

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 : NO. 05-440-14
 :
 DESMOND FAISON :

SURRICK, J.

JANUARY 25, 2008

MEMORANDUM & ORDER

Presently before the Court is Defendant Desmond Faison's Motion to Suppress Physical Evidence (**Doc. No. 421**), **seized as a result of the search of 6432 Garman Street in Philadelphia on July 20, 2004.**¹ **A Suppression Hearing was held on August 15, 2007.** For the following reasons, Defendant's Motion will be **denied**.

I. BACKGROUND

On June 8, 2004 the Philadelphia Police began a surveillance of several individuals suspected of narcotics distribution in and around the Paschal Housing Project in Southwest Philadelphia. (Suppression Hr'g Tr. 135, Aug. 15, 2007; Doc. No. 476-2 at 2.) This investigation was initiated pursuant to information and complaints received from citizens suggesting that narcotics sales were taking place in this area. (Doc. No. 476-2 at 2.) At

¹ Defendant filed an omnibus Motion to Suppress Physical Evidence seized in searches conducted on five different dates: March 30, 2001; July 28, 2003; December 5, 2001; June 16, 2004; and July 20, 2004. (Doc. No. 421.) Defendant's Motion does not allege specific facts regarding the searches on these dates, but rather alleges generally that all of the searches in question were unconstitutional for a number of reasons. (*See id.*) The Government filed an Omnibus response to Defendant's Motion. (Doc. No. 476.)

approximately 7:15 p.m. on June 8, the Philadelphia police officers set up a surveillance of the 7200 block of Saybrook Avenue. (*Id.*) In conjunction with the surveillance, Officer Brian Monaghan set up a controlled buy of narcotics by a confidential informant. (*Id.*) Officer Monaghan has been a Philadelphia police officer for eighteen and one half years. (Hr'g Tr. 127.) He has been doing narcotics investigations for nine years. He is presently assigned to the Narcotics Bureau and is on detail to the ATF. (*Id.*) After searching the confidential informant, Monaghan gave the informant pre-recorded buy money. (Doc. No. 476-2 at 2.) The confidential informant then made a phone call. (*Id.*) As a result of the phone call the confidential informant went to a designated location. (*Id.*) Police officers then observed a black woman, later identified as Lynette Simpson, leaving the property at 7283 Saybrook Avenue on a bicycle. (*Id.*) She went to the area where the confidential informant was waiting. (*Id.*) Simpson and the confidential informant had a brief conversation and the confidential informant handed Simpson the pre-recorded buy money. (*Id.*) Simpson removed several small objects from her pocket and handed them to the confidential informant. (*Id.*) Simpson then returned to 7283 Saybrook Avenue. (*Id.*) The confidential informant returned to Officer Monaghan and handed him the objects that he had received from Simpson. (*Id.*) A field test of these objects was positive for cocaine base.

On June 9, 2004, Philadelphia Police observed Defendant Desmond Faison drive up to 7283 Saybrook Avenue in a black Lincoln. (*Id.*) The Defendant was permitted to enter 7283 Saybrook Avenue by a black woman. (*Id.*) A few seconds later Defendant exited holding a large amount of United States currency. (*Id.*) The Defendant was joined by an unknown black man who got into Defendant's car. (*Id.*) The vehicle pulled away and Defendant and the unknown man were observed driving to the 6400 block of Garman Street. (*Id.*) Defendant and his

companion were observed entering 6432 Garman Street, with Defendant using a key. (*Id.*) Shortly thereafter, Defendant and his companion left 6432 Garman Street, with Defendant again using a key to lock the door. (*Id.*) Police then observed Defendant's black Lincoln drive to the 7200 block of Saybrook Avenue. (*Id.*) A second unknown black man approached the driver's side of the Lincoln and handed Defendant a large bundle of United States currency. Defendant gave the unknown male a clear baggie containing objects which the unknown man then tucked into his waistband. (*Id.*) Defendant's vehicle was then observed driving back to the 6400 block of Garman Street, and Defendant was seen entering 6436 Garman Street. (*Id.*)

