

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	
	)	I.D. No. 1101000487
BRYCE M. HOLTON,	)	
	)	
Defendant.	)	
	)	

Date Submitted: August 16, 2011  
Date Decided: September 22, 2011

**OPINION**

*Upon Consideration of  
Defendant's Motion to Suppress: **DENIED***

Kate Schulhaus Keller, Deputy Attorney General, Department of Justice, State of Delaware, 820 N. French Street, 7<sup>th</sup> Floor, Wilmington, DE, 19801, Attorney for the State.

Bradley V. Manning, Assistant Public Defender, 820 North French Street, Wilmington, DE, 19801, Attorney for the Defendant.

**JURDEN, J.**

## **I. INTRODUCTION**

Before the Court is Defendant Bryce M. Holton's Motion to Suppress a handgun seized as a result of a search of his home stemming from an altercation in a parking lot. A magistrate issued a search warrant to search Holton's home and vehicle. During the search of Holton's home, the police found a handgun. Holton challenges only the search of his home as a violation of his rights under the Fourth Amendment to the United States Constitution and Article I, Section 6 of the Delaware Constitution. For the reasons that follow, the Court finds that Defendant's Motion is **DENIED**.

## **II. BACKGROUND**

On December 31, 2010, Vance Taylor and a friend, Webster Reed, arrived at the Middletown Square Shopping Center.<sup>1</sup> While walking to a restaurant in the shopping center, Taylor noticed Holton standing by his red Cadillac.<sup>2</sup> Taylor knew Holton as the father of a former friend.<sup>3</sup> Taylor said, "What's up" to Holton as Holton was walking to his car, at which time Holton allegedly became hostile towards Taylor.<sup>4</sup> Taylor advised police that Holton got in his face and struck him twice in the head with a closed fist. This prompted Reed to tell Holton to "chill

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<sup>1</sup> State's Response to Defendant's Motion to Suppress ("St.'s Resp.") at p. 2.

<sup>2</sup> *Id.*

<sup>3</sup> Probable Cause Sheet ("PCS") at ¶ 3.

<sup>4</sup> *Id.*

out.”<sup>5</sup> Upon hearing this, Holton allegedly retrieved a black handgun from under the dashboard of his car. Taylor alleges that Holton pointed the handgun at him while stating “I am going to kill you; I am going to kill you.”<sup>6</sup> Holton then returned to his car, and drove off.<sup>7</sup>

The next day, Taylor reported the alleged assault to Detective Hoffecker of the Middletown Police Department.<sup>8</sup> Taylor told Hoffecker that Holton attacked him and that during the assault Holton’s red Cadillac was parked in a handicapped parking space in front of a liquor store.<sup>9</sup> In addition, Taylor described the handgun with which Holton had threatened him.<sup>10</sup> After speaking with Taylor, Hoffecker went to Middletown Wine and Spirits, a liquor store located in the Middletown Square Shopping Center.<sup>11</sup>

Detective Hoffecker reviewed security camera footage at the liquor store which showed a red Cadillac parked in a handicapped parking space the day before.<sup>12</sup> According to the Detective, the videotape shows the following: a black male and black female exit a car, and return to the car a short time later with dry cleaning.<sup>13</sup> A second black male appears.<sup>14</sup> The first black male strikes the second

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶ 2.

<sup>9</sup> *Id.* at ¶¶ 3-5.

<sup>10</sup> *Id.* (Taylor described the gun as “a black handgun, approximately 6-7 inches in length, with a thin circular barrel.”).

<sup>11</sup> *Id.* at ¶ 6.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

black male.<sup>15</sup> The first black male then returns to the red Cadillac and removes an unidentified object from his car.<sup>16</sup> Hoffecker could not provide a description of the object because the men moved off screen.<sup>17</sup> Eventually, the footage shows the red Cadillac leave the handicapped parking space.<sup>18</sup>

Using a description provided by Taylor, Hoffecker observed that the first black male in the surveillance video matched a description of Holton.<sup>19</sup> Hoffecker obtained Holton's address and physical description by running a criminal history check.<sup>20</sup> To confirm Holton's address, Hoffecker drove by Holton's residence. He observed a red Cadillac parked in front of the address provided, and also noticed a black male matching Holton's description sitting on a couch inside the house.<sup>21</sup> A registration check of the Cadillac showed that it was a 2006 Cadillac registered to Bryce M. Holton and Lisa Holton.<sup>22</sup> The car registration address matched the address provided by Holton's criminal history.<sup>23</sup>

Through his investigation, Hoffecker was able to determine that Holton has three prior felony convictions in New Jersey: (1) theft by deception 3<sup>rd</sup> degree; (2)

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶9.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at ¶ 10.

<sup>22</sup> *Id.* at ¶ 11.

<sup>23</sup> *Id.* (Holton's driver's license address also matched the address provided by the criminal history check).

receiving stolen property 3<sup>rd</sup> degree; and (3) conspiracy 3<sup>rd</sup> degree.<sup>24</sup> These convictions prohibit Holton from owning or possessing a handgun.<sup>25</sup>

With these findings, Hoffecker applied for and was granted a search warrant on January 2, 2011 to search for a black handgun in Holton's residence and car.<sup>26</sup> Middletown Police found no handgun in the Cadillac. When they searched Holton's home they found 4.5 grams of cocaine, a handgun locked in a safe, and ammunition.<sup>27</sup>

### **III. THE PARTIES' ARGUMENTS**

Holton argues that all the evidence seized from his residence should be suppressed because the search warrant affidavit lacked the requisite probable cause to establish a nexus between the items sought and his home.<sup>28</sup> Holton concedes that the police had probable cause to search his car, but contends that the search warrant for his house lacked the specific facts needed within the "four corners" of the warrant to establish probable cause.<sup>29</sup>

Specifically, Holton takes issue with the fact that the police provided no information or evidence within their search warrant (besides his address) to suggest Holton possessed handgun *in his home*.<sup>30</sup> Nothing in the search warrant indicated

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<sup>24</sup> *Id.* at ¶ 13. (All three convictions took place on 07/09/2001 in Atlantic County Superior Court, New Jersey).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at ¶ 14.

<sup>27</sup> Evidence Inventory Worksheet.

<sup>28</sup> Defendant's Motion to Suppress ("Def. Mot. to Supp.") at ¶ 2.

<sup>29</sup> *Id.* at ¶ 5.

<sup>30</sup> *Id.*

that the police feared Holton would move the gun prior to his arrest. And, no one ever observed Holton with a gun at his home on the day of the altercation, or any other time.<sup>31</sup> The only alleged criminal activity in the affidavit of probable cause occurred in the parking lot.<sup>32</sup>

The State, on the other hand, asserts the search warrant is valid. In its response, the State argues it was perfectly reasonable for the magistrate to deduce, based on the information provided in the search warrant, that Holton's gun could be located in his house.<sup>33</sup> Specifically, the State points out the police were justified in searching the house for evidence because common sense dictates that people keep their handguns, personal possessions, in their homes or their cars, regardless of whether they are a person prohibited.<sup>34</sup> The State also argues that because Holton is a person prohibited, the police were justified in searching his home.<sup>35</sup>

#### **IV. DISCUSSION**

On a motion to suppress challenging the validity of a search warrant, the defendant has the burden of establishing that a search or seizure violated his rights under the United States Constitution, the Delaware Constitution, or the Delaware

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at ¶ 6.

<sup>33</sup> St.'s Resp. at p. 7.

<sup>34</sup> Transcript at 15-16.

<sup>35</sup> *Id.* at 16.

