

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No. 03-52 GMS
)	
SHANNEN LEATHERBURY,)	
)	
Defendant.)	

MEMORANDUM

I. INTRODUCTION

The defendant, Shannen Leatherbury, has moved to suppress physical evidence seized pursuant to a search warrant executed on April 11, 2003.¹ The defendant alleges that the search warrant for his person was not supported by facts sufficient to establish probable cause. After reviewing the warrant affidavit along with the parties' submissions on the issue, the court will deny the defendant's motion to suppress for the reasons stated below.

II. BACKGROUND

The affidavit of probable cause filed in support of the search warrant details the investigation that led to the defendant's arrest on April 11, 2003. According to the affidavit: A "reliable"

¹The defendant also moved to suppress statements he allegedly made following the execution of the search warrant. At a suppression hearing (D.I. 18) the government conceded that the motion to suppress the physical evidence is case dispositive. (Transcript of motion hearing, December 2, 2003, page 83, lines 2-6). The court interprets the government's statement to mean that should the defendant's motion be granted with regard to the physical evidence, then the statements are the fruit of the poisonous tree and, therefore, must be suppressed as well. Should the court deny the defendant's motion then the court already determined at the suppression hearing that the statements were either spontaneously given or that the defendant was properly *Mirandized*, therefore, the statements would be admissible. (Transcript of motion hearing, December 2, 2003, pages 80-81).

confidential informant contacted Detectives Armorer and Ross during the third week of March 2003 regarding “a black male known as Shannen Leatherbury selling crack cocaine from within the residence of 600 West Street Apt 2C.” (Appendix to Defendant’s Opening Brief, page 5 of the Warrant). During the second week of April, Detectives Ross and Armorer were able to confirm that Shannen Leatherbury had a current address of 600 West Street, Apartment 2C. As well, the informant positively identified the defendant from a rapsheet photo.

On April 9, 2003, the detectives met with the informant to arrange a controlled purchase. In the affidavit the informant was described as a “past proven and reliable confidential informant who has provided information regarding illegal drug sales in the city of Wilmington in the past.” *Id.* The affidavit continued, “[s]aid confidential informant agreed [to make the controlled purchase] and was first searched for contraband and U.S. currency. Said search ended in negative results.” *Id.* at 6.

The detectives followed the informant and observed the defendant get into the informant’s vehicle. *Id.* The vehicle was then followed to the 300 block of West 6th Street. A Detective Emory witnessed the defendant exit the informant’s vehicle and enter the 600 N. West Street residence. A few minutes later the defendant returned to the informant’s car and the two drove to the intersection of 9th and Orange Streets, where the defendant exited the vehicle and left the area on foot. *Id.* The confidential informant was then followed to a predetermined location where he turned a baggie containing 2.9 grams of crack cocaine over to the police. Upon debriefing, the informant “stated that he/she met with ‘Shannen’” and provided a description of the defendant. He also told the police that after he picked the defendant up, they drove to the 300 Block of W. 6th Street where the defendant exited the vehicle and returned shortly thereafter with a bag of crack cocaine. *Id.*

Such were the facts stated in the affidavit. Based on the affidavit, a search warrant was issued on April 10, 2003, by a Justice of the Peace for New Castle County, Delaware, for the residence at 600 West Street, Apartment 2C, and for Shannen Leatherbury. *Id.* at 7.

III. STANDARD OF REVIEW

Under the Fourth Amendment, individuals enjoy the “right . . . to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” U.S. Const. amend. IV. In addition, the Fourth Amendment provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.” *Id.* The protections afforded by these requirements apply to the states as equally as they do to the federal government. *See, e.g., Mapp v. Ohio*, 367 U.S. 643, 655-56 (1961) (overruling *Wolf v. Colorado*, 338 U.S. 25 (1949)). A search warrant is supported by probable cause when the attached affidavit sets forth sufficient facts and circumstances to justify a reasonable belief that a search of the specified premises will uncover evidence of criminal wrongdoing. *See, e.g., United States v. Deaner*, 1 F.3d 192, 196 (3d Cir. 1993) (citing *Illinois v. Gates*, 462 U.S. 213, 236 (1983)); *accord United States v. Pelham*, 801 F.2d 875, 877-78 (6th Cir. 1986).

After the search warrant has been issued and is challenged, a reviewing court must determine whether there was a “substantial basis” to conclude that probable cause existed. *United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir. 1993) (quoting *Illinois v. Gates*, 462 U.S. at 238-39). The court must ask whether the circumstances set forth in the four corners of the affidavit indicate a fair probability that evidence of a crime would be found at the target location or on the target person. *See Illinois v. Gates*, 462 U.S. at 238; *see also United States v. Hodge*, 246 F.3d 301, 305 (3d Cir.

2001). This basis must be a *factual* one. It cannot be founded on mere conclusory statements provided by the officer. *See Illinois v. Gates*, 462 U.S. at 239.

Nevertheless, the reviewing court should avoid scrutinizing affidavits “in a hyper-technical, rather than a common sense, manner.” *Id.* at 236-37. While the court should not conduct its own *de novo* review of the affidavit to determine whether it was supported by probable cause, *see United States v. Williams*, 3 F.3d 69, 72 (3d Cir. 1993) (citing *Gates*), neither should the court blindly approve the warrant simply because a magistrate, or justice of the peace as in this case, has signed it. *See United States v. Loy*, 191 F.3d 360, 365 (3d Cir. 1999) (citing *United States v. Tehfe*, 722 F.2d 1114, 1117 (3d Cir. 1983)); *United States v. Jones*, 994 F.2d 1051, 1055 (3d Cir. 1993) (citing same). Furthermore, “the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.” *United States v. Ventresca*, 380 U.S. 102, 109 (1965).

Delaware law is in accord. *See Wilson v. Delaware*, 314 A.2d 905, 906-07 (Del. 1973); *Pierson v. Delaware*, 338 A.2d 571, 573 (Del. 1975); *Jensen v. Delaware*, 482 A.2d 105, 110-11 (Del. 1984).

IV. DISCUSSION

Here, there was a “substantial basis” for the issuing Justice of the Peace to conclude that probable cause existed. The affidavit contained sufficient facts in their totality to support a finding of probable cause. The detectives attested to the reliability of the confidential informant; a reliability that had been confirmed through prior dealings. Specific to this investigation, the detectives independently verified that the residence provided by the informant matched the defendant’s

address. Additionally, the informant's account of the controlled purchase was corroborated by what the officers observed first-hand.

The defendant denies that the purchase ever took place. He contends that the following statement in the affidavit proves the buy could not have happened because the informant had no money: "Said confidential informant . . . was searched for contraband and U.S. Currency. Said search ended in negative results." The court disagrees with the defendant on this point. A common sense reading of the affidavit would permit the issuing judge to conclude that the informant had no money *of his/her own*. The court agrees with the government that "probable cause could exist even if the defendant fronted the drugs." (D.I. 25, Government's Opposition to Defendant's Motion to Suppress Evidence and Statements, page 5, n. 4).

V. CONCLUSION

For the reasons stated above, the defendant's motion to suppress the physical evidence is denied. At the suppression hearing, the court determined that the admissibility of the statements was contingent on the validity of the warrant. As such, the accompanying order denies the defendant's motion to suppress both the physical evidence and the statements.

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ORDER

IT IS HEREBY ORDERED that:

1. For the reasons stated in the accompanying Memorandum, the defendant's motion to suppress is DENIED.

Dated: February 13, 2004

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE