERS and DIRECTS the Commonwealth to provide the confidential informant form with the intention that more restricted information will be provided to the Defendant closer to the trial date. The Defendant's motion to compel discovery is **granted**.

III. MOTION TO RESERVE RIGHT

The Defendant's motion further requests to reserve right under Rule 579 of the Pennsylvania Rules of Criminal Procedure. Pursuant to this request, the Defendant reserves the right to submit additional pre-trial motions in consideration of newly received discovery. The Court **grants** this motion.

The Court hereby enters the following Order:

ORDER

And now, this 5th day of November, 2024, upon consideration of the Defendant's Omnibus Pretrial Motion and for the reasons set forth above, the Court Orders the following:

1. Motion to Suppress the November 20, 2023, Search Warrant based on stale information is **DENIED**;
2. Motion to Suppress November 20, 2023, Search Warrant based on lack of probable cause is **DENIED**;
3. Motion to find an unlawful search of the Defendant's cell phone occurred on November 20, 2023 is **GRANTED**;
4. Motion to Suppress evidence obtained from the cell phone as fruit of the poisonous tree is **GRANTED**;
5. Motion to Compel Discovery is **GRANTED**;
6. Motion to Reserve Right is **GRANTED**.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA-Lindsey Sweeley, Esq.
PD- Taylor Paulhamus, Esq.
Gary Weber-Lycoming Reporter