

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

July 23, 2010

Edward C. Gill, Esquire
16 North Bedford Street
P. O. Box 824
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Martin Cosgrove, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

RE: State of Delaware v. Desiree Vincent
Defendant ID No. 1001008866

Dear Counsel:

Before the Court is Defendant's Motion to Suppress which attacks the search warrant affidavit for failing to set forth information which establishes probable cause to search Ms. Vincent's apartment.

A review by this Court is guided by the Delaware Supreme Court's decisions summarized by Judge E. Scott Bradley in *State v. Ivins*, 2004 WL 1172351 (Del. Super).

The Delaware Supreme Court reasoned that "[t]his Court has also eschewed a hypertechnical approach to the evaluation of the search warrant affidavit in favor of a common-sense interpretation, bearing in mind that the court reviewing the search warrant owes a certain degree of deference to the issuing magistrate. *Gardner v. State*, 567 A.2d 404 (Del. 1989), citing *Tatman v. State*, 494 A.2d 1249, 1251-52 (Del.1985); *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984). Furthermore, the Delaware Supreme Court recognizes the compelling force of the "totality of the circumstances" announced in *Gates*, and finds it consistent with the Court's holding in *Jensen v. State*, 482 A.2d 105 (Del. 1984). *Gardner*, 567 A.2d at 409, citing *Jensen*, 482 A.2d at 111. Therefore, "the affidavit supporting the search warrant must be 'considered as a whole and not on the basis of separate allegations.'" *Id* at 409, quoting *Jensen*, 482 A.2d at 111. However, "there must be a nexus between the items which are sought and the place in which the police wish to search for them." *Jones*, 2000 WL 33114361 (Del. Super. Ct.), citing *Dorsey v. State*, 761 A.2d 807, 811 (Del.2000); *Hooks v. State*, 416 A.2d 189, 203 (Del.1980); *Pierson v. State*, 338 A.2d 571 (Del.1975). It is not necessary that the nexus be a result of direct observation. Rather, it 'can be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide [evidence of a crime]' *United States v. Feliz*, 182 F.3d 82,

88 (1st Cir.1999), *quoting United States v. Charest*, 602 F.2d 1015, 1017 (1st Cir.1979).

The relevant portions of the affidavit are Paragraphs 3 through 6 which are set forth below:

3. On 11/26/2009 TFC Brennan from Delaware State Police Troop #5 responded to [redacted portion] for a report of a burglary. TFC. Brennan met with victims Alice Branch [redacted portion] and James J. Lee 3rd [redacted portion].

4. TFC. Brennan obtained from the two victims that one Panasonic 42" Flat Screen Television model number TH42PZ80U black in color, one AOC 32" Flat Screen Television model number L32W861 black in color, one Sony 32" Flat Screen Television model number unknown black in color, one HP Photosmart M627 Digital Camera silver in color, one GE Digital Still Camera and one prescription bottle of Cymbalta Percocet Pills were all taken during the burglary.

5. The victims in this case stated that they believed that Desiree N. Vincent is a suspect in this. They stated that Desiree Vincent has come to their house in the past attempting to get prescription pills from victim Lee. They also stated that when they left their house on 11/26/2009 to go to a Thanksgiving dinner they observed Desiree Vincent and her boyfriend John standing in the driveway of Desiree's mother's house located at 16902 Clendaniel Road in Lincoln, Delaware 19960, which is located three houses away from the victims residence.

6. During the week of 12/07/2009 Affiant #1 met with a cooperating individual who stated that they know Desiree Vincent and her boyfriend John Vickers and know them well. The cooperating individual stated that Desiree Vincent is addicted to Prescription medications and that she recently committed a burglary with John Vickers in which three flat screen televisions were stolen. The cooperating individual stated that the burglary occurred at an elderly ladies house that is located next to or near Desiree's mother's house. The cooperating individual stated that Desiree Vincent is keeping the three televisions inside of her apartment in Chandler Heights Apartments in Seaford.

In reviewing these paragraphs, based on the time frame and the freshness of the information, together with reasonable inferences, I find probable cause to exist.

The issuing magistrate knew the following:

- a. A burglary was reported by victims Branch and Lee on November 26, 2009.
- b. Included in what was reported stolen were three (3) flat screen televisions, including model numbers as well as Percocet prescription pills. Percocet is a known opiate base prescription.

c. The victims reported that they suspected the Defendant was involved in the burglary because (i) past efforts by Ms. Vincent to obtain prescription pills from victim Lee; and (ii) Ms. Vincent and her boyfriend being present in the driveway of Ms. Vincent's mother's house on November 26, 2009. Ms. Vincent's mother's home is located just three houses down the street.

d. On December 7, 2009, an informant, who is not established as past proven reliable, reported the following to the police officer: (i) the informant knows Ms. Vincent and her boyfriend well; (ii) Ms. Vincent is addicted to prescription pills; (iii) Ms. Vincent and her boyfriend committed a recent burglary near Ms. Vincent's mother's house; (iv) three (3) flat screen televisions were stolen; and (v) Ms. Vincent was keeping the three (3) televisions at her apartment in Chandler Heights.

In examining the totality of the circumstances, I note that although the informant was not past proven reliable, the information provided may be reasonably inferred as coming directly from Ms. Vincent, based upon the detail of what the police learned in Paragraphs a, b, and c..

The information is fresh in that it comes very soon after the Thanksgiving burglary and the informant reports the exact number of televisions that were stolen. The informant also notes the Defendant's substance abuse issue which can be connected back to the report of the victim that the Defendant has sought prescription pills from the victims and the fact that prescription pills were stolen in the burglary. Finally, the informant reports the correct location of the burglary.

Therefore, based upon the above, I am satisfied that the issuing magistrate was correct in finding the existence of probable cause to search the Chandler Heights apartment of Ms. Vincent for fruits of the burglary.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary