

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

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 ALLEN WOODS : NO. 16-218-2
 :

MEMORANDUM

SURRICK, J.

JANUARY 22, 2018

Presently before the Court is Defendant Allen Woods’ Motion to Suppress Physical Evidence. (ECF No. 246.) For the following reasons, Defendant’s Motion will be denied.

I. BACKGROUND

On June 22, 2016, a grand jury returned a Superseding Indictment charging Defendant Allen Woods with conspiracy to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A) (Count One); attempted possession of 50 kilograms or more of marijuana with intent to distribute, and aiding and abetting, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(C), and 18 U.S.C. § 2 (Count Two); and conspiracy to commit money laundering and aiding and abetting, in violation of 18 U.S.C. § 1956(h) and 18 U.S.C. § 2 (Count Nine). (Superseding Indictment, ECF No. 302.) Defendant was charged with nine co-Defendants, some of whom have entered plea agreements with the Government. The Government alleges that Defendant was involved in a conspiracy, together with his nephew Jerome Woods—the leader of the organization—to transport bulk quantities of drugs. In the instant Motion, Defendant seeks to suppress evidence obtained pursuant to a search of his cellular telephone.

A. Factual Background

1. Defendant's Arrest

Defendant was arrested on June 24, 2016, at the Federal Courthouse in Philadelphia. (July 31 Hr'g Tr. 5-6.) He was attending the detention hearing of his nephew, co-Defendant Jerome Woods. (*Id.* at 5.) Prior to the arrest, FBI Special Agent Kevin Lewis had consulted with the United States Marshals Service and asked for their assistance to execute a federal arrest warrant on Defendant. (*Id.* at 5-6.) At the detention hearing, the Marshals Service approached Defendant and asked him to step outside of the courtroom. (*Id.* at 6.) Defendant was advised that there was a warrant out for his arrest and was then taken into custody. (*Id.*) Agent Lewis conducted a search of Defendant incident to arrest and found a cellular phone, keys, and a wallet. (*Id.*) Agent Lewis seized the cellular phone, but returned Defendant's wallet and keys to his sister, Larnella Woods, who was also in the courtroom for the detention hearing. (*Id.*) Later that day, Defendant had his initial appearance before a magistrate judge. (*Id.* at 7.)

2. Search Warrant and Affidavit

On September 9, 2016, Agent Lewis obtained a search warrant for three of Defendant's cellular phones from Magistrate Judge Lynn Sitarski. (*Id.*; Lewis Aff., Gov't's Resp. Ex. 1 Att. A.) One of the three cellular phones was the LG cellular phone seized incident to Defendant's arrest on June 24, 2016 at Jerome Woods' detention hearing. (July 31 Hr'g Tr. 7; Search Warrant Lewis, Gov't's Resp. Ex. 1.)¹ The other two Sanyo Boost cellular phones were found on Defendant during his 2011 arrest in Arizona. (Lewis Aff. 3.)²

¹ This cellular phone is referred to as "Subject Telephone #3" in the Affidavit of Probable Cause supporting the Search Warrant. (Lewis Aff. 3.)

² Defendant's Motion does not raise any objections to the search of the two Sanyo Boost cellular phones that were taken from Defendant in 2011.

The Affidavit of Probable Cause outlines Agent Lewis's investigation into the drug trafficking organization and Defendant's participation in that organization. (Lewis Aff. 3-5.) Specifically, Agent Lewis describes information that he learned from Cooperating Witness #1 ("CW-1"), who from 2010 through 2012, transported money and drugs for the organization in his tractor-trailer truck from Philadelphia to Phoenix, Arizona. CW-1 identified Jerome Woods, or "Nah" as the leader of the organization, and Defendant, also known as "Unc," as an organization member who would accompany him on numerous trips from Arizona to Philadelphia. (*Id.* at 4.) The Affidavit also describes Defendant's early 2011 arrest in Phoenix, Arizona after Defendant attempted to purchase 400 pounds of marijuana. At the time of this arrest, police confiscated the two cell phones that are also subjects of the Search Warrant, in addition to nearly \$200,000, a handgun, a money counter and a digital scale. (*Id.*) Defendant was later found guilty and sentenced to two years and six months in prison. (*Id.* at 6.) He was released from prison in Arizona in 2013. (*Id.*)

The Affidavit also includes information about Defendant's connection to Kevin Willoughby, who was arrested with 180 pounds of marijuana in Virginia in June of 2014. (*Id.* at 7-8.) Willoughby was another tractor-trailer driver for the Jerome Woods' drug organization and transported boxes of marijuana for the organization in late 2013 and 2014. (*Id.* at 7.) Information that the FBI obtained from Willoughby's cellular phone revealed that he had been in contact with Defendant and Jerome Woods on multiple occasions prior to his arrest. (*Id.*) Willoughby told law enforcement that he met Defendant in Phoenix, and that Defendant assisted with loading boxes of marijuana onto his tractor-trailer and delivered keys to storage units where the drugs were stored. (*Id.* at 8.)

The Affidavit also states that pursuant to telephone toll records, Defendant's cellular phone had approximately 350 contacts with Jerome Woods' cellular phone between September 2015 and December 2015. (*Id.*) Defendant also had over 400 contracts with Jerome Woods between February 24, 2016 and June 20, 2016. (*Id.*)

Finally, the Affidavit describes the arrest of Jerome Woods, Defendant's nephew on June 16, 2016 in Philadelphia. FBI agents had to breach the door when nobody responded to the officers' knock and announce. (*Id.* at 9.) Jerome Woods was eventually located in the basement of the residence. Agents discovered numerous bags of cocaine spread around the bathroom floor in the basement, just feet away from where they first observed Jerome Woods. (*Id.*) The agents also seized a scale and numerous cellular phones from the residence. (*Id.*)

In the Affidavit, Agent Lewis states that, based on his training and experience, he knows that drug traffickers use their cellular phones to communicate with co-conspirators to facilitate, plan, and execute drug transactions. (*Id.* at 10.) He also states that drug traffickers often store contact lists, address books, calendars, photographs, videos, audio files, text messages, call logs, and voicemails in their cellular phones, to be used in furtherance of their drug trafficking activities. (*Id.*) Agent Lewis states that drug traffickers use cellular phones to communicate with associates, whether by call, text, or voicemail. (*Id.*)

B. Procedural History

Defendant filed the Motion to Suppress on May 8, 2017. (Def.'s Mot., ECF No. 246.) The Government filed a Response in Opposition on July 7, 2017. (Gov't's Resp., ECF No. 283.) On July 31, 2017, an evidentiary hearing was held on the Motion. (July 31 Hr'g Tr. (on file with Court).)

II. DISCUSSION

Defendant argues that law enforcement seized and searched his cellular phone without probable cause. The Government responds that (1) the seizure of the phone was proper as it was incident to a lawful arrest, and (2) the search warrant affidavit was based on probable cause.

A. Seizure of Defendant's Cellular Phone

In his Motion, Defendant argues that his cellular phone was illegally seized. In particular, he contends that the phone was not seized from his person, but rather from a third party, and thus, a search incident to a lawful arrest exception does not apply. Defendant offered no testimony to support this contention at the suppression hearing. In fact, Agent Lewis specifically testified that he confiscated the cellular telephone from Defendant and not from another person. Defendant's cellular phone was properly seized during a search incident to a lawful arrest.

A search incident to a lawful arrest does not violate the Fourth Amendment. *United States v. Robinson*, 414 U.S. 218, 234-35 (1973). Although the Fourth Amendment generally requires law enforcement officers to obtain a warrant before searching persons or property, the search incident to arrest exception permits law enforcement effectuating an arrest to conduct a contemporaneous warrantless search of the arrestee and of "the space within an arrestee's 'immediate control[.]'" *Arizona v. Gant*, 556 U.S. 332, 339 (2009). The purpose of this exception is to "protect[] arresting officers and safeguard[] any evidence of the offense of arrest that an arrestee might conceal or destroy." *Id.*; see also *Allison v. GEO Grp., Inc.*, 611 F. Supp. 2d 433, 441 (E.D. Pa. 2009). Agent Lewis was well within his authority to seize Defendant's cellular phone at the time of his arrest and detention at the Federal Courthouse. The fact that Agent Lewis ultimately returned Defendant's keys and wallet, but not his cellular phone, to

Defendant's sister is of no consequence. Agent Lewis did not search the cellular phone at that time, but instead waited until he obtained a search warrant from a magistrate judge to access the contents of the phone. There was no Fourth Amendment violation here.

B. Search of Cellular Phone

Defendant also argues that Agent Lewis's Affidavit in support of the Search Warrant lacked probable cause to believe that evidence of drug activity would be located on Defendant's cellular phone.

Under the Fourth Amendment, a search warrant must be issued on the basis of probable cause. U.S. Const. amend. IV. To establish probable cause, a warrant application must show that there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). As the district court reviewing the magistrate judge's determination, we are required only to "ensure that the magistrate had a substantial basis for concluding that probable cause existed." *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983) (internal quotation marks omitted). The role of the magistrate judge is to "simply make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit" probable cause exists. *Id.* Probable cause may be inferred from "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 [evidence]." *United States v. Stearn*, 597 F.3d 540, 554 (3d Cir. 2010) (citation omitted).

Defendant argues that probable cause is lacking because there is no evidence in the Affidavit that Defendant used a cellular phone to engage in drug trafficking activity subsequent to his 2011 arrest and conviction in Arizona. Defendant's argument does not square with the information contained in the Affidavit. The Affidavit describes telephonic contacts with

Willoughby in 2013 and 2014 and with Jerome Woods late 2015 and early 2016. In particular, the Affidavit states that in June 2014, Kevin Willoughby was arrested and found in possession of 180 pounds of marijuana. The Affidavit also makes clear that Willoughby told law enforcement that he had been transporting marijuana for the organization since late 2013, and that Allen Woods assisted with loading drugs onto his trailer, and providing keys to storage facilities that housed the drugs. The Affidavit also states that an investigation of Willoughby's phone revealed that Allen Woods "had multiple contacts" with Willoughby's phone, "including telephonic and text messages." (Lewis Aff. 7.) In addition, the Affidavit makes clear that in the months leading up to his arrest, Defendant had been in frequent contact with his nephew, who law enforcement understood to be the leader of the trafficking organization. Law enforcement discovered that there were approximately 400 contacts over a four-month period from February to June 2016, when Defendant was arrested. *See United States v. Valles*, 521 F. App'x 92, 94-95 (3d Cir. 2013) (concluding that probable cause supported search warrant affidavit and finding relevant the fact that the defendant made frequent telephone calls to his nephew who was the leader of the drug organization)

Defendant also argues that probable cause is lacking because the information contained in the Search Warrant Affidavit is stale. Specifically, he states that the last act of drug activity attributable to Defendant—and indeed as included as an overt act in the Indictment—is dated June 2014, which is too attenuated in time to establish probable cause for a September 2016 search warrant. This argument also fails.

"The age of information supporting a warrant application is a factor that must be considered in determining probable cause." *United States v. Williams*, 124 F.3d 411, 420 (3d Cir. 1997) (citation omitted). If information contained in an Affidavit is too old, it will have

minimal value. *Id.* However, “[a]ge alone . . . does not determine staleness.” *Id.*; *see also United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir. 1993) (“The determination of probable cause is not merely an exercise in counting the days or even months between the facts relied on and the issuance of the warrant.” (quoting *United States v. Williams*, 897 F.2d 1034, 1039 (10th Cir. 1990))). Instead, courts should undertake a holistic review of the facts alleged in the search warrant affidavit and examine both “the nature of the crime and the type of evidence.” *Harvey*, 2 F.3d at 1322.

A holistic review of the Affidavit reveals that Defendant’s involvement in his nephew’s drug trafficking organization was continuous and ongoing. “[T]he mere passage of time does not render information in an affidavit stale where [] the facts suggest that the activity is of a protracted and continuous nature.” *United States v. Yusuf*, 461 F.3d 374, 391 (3d Cir. 2006). Defendant had engaged in the drug trafficking back in 2011, which resulted in an arrest, conviction, and sentence. Despite this conviction and sentence, Defendant nevertheless continued to participate in his nephew’s drug trafficking activities. According to Willoughby, Defendant had been involved in the same scheme to transport bulk quantities of marijuana from Arizona to Philadelphia in late 2013 and 2014. Evidence of Defendant’s involvement continued through the time of his arrest in 2016. Jerome Woods was discovered with large quantities of cocaine at the time of his arrest in June 2016, and in the months preceding this arrest, Defendant had contacted Jerome Woods over 400 times. This frequency of contact is not explained simply by the familial relationship between the men.

Based upon all of this, there was a fair probability that evidence of drug trafficking would be found on the cellular phone seized from Defendant at the time of his arrest in July 2016. *See United States v. Caple*, 403 F. App’x 656, 659 (3d Cir. 2010) (concluding that because the

Affidavit showed that defendant's drug trafficking activity defendant engaged in a continuing criminal enterprise, "it was reasonable to conclude that the items sought as evidence of [his] drug trafficking would be maintained for a period of time"). The magistrate judge had a substantial basis for concluding that probable cause existed. Accordingly, Defendant has suffered no Fourth Amendment violations.

Even if probable cause were lacking—although here, it is not—law enforcement was permitted to rely on the affidavit in good faith. "Typically, the mere fact that an officer has obtained a search warrant is sufficient to establish good faith." *United States v. Gallo*, 110 F. App'x 265, 267-70 (3d Cir. 2004) (citing *United States v. Hodge*, 246 F.3d 301, 307-08 (3d Cir. 2001)). The Third Circuit has identified four circumstances under which a law enforcement officer's reliance on a warrant is unreasonable under the good faith doctrine:

- (1) [when] the magistrate [judge] issued the warrant in reliance on a deliberately or recklessly false affidavit;
- (2) [when] the magistrate judge abandoned his judicial role and failed to perform his neutral and detached function;
- (3) [when] 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) [when] the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

Hodge, 246 F.3d at 308. None of those circumstances apply here. There have been no allegations that the warrant contains deliberately or recklessly false information, or that the magistrate judge abandoned her judicial role. In addition, the Warrant sufficiently described the place to be searched—Defendant's cellular phone—and the things to be seized from that phone. Finally, as described above, the warrant is based on probable cause.

III. CONCLUSION

For these reasons, Defendant's Motion to Suppress Physical Evidence will be denied.

An appropriate Order follows.

BY THE COURT:

/s/ R. Barclay Surrick
U.S. District Judge

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ORDER

AND NOW, this 22nd day of January, 2018, upon consideration of Defendant Allen Woods' Motion to Suppress Physical Evidence (ECF No. 246), and all documents submitted in support thereof and in opposition thereto, and after a hearing in open Court, it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
U.S. District Judge