

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

<b>UNITED STATES</b>	:	<b>CRIMINAL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 04-CR-603-1</b>
	:	
<b>JOSEPH MITCHELL</b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**March 1, 2005**

Defendant Joseph Mitchell has submitted a Motion to Suppress Certain Physical Evidence obtained from the search of 531 N. Allison Street, Philadelphia, Pennsylvania, pursuant to a state warrant issued on August 23, 2004. A hearing was conducted before this Court on February 18, 2005. For the reasons that follow, the Motion will be denied.

**I. Background**

Defendant is charged with possession of a firearm with an obliterated serial number, in violation of 18 U.S.C. §§ 922(k) and 924(a)(1)(B). On August 24, 2004, police executed a search warrant for 531 N. Allison Street, Philadelphia, PA, which was obtained from Philadelphia Common Pleas Court Judge Amanda Cooperman. The basis of this warrant was an affidavit submitted by Detective Chris Marano of the Philadelphia Police Department (“Affidavit”). In his Affidavit, Detective Marano states the following: On August 17, 2004, at around 3:50 p.m., a shoot-out reportedly occurred in the area of 56th and Girard Avenue. Several individuals phoned “911” and reported “males shooting at each other.” Upon arrival, police identified over 27 fired cartridges and a 60-year-old complainant, who had apparently been caught in the cross fire and shot in the shoulder while driving by. Police also reported extensive

property damage.

The Affidavit continues that on or about August 20, 2004, Special Agent Chad Campanell of the Bureau of Alcohol, Tobacco, Firearms, and Explosives met with a confidential informant (“CI”), who claimed to have information related to the shooting. The CI, who is registered (with an identification number of C/I#766030-277), reportedly told Campanell that he or she overheard Defendant discussing the shooting, with Defendant stating “I gave ‘em thirty the other day and I’m gonna give them thirty every time I see them.” According to the Affidavit, the CI identified a picture of Defendant at the police station and a picture of a firearm, a Mac 11 semi-automatic pistol, Defendant was allegedly carrying. The CI further told police that Defendant is known to carry a gun and wear a bullet-proof vest. The CI stated that Defendant had recently beat a murder charge and that he lived with his grandmother at 531 N. Allison Street.

After receiving this information, Det. Marano states in the Affidavit that he pulled Defendant’s police record to corroborate what he had learned. Defendant had previously been arrested for murder. In addition, the Affidavit states that Bureau of Motor Vehicle files and voter registration confirmed that Defendant resided at the Allison Street address. Based on this information, a warrant was issued.

On August 24, 2004, the warrant for the Allison Street address was executed at approximately 6:30 a.m.<sup>1</sup> Upon entry, agents reportedly encountered Defendant on a couch with a large semi-automatic firearm next to him. He was detained, as was a juvenile male in the room

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<sup>1</sup> In his Motion to Suppress, Defendant claimed the warrant was executed untimely, but withdrew this objection at oral argument. See Fed. R. Crim. P. 41(a)(2)(B).

and a third man in a different part of the house. A search of the couch where Defendant was first observed and the surrounding area yielded several firearms.<sup>2</sup> In addition, police seized ammunition, several identifying documents, a small quantity of marijuana, and a ballistics vest. Defendant was arrested based on this evidence and now brings this Motion to Suppress.

## **II. Legal Standard**

In a motion to suppress, the burden is on the defendant to show by a preponderance of the evidence that a search was invalid and that his rights were violated. See United States v. Acosta, 965 F.2d 1248, 1257 n.9 (3d Cir. 1992); United States v. Matlock, 415 U.S. 164, 178 n.14 (1974). Where a search is conducted pursuant to a warrant, a reviewing court need only determine whether the magistrate or issuing judge had a substantial basis for determining that probable cause existed, based on the totality of the circumstances. See United States v. Hodge, 246 F.3d 301, 305 (3d Cir. 2001) (citing Illinois v. Gates, 462 U.S. 213 (1983)); see also United States v. Daly, 937 F. Supp. 401, 407 (E.D. Pa. 1996); United States v. Martinez-Zayas, 658 F. Supp. 79, 82 (E.D. Pa. 1987). Furthermore, under the “good faith” exception enunciated in United States v. Leon, the exclusionary rule will not apply and a motion to suppress must be denied where evidence was obtained by officers acting in reasonable reliance on a search warrant issued by a neutral and detached magistrate. See 468 U.S. 897, 926 (1984); see also United States v. Williams, 3 F.3d 69, 74 (3d Cir.1993).

## **III. Discussion**

Defendant makes several claims in support of his Motion to Suppress. First, Defendant

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<sup>2</sup> (1) SWD Intratec Mac 11, 9 mm pistol; (2) a Glock semi-automatic handgun; (3) a Rossi .357 caliber revolver; (4) a Smith & Wesson .38 caliber revolver; and, (5) a Ruger semi-automatic P90 .45 caliber handgun.

argues that the warrant was issued improperly and not supported by probable cause because it failed adequately to state the basis of the CI's knowledge and reliability. Second, Defendant asserts that the government did not have sufficient probable cause to search the particular premises at Allison Street. Finally, Defendant argues that the warrant was overbroad, in violation of the Fourth Amendment's requirements of particularity.<sup>3</sup>

Without reaching the question regarding the sufficiency of probable cause based solely on the information provided by the CI, it is clear that the Leon good faith exception compels the denial of the Motion to Suppress in this case. The good faith exception provides that suppression of evidence "is inappropriate when an officer executes a search in objectively reasonable reliance on a warrant's authority." As detailed in Leon, the test for whether the good faith exception applies is "whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." Leon, 468 U.S. at 922 n.23. This rule will not apply if: (1) the warrant affidavit is recklessly or intentionally false; (2) the warrant is based on an affidavit so lacking in probable cause as to render official belief in its existence entirely unreasonable; (3) when the warrant is so facially deficient that it fails to state with particularity the place to be searched and the things to be seized; or, (4) when the magistrate failed to act in a neutral or detached manner in issuing the warrant. See Hodge, 246 F.3d at 308; Williams, 3 F.3d at 74 n.4.

None of the described exceptions apply in this case. First, there is no evidence the

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<sup>3</sup> As an initial matter, the government agrees that Defendant had a reasonable expectation of privacy in the area searched, as he was at least an overnight guest in the residence. See, e.g., Minnesota v. Carter, 525 U.S. 83, 90 (1998) (extending Fourth Amendment protections to overnight guests).

magistrate failed to act in a neutral or detached manner or that the supporting Affidavit was intentionally or recklessly false. Second, the warrant stated with sufficient particularity the items sought to be recovered. The warrant authorized police to search for “any and all firearms, ammunition, ballistics vests, any and all contraband and any and all items linking the below male to the crime of aggravated assault.” This was not a “general” warrant merely because it described a category of items to be seized; a warrant will satisfy the Fourth Amendment’s particularity requirement though it describes in inclusive, generic terms what is to be seized, provided it does not vest officers with unbridled discretion to search and seize whatever they wish. See United States v. \$92, 422.57, 307 F.3d 137, 149 (3d Cir. 2002); see also United States v. Shields Rubber Corp., 732 F. Supp. 569, 570 (W.D. Pa. 1989) (finding generic classifications in search warrant acceptable); cf. Groh v. Ramirez, 540 U.S. 551, 557-58 (2004) (condemning warrants that authorize a general, exploratory rummaging through a person’s belongings). Here, officers were clearly limited to firearms and other evidence linking Defendant to the commission of a certain crime. Also, to the extent that the warrant Affidavit provided probable cause to believe Defendant was involved in a crime, it in turn provided a reasonable basis for concluding that evidence of the crime would be found at the Allison Street address, as vehicle and voter registration records confirmed that this was Defendant’s residence.

Moreover, police were entitled to seize the marijuana, as it is well established that police may seize contraband that they find in plain view within the permitted search area. See Coolidge v. New Hampshire, 403 U.S. 443, 465-66 (1971); Arizona v. Hicks, 480 U.S. 321, 326-27 (1987). Police were not prohibited from seizing contraband in the residence merely because it had not been listed on the warrant. In addition, police properly seized identifying documents

near where certain firearms were found– to establish residence or possession on the part of Defendant– as evidence “linking [Defendant] to the crime of aggravated assault.”

Finally, the Affidavit was not so lacking in probable cause that an executing officer could not reasonably have relied on it. In assessing a warrant application based on information provided by a CI, a judge must consider the past reliability of the informant, the basis of the individual’s knowledge, corroboration of the information through independent sources, the extent to which the CI was able to provide information predicting future actions, and the level of detail of the information provided. See Daly, 937 F. Supp. at 408; United States v. Gagnon, 373 F.3d 230, 236 (3d Cir. 2004). No one factor is required; instead, a court must balance these factors in determining whether or not to base a warrant on the information. Daly, 937 F. Supp. at 408. Courts should reject warrants based on uncorroborated statements by an unidentified informant, where there is no additional evidence or independent investigation to support the CI’s claims. See, e.g., United States v. Fields, 182 F. Supp. 2d 575, 579 (E.D. Tex. 2002); cf. United States v. Dixon, 123 F. Supp. 2d 278, 282 (E.D. Pa. 2000) (upholding warrant based on confidential informant’s information where information was corroborated by independent investigation); United States v. Walke, 2005 WL 61438, at \*1 (E.D. Pa. Jan. 10, 2005) (upholding warrant where informant previously provided reliable information).

Here, police worked with a registered informant, who specified his basis of knowledge and details about Defendant that police could corroborate. This Court must afford “great deference” to the magistrate’s determination that the Affidavit set forth a sufficient basis of probable cause. See Martinez-Zayas, 658 F. Supp. at 82. Moreover, the warrant was not clearly lacking in the indicia of probable cause or otherwise facially deficient. Thus, it was objectively

reasonable for officers to rely on the warrant. See Hodge, 246 F.3d at 309. Accordingly, the Leon good faith exception to the exclusionary rule mandates denial of suppression of the evidence in this case.

#### **IV. Conclusion**

For the foregoing reasons, the Court will deny Defendant's Motion to Suppress. An appropriate Order follows.

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**ORDER**

**AND NOW**, this 1st day of March, 2005, upon consideration of Defendant's Motion to Suppress Certain Physical Evidence (docket no. 29), the government's response thereto, and after a hearing on February 18, 2005, it is **ORDERED** that the Motion is **DENIED**.

**BY THE COURT:**

S/Bruce W. Kauffman  
**BRUCE W. KAUFFMAN, J.**