

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID No. 1108022662
)
 DENNIS TAYLOR,)
)
 Defendant.)

Submitted: January 6, 2012

Decided: January 17, 2012

On Defendant's Motion to Suppress

DENIED

MEMORANDUM OPINION

Brian Robertson, Esquire, Department of Justice, Wilmington, Delaware,
Attorney for the State

Natalie S. Woloshin, Esquire, Woloshin, Lynch, Natalie & Gagne, P.A.,
Wilmington, Delaware, Attorney for Defendant

JOHNSTON, J.

INTRODUCTION

On August 26, 2011, Detectives Jordan and Ketler of the Wilmington Police Department applied for a warrant to search the residence of Defendant Dennis Taylor, located at 102 E. 28th Street in Wilmington, Delaware (hereinafter referred to as “102 E. 28th Street” or “the Residence”). A Delaware Justice of the Peace authorized the search warrant on August 26, 2011. The warrant was executed on the same day and contraband was seized from the residence. Defendant was subsequently charged with, *inter alia*, Possession with Intent to Deliver Marijuana in violation of 16 *Del. C.* § 4752.

DEFENDANT’S MOTION TO SUPPRESS

On December 15, 2011, Defendant filed a Motion to Suppress all evidence seized in the August 26, 2011 search of his residence. Defendant claims that the affidavit in support of the search warrant lacked probable cause. Specifically, Defendant claims that that there were insufficient facts to establish a “legally sufficient nexus” between his residence and the belief that drugs would be found there.

STATE’S RESPONSE TO DEFENDANT’S MOTION TO SUPPRESS

In response, the State argues that probable cause existed for issuance of the search warrant for Defendant’s residence. According to the State, the

search warrant application was supported by information from a past-proven and reliable confidential informant as well as direct observations by investigating officers. Such information, the argument continues, established a sufficient nexus that drugs would be uncovered at the Defendant's residence.

AFFIDAVIT OF PROBABLE CAUSE

The affidavit of probable cause attached to the warrant application set forth information related to the affiant, Detective Jordan, by a past-proven and reliable confidential informant ("the Informant") in August 2011. According to the Informant, an older black male, later identified as the Defendant, sold marijuana from his business located at 2809 N. Market Street in Wilmington, Delaware (hereinafter referred to as "2809 N. Market Street" or "the Business"). The Informant further stated that the Defendant "ke[pt] and store[d] larger amounts of marijuana at his residence in the 100 blk. of E. 28th Street in Wilmington, DE."

Based on the foregoing information, officers had the Informant conduct a controlled purchase of marijuana from the Defendant at Defendant's business. During the transaction, the Informant stated that he met the Defendant outside 2809 N. Market Street and requested a specific amount of marijuana. The Informant stated that the Defendant directed him

inside the business and handed him the requested amount of marijuana in exchange for money.

At some point in time after this purchase, Detective Jordan had Officer Ball of the Wilmington Police Department's Community Policing Unit conduct a business contact at 2809 N. Market Street. Officer Ball spoke with the business operator who identified himself as Dennis Taylor, the Defendant. Defendant further stated that he resided at 102 E. 28th Street.

The following week, Detective Jordan arranged for the Informant to conduct a second controlled purchase of marijuana from the Defendant. As before, the Informant responded to 2809 N. Market Street where he entered the business and spoke with the Defendant, requesting a specific amount of marijuana. The Informant stated that the Defendant handed him the requested amount of marijuana in exchange for money.

Shortly thereafter, officers conducted surveillance and observed Defendant enter the residence at 102 E. 28th Street with a key.

On August 25, 2011, Detectives Jordan and Ketler applied for and obtained a warrant to search Defendant's business. The following day, officers arrived at Defendant's business to execute the search warrant. Prior to executing the search warrant, officers conducted surveillance and observed the Defendant leave the residence at 102 E. 28th Street and respond

directly to his business. A short while later, Defendant was observed exiting his business and returning to the residence at 102 E. 28th Street. Defendant was then observed exiting and re-entering the residence at 102 E. 28th Street by use of a key.

Officers then executed the search warrant at Defendant's business. Defendant was arrested and marijuana was seized from inside the business.

One additional provision of the probable cause affidavit is noteworthy. It reads: "These Detectives ask that a search warrant be granted for the residence of 102 E. 28th Street Apartment A, Wilmington, DE [] [b]ased on the information given by the [Confidential Informant] as well as these Detectives' training and experience that drug dealers tend to keep/store more drugs (larger amounts), money (proceeds) and paraphernalia (for weighing, cutting, packaging) inside their residence for safekeeping separate from a 'stash' being used to sell/deliver from on the street."

DISCUSSION

Under the Delaware Constitution, a search warrant only may be issued upon a showing of probable cause.¹ The search warrant must be supported

¹ Del. Const., art. 1, § 6.

by a sworn affidavit that establishes sufficient cause for the warrant's issuance.²

The Court must employ a “four-corners” test to determine whether an application for a search warrant demonstrates probable cause.³ Under this test, sufficient facts must be appear on the face of the affidavit such that a reviewing court can verify the factual basis for a determination that probable cause exists.⁴ To establish probable cause, the supporting affidavit must set forth sufficient facts on its face for a neutral judicial officer to form a reasonable belief that an offense has been committed and that seizable property would be found in a particular place.⁵ An officer’s training and experience also may be taken into account when determining whether probable cause exists.⁶ Great deference must be paid by a reviewing court to the determination of a judge who has made a finding of probable cause to issue a search warrant.⁷

² *State v. Walker*, 444 A.2d 277, 280 (Del. Super. 1982) (citing *Sexton v. State*, 397 A.2d 540, 545-46 (Del. 1979)).

³ *State v. Adams*, 13 A.3d 1162, 1172 (Del. Super. 2008); *State v. Sisson*, 883 A.2d 868, 876 (Del. Super. 2005); *State v. Church*, 2002 WL 31840887, at *5 (Del. Super.).

⁴ *Sisson*, 883 A.2d at 876 (citing *Pierson v. State*, 338 A.2d 571, 573 (Del. 1975)).

⁵ *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000). *See also Adams*, 13 A.3d at 1173 (“An affidavit establishes probable cause to search only where it contains a nexus between the items sought and the place to be searched.”) (citing *Hooks v. State*, 416 A.2d 189, 203 (Del. 1980)).

⁶ *State v. Church*, 2002 WL 31840887, at *8 (Del. Super.) (citing *State v. Jones*, 2000 WL 33114361, at *2 (Del. Super.)).

⁷ *Sisson*, 883 A.2d at 876.

Here, the focus of the Court's analysis is upon the sworn affidavit of probable cause, executed by Detectives Jordan and Ketler, that was the basis for issuing the warrant to search Defendant's residence. The Court finds that the facts and statements contained within the four-corners of the supporting affidavit established sufficient probable cause for issuance of a warrant to search Defendant's residence.

Detectives received information from a past-proven and reliable confidential informant that Defendant was selling marijuana from his business, while storing larger quantities of marijuana at his residence. Detectives were able to corroborate the information provided by the Informant regarding sales of marijuana at Defendant's business by conducting two separate controlled purchases of marijuana. The Informant's information was further corroborated by execution of a search warrant at Defendant's business which resulted in the discovery and seizure of marijuana.

Based upon the information provided by the Informant, surveillance efforts, and their training and experience, the Detectives believed that Defendant was keeping a larger supply of marijuana at his residence. According to the Detectives, it is common for drug dealers to store larger

quantities of drugs at a secured location, including their residence, for ready access and to avoid detection by law enforcement.

During the course of their investigation, the Detectives linked Defendant to the residence at 102 E. 28th Street. Defendant was repeatedly observed leaving his business and travelling directly to the 102 E. 28th Street residence. Defendant also was observed using a key to enter and lock the front door of the residence. Most significantly, Defendant, himself, acknowledged that he resided at this residence. Therefore, there was sufficient evidence for police to conclude that Defendant resided at 102 E. 28th Street.

The Court finds that based upon Defendant's repeated path of travel between his business and residence, the information provided by the Informant, and the Detectives' training and experience, the likelihood was great that drugs would be uncovered at both addresses. As such, there was a sufficient nexus between the Defendant's residence and the Detectives' belief that drugs would be found there.

CONCLUSION

The face of the affidavit contained sufficient facts to support a finding of probable cause. Based on the information supplied by the past proven and reliable confidential informant as to drug dealing from 2809 N. Market

Street, the affiants' personal observations of the Defendant, and the experience of the Detectives' – all as fully set forth in the affidavit – the Court finds that the issuing judicial officer possessed sufficient grounds to reasonably believe that an offense had been committed and that the items listed in the search warrant would be found at 102 E. 28th Street.

THEREFORE, Defendant's Motion to Suppress is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston