

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1254-2023
v.	:	CR-1274-2023
	:	CR-1282-2023
RASHAUN FLEMING,	:	
Defendant	:	

OPINION

On August 7, 2024, a hearing was held on the Defendant’s Omnibus Pretrial Motion. Although the Omnibus Motion does not specifically title the nature of the Motion, it is a Motion to Suppress evidence obtained from two separate search warrants. The Defendant is charged with one count of Manufacture, Delivery, or Possession with Intent to Deliver¹ and one count of Criminal Use of a Communication Facility² under Docket No. 1254-2023, two counts of Manufacture, Delivery, or Possession with Intent to Deliver³ under Docket No. 1282-2023, and one count of Receiving Stolen Property⁴ and two counts of Possession of a Firearm Prohibited⁵ under Docket No. 1274-2023.

At the hearing, the Commonwealth presented three search warrants to support the evidence that had been seized. The search warrants were marked and admitted as Commonwealth’s Exhibits 1, 2 and 3. The Defendant did not contest the validity of the search warrant marked as Exhibit 1. The Defendant contested that the Commonwealth had probable cause for the second search warrant (Exhibit 2), and that without the evidence discovered under the second search warrant there would be no probable cause for the third search warrant (Exhibit 3). The Defendant conceded that the argument on the third search

¹ 35 §780-113 §(a)(30)
² 18 7512 §§(a)
³ 35 §780-113 §(a)(30)
⁴ 18 §3925 (a)
⁵ 18 §6105 §§(a)(1)

warrant rested solely on the validity of the second search warrant, and the outcome on the second search warrant would dictate the outcome on the third search warrant. The Commonwealth did not contest that the outcome on the second search warrant would dictate the outcome on the third search warrant. Therefore, the Court shall focus its review on whether or not there was probable cause for the issuance of the second search warrant.

Background

The second search warrant (Commonwealth Exhibit 2) was applied for on September 7, 2023, and requested for: “U-Haul, specifically unit number 1144 rented by Rashaun Fleming.” The items to be searched for were: methamphetamines, related paraphernalia and U.S. currency. In support of the search warrant request, the Affidavit of Probable Cause (Commonwealth Exhibit 2), provided that a confidential informant had been utilized to set controlled buys for methamphetamines with an individual called “Rollie” who was then identified as Rashaun Fleming, the Defendant. (Commonwealth Ex. 2, P 15-17). On August 20, 2023, the CI was directed to contact “Rollie” to set up a transaction, at which time “Rollie” informed the CI that he was in “still in Philadelphia making a drug pickup,” (Commonwealth Ex. 2, P 16), and that he would not be back in Williamsport until sometime on August 21, 2023. (Commonwealth Ex. 2, P 16). Further surveillance was conducted on the Defendant and his residence. (Commonwealth Ex. 2, P 18-20), On August 23, 2023, a search warrant was executed on the Defendant’s residence and vehicle. (Commonwealth Ex. 2, P 20-21). On the same date, an arrest warrant was executed on the Defendant. (Commonwealth Ex. 2, P. 20-21). On August 24, 2023, a search was conducted of Rashaun Fleming’s vehicle and a contract for a U-Haul storage Unit 1144 was found in the vehicle. (Commonwealth Ex. 2, P 22). The U-Haul unit contract revealed that the Defendant’s rental period began on August 21, 2023. (Commonwealth Ex. #2, P 22). On August 25, 2023,

Detectives met with representatives of U-Haul Williamsport who informed detectives that a backpack could be seen in Unit 1144 from looking from above the unit. (Commonwealth Ex. 2, P 23). Between August 25 and September 7, 2023, the U-Haul representatives informed detectives of suspicious activity involving multiple, unrelated parties attempting to gain access to Unit 1144. (Commonwealth Ex. 2, P 23). On September 7, 2023, Officer Minnier utilized a trained and certified K9 officer to do a sniff search of the hallway of Unit 1144. (Commonwealth Ex. 2, P 23). The K9 alerted to the presence of a controlled substance 2 to 3 units from Unit 1144. (Commonwealth Ex. 2, P 23).