On June 10, 2004, Police observed the Defendant's black Lincoln leave the property at 6432 Garman Street and proceed to the 7200 block of Saybrook Avenue. (*Id.* at 3.) Defendant was approached while in his vehicle by Lynette Simpson. (*Id.*) Simpson was observed handing United States currency to Defendant. (*Id.*) Defendant then drove his vehicle back to 6432 Garman Street and entered the home. (*Id.*)

On July 20, 2004, Defendant Faison was observed removing clear plastic baggies from his pants and placing them under the driver's seat of his vehicle which was parked in a rear driveway on the 6400 block of Garman Street in Philadelphia. (Hr'g Tr. 128.) Philadelphia police officers continued their surveillance as Defendant entered his black Lincoln and drove to the 7100 block of Grays Avenue. (*Id.* at 128-29.) Upon reaching Grays Avenue, another man, later identified as Jamar Simmons, joined Defendant in the passenger side of the vehicle. (*Id.* at 129.) Simmons remained in the vehicle for a few seconds and then exited carrying several clear plastic baggies. (*Id.*) Defendant then drove away in his vehicle. The police continued their surveillance. (*Id.*) When Simmons was approached by police officers on Grays Avenue he

attempted to discard the clear plastic baggies. (*Id.*) The police officers retrieved the baggies which contained 20.7 grams of crack cocaine. (Doc. No. 476-2 at 3.) Simmons also had \$202 on his person. (Hr'g Tr. 129-130.) Shortly thereafter, police officers observed Defendant parking his vehicle at the 2200 block of 72nd Street and exiting the vehicle. (*Id.* at 130.) Police officers approached Defendant as he was walking down 72nd Street, speaking into his cell phone. (*Id.*) Police officers arrested Defendant and seized \$1,528 in United States currency from him as well as his cellular telephone. (*Id.* at 131.) During the arrest of Defendant, police observed numerous people on the street, some operating cell phones, passing along word of the Defendant's arrest to unknown persons. (*Id.*) Based on this chatter, the police decided that they should immediately secure the property at 6432 Garman Street. (*Id.*)

Police arrived at 6432 Garman Street and were greeted at the door by Defendant's mother. (*Id.* at 139.) The police entered the property prior to obtaining a warrant to secure the property. (*Id.*) The police did not search for or seize any evidence prior to obtaining a search warrant. (*Id.*) The police applied for and were issued Search Warrant Number 114560 for the property at 6432 Garman Street. (*Id.* at 132; Doc. No. 476-2 at 4.) The search warrant permitted the police to search for and seize "cocaine, proof of residence, ownership, records of illegal narcotic activity, USC [United States Currency], proceeds of illegal narcotic sales, weapons" (Doc. No. 476-2 at 4.) Upon executing this warrant, police found one packet of crack cocaine, a box of small baggies, mail in the name of Desmond Faison, and several parking tickets identifying Defendant and the vehicle that he was driving before he was apprehended. (Hr'g Tr. at 132.)

II. LEGAL ANALYSIS

The Fourth Amendment of the United States Constitution guarantees that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation” U.S. Const. amend. IV. The Fourth Amendment “protect[s] the basic right to be free from unreasonable searches and seizures” and “requir[es] that warrants be particular and supported by probable cause.” *Payton v. New York*, 445 U.S. 573, 584 (1980). It is clear that the “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Id.* at 585 (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)).

Where a search has been conducted pursuant to a warrant approved and issued by a neutral and detached magistrate judge, a district court must exercise a deferential review of the probable cause determination made by the magistrate. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983). A warrant should be upheld as long as the issuing authority had a “substantial basis for . . . conclud[ing] that probable cause existed.” *Id.* The Supreme Court has defined “probable cause” as “a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.*

Probable cause is determined based upon the totality of circumstances. Probable cause exists if, “given all the circumstances set forth in the affidavit . . . including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238. Probable cause may be based on a police officer's observations or experience, *United States v.*

Jenkins, 901 F.2d 1075, 1080-81 (11th Cir.1990), or information from a reliable, known informant or information from an independent source that can be independently corroborated.

United States v. Stiver, 9 F.3d 298, 300-01 (3d Cir. 1993).

In this case, the search warrant is clearly supported by probable cause. On multiple occasions prior to seeking a search warrant, Philadelphia police officers observed Defendant engaging in transactions which, based upon their experience, they believed to be narcotics sales. The affidavit of Officer Monaghan identifies in detail the evidence adduced during extensive surveillance which linked Defendant and his home to suspected narcotics sales. This evidence includes the Defendant's entering and exiting 6432 Garman Street prior to or following several transactions with other individuals in which Defendant was given money. This included Defendant entering the subject property after receiving money from Lynette Simpson who was seen selling drugs to a confidential informant in a controlled narcotics buy. Defendant was also seen interacting with Jamar Simmons after which Simmons exited Defendant's car with baggies in his possession. When Simmons was stopped, the baggies were found to contain crack cocaine.

The Third Circuit has noted that "evidence of involvement in the drug trade is likely to be found where the dealer resides." *United States v. Whitner*, 219 F.3d 289, 297 (3d Cir. 2000). It was certainly reasonable for the issuing authority to conclude based upon Defendant's actions during the lengthy surveillance that Defendant was engaged in the business of selling narcotics. In addition, his entry into and exit from the house 6432 Garman Street during the course of this surveillance provided an explicit tie between his suspected activity and the property in question.

The issuing authority "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. Lawson*, 999 F.2d 985, 987 (6th Cir. 1993) (quoting *United States v. Fannin*, 817 F.2d 1379, 1382 (9th Cir. 1987); *United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986)); *see also*, *Whitner*, 219 F.3d at 297.

In this case, the officer providing the affidavit, Officer Monaghan, was at the time a fifteen year veteran of the Philadelphia police force, with nine years of experience in narcotics investigation. Philadelphia police believed that evidence of illicit narcotics trade was present at 6432 Garman Street and that it was at risk of being removed or destroyed if the property was not secured and searched. Their belief was based upon observing a controlled drug transaction with Lynette Simpson, watching Defendant retrieve money from the address where Simpson was **observed and take that money directly to the Garman Street address**, observing Defendant conduct an apparent drug transaction with an unknown black male and then immediately return to the Garman Street address, and finally watching Defendant allow Jamar Simmons get into his car and then leave with plastic baggies that Defendant had put in the car and that contained crack cocaine. It was entirely reasonable for the issuing authority to conclude that there was probable cause to believe that evidence of illegal drug activity would be found at 6432 Garman Street.

At the suppression hearing, Defendant Faison raised the issue of his vehicle having tinted glass. (Hr’g Tr. 138.) The implication was that the police did not have a sufficient view of Jamar Simmons when he was in the vehicle with Defendant Faison to actually observe him engaging in illegal activity. (*Id.*) This argument is unavailing. “[P]robable 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 [illicit]

property.’” *United States v. Jones*, 994 F.2d 1051, 1056 (3d Cir. 1993) (quoting *United States v. Jackson*, 756 F.2d 703, 705 (9th Cir. 1985)). As discussed above, there was ample evidence to establish probable cause, notwithstanding any hindrance to direct eyewitness observation through the glass on the Defendant’s vehicle. Defendant was seen putting plastic baggies into his car. Simmons was seen taking plastic baggies out of the car. Those baggies contained crack cocaine.

Similarly, the Defendant’s suggestion that he was not seen taking anything into or out of the house at 6432 Garman Street, nor otherwise engaging in illegal activity on the day in question misses the point. The Philadelphia police investigation was aimed at uncovering an ongoing narcotics distribution operation in the neighborhood of the Paschal Housing Projects. Surveillance was conducted over a period of several days. Defendant was seen interacting with people in a manner consistent with narcotics distribution. He was also seen entering and leaving the Garman Street address in the course of these activities. There is more than sufficient evidence to establish probable cause to believe that there was a connection between the property to be searched and the illegal activity.

III. CONCLUSION

For these reasons, we conclude that Defendant’s Motion to Suppress Physical Evidence obtained from the premises at 6432 Garman Street on July 20, 2004 is without merit. Accordingly, Defendant’s motion will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 25th day of January, 2008, upon consideration of Defendant Desmond Faison's Motion to Suppress Physical Evidence seized on July 20, 2004 (Doc. No. 421), and after a hearing, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

Barclay Surrick, Judge

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