

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
TERRY HIGGINS,		
Appellant		No. 1286 MDA 2012

Appeal from the Judgment of Sentence entered June 26, 2012
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0000201-2011

BEFORE: MUNDY, OLSON AND STRASSBURGER,* JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 20, 2013

Appellant, Terry Higgins, appeals from the judgment of sentence entered on June 26, 2012, following his bench trial convictions for two counts of possession with intent to deliver controlled substances (PWID) and one count of possession of drug paraphernalia.¹ We affirm.

We summarize the facts and procedural history of this case as follows. On November 23, 2010, Harrisburg Detective Sean Cornick obtained a search warrant of Appellant's residence following a controlled narcotics purchase of crack cocaine by a confidential informant and additional police surveillance. The following day, police executed the warrant and recovered 35.7 grams of cocaine, .1462 pounds of marijuana, digital scales, and other

¹ 35 P.S. § 780-113(a)(30) and (a)(32).

*Retired Senior Judge assigned to the Superior Court.

drug paraphernalia from Appellant's residence. Police also discovered Appellant's identification, confirming his residence as the address subjected to the search.

The Commonwealth charged Appellant with the aforementioned crimes. On April 14, 2011, Appellant filed a motion to suppress, arguing the affidavit of probable cause attached to the application for the search warrant was based upon unreliable information from the confidential informant. The trial court denied relief by order entered on July 8, 2011. On April 18, 2012, the trial court held a bench trial and convicted Appellant of two counts of PWID and one count of possession of narcotics paraphernalia. On June 26, 2012, the trial court sentenced Appellant to an aggregate term of five to 10 years of imprisonment, followed by six years of probation, plus fines and costs. This timely appeal followed.²

On appeal, Appellant presents one issue for our review:

- A. Whether the trial court erred in denying Appellant's [m]otion to [s]uppress physical evidence where the [a]ffidavit of probable cause in support of the search warrant failed to include any facts related to the reliability of information given by the confidential informant?

Appellant's Brief at 7.

² Appellant filed his notice of appeal on July 12, 2012. The trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) on July 16, 2012. On July 25, 2012, Appellant complied timely. The trial court issued an opinion pursuant to Pa.R.A.P. 1925(a) on September 6, 2012.

Our standard of review in addressing a challenge to the denial of a suppression motion is

limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous. [...]he suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review.

Commonwealth v. Jones, 988 A.2d 649, 654 (Pa. 2010) (citations and quotations omitted).

Appellant contends that the information contained within the four corners of the affidavit of probable cause in support of the execution of the search warrant at issue fails “to include any language of reliability as to the confidential informant.” Appellant’s Brief, at 11. Appellant claims, at the very least, the affidavit required customary language that the informant has provided prior information to police that ultimately resulted in arrests or convictions. ***Id.*** at 12. Had police included such language in the affidavit of probable cause, Appellant suggests he could have obtained police reports from prior cases involving the same confidential informant “to test whether the allegations of prior reliability were accurate.” ***Id.*** In sum, Appellant

maintains that the deficient affidavit rendered the search warrant infirm, all of the evidence tainted, and, thus, suppression was warranted. *Id.* at 13.

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 by the Pennsylvania Supreme Court in *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985). *Commonwealth v. Hawkins*, 45 A.3d 1123, 1127 (Pa. Super. 2012)(citation omitted). “A magistrate is to make a practical common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* (citations omitted). In reviewing the validity of a search warrant, the reviewing court is limited to determining whether there is substantial evidence supporting the issuing authority's decision to approve the warrant. *Id.* (citation and quotation omitted).

This Court has previously determined that an officer's affidavit sets forth sufficient information to provide a substantial basis for a magistrate to conclude that probable cause exists to issue a search warrant after using a confidential informant to complete a controlled narcotics purchase. *Id.* The officer must take “adequate precautions to ensure substantial reliability of the controlled buy [will] corroborate information already obtained.” *Id.* at 1129; *see also Commonwealth v. Dean*, 693 A.2d 1360 (Pa. Super.

1997) (Informant's tip, as corroborated by controlled drug buy that police conducted just two days before they executed search warrant for defendant's home, satisfied probable cause requirement and supported issuance of warrant); ***Commonwealth v. Baker***, 615 A.2d 23 (Pa. 1992) (Facts sufficient to establish probable cause for issuance of search warrant where informant's information implicating defendant as seller was corroborated by police officer's first-hand observations when he gave informant money to purchase cocaine and saw informant enter residence and return from residence with cocaine); ***Commonwealth v. Luton***, 672 A.2d 819, 821 (Pa. Super. 1996) (Police-conducted "controlled buy" sufficiently corroborated neighbors' observations alleging drug operations from defendant's home); ***Commonwealth v. Johnson***, 517 A.2d 1311 (Pa. Super. 1986) (Finding an abundance of probable cause where a controlled buy was conducted within 48 hours of the execution of the search wherein defendant left residence and met with informant who returned to police with drugs).

Upon review of the affidavit in this case, we conclude the trial court did not err in concluding probable cause existed to issue the search warrant. The confidential informant stated he/she had purchased crack cocaine from Appellant "on a regular basis" at Appellant's residence "for a couple of years". Application for Search Warrant, Affidavit of Probable Cause, 11/23/2010 at 1. The confidential informant identified Appellant's beige vehicle and police confirmed that the vehicle belonged to Appellant. ***Id.***

Police conducted a controlled narcotics purchase through the confidential informant wherein police initially searched the confidential informant, gave him/her pre-recorded currency, watched the confidential informant enter Appellant's property and return two minutes later, and the informant turned over crack cocaine to police. *Id.* Moreover, police continued surveillance and witnessed several other males selling crack cocaine in the area. *Id.* Police observed Appellant talking to these men from the porch of his residence. *Id.*

Based upon the totality of circumstances, we conclude that the trial court did not err in denying suppression because probable cause existed. The confidential informant told police that he/she had been purchasing crack cocaine from Appellant's residence for a number of years. However, this is not a case where the affidavit of probable cause was issued solely on the confidential informant's tip. Instead, police corroborated the informant's information through a controlled narcotics purchase wherein police took adequate measures to ensure substantial reliability. Further, police witnessed narcotics-related activity around Appellant's residence and personally observed Appellant speaking to other purported drug dealers. Based on the foregoing, there was a fair probability that crack cocaine would be found in Appellant's residence. Thus, the affidavit set forth sufficient information to provide a substantial basis for the magistrate to conclude that probable cause existed to issue the search warrant.

Judgment of sentence affirmed.