

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 JAMES BUTLER : NO. 99-536-01

MEMORANDUM AND ORDER

HUTTON, J.

January 7, 2000

Presently before the Court is Defendant's motion to suppress physical evidence obtained during the execution of a search warrant by the Philadelphia Police. In addition, Defendant requests the identification of the confidential informant named in said warrant. For the reasons stated below, Defendant's motion is **DENIED.**

I. BACKGROUND

Defendant James Butler is charged with the possession and distribution of cocaine and the possession of a firearm by a convicted felon in the furtherance of a drug trafficking crime under 21 U.S.C. § 841(a)(1), 18 U.S.C. § 924(c)(1), 18 U.S.C. § 922(g)(1). Defendant has filed the instant motion seeking the suppression of physical evidence and the identification of a confidential informant. On May 20, 1999, the Philadelphia Police Department executed a search warrant upon Defendant's residence in which various items of contraband were seized. Following

Defendant's arrest, the local charges were dismissed in favor of federal prosecution.

On November 23, 1999, the Court held a suppression hearing in which Defendant argued that there was insufficient probable cause for the state bail commissioner's issuance of a search warrant on Defendant's residence. In particular, Defendant argues that the police misled the bail commissioner because he "was never appraised of the fact that the tip was anonymous, the informant was not reliable and that the police surveillance negated the information received." (See Def.'s Br. in Supp. of Mot. to Suppress at 7; see also Tr. of Mot. Hr'g at 19-30, Nov. 23, 1999).

II. STANDARD OF REVIEW

District courts exercise only a deferential review of the initial probable cause determination. See Illinois v. Gates, 462 U.S. 213, 236, 103 S. Ct. 2317, 2331, 76 L. Ed. 2d 527 (1983); see also United States v. Conley, 4 F.3d 1200, 1205 (3rd Cir. 1993). "[T]he duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for . . . conclud[ing]' that probable cause existed." Conley, 4 F.3d at 1205 (quoting Gates, 462 U.S. at 238, 103 S. Ct. at 2332). As such, the Court's role is to ensure that a substantial basis existed for the magistrate's finding that a fair probability existed that evidence would be found in a particular place. Id. The Supreme Court has directed that "although in a particular case it may not be easy to

determine when an affidavit demonstrates the existence of probable cause, 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, 85 S. Ct. 741, 746, 13 L. Ed.2d 684 (1965); Conley, 4 F.3d at 1205. "The district courts should focus not on what information an affidavit does not include, but rather on the information it does contain." Conley, 4 F.3d at 1208. Simply asking "whether those facts could provide to a magistrate a substantial basis for a fair probability that evidence of wrongdoing will be found." Conley, 4 F.3d at 1208.

The concept of totality of the circumstances is the guidepost in probable cause determinations. See Gates, 462 U.S. at 233, 102 S. Ct. 2329. While an informant's veracity, reliability, and basis of knowledge are highly relevant in determining the reliability of his information, these factors are not "entirely separate and independent requirements to be rigidly exacted in every case." Id. at 230, 102 S. Ct. 2328. "Rather . . . they should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause' to believe that contraband or evidence is located in a particular place." Id.

III. DISCUSSION

A. Probable Cause

In the context of the matter at hand, the Court is not persuaded by Defendant's arguments. The search warrant is clearly not deficient as it is unquestionable that it contains sufficient information to provide a judicial official with a substantial basis to conclude that there was a fair probability that contraband would be found.

While Defendant's position that the warrant's supporting affidavit does not attest to the reliability of the confidential informant is true, the supporting affidavit of probable cause clearly and unequivocally states that the confidential informant purchased a substance identified as cocaine from Defendant with pre-recorded buy money.¹ Reading the warrant's supporting affidavit in its entirety, it is quite clear that the basis for the warrant was not an unsubstantiated tip by a confidential informant, but rather the result of the informant's tip and his subsequent controlled purchase of cocaine from Defendant. See United States v. Khounsavanh, 113 F. 3d 279, 286 (1st Cir. 1997) (finding that an informant who alleges that drugs are being sold in a particular apartment and offers and makes a controlled buy clearly

¹ Defendant's position that the informant's tip was anonymous flies directly in the face of the evidence. As the search warrant states that the confidential informant made a controlled drug buy, such tip clearly cannot be anonymous. (See Search Warrant at 2). Further, such a condition mitigates any reliability concerns surrounding the informant.

corroborates the very criminal activity claimed, thereby supporting a finding of probable cause).

The Court cannot conceive of a set of facts which would provide a more credible basis for the issuance of a search warrant. After all, the informant provided the police with information concerning Defendant's alleged illegal drug distribution and further substantiated that information through his subsequent cocaine purchase. Clearly, the confidential informant was reliable and the bail commissioner, without question, had a substantial basis to conclude that there was a fair probability that contraband would be found.

B. Disclosure of the Confidential Informant

The government need not disclose the identity of the confidential informant at this time.² The Supreme Court has recognized a qualified privilege possessed by the Government in the refusal to disclose the identity of a confidential informant from whom it has received information concerning alleged criminal activity. See Roviaro v. United States, 353 U.S. 53, 77 S. Ct. 623, 1 L. Ed.2d 639 (1957); see also United States v. Bazzano, 712 F.2d 826, 839 (3rd Cir. 1983). "In determining whether the privilege should be sustained, a court must 'balanc[e] the public interest in protecting the flow of information against the

² The Government acknowledges that should it proceed on Count 1 of the indictment it will need to produce the confidential informant to prove that count. (See Gov't Resp. to Def.'s Mot. at 11).

individual's right to prepare his defense." Bazzano, 712 F.2d at 839.

Defendant makes no substantive argument as to how the informant's identity will in any way aid in the determination of the search warrant's validity. In fact, for the purpose of this motion the informant's identity is irrelevant, as the sole issue to be considered is whether the bail commissioner had a substantial basis to conclude that there was a fair probability that contraband would be found on the premises searched. The identity of the informant sheds no light on this consideration.

What is relevant is that there was an informant and that this individual made a controlled buy from the Defendant. While Defendant does not admit to any criminal wrongdoing, he also does not claim that the Police fabricated the affidavit to the extent that it states a controlled buy was conducted with the assistance of the confidential informant. Rather, Defendant maintains that the observations of the confidential informant while in Defendant's residence is somehow germane to the finding of probable cause. Defendant simply ignores the fact that the search warrant states that a controlled buy was actually conducted on the premises. Consequently, Defendant fails to establish that the disclosure of the informant's identity will serve any purpose.

An appropriate Order follows.

