

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

WILLIAM HENRY JAMES, II,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 589 WDA 2012

Appeal from the Judgment of Sentence Entered October 13, 2012  
in the Court of Common Pleas of Allegheny County,  
Criminal Division, at No(s): CP-02-CR-0015720-2007

BEFORE: BENDER, ALLEN, and MUSMANNO, JJ.

MEMORANDUM BY BENDER, J.:

Filed: March 19, 2013

Appellant, William Henry James, II, appeals *nunc pro tunc* from the judgment of sentence of ten to fifteen years' incarceration, imposed after he was convicted following a non-jury trial of possession of a controlled substance, possession with intent to deliver a controlled substance (PWID), and possession of drug paraphernalia. On appeal, Appellant challenges the trial court's denial of his pretrial motion to suppress evidence, and the court's denial of his motion to compel the Commonwealth to reveal the identity of a confidential informant (CI) involved in this case. After careful review, we affirm.

On May 14, 2007, Detective Jaison Mikelonis of the Allegheny County Police Department Narcotics Unit submitted an affidavit of probable cause requesting a search warrant for Appellant's person, residence, and two vehicles registered in Appellant's name. The affidavit was based on

information obtained from a CI that Appellant was selling narcotics, namely heroin, out of his home. A magistrate issued the warrant and, that same day, Detective Mikelonis and other police officers searched Appellant's home at 1248 Faulkner Street in Pittsburgh, Pennsylvania. There, they recovered, *inter alia*, 77.35 grams of heroin packaged into 4,200 stamp bags; multiple firearms including revolvers, a shotgun, a 9-millimeter handgun, and an AR-15 assault rifle; approximately \$13,000 in United States currency; items believed to be associated with the growth of marijuana; and paraphernalia associated with the packaging of narcotics, including a digital scale, plastic bags and latex gloves.

Based on this evidence, Appellant was charged and convicted, following a non-jury trial, of the above-stated offenses. He was subsequently sentenced to an aggregate term of ten to fifteen years' incarceration. Appellant did not file a direct appeal, but later filed a petition for post conviction relief pursuant to the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546, seeking the restoration of his appeal rights *nunc pro tunc*. The court granted that petition and Appellant filed a notice of appeal, as well as a timely concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Herein, he raises two issues for our review:

- I. Did the trial court err in denying [Appellant's] motion to suppress physical evidence when the information upon which the search warrant was issued failed to establish probable cause?

- II. Did the trial court abuse its discretion in denying [Appellant's] motion to disclose the [CI's] identity as the CI's identity was material to [Appellant's] defense and the request was reasonable and in the interests of justice?

Appellant's Brief at 5.

In his first issue, Appellant argues that the affidavit of probable cause did not set forth sufficient information to establish probable cause to search his residence, person, and two of his vehicles. Initially, we note that Appellant's motion to suppress only challenged the validity of the search of his residence at 1248 Faulkner Street. **See** Omnibus Pre-Trial Motion, 6/12/08, at 2 (unnumbered pages) (stating the reasons why "the arrest and/or search of *the residence* was illegal, invalid, and unconstitutional"). Thus, Appellant has waived his attack on the adequacy of the search warrant pertaining to his person and vehicles. Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

To buttress his claim that the search warrant was not supported by probable cause, Appellant presents two essential arguments: (1) the affidavit of probable cause did not contain enough information to establish the reliability of the CI; and (2) the information provided by the CI in the affidavit was non-specific and stale. We begin our assessment of these issues by noting that,

[o]ur standard of review of a denial of suppression is whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error. Our scope of review is limited; we may consider only the evidence of the prosecution 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 record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

***Commonwealth v. McRae***, 5 A.3d 425, 429 (Pa. Super. 2010).

Next, we set forth the affidavit of probable cause, which was drafted by Detective Mikelonis:<sup>1</sup>

During the months of April and May 2007, I received information from a confidential reliable informant (CRI) concerning heroin that was being sold from a residence in the Sheraden section of Pittsburgh identified as 1248 Faulkner Street, Pittsburgh, PA 15204. Because of the inherent violence associated with narcotic's trafficking, and the danger of retaliation against a known police informant/and or the informant's family/loved ones, the confidential informant has a legitimate need to remain anonymous and shall hereinafter be referred to only as CRI7. CRI7 is familiar with heroin, and the methods used to sell, distribute, and use heroin from being in and around the illicit drug culture. The information provided by CRI7 is based on his/her own observations and conversations with the targets of this investigation. CRI7 has provided accurate and reliable information and assistance in the past that led to the arrests of R.ROBINSON in 2006 (VCSDD&CA) and L. BURT in 2007 (VCSDD&CA). At the time of ROBINSON'S and BURT'S arrests both were in the possession of heroin and were charged accordingly. Both cases are within the court system and pending adjudication.

The CRI stated that within the past 48 hours of the date of this application, he/she was at 1248 Faulkner Street, Pittsburgh, PA 15204, and observed heroin that was being offered for sale by an individual at the residence identified as – William H. JAMES. When CRI7 left the residence there was still heroin at the residence that William was selling. Based on conversation with

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<sup>1</sup> We reproduce the statements in the affidavit exactly as they were written by Detective Mikelonis, with no additions or corrections by this Court.

the suspect and his affiliates and past observations of their ongoing daily drug dealing, CRI7 believed William would be selling heroin from the residence throughout the next several days.

CRI7 described William as a tall husky black male, whom he/she knew by the nickname "WILL." CRI7 believed William was in his early thirties. CRI7 was shown a photograph of William H. JAMES – PA OLN# 26244730. CRI7 positively identified William via the photo as the individual selling heroin from 1248 Faulkner Street, Pittsburgh, PA 15204. CRI7 has been at 1248 Faulkner Street, Pittsburgh, PA 15204 on many prior occasions and has observed William in possession of heroin on multiple occasions that he was selling from 1248 Faulkner Street. CRI7 contacts William at cellular phone (412) 292-2839 and identified this phone as his phone of business. During the month of May 2007, I have observed William coming and going from the residence on several occasions. CRI7 stated that William sells heroin from the residence on a daily basis and frequently conducts his business throughout the day. According to CRI7, William frequently keeps quantities of heroin directly on his person when he is actively conducting business. CRI7 said that William is selling heroin packaged in stamp bags. According to CRI7, William charges \$80.00 for a bundle of heroin, which is ten individual stamp bags; however, William also sells multiple bundles and bricks (50 stamp bags) of heroin. According to CRI7, it's all dependent on the amount of money the customer has to spend.

During the month of May 2007, I used CRI7 to make a controlled purchase of heroin from William from the residence at 1248 Faulkner Street, Pittsburgh, PA 15204. CRI7 purchased a quantity of suspected heroin from William in exchange for official investigative funds. I field tested the heroin that was purchased and it yielded positive results for the presence of heroin.

According to CRI7, William lives at 1248 Faulkner Street, Pittsburgh, PA 15204. I have confirmed through surveillance, the Allegheny County Real Estate website, the Department of Motor Vehicles, and the Pennsylvania State Police Bureau of Criminal Intelligence that William lives at 1248 Faulkner Street, Pittsburgh, PA 15204.

In addition to William's residence, CRI7 identified two of his vehicles as one Dark Grey 2002 JEEP Grand Cherokee bearing PA Registration GLJ-6759 and one white 1991 Acura sedan bearing

PA Registration GFE-9711. I checked both vehicles through the PA Department of Motor Vehicles and both are registered to William H. James. CRI7 has seen William drive both vehicles on numerous occasions and conduct illegal narcotics transactions from both of his vehicles.

Through my training and experience, I know that drug dealers frequently hide narcotics upon their bodies and within the orifices of their bodies while conducting business or while transporting their narcotics. I also know that drug dealers frequently have firearms within their immediate area or concealed upon their bodies when conducting business.

Based on the above information, coupled with my training and experience, along with the past reliability of CRI7, I believe that William H. JAMES is in possession of heroin at 1248 Faulkner Street, Pittsburgh, PA 15204, that he is selling from the residence. A search warrant is requested for the person of William H. James, the residence at 1248 Faulkner Street, Pittsburgh, PA 15204, and one Dark Grey 2002 JEEP Grand Cherokee bearing PA Registration GLJ-6759 and one white 1991 Acura sedan bearing PA Registration GFE-9711 both registered to William H. James.

Affidavit of Probable Cause, 5/14/07, at 2-3.

