

Thomas J. Rueter, United States Magistrate Judge for the Eastern District of Pennsylvania, on August 5, 2005. (Search Warrant For Various Properties.) The evidence contained in both affidavits was obtained from a number of sources. (Burden Hill Search Warrant Aff. at 2.) Those sources included, *inter alia*, wiretaps of two cellular phones belonging to co-defendant Alton Coles, observations of ATF agents, detectives, and the police, and interviews with confidential sources. (*Id.*)

The agents conducting the search on August 10, 2005, knocked on the door of 5 Burden Hill Road and announced their presence at approximately 6 AM. (Hr'g Tr. 4, August 31, 2007.) There was no reply, so the agents entered the premises to find Defendant, his girlfriend and co-defendant, Thais Thompson, and two of her children. (*Id.* at 4-5.) The agents did a preliminary sweep of the house for any additional occupants or threats. (*Id.* at 5.) They then escorted Thompson and her children outside of the residence and to a government vehicle. (*Id.*)

Agents seized numerous pieces of evidence from the home. (*Id.* at 9.) That evidence included a large quantity of ammunition, a digital scale, a firearm in a handbag, over \$500,000 in cash found in various locations around the home, as well as kilo wrappers for packaging cocaine. (*Id.* at 9-10.) During the search, a narcotics detection dog was brought in to assist in looking for drugs. (Doc. No. 428.) Following the search of the house, the dog sniffed around the outside of a 2001 Chevrolet Suburban. (*Id.*) When he reached the rear of the car, the dog alerted, indicating the presence of drugs. (*Id.*) The vehicle was seized and a search warrant was obtained for the vehicle. (*Id.*) Execution of that search warrant² resulted in the seizure of 547 grams of

² The car was seized immediately but the search warrant for the car was not executed until the following day, August 11, 2005.

cocaine from the car. (*Id.*)

The search of the house was completed in approximately two hours. (Hr’g Tr. 10, August 31, 2007.) As the agents were leaving the premises, Defendant Morris approached Agent Thompson-Campbell and Special Agent Weir from across the lawn and indicated that the large amount of cash seized from the home was his, and that it had recently been returned to him from a federal agency. (*Id.* at 14, 33.) He could not recall which federal agency had originally seized the money. (*Id.* at 14.)

II. LEGAL ANALYSIS

A. Suppression of Evidence Seized Under the Search Warrant for Lack of Probable Cause

Defendant contends that the affidavits in support of the search warrant for 5 Burden Hill Road lack probable cause. In determining whether a search warrant is based on probable cause, the duty of the reviewing court is to look at whether the magistrate had a “substantial basis” for concluding that probable cause existed. *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983) (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)). The Supreme Court has determined that when assessing whether probable cause exists to support the issuance of a search warrant, the magistrate must make a “practical, common-sense decision” in analyzing the “totality-of-the-circumstances,” looking to “all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information.” *Gates*, 462 U.S. at 238-39 (quoting *Jones*, 362 U.S. at 271). In this matter, the affidavit presented by Agent Tropea linked co-defendant Alton Coles, the purported drug kingpin, to his cocaine supplier, Defendant Morris, through a number of drug related telephone conversations. It identified the

residence of the cocaine supplier as 5 Burden Hill Road through phone calls to the supplier's cell phone and his residence. And it demonstrated that Defendant Morris was a resident of 5 Burden Hill Road. In reviewing a search warrant, this Court must determine only whether on the basis of the facts available and inferences permissible within the four corners of the affidavit, there was a substantial basis on which the issuing magistrate could determine that probable cause existed for the issuance of the search warrant. On the basis of the evidence presented in this affidavit, we are convinced that Magistrate Judge Rosen had a substantial basis to believe that the evidence presented and the conclusions drawn by Agent Tropea were credible. Clearly, there was a substantial basis for Magistrate Judge Rosen's conclusions that probable cause existed for the issuance of the search warrant for 5 Burden Hill Road. We are satisfied that the search warrant was properly issued.

The search warrant for Burden Hill was issued pursuant to a 22-page affidavit. (Burden Hill Search Warrant.) The Burden Hill affidavit incorporates by reference a 127-page affidavit, which was presented to Magistrate Judge Reuter by Agent Tropea, alleging probable cause to search a number of other properties related to the cocaine distribution organization. (Search Warrant For Various Properties.) The larger affidavit outlines a significant amount of evidence placing Alton Coles at the top of the drug organization. (Search Warrant for Various Properties Aff. at 2.) Investigators were also able to identify several other members of the cocaine distribution organization who are named and linked to Coles in the larger affidavit. (*Id.*)

Burden Hill Road was not named or identified in the 127-page affidavit because investigators had only succeeded in identifying that address shortly before July 31, 2005. (Burden Hill Search Warrant Aff. at 12.) As a result, evidence of probable cause specific to 5

Burden Hill Road is outlined in the Burden Hill affidavit. Nevertheless, the Burden Hill affidavit rests upon the evidence detailed in the larger affidavit which demonstrates that Coles was at the head of an expansive cocaine conspiracy involving a number of other individuals, and which shows that evidence of this conspiracy was contained within many of the homes and cars that belong to Coles and his co-conspirators. (Search Warrant for Various Properties Aff.)

The Burden Hill affidavit states that between May 26, 2005 and July 30, 2005, investigators monitoring Coles' boost phone and his first Nextel phone via pen register recorded approximately 300 calls made between Coles and a cell phone registered under the name of Tom Robinson. (Burden Hill Search Warrant Aff. at 8 n.6.) The owner of the cell phone was identified as Defendant Morris. (*Id.* at 12-13.) Defendant's cell phone was registered under another name. This is consistent with Agent Tropea's experience that drug traffickers prefer to use cell phones, preferably phones not connected to them, to conduct business. (*Id.* at 13.) The affidavit outlines a number of the specific conversations intercepted between Coles and Defendant, which Agent Tropea was able to decipher based upon his extensive experience with drug trafficking while with the ATF. (*See* Burden Hill Search Warrant Affidavit at 12-20.) Phone calls were made to Defendant while he was at his home at 5 Burden Hill Road. Among the phone conversations, Agent Tropea identified a number of drug transaction related discussions revolving around cocaine deliveries and payments for the deliveries. Tropea's conclusion that Defendant Morris was Coles's cocaine supplier was reasonable given all of the evidence.

Although the meaning of the substance of the conversation may not be immediately obvious or clear to a lay person, Agent Tropea was able to rely on his expertise as a result of

seventeen years of experience with the ATF in determining that the conversations revolved around drug transactions. In the calls, the two men clearly spoke about meeting to make some form of an exchange. Agent Tropea's conclusions are reasonably based on the conversations intercepted. Given Agent Tropea's extensive experience, Magistrate Judge Rosen had a substantial basis for accepting Agent Tropea's interpretations of the conversations.

In the same time frame as the calls made between Coles and Defendant's cell phone, the Burden Hill affidavit cited approximately 20 relevant calls placed by Coles to the residence telephone at 5 Burden Hill Road, which is registered to co-defendant Thais Thompson. (*Id.* at 7 n. 4.) In a few of those conversations, Coles specifically asks for "Jay." (*Id.* at 12.) "Jay" Morris appears as an alias for James Morris in the FBI criminal history records. (*Id.* at 7.)

On July 31, 2005, Coles called 5 Burden Hill Road and asked for Defendant. (*Id.* at 11.) Thompson answered the phone and told Coles that Defendant was currently on an airplane but should be home around 11 PM. (*Id.*) Coles told Thompson that he had tried to reach Defendant on his cell phone first. (*Id.*) On July 27, 2005, investigators had recorded a call in which Defendant told Coles that he had to go to Cancun that week. (*Id.*) Agent Tropea identified Mexico as a well known source location for the cocaine shipped to the United States. (*Id.*)

Investigators began surveillance of the 5 Burden Hill Road address. (*Id.* at 11.) During the surveillance of the home, three cars were identified: a gold Chevrolet Suburban registered to Linda Fletcher, a red Ford Sport Utility Vehicle registered to Hillis Thompson, and a green Honda sedan registered to Thais Thompson. (*Id.* at 11-12.) All three cars were registered to the same address: 400 Alloway Aldine Road, Elmer, New Jersey. (*Id.*) Investigators from the Salem County Prosecutor's Office, who were knowledgeable about both Defendant and the residence at

5 Burden Hill Road, had observed Defendant operating the gold Chevrolet Suburban “on numerous occasions at a number of locations as late as June 2005 in Salem County, New Jersey.” (*Id.* at 12.) Defendant was also linked to 5 Burden Hill Road by a police officer with the New Jersey Department of Health and Human Services who went to the premises in a child custody matter and identified Defendant and Thompson inside. (*Id.*) Agent Tropea asserts in the Burden Hill affidavit that he expected, based upon his knowledge, experience, and training that drug equipment, contraband, weapons, and non-contraband evidence would be found at the residences and stash houses connected to the co-conspirators. (Search Warrant for Various Properties Aff. at 5-7; Burden Hill Search Warrant Aff. at 5-6, 18, 20.) Based upon all of the evidence, Agent Tropea concluded that 5 Burden Hill Road was Defendant’s residence and it was therefore likely that significant evidence, both contraband and non-contraband, would be found inside, related to his drug trafficking activities.

In determining the existence of probable cause, a magistrate cannot merely “ratif[y] the bare conclusions of others.” *Gates*, 462 U.S. at 239. However, “[t]he issuing judge or magistrate may give considerable weight to the conclusions of experienced law enforcement officers regarding where evidence of a crime is likely to be found and is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense.” *United States v. Whitner*, 219 F.3d 289, 296 (3d. Cir 2000) (citations omitted).

In addition:

While ideally every affidavit would contain direct evidence linking the place to be searched to the crime, it is well established that direct evidence is not required for the issuance of a search warrant. Instead, 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 stolen property.’

Id. at 297 (citations omitted). In particular, the Third Circuit has accepted the proposition accepted by a number of other courts of appeals that “evidence of involvement in the drug trade is likely to be found where the dealers reside.” *Id.* at 297-99.

Magistrate Judge Rosen had a substantial basis for accepting Agent Tropea’s conclusions that 5 Burden Hill Road was Defendant’s primary residence and that drug traffickers have a tendency to keep evidence of their illicit activities in their homes. *See id.* Magistrate Judge Rosen also had a substantial basis on which to accept Agent Tropea’s conclusion that there would likely be important evidence concealed at that location, and that there was probable cause to search 5 Burden Hill Road. *See id.* at 296-299.

We are satisfied that the search warrant for 5 Burden Hill Road was based upon probable cause and was properly issued.

B. Suppression of Evidence As Fruit of the Poisonous Tree

Defendant argues that the search warrant executed on August 10, 2005 relied upon a number of wire interceptions that Defendant has separately moved to suppress. He contends that if suppression of the wire interceptions is granted, the evidence seized from 5 Burden Hill Road should be suppressed as well as fruit of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 485 (1963).

A Suppression Hearing regarding intercepted wire communications was held on August 13, 2007. The Motions to Suppress Wire Interceptions were denied by **Memorandum and Order dated October 4, 2007. (Doc. No. 535.)** Defendant’s fruit of the poisonous tree argument is without merit.

III. CONCLUSION

For these reasons, we conclude that there is no basis for the suppression of the evidence seized from 5 Burden Hill Road during the August 10, 2005 search conducted pursuant to a valid search warrant. Accordingly, Defendant's Motion to Suppress will be denied.

An appropriate Order follows.