Code.<sup>36</sup> The defendant must show he is entitled to relief by a preponderance of the evidence.<sup>37</sup>

Under the Delaware and the United States Constitutions, “a search warrant may be issued only upon a showing of probable cause.”<sup>38</sup> Delaware constitutional requirements for search warrants are codified in Title 11, Sections 2306 and 2307 of the Delaware Code. Pursuant to Section 2306, the application for a search warrant must “state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated [in the search warrant application] and shall recite the facts upon which suspicion is founded.”<sup>39</sup> Under Section 2307, a warrant may issue only upon a judicial determination of probable cause.<sup>40</sup>

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<sup>36</sup> *State v. Cannon*, 2007 WL 1849022, at \*2 (Del. Super.) (citing *Rakas v. Illinois*, 439 U.S. 128, 130 n. 1 (1978); *State v. Dollard*, 788 A.2d 1283, 1286 (Del. Super. 2001); *State v. Bien-Aime*, 1993 WL 138719, at \*3 (Del. Super.)).

<sup>37</sup> *Id.*

<sup>38</sup> *State v. Sisson*, 903 A.2d 288, 296 (Del. 2006); U.S. Const. Amend. IV, Del. Const. art. 1, § 6.

<sup>39</sup> DEL. CODE ANN. Tit. 11, § 2306 (2001) (“The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.”).

<sup>40</sup> DEL. CODE ANN. Tit. 11, § 2307 (2001) (“If the judge, justice of the peace or other magistrate finds that the facts recited in the complaint constitute probable cause for the search, that person may direct a warrant to any proper officer or to any other person name for service. The warrant shall designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible, and may be returnable before any judge, justice of the peace or magistrate before whom it shall also direct to be brought the person or thing searched for if found, and the person in whose custody or possession such person or thing is found, to be dealt with according to law.”).

Delaware courts engage in a four-corners test to make a probable cause determination.<sup>41</sup> Within the four-corners of the search warrant affidavit, the document must present sufficient facts for a judge or magistrate to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place.<sup>42</sup>

When determining whether probable cause to obtain a search warrant exists, the Court will apply a totality of the circumstances test.<sup>43</sup> This analysis allows a magistrate to draw reasonable inferences from the factual allegations within the affidavit.<sup>44</sup> As such, probable cause may exist under the totality of the circumstances where “there is a fair probability that contraband or evidence of a crime will be found in a particular place.”<sup>45</sup>

While the four-corners test “restricts the scope of a reviewing courts inquiry,” the Court is still permitted to use common sense in its analysis.<sup>46</sup> Reviewing a search warrant in this manner avoids a “hypertechnical approach.”<sup>47</sup> Moreover, the Court must give great deference to the judge or magistrate who initially finds probable cause to issue a search warrant.<sup>48</sup> But, the Court must still

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<sup>41</sup> *Sisson*, 883 A.2d at 876.

<sup>42</sup> *Sisson*, 903 A.2d at 296. (citing 11 *Del. C.* § 2306; *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000)).

<sup>43</sup> *Id.* (citing *Fink v. State*, 817 A.2d 781, 787 (Del. 2003)); *See also Gardner v. State*, 567 A.2d 404 (Del. 1989).

<sup>44</sup> *Sisson*, 903 A.2d at 296.

<sup>45</sup> *Id.* (citing *Stones v. State*, 1996 WL 145775, at \*2 (Del.1996) (Order) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

<sup>46</sup> *See State v. Cannon*, 2007 WL 1849022, at \*3 (Del. 2007).

<sup>47</sup> *See Id.*

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determine whether the information provides the magistrate with a substantial basis to find probable cause.<sup>49</sup>

Police clearly established probable cause that an offense had been committed in this case. Not only did the victim provide a statement to the police about the altercation, but Hoffecker also corroborated the alleged victim's statement by reviewing the video surveillance footage. Thus, the Court must determine whether the magistrate, based on the facts provided by the police, had a reasonable belief that a handgun could be found in Holton's residence.<sup>50</sup>

To search a particular place, there must be a logical nexus between the items sought and the place to be searched.<sup>51</sup> Simply because police have probable cause to believe someone has committed a crime does not always mean police have probable cause to search a home.<sup>52</sup> But, a direct observation or facts placing evidence at the place to be searched are not needed to establish a nexus; in fact, inferences may be drawn depending on "the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences."<sup>53</sup>

Holton relies heavily on this Court's recent decision in *State v. Cannon*.<sup>54</sup> In *Canon*, a concerned citizen ("C.C.") notified the Wilmington Police that Cannon

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<sup>49</sup> *Cannon*, 2007 WL 1849022, at \*3. (citing *Gates*, 462 U.S. at 239)).

<sup>50</sup> *Sisson*, 883 A.2d at 876.

<sup>51</sup> *Id.* at \*4; *See, e.g., Dorsey*, 761 A.2d at 811; *Hooks v. State*, 416 A.2d 189, 203 (Del. 1980); *State v. Jones*, 1997 WL 528274, at \*4 (Del. Super.).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> 2007 WL 1849022 (Del. Super.).

was selling large amounts of drugs at two different locations in Wilmington.<sup>55</sup> The C.C. provided a description of Cannon's car, the registration number for the car, and Cannon's address.<sup>56</sup> One week later, a Crime Stoppers tip corroborated the information provided by the C.C.<sup>57</sup>

To investigate Cannon's activities, the police ran a criminal history check, a license check, and a registration check to confirm Cannon's address.<sup>58</sup> The police also conducted surveillance on Cannon, during which they observed Cannon leave his residence and drive around the city, allegedly engaging in drug dealing.<sup>59</sup> Using this information, the police applied for a search warrant for Cannon's person, car, and residence.<sup>60</sup> A magistrate approved the search warrant, and the police seized evidence from Cannon's residence.<sup>61</sup>

Cannon moved to suppress the evidence seized arguing that the affidavit supporting the search warrant "failed to provide a substantial basis for the magistrate to reasonably believe that evidence or contraband would be found at his house."<sup>62</sup> The State countered by arguing that based on the totality of the

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<sup>55</sup> *Id.* at \*1.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at \*2. (Police drew this conclusion because they found 0.1 grams of cocaine on an individual that Cannon interacted with while the police were following him. The police stopped that individual, and he indicated that he got the cocaine from Cannon).

<sup>60</sup> *Id.* (The police also included statements in their affidavit pertaining to their training and experience with regard to drug investigations).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

circumstances (police surveillance of illegal activity away from Cannon's home and expert statements) the police established a logical nexus to Cannon's home.<sup>63</sup>

The Court granted Cannon's motion to suppress holding that under the totality of the circumstances, the affidavit submitted "did not present the issuing judicial officer with a substantial basis for finding probable cause to search Cannon's residence."<sup>64</sup> The Court reasoned that the police lacked probable cause because: (1) the tips came from unproven citizen informants; (2) no one suggested Cannon was using his residence for drug dealing; (3) the police never conducted a controlled buy; (4) 0.1 grams of cocaine does not support an allegation that Cannon was selling large amounts of drugs; and (5) the police never observed Cannon leaving or returning to his residence with anything that looked related to drug dealing.<sup>65</sup>

The State argues *State v. Sisson* is instructive.<sup>66</sup> In *Sisson*, this Court upheld a magistrate's probable cause determination with respect to Sisson's residence where America Online ("AOL") intercepted an image of child pornography attached to an email account linked to Sisson's Delaware address.<sup>67</sup> AOL forwarded this information to the National Center for Missing and Exploited

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at \*5.

<sup>65</sup> *Id.*

<sup>66</sup> 883 A.2d 868 (Del. Super. 2004).

<sup>67</sup> *Id.* at 872.

Children, who then forwarded it to the Delaware State Police.<sup>68</sup> The State Police verified Sisson's address by checking the address listed on his driver's license.<sup>69</sup> The police successfully obtained a search warrant based on the facts above.<sup>70</sup>

Sisson argued that a "screen name" is not enough of a nexus to link a person to internet transmissions.<sup>71</sup> The Court disagreed, holding that the screen name alone was "sufficient to link the Internet subscriber associated with that screen name to criminal activity for the purposes of establishing probable cause."<sup>72</sup> The Court continued, "[w]hile it may well be that the screen name will not provide *prima facie* evidence of identity, it is certainly adequate in most cases to warrant a reasonable [person] in the belief that seizable property would be found at the address of the Internet subscriber with whom the screen name is registered."<sup>73</sup>

In *State v. Jones*,<sup>74</sup> a magistrate approved a search warrant for Jones's residence based upon illegal acts that took place outside of Jones's home. The police initially relied on information provided by a confidential informant ("C.I."). The C.I. told the police that he planned to sell marijuana to Jones.<sup>75</sup> The Police arranged a controlled buy between Jones and the C.I. in a parking lot.<sup>76</sup> Jones

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<sup>68</sup> *Id.* at 872-73.

<sup>69</sup> *Id.* at 873.

<sup>70</sup> *Id.* (General information included by the police about the use of computers for child pornography and the habits of child pornography collectors was considered too).

<sup>71</sup> *Id.* (Sisson also argued that the Internet service provider was not a reliable informant – the Court held otherwise).

<sup>72</sup> *Id.* at 878.

<sup>73</sup> *Id.* (internal quotations omitted) (other citations omitted).

<sup>74</sup> 2000 WL 33114361 (Del. Super).

<sup>75</sup> *Id.* at \*1. (The C.I. also described the defendant's appearance).

<sup>76</sup> *Id.*

arrived in his car, and participated in a drug transaction with the C.I.<sup>77</sup> The Police unsuccessfully attempted to apprehend Jones after the transaction.<sup>78</sup> To find Jones, the police ran his car's registration number, which linked Jones to his residence.<sup>79</sup>

To confirm the address provided by the registration, an officer drove by the house, and saw Jones's car parked out front.<sup>80</sup> On those facts, the police applied for a search warrant for that residence.<sup>81</sup>

In his argument, Jones conceded that the police had probable cause to arrest him for the failed controlled buy.<sup>82</sup> But, Jones contended that the warrant lacked probable cause to believe drugs would be found at his address within the four-corners of the warrant.<sup>83</sup> The State argued that under the totality of the circumstances, the search warrant contained sufficient probable cause to support a search of Jones's residence.<sup>84</sup>

The Court denied the Motion to Suppress, reasoning that the statements by the police as to their training and experience and the facts provided in the affidavit established probable cause.<sup>85</sup> While it is true that *Jones* focuses on whether an

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* (The police also established that Jones had prior drug arrests).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at \*2. (Like *Sisson*, statements were included about the officer's training and experience with respect to drug investigations).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* (The Court notes that *Jones* narrowly addresses the issue of statements made by the police about their training and experience. However, because police relied upon observing Jones's car when he was engaged in an illegal activity, and the address provided by Jones's registration number to link Jones to his address, the Court finds the case instructive).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at \*4.

officer's training and experience can provide sufficient probable cause for a search, the *Jones* Court noted that "although probable cause to arrest does not automatically provide probable cause to search the arrestee's home, the fact that probable cause to arrest has been established increases the probability that the defendant is storing evidence of that crime in the defendant's residence."<sup>86</sup>

The facts in this case distinguish it from *Cannon*. First, the police in *Cannon* relied on information provided by an unproven informant. Here, Hoffecker relied on information he received from a complaining victim (Taylor) that alleged Holton had assaulted and threatened him. Moreover, Hoffecker did not have to only rely on Taylor's statement because he was able to confirm the veracity of the statement using surveillance footage. Consequently, Hoffecker was able to instantly corroborate the statement with his own eyes.

