

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

March 16, 2010

Thomas A. Pedersen, Esquire
5 West Market Street
Georgetown, DE 19947

John W. Donahue, IV, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

RE: John P. O'Connor
Defendant ID No. 0901014131

Dear Counsel:

The defense has filed a Motion to Suppress. It is denied for the following reasons:

First, it is untimely. The events at issue and subsequent arrest occurred in January, 2009. I do not know why it took the State six months to file a single count receiving stolen property charge, but it did, and the Defendant was arraigned in July.

At the September case review, the Defendant did not appear and a capias was issued. The Defendant was returned on the capias in January. The next case review date was February 15, 2010. The present Motion was not filed until nearly a month later, March 11, 2010.

It is late, but, nevertheless, I will address the merits of the Motion.

This is a search warrant case which means the Court should review the four corners of the affidavit. *State v. Backus*, 2002 WL 31814777 (Del. Super. Nov. 18, 2002); *Franks v. Delaware*, 438 U.S. 154 (1978).

In this case, the police arrested a burglar who then confessed and implicated another person in the burglaries and also implicated another person as being a fence, who would take the stolen property in return for prescription drugs. The Defendant is alleged to be the fence. The cooperative burglar was named in the affidavit. He was not an undisclosed confidential informant. There was no need to report whether he was past-proven reliable. The magistrate issuing the warrant had sufficient information as to the admissions of criminal activity by the cooperating burglar to determine the existence of probable cause. The cooperative burglar disclosed the location where the property was fenced. Further investigation narrowed the focus to Mr. O'Connor.

The warrant itemized recently stolen property which the burglar said he had taken to the fence at the target property; and, therefore, there is a common sense connection for the police to seek a warrant to search for those items at the target property..

I am satisfied probable cause existed for the warrant, and that there was a reasonable belief that the stolen items might be at the property to be searched.

The defense asks for an evidentiary hearing to delve into what other evidence might be helpful to its motion. I decline to go past the "four corners" of the affidavit for purposes of a discovery hearing because *Franks* and *Backus* require the Defendant to make a preliminary showing by an offer of proof that the affidavit contains a deliberate falsehood or a reckless disregard for the truth.

The Motion to Suppress is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary