

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 02-99-SLR
)
MARCUS JONES,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Defendant Marcus Jones has filed this motion to suppress evidence¹ seized pursuant to a search warrant executed on April 29, 2002 at 1003 Liberty Road, Wilmington, Delaware. (D.I. 13, A69) Defendant alleges that the search warrant lacks the facts necessary to establish probable cause, and is so lacking of probable cause that it renders the "good faith exception"² inapplicable. (D.I. 13, 18) The United States of America ("government") has filed its opposition. (D.I. 17) Because both sides agree that the four corners of the warrant affidavit are

¹The items seized from the residence were five bags of crack cocaine, one bag of marijuana, twenty-nine 357 caliber live ammunition rounds, seven 380 caliber live rounds of ammunition, one 9mm caliber live round of ammunition, one 9 mm caliber live round of ammunition, one 380 caliber magazine, one unknown caliber rifle round and one shoe box. (D.I. 13, A75) A federal grand jury indicted defendant on one count of violating 18 U.S.C. § 922(g)(1) for possession of ammunition, and on one count of 21 U.S.C. § 844(a) for possession of cocaine base. (D.I. 1)

²United States v. Leon, 468 U.S. 897 (1984).

dispositive, an evidentiary hearing was not held. (D.I. 13, 17)
The issues are fully briefed. For the reasons that follow,
defendant's motion to suppress is denied.

II. BACKGROUND

The affidavit of probable cause filed in support of the search warrant is four pages long and details a series of events and individuals involved in the investigation of a first degree assault case. According to the affidavit: On April 16, 2002, Detective John Ciritella³ was investigating a shooting in the area of 27th and Bowers Street ("Bowers shooting"), Wilmington, where three individuals were injured. (D.I. 13, A71) One of the victims indicated that the gunfire originated from an old, gold vehicle with tinted windows. Police recovered shell casings from 380, 9mm and 40 caliber weapons.

Later that day, Delaware state police officers recovered a brown, late model Honda abandoned in the First State Plaza parking lot. In the back seat, in plain view, police discovered spent shell casings. Although the ignition was pulled up from the steering column, the car had not been reported stolen. Because the shell casings were consistent with those recovered from the Bowers shooting, the car was towed to the Wilmington police garage and searched pursuant to a warrant. Police

³Ciritella has been a Wilmington, Delaware police officer since October 6, 1986 and assigned to the Criminal Investigation Division since May 11, 1999. (D.I. 13, A71)

discovered one spent 40 caliber casing, one 380 spent shell casing and twelve 223 caliber spent shell casings. An officer from the Evidence Detection Unit indicated that these casings were "high confidence matches" to the Bowers shooting. The casings also matched other shootings being investigated.

Ciritella viewed a security surveillance video of the First State Plaza parking lot that revealed the Honda was driven and parked by a black male. A white car ("Bonneville"), with a spoiler on the rear trunk area, pulled alongside the Honda, picked up the man and drove away.

On April 18, 2002, a vehicle matching the Bonneville was stopped by Wilmington police. The driver, Ramadan Dorsey ("Dorsey"), waived Miranda warnings and voluntarily admitted that he drove the Honda to the First State Plaza parking lot after he noticed the car parked in front of his sister's house on Lloyd Street. Because Dorsey was concerned that the police were "after him," he decided to move the car.

On April 26, 2002, Ciritella interviewed a suspect ("CI 1") police had arrested earlier that day. CI 1 told Ciritella that he and Dorsey had dropped off two AR-15 rifles at a storage facility sometime in mid-April. The AR-15 rifle fires 223 caliber rounds.

CI 1 was taken to the storage facility and identified the storage area where Dorsey stored the rifles. Although CI 1 was

unable to state the storage unit number, he correctly identified Aletheia Hickson as the renter. Ms. Hickson is the mother of Andre Hickson ("Hickson"), an associate of Dorsey. Dorsey and Hickson were the only individuals that CI 1 saw with the rifles. Hickson was also seen hiding guns in speakers at a residence located across from the Belvedere Fire House.

On April 29, 2002, Ciritella interviewed a subject ("CI 2") regarding the Bowers shootings. CI 2 told Ciritella that on the day of the shooting, he was with defendant at a house on Lloyd Street. Hickson arrived at the house and said he had to dispose of the sweatshirt he was wearing because it was covered with gunpowder. Hickson had a grey handgun in his waistband. CI 2 said defendant showed him a newspaper article describing the Bowers shooting and indicated that Hickson was involved.

Hickson and defendant are related, according to CI 2. One day while at the 1003 Liberty Road residence, Hickson showed CI 2 and defendant a box containing an AR-15 rifle, a German luger, and at least four other handguns. The Belvedere Fire House is located across from 1003 Liberty Road. A police investigation into the property revealed that Aletheia Hickson had a phone number listed for the residence.

As part of another investigation, Ciritella knew that Dorsey was a suspect in a burglary of a gun store. Among the items stolen were AR-15 rifles.

Based on Ciritella's affidavit, a search warrant was issued on April 29, 2002 by a Justice of the Peace for New Castle County, Delaware for the residence at 1003 Liberty Road. The warrant authorized a search for weapons, including AR-15 rifles and ammunition as well as materials or documents related to the Bowers shooting investigation.

II. STANDARD OF REVIEW

The Fourth Amendment of the United States Constitution establishes the right of all people to be secure in their homes against unreasonable searches and seizures without a warrant that is supported by probable cause and specifically describes the area to be searched. United States v. Zimmerman, 277 F.3d 426, 431 (3d Cir. 2002). Because unreasonable government intrusion into the home is "the chief evil against which the wording of the Fourth Amendment is directed," Payton v. New York, 445 U.S. 573, 585 (1980), a judge must consider whether sufficient evidence has been presented that demonstrates that there is a "fair probability" that evidence of a crime will be located at the place to be searched before validating a warrant. Illinois v. Gates, 462 U.S. 213, 238 (1983).

Once issued, a reviewing court must determine whether there was a "substantial basis" for determining that probable cause existed. United States v. Harvey, 2 F.3d 1318, 1322 (3d Cir. 1993). Essentially this hinges on whether, considering all of

the circumstances described in the affidavit, there was a fair probability that contraband or evidence of a crime would be found in a specific location. United States v. Gates, 462 U.S. 213, 238 (1983). The decision of the issuing officer should be afforded great deference. United States v. Zimmerman, 277 F.3d 426, 432. The reviewing court should avoid "interpreting affidavit[s] in a hyper-technical, rather than a common sense manner." United States v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993). In so doing, the court must confine itself to only the affidavit and cannot consider other portions of the record. United States v. Hodge, 246 F.3d 301, 305 (3d Cir. 2001). When resolving questionable cases, the deference accorded warrants should prevail. United States v. Jones, 994 F.2d at 1055. Moreover, direct evidence linking the place to be searched with a crime is not required for a warrant to issue. Id. at 1056. Rather, "probable cause can be, and often is, inferred by considering the type of crime, the nature of the items sought, the suspect's opportunity for concealment and normal inferences about where a criminal might hide" the items sought. Id.

The good faith exception to the exclusionary rule⁴
"instructs that suppression of evidence 'is inappropriate when an

⁴The exclusionary rule is a judicially created remedy designed to deter police conduct that violates the constitutional rights of individuals. United States v. Leon, 468 U.S. at 919; United States v. Zimmerman, 277 F.3d at 436.

officer executes a search in objectively reasonable reliance on a warrant's authority' even though no probable cause to search exists." United States v. Zimmerman, 277 F.3d 426, 436, (quoting United States v. Hodge, 246 F.3d 301, 307 (3d Cir. 2001)). The Supreme Court's "evaluation of the costs and benefits of suppressing reliable physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral" judicial officer compelled the creation of the good faith exception. United States v. Leon, 468 U.S. 897, 913. A warrant issued by a judge "normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." Id. at 922. There are, however, four situations where an "officer's reliance on a warrant would not be reasonable and would not trigger" the good faith exception:

1. Where the [judge] issued the warrant in reliance on a deliberately or recklessly false affidavit;
2. Where the [judge] abandoned his or her judicial role and failed to perform his or her neutral and detached function;
3. Where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or
4. Where the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

United States v. Zimmerman, 277 F.3d at 436; see also United States v. Leon, 468 U.S. at 923; United States v. Hodge, 246 F.3d 301, 307.

III. DISCUSSION

The results of Ciritella's investigation of the Bowers shooting are chronicled in a piecemeal fashion in the four page affidavit. Considered discretely, each piece of information does not support a finding of probable cause to search defendant's residence. Considered cumulatively, however, the information contained in the warrant does establish with a fair probability that evidence related to the Bowers shooting would be found at the 1003 Liberty Road residence. See Illinois v. Gates, 462 U.S. 213, 238 (1983)(totality of the circumstances should be considered in probable cause determinations). Defendant's argument that the CIs were not proven reliable is unsupported by the record because Ciritella did verify the storage unit information which in turn supported CI 2's information about a relationship between defendant, Ms. Hickson and Hickson.

Even assuming that a substantial basis for probable cause were lacking, the court finds the good faith exception applies and, therefore, the evidence obtained pursuant to the warrant is admissible. There has been nothing presented to implicate any of the four exceptions to the good faith exception to the exclusionary rule.

IV. CONCLUSION

For the reasons stated, at Wilmington this 22d day of May, 2003;

IT IS ORDERED that:

1. Defendant's motion to suppress is denied. (D.I. 13)
2. A telephonic conference is scheduled for **Friday, June 13, 2003** at **8:30 a.m.** with the court initiating said call.
3. The time between this order and **June 13, 2003**, shall be excluded under the Speedy Trial Act in the interests of justice. 18 U.S.C. § 3161(h)(8)(A).

Sue L. Robinson
United States District Judge