Second, the police in *Cannon* only established that Cannon lived at the residence, not that Cannon was storing evidence or contraband there. To do so, the police would have to establish something that suggests Cannon's involvement in an illegal act to justify a search. As the Court noted, the police never observed Cannon coming or going with anything that is typically associated with drug dealing. Additionally, the police saw no drug activity at Cannon's residence and

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<sup>86</sup> *Id.* (citing *Dorsey v. State*, 761 A.2d 807, (Del. 2000) (internal quotations omitted)); *but see Dorsey*, 761 A.2d at 808-809. (finding that police lacked the necessary nexus to establish probable cause where the victim had been found shot dead in a room in a building owned by the defendant. After interviewing the defendant, the police obtained search warrants for the defendant's building and cars, but the Supreme Court held that the warrant was invalid because nothing linked the cars to the crime).

the court stated that 0.1 grams of cocaine is not indicative of selling large quantities of drugs.

Based on the Court's analysis in *Cannon*, there was no probable cause to believe that Cannon was selling large quantities of drugs – a crime that would justify a reasonable belief that an individual is hiding evidence or contraband in his home. To put it another way, the police in *Cannon* had no probable cause to suspect Cannon's involvement in the crime for which he was investigated. Logically, this means the police had no probable cause to search Cannon's home for evidence of that crime.

*Jones* differs from *Cannon* in that the police in *Jones* actually witnessed a crime. The police in *Cannon* suspected involvement in large scale drug dealing on the part of the defendant, but did not have enough information to arrest him. The C.I. in *Jones* allowed the police to know for sure that a crime took place; much like the surveillance footage does here. The police knew Jones had drugs in the car, so they established where he lived, and inferred that the evidence could be in Jones's house. Hoffecker did the same thing here by drawing an inference that the gun could be located in either the house or the car.

This case also differs from *Cannon* because the police linked Holton's red Cadillac (which allegedly contained a handgun) to his home. Hoffecker had probable cause to arrest Holton for assault and possession of a deadly weapon by a

person prohibited. The Court in *Jones* noted that this fact alone is not enough to justify a search of Holton's residence, but it makes it much more likely that the gun would be located there. Because guns are so freely moveable, it is reasonable to think the handgun could be in either Holton's car or residence. More to the point, if Holton used the handgun for personal protection, it is even more likely that he would have brought the handgun into his home, and thus, the police had probable cause to search Holton's residence.

Finally, Hoffecker went to great lengths to connect Holton to his residence. The investigation included running a criminal history check, a DMV check, and driving by the address provided by both. When Hoffecker drove by the address he saw the red Cadillac parked at the residence and also observed Holton inside the home. There is no question that the address provided is where Holton resides. Moreover, the DMV check established that the car in the surveillance footage belonged to Holton.

Aside from the lack of statements in the affidavit asserting training and experience, *Jones* is strikingly similar to this case. A lack of statements is not problematic to the Court's analysis here because it is just one fact to consider under the totality of the circumstances. The Court is permitted to avoid a hypertechnical analysis of the warrant in favor of a common sense approach while drawing logical inferences. Here, based on the detail included about Holton's



actions, his car, and his residence, common sense tells us that Hoffecker, based on his training and experience, believed the handgun would be in either Holton's home or car. Simply because Hoffecker left out a sentence referencing his training and experience does not make the warrant invalid.

Even without that inference, a magistrate could reasonably believe that seizable property would be found at the address linked to the red Cadillac associated with the altercation. Consequently, the Court finds that there was a substantial basis within the four-corners of the search warrant affidavit for a magistrate to find probable cause linking the handgun to Holton's home.

**CONCLUSION**

For the foregoing reasons, the defendant's Motion to Suppress is **DENIED**.

**IT IS SO ORDERED.**

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**Jan R. Jurden**

**cc: Prothonotary**