Appellant initially contends that the inculpatory information provided to Detective Mikelonis by the CI was insufficient to establish probable cause because Detective Mikelonis did not corroborate that information with any independent evidence. However, based on our Supreme Court's decision in ***Commonwealth v. Jones***, 668 A.2d 114 (Pa. 1995), we conclude that no corroborating information was necessary in this case.<sup>2</sup> In ***Jones***, our

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<sup>2</sup> We acknowledge that because ***Jones*** was a plurality decision, it is not binding precedent. ***See In Interest of O.A.***, 717 A.2d 490, 496 (Pa. 1998). Nevertheless, we find it instructive.

Supreme Court first summarized the legal precepts underlying the determination of whether probable cause exists, stating:

The standard for evaluating whether probable cause exists for the issuance of a search warrant is the “totality of circumstances” test as set forth in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and adopted by this Court in *Commonwealth v. Gray*, 509 Pa. 476, 484, 503 A.2d 921, 925 (1985). 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.* at 484, 503 A.2d at 925, quoting *Gates*, 462 U.S. at 238-39, 103 S.Ct. at 2332.

The information offered to establish probable cause must be viewed in a common sense, nontechnical manner and deference must be accorded to the issuing magistrate. *Commonwealth v. Baker*, 532 Pa. 121, 126-27, 615 A.2d 23, 25 (1992). The duty of a court reviewing the decision is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Id.* at 127, 615 A.2d at 25.

*Id.* at 116-117. The Court further elaborated on the totality of the circumstances test, stating it “was adopted to do away with rigid, precise determinations of probable cause.” *Id.* at 117 (citing *Gates*, 462 U.S. at 232). Thus, “[t]o require corroboration in every situation would be contrary to the purpose of the totality of the circumstances test: allowing a flexible, common sense approach to all the circumstances of an affidavit.” *Id.* (citation and footnote omitted).

The *Jones* Court then specifically addressed whether corroborating information was required under the totality of the circumstances in that case, where the affidavit of probable cause indicated the CI had provided

reliable information in the past. Specifically, the *Jones* affidavit stated that “the informant had provided tips on three prior occasions, resulting in one conviction and two cases pending before the courts,” and indicated the “names of the prior arrestees and the dates they were arrested.” *Id.* at 117. Based on these prior tips, the Court concluded that the reliability of the informant was established, and “corroboration was not necessary.” *Id.* at 118.

Similarly, in Appellant’s case, the affidavit of probable cause stated that the CI provided reliable information in the past, which led to the arrests and pending criminal cases of two named individuals. The affidavit also provided the year that each of those arrests occurred, and indicated that at the time both individuals were arrested, they “were in [] possession of heroin and were charged accordingly.” Affidavit of Probable Cause, 5/14/07, at 2. Therefore, in line with the Court’s rationale in *Jones*, we conclude that here, the veracity of the CI was established based on his/her prior reliable tips, even absent any corroborating evidence.

Nevertheless, we note that corroborating information was provided in the affidavit, namely Detective Mikelonis’ utilizing the CI to conduct a controlled buy, his confirmation that the residence and cars belonged to Appellant, and his statement that he observed Appellant “coming and going from the residence on several occasions.” Affidavit of Probable Cause,



5/14/07, at 2. Accordingly, this corroborating information bolsters our conclusion that the CI's veracity was sufficiently demonstrated.<sup>3</sup>

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<sup>3</sup> Appellant argues that in *In the Interest of O.A.*, *supra*, filed shortly after *Jones*, our Supreme Court held that corroborating information was necessary even where the CI provided reliable information in the past. Not only does Appellant misinterpret the Court's holding in *In the Interest of O.A.*, but that case is distinguishable from both *Jones* and the present circumstances. In *In the Interest of O.A.*, the Court examined whether police officers had probable cause to conduct a *warrantless* arrest and search based on a tip from a CI "who had previously provided information leading to approximately fifty arrests." *Id.* at 493. In concluding the officers did not possess probable cause, the Court distinguished its holding in *Jones*, stating:

In *Jones*, a magistrate issuing a search warrant made a determination that probable cause existed. In the instant case the determination was made by a police officer performing a warrantless arrest. A probable cause determination by a police officer making a warrantless arrest lacks the procedural safeguard that a neutral and detached magistrate can impart to any determination of probable cause. We recognize that the totality of the circumstances standard is the same whether used for determining the existence of probable cause for a magistrate's issuance of a search warrant or a police officer's determination that a warrantless arrest is justified. Nonetheless, any analysis of the relevant circumstances must consider that "the detached scrutiny of a neutral magistrate, is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime." *United States v. Leon*, 468 U.S. 897, 913-4, 104 S.Ct. 3405, 3415-3416, 82 L.Ed.2d 677, 692-693 (1984). Thus, the usual deference given by a court to an issuing magistrate's probable cause determination is lacking in the instant case. *See Commonwealth v. Baker*, 532 Pa. 121, 127, 615 A.2d 23, 25 (1992) ("deference is to be accorded a magistrate's finding of probable cause").

*In the Interest of O.A.*, 717 A.2d at 496. Furthermore, we also find *In the Interest of O.A.* distinguishable because, in both Appellant's case and  
(Footnote Continued Next Page)

Next, Appellant argues that the affidavit was inadequate because “the information provided by the CI [was] both non-specific and stale.” Appellant’s Brief at 24. Essentially, he maintains that the CI specified a lengthy, general time-frame of two months – April and May of 2007 – during which he/she allegedly observed Appellant engaging in illegal activity, and could only state that he/she saw this conduct “on many prior occasions” or “on multiple occasions.” *Id.* at 26 (quoting Affidavit of Probable Cause, 5/14/07, at 2). Appellant notes that “[t]he most specific statement of when the alleged illegal activity was occurring” was the CI’s claim that he/she observed heroin being offered for sale “within the past 48 hours” of the application for the search warrant. *Id.* However, Appellant contends that there was no reliable information from the CI that would demonstrate the alleged drug transactions “were continuous” in nature, other than the CI’s unsupported statement that he/she “believed” Appellant would be selling heroin from the residence “throughout the next several days.” *Id.* at 27 (quoting Affidavit of Probable Cause, 5/14/07, at 2). Appellant asserts that

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in *Jones*, the affidavits provided detailed information about the CI’s prior tips - *i.e.* the names and dates of individuals arrested, and status of their cases - while in *In the Interest of O.A.*, there was merely a general assertion that the CI’s prior information led to numerous arrests. Thus, we disagree with Appellant that *In the Interest of O.A.* conflicts with the Court’s decision in *Jones* and requires corroborating evidence in the present case.

without information corroborating the CI's belief, "there [was] insufficient evidence for police to believe there would be heroin found at the residence over 48 hours after an alleged sale," especially in light of the ease with which drugs can be disposed. *Id.*

In rejecting this argument, we are again guided by our Supreme Court's decision in *Jones*. There, the Court explained:

An affidavit must set forth sufficient facts from which the time frame that criminal activities occurred can be determined so that probable cause exists when the search warrant is issued. *Commonwealth v. Edmunds*, 526 Pa. 374, 382, 586 A.2d 887, 891 (1991). However, "staleness" of information must not be determined by rigorous exactitude. *Commonwealth v. Baker*, 513 Pa. 23, 28, 518 A.2d 802, 804 (1986). A showing that criminal activity is likely to have continued up to the time of the issuance of a warrant renders otherwise stale information viable. *Commonwealth v. Stamps*, 493 Pa. 530, 536, 427 A.2d 141, 144 (1981), *citing United States v. Harris*, 403 U.S. 573, 579 n. 2, 91 S.Ct. 2075, 2079 n. 2, 29 L.Ed.2d 723 (1971).

Viewing the affidavit with a common sense, non-technical eye leads to the conclusion that the affidavit evidences an on-going drug operation emanating out of 423 Biddle Street, and provides a substantial basis for issuing a search warrant. The affidavit states that within twenty-four hours, the detectives received information that Kimba Jones, a resident of 423 Biddle Street, "has just" been observed selling drugs. The affidavit also states that within the past two months the informant, who is familiar with the appearance of marijuana, cocaine, and crack cocaine and how they are ingested into the body, had personally observed drugs in the apartment and had personally observed drug abusers coming and going from the apartment from 3 p.m. to late evening. Furthermore, the informant personally observed paraphernalia used to prepare powder cocaine into crack cocaine inside the apartment.

A common sense appraisal of the affidavit leads to the conclusion that an on-going drug operation had been occurring for the two months prior to the affidavit, and that the very

recent sales of drugs by a member of the apartment's household indicated that the drug activity was still occurring up until the time the search warrant was issued. We hold that the affidavit was not stale, and the magistrate had a substantial basis upon which to issue the search warrant.

**Jones**, 668 A.2d at 118 (footnote omitted).

The present circumstances are substantially similar to those in **Jones**. Here, the CI, who was "familiar with heroin, and the methods used to sell, distribute, and use heroin," informed Detective Mikelonis that over the span of a two month period, he/she personally observed Appellant selling heroin from his home on "many prior occasions." Affidavit of Probable Cause, 5/14/07, at 2. The CI stated that Appellant sold narcotics "on a daily basis and frequently conducts business throughout the day." **Id.** The CI indicated familiarity with Appellant's method of packaging and his prices, describing that he sells "bundles" of heroin for \$80 each, and also distributes "bricks" containing 50 stamp bags of heroin. **Id.** Additionally, the CI participated in a controlled buy in May of 2007, which was within 14 days of the affidavit of probable cause being filed, and also stated that he/she personally observed Appellant selling heroin within 48 hours prior to the affidavit's filing. **Id.** Finally, the CI reported that based on his/her "past observations of [Appellant's] *ongoing daily* drug dealing," and his/her "conversation[s] with [Appellant] and his affiliates," the CI "believed [Appellant] would be selling heroin from the residence throughout the next several days," including the date of the warrant application. **Id.** (emphasis added).

As in *Jones*, a common sense reading of the affidavit compels a conclusion that Appellant was conducting an on-going drug operation throughout the two months prior to the warrant application, and that his daily drug sales were continuing up until the time the warrant was issued and executed. Thus, the CI's information was current and specific enough to provide probable cause to issue the warrant, and the trial court did not err in denying Appellant's motion to suppress.

In his second issue, Appellant contends that the trial court abused its discretion in denying his motion to compel the Commonwealth to reveal the identity of the CI. Our standard of review of this claim is whether the trial court abused its discretion. *See Commonwealth v. Belenky*, 777 A.2d 483, 487 (Pa. Super. 2001) (citing *Commonwealth v. Roebuck*, 681 A.2d 1279, 1282 (Pa. 1996)). In order to compel the revelation of a CI's identity, a defendant must show the disclosure "would yield information material to his or her defense, and that the request for disclosure is reasonable." *Commonwealth v. Marsh*, 997 A.2d 318, 321 (Pa. 2010) (citation omitted). After this showing is made, "the trial court must then balance relevant factors to determine, in its discretion, whether the informant's identity should be revealed." *Id.* (citation omitted).

In this case, Appellant has failed to satisfy the first hurdle of proving the CI's identity was material to his case. Appellant argues that the identity of the CI was imperative to his defense of mistaken identity. He maintains that because other people lived in the house at 1248 Faulkner Street, the

only evidence linking him to the contraband found in that residence were the claims of the CI. In other words, the CI "was the only witness who could identify [Appellant as] the person selling heroin out of the residence." Appellant's Brief at 37. Therefore, Appellant contends that "the CI here was a material witness to the crimes for which [Appellant] was convicted" and, consequently, the court should have granted his motion requesting the revelation of the CI's identity. *Id.*

Appellant's argument is meritless. The charges brought against Appellant were not based on the controlled buy involving the CI but, rather, on the contraband discovered in his home and on his person at the time the search warrant was executed. Namely, Appellant was discovered to be in physical possession of a loaded firearm and a "sleeve," *i.e.* 600 stamp bags, of heroin. **See** N.T. Suppression Hearing, 7/20/09, at 10. Inside Appellant's residence, police discovered an additional 4,800 stamp bags of heroin, as well as items typically used to package and sell narcotics, a cache of guns, and over \$13,000 in United States currency. As emphasized by the trial court, the CI "did not participate in the search of [Appellant's] residence nor did he witness any crimes on the date that [Appellant] was arrested and charged. The [CI's] role in [Appellant's] case was limited to a controlled buy that he/she had made in the days prior to [Appellant's] arrest and the information that he/she supplied to the police detailing [Appellant's] drug trafficking activities." Trial Court Opinion, 8/27/12, at 8-9. Therefore, the court concluded, and we agree, that the CI's identity was not material to

Appellant's defense. Consequently, the court did not abuse its discretion in denying his motion to compel the Commonwealth to reveal that information. ***See Commonwealth v. King***, 932 A.2d 948, 953 (Pa. Super. 2007) (concluding CI's identity should not be revealed where defendant's "charges arose from the execution of the search warrant, not from the controlled buy;" the CI "was not an eyewitness to the crimes charged, which arose strictly out of the execution of the search warrant inside the house;" the CI was not present at the time of the search; and defendant did not challenge the validity of the search warrant).

Judgment of sentence affirmed.