

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

UNITED STATES of AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
TEDDY YOUNG, et al.	:	No. 05-56
	:	
	:	

MEMORANDUM

STENGEL, J.

July 24, 2006

On June 6, 2002, a search warrant was executed at the Philadelphia residence of defendant Theodore Young, Sr. Theodore Young, Sr. (“Young, Sr.”), along with eighteen (18) other defendants including Young, Sr.’s son, Theodore Young, Jr., were later indicted for heroin trafficking offenses.¹ Currently before the court are Young, Sr.’s two (2) motions asserting that any statements he made during the search were illegally obtained and coerced, and that the search warrant was issued without probable cause. For the reasons set forth below, I will deny both motions.

I. BACKGROUND

This case involves an FBI wiretap on the cellular telephone of defendant Theodore Young, Jr. The wiretap occurred from September 7, 2001, to June 8, 2002. All eighteen (18) defendants currently implicated in this case were intercepted in the wiretap and charged in a federal indictment for being members and participants in the Teddy Young

¹Although the original indictment named nineteen (19) defendants, the nineteenth defendant, Mr. Frank Robinson, was dismissed shortly after his death.

Heroin Organization (“YHO”). As detailed in the indictment, all of the charged defendants engaged in discussions concerning the distribution of controlled substances.

On June 6, 2002, several search warrants were simultaneously executed, including a search at Young, Sr.’s residence located at 7219 Woolston Avenue, Philadelphia, Pa. Young, Sr. was present during the search of his residence.² Immediately prior to the search, the agents executing the warrant called Young, Sr. and instructed him to open the door in ten (10) seconds. When the door was not opened within a reasonable period, the door was forced open with a ram. FBI agents and police then entered the residence while certain officers stayed outside and proceeded to the rear of the building. The residence was secured within ten (10) minutes.

While agents were entering the house, the agents stationed at the rear of the building observed Young, Sr. lean out of a rear upper-level window, throw two objects to the ground, and then retreat back into the residence. The agents retrieved the items which turned out to be two plastic bags containing bundles of heroin. One bag contained nine (9) bundles of heroin stamped “Fax,” and the other contained eleven (11) bundles stamped “S-34.”

Several people were found inside the residence: Young, Sr., Karen Laroda, Dawn Whitehead, Anita Whitehead, Marcus Whitehead, and Spencer Craig. Upon entering the residence, FBI special agent Mario Campana told Young, Sr. that he was not being

²The search warrant for the residence was issued on June 5, 2002, by the Honorable Magistrate Judge Diane M. Welsh.

arrested that day. All of the people, except for Young, Sr., who were present in the residence were informed by law enforcement that they could leave once the premises was secured.

As the search progressed, several items were seized, including: (1) approximately \$1,546, (2) two handguns, (3) one sawed-off shotgun, (4) ammunition, (5) boxes of plastic bags commonly used to package drugs, (6) one printing kit, (7) three heat sealers, and (8) one black BMW automobile. When asked where he got the drugs, Young, Sr. responded that he got them from the Kennington and Allegheny area known as El Segundo.³ Young, Sr. was further asked where the drugs came from and from whom he received them, but refused to answer. Upon the conclusion of the search, evidence was seized while the defendant was not arrested.

On June 5, 2002, the Honorable Magistrate Judge Diane M. Welsh reviewed an affidavit sworn to by FBI Special Agent Robert Norton in support of the federal search warrant for the Young, Sr. residence. The affidavit states that information in the affidavit was obtained from: (1) reports from undercover police officers; (2) surveillance conducted during the investigation; (3) information derived from court-authorized wiretaps; (4) information obtained from confidential sources; and (5) discussions with other officers and agents involved in the investigation. The affidavit provides an overview of the YHO based on information known by the told affiant. Specifically

³“El Segundo” is a term often used to identify the heavily Latino area. According to its response, the government does not intend to use this statement at trial.

referring to Young, Sr.'s residence located on Woolston Avenue, the affidavit details several intercepted telephone calls referencing either delivery of drugs or drug proceeds at the residence.

II. LEGAL STANDARD

A magistrate judge's determination of probable cause is to be accorded great deference. Illinois v. Gates, 462 U.S. 213, 236 (1983); United States v. Conley, 4 F.3d 1200, 1204-05 (3d Cir. 1993). "A reviewing court must determine only that the magistrate judge had a 'substantial basis' for concluding that probable cause existed to uphold the warrant." United States v. Whitner, 219 F.3d 289, 296 (3d Cir. 2000). In making this determination, the court confines itself "to the facts that were before the magistrate judge, i.e., the affidavit, and [does] not consider information from other portions of the record." United States v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993).

In determining whether a warrant should be issued, "the task of the issuing magistrate is simply to make a practical, common-sense decision, whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." New York v. P.J. Video, Inc., 475 U.S. 868, 876 (1986) (quoting Jones v. United States, 362 U.S. 257, 271 (1960)); Whitner, 219 F.3d at 296.

III. DISCUSSION

In this case, the June 5, 2002, affidavit provides a substantial basis for the magistrate judge to find probable cause to search the 7519 Woolston Avenue residence. The intercepted telephone calls between Young, Sr. and Theodore Young, Jr. demonstrate a high probability that illegal drug activity occurred at the location over a period of time. Pen register activity also showed frequent contact between Young, Sr. and Theodore Young, Jr. Furthermore, the affidavit provides a basis for assessing the reliability of certain confidential sources implicating Young, Sr. The affidavit states that the sources had been used by law enforcement in the past, and provided information that resulted in the confiscation of narcotics and the arrests of several individuals. See United States v. Williams, 3 F.3d 69, 72 (3d Cir. 1993) (noting the importance of informant's past reliability). Thus, the sources' statements that Young, Sr. was a member of the YHO were corroborated by independent evidence, i.e., intercepted telephone calls. See Dixon, 123 F. Supp. 2d 278, 282 (E.D. Pa. 2000) (concluding that there was a substantial basis for finding probable cause when informant's statement regarding purchase of drugs was corroborated).

In addition to finding that the search warrant and affidavit are supported by probable cause, I note that Young, Sr. lacks standing to object to the heroin recovered from the outside rear of the residence. Young, Sr. abandoned possession or ownership of the bundles of heroin by throwing them out of the window. Hester v. United States, 265

U.S. 57 (1924). A warrantless search and seizure of abandoned property, as in the discarded heroin, does not violate the Fourth Amendment. Abel v. United States, 362 U.S. 217, 241 (1960).

IV. CONCLUSION

Based upon my finding that the affidavit provided a substantial basis to support a finding of probable cause to issue a search warrant, and in consideration of the government's representation that it does not intend to introduce Young, Sr.'s statement regarding where he received the heroin, I will deny Young, Sr.'s motions. An appropriate order follows.

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ORDER

AND NOW, this 24th day of July, 2006, upon consideration of defendant Theodore Young, Sr.'s Motions to Suppress Statements and Physical Evidence (Document #'s 310 and 311), the government's response thereto, and oral arguments held on May 16, 2006, it is hereby **ORDERED** that the motions are **DENIED**.

BY THE COURT:

s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.