Analysis

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). When a defendant files a motion to suppress, 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).

An affidavit of probable cause must provide an issuing authority with a substantial basis for determining that probable cause exists to justify a search. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. Super. 2018) citing *Illinois v. Gates*, 462 U.S. 213, 239 (1983). Moreover, the issuing magistrate must make a practical, common sense determination when provided with all of the circumstances provided in the affidavit, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Commonwealth v. Clark*, 611 Pa. 601, 607 28 A.3d 1284, 1288 (2012). The reviewing court is tasked with

ensuring that the issuing magistrate had a substantial basis for concluding that probable cause existed and the search was conducted lawfully. *Id.* Moreover, the reviewing court should evaluate the issuing magistrate's probable cause determination by extending deference to that determination. *Commonwealth v. Leed*, 646 Pa. 602, 618 186 A.3d 405, 415 (2018).

A reviewing court must limit its inquiry to the information provided in the "four corners" of the affidavit proffered to support the finding of probable cause in concluding that the warrant was issued upon sufficient probable cause. *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. 2013). Probable cause is a fluid and practical concept that relies on assessing the probabilities in particular factual contexts which cannot be categorically reduced to a neat set of legal rules. *Commonwealth v. Rapak*, 138 A.3d 666, 671 (Pa. Super. 2016)(internal citations omitted). Probable cause exists where the affiant's knowledge of the facts and circumstances based on reasonably trustworthy information justify a man of reasonable caution in the belief that a search should be executed. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. Super. 2018). "The standard for evaluating whether probable cause exists for the issuance of a search warrant is the 'totality of the circumstances' test as set forth in *Illinois v. Gates*, 462 U.S. 213 (1983), and adopted in *Commonwealth v. Gray*, 509 Pa. 476, 486, 503 A.2d 921, 925 (1985)." *Commonwealth v. Jones*, 542 Pa. 418, 424 (1995). Further, the affidavit of probable cause must contain information that links the place to be searched directly to the criminal activity. *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021)(internal citations omitted). Additionally, search warrants are consistently found to be valid so long as other factors eliminate the possibility of the police intruding in the incorrect place. *Commonwealth v. Leed*, 646 Pa. 602, 619 (2018).

The Defendant argued that the facts were insufficient in the second search warrant application to support probable cause to search the U-Haul Unit 1144 for drugs. The

Defendant's argument focused on the fact the police K9 alerted not at Unit 1144 but at a unit 2 to 3 units away and that the police already discovered drugs at the Defendant's residence.

The Commonwealth counters the argument on the basis that the Affidavit of Probable Cause contains several allegations that the Defendant possessed a large amount of methamphetamines, that the Defendant rented the U-Haul unit around the time he returned from Philadelphia where he picked up drugs per the CI, and that located within the U-Haul unit 1144 was a backpack capable of holding the methamphetamines, related paraphernalia, and U.S. currency being sought related to the Defendant's alleged drug trafficking.

Conclusion

A non-technical, common-sense reading of the facts provided in the affidavit of Commonwealth Exhibit #2 and the totality of the circumstances renders the technicality of where the K9 alerted indiscriminate when evaluating the remainder of the facts. The above quoted portions of the search warrant support that the Commonwealth had set forth probable cause within the search warrant application that the likelihood was high that the targeted contraband would be found in the U-Haul Unit 1144.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 7th day of **January, 2025**, upon consideration of the Defendant's Motion to Suppress, the argument of counsel, and for the reasons set forth above, the Court **DENIES** the Defendant's Motion to Suppress evidence obtained under the second search warrant (Exhibit 2). Further, as stated above, since the basis of the third search warrant (Exhibit 3) was what was discovered during the search conducted under the second search warrant, the Court hereby **DENIES** the Motion to Suppress evidence seized under the third search warrant (Exhibit 3).

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA

Timothy Reitz, Esquire-1195 Mill Rd, Allenwood, PA 17810

Gary Weber-Lycoming Reporter