

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 DANTE TUCKER : NO. 05-440-10
 :

SURRICK, J.

FEBRUARY 1, 2008

MEMORANDUM & ORDER

Presently before the Court is Defendant Dante¹ Tucker's Motion to Suppress Physical Evidence (Doc. No. 457), Defendant's Supplement [sic] Motion for Suppression of Evidence (Doc. Nos. 518, 527), as well as the Government's responses thereto (Doc. Nos. 477, 528, 529).² A Suppression Hearing was held on August 17, 2007. For the following reasons, Defendant's Motions will be denied.

I. BACKGROUND

On February 21, 2007, the grand jury returned a 194-Count Fifth Superseding Indictment ("Indictment") charging Alton Coles and twenty-one co-defendants, including Dante Tucker, with offenses related to their participation in a drug conspiracy. In furtherance of the investigation leading up to the Indictment, the Government submitted an initial application for

¹ Spelled variously, by the Government and the Defendant, as "Dante," "Donte," and "Dontey."

² The Defendant filed two identical *pro se* supplemental motions to suppress (Doc. Nos. 518, 527) and the Government responded with two identical responses (Doc. Nos. 528, 529). This Court will reference only one set of the motions and responses. (Doc. Nos. 518, 529.)

authorization of a wiretap of the cellular phone of Alton Coles. The Honorable Eduardo C. Robreno authorized the wiretap on May 19, 2005. Following wiretap and physical surveillance, Special Agent Anthony M. Tropea of the Bureau of Alcohol, Tobacco and Firearms (“ATF”) submitted an affidavit in support of a search warrant of various properties, detailing his investigation, the information from four confidential sources, and the elements that had been corroborated. (*See* Search Warrant Aff.) On August 5, 2005, the Honorable Thomas J. Rueter, United States Magistrate Judge, issued a search warrant authorizing the search of various properties, including the residence of Defendant Dante Tucker at 957 N. 66th Street, Philadelphia, Pennsylvania. (*See* Search Warrant Aff. ¶ 15(g).)

ATF agents executed the search warrant on August 10, 2005. (Doc No. 477 at 9.) The search of 957 N. 66th Street yielded evidence of the conspiracy to distribute cocaine and crack. (*Id.*) **Defendant seeks to suppress this evidence on the grounds that the search violated his Fourth Amendment rights.** (Doc. No. 457 ¶ 9; Doc. No. 518 at 8.)

II. DISCUSSION

Defendant contends that the evidence seized during the search of 957 N. 66th Street should be suppressed because the affidavit for the search warrant failed to establish probable cause for the issuance of the warrant. (*See* Doc. No. 518 at 2.)³ In support of this argument, Defendant asserts that (1) the affidavit lacked reliable evidence from confidential sources (Doc. No. 518 at 2) and that (2) the Government failed to establish a nexus between the alleged criminal activity and the Defendant’s property (*id.* at 5).

³ Defendant originally challenged the search of 339 East Essex Avenue, Lansdowne, as well. (*See* Doc. No. 457 ¶¶ 3–6.) Defense counsel withdrew this challenge at the Suppression Hearing. (*See* Hr’g Tr. 28, Sept. 17, 2007.)

A. Information from Confidential Sources

Defendant asserts that the Government has failed to establish probable cause because “[t]he affidavit for the warrant contains insufficient information from the confidential informant which would reasonably lead to any conclusion that the defendant was engaged in any kind of illegal activity.” (Doc. No. 518 at 2.) Defendant argues that there is no factual basis for the contention by one confidential informant that the Defendant is a “gun” (essentially, an armed guard) for co-Defendants Coles and Baukman. Defendant also argues that there is “NO information or explanation as to why, how and when the informant actually obtained the information about TUCKER.” (*Id.*) The Government responds that the affidavit makes it clear that CS-4 had first-hand knowledge of the Defendant’s criminal activities and that investigators extensively corroborated CS-4’s information through independent investigations. (Doc. No. 529 at 12.)

When reviewing whether a search warrant is based on probable cause, we adopt a deferential standard. *United States v. Ritter*, 416 F.3d 256, 264 (3d Cir. 2005). The Supreme Court has advised that in assessing whether probable cause exists to support the issuance of a search warrant, the magistrate must do a “totality-of-the-circumstances analysis” and must make a “practical, common-sense decision.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). That decision should be based on “all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information.” *Id.* (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)).

The District Court, in reviewing the magistrate’s decision, must “simply . . . ensure that the magistrate had a ‘substantial basis for . . . conclud[ing]’ that probable cause existed.” *Id.* at

238-39 (quoting *Jones*, 362 U.S. at 271); see also *United States v. Williams*, 124 F.3d 411, 420 (3d Cir. 1997). A “substantial basis” is said to exist where, “given all the circumstances set forth in the affidavit before [the issuing judge] . . . 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.

In determining whether probable cause exists, the magistrate cannot merely “ratif[y] the bare conclusions of others.” *Gates*, 462 U.S. at 239. When relying on statements made by an unnamed source, the affiant must do more than attest to having received “reliable information from a credible person.” *Id.* (quoting *Aguilar v. Texas*, 378 U.S. 108, 109 (1964)). Corroboration of a source’s statements will support a finding of probable cause. As the *Gates* Court indicated: “Our decisions applying the totality-of-the-circumstances analysis . . . have consistently recognized the value of corroboration of details of an informant’s tip by independent police work.” *Id.* at 241. [I]t is enough for purposes of assessing probable cause, that ‘corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,’ thus providing ‘a substantial basis for crediting the hearsay.’” *Id.* at 244-45 (quoting *Jones*, 362 U.S. at 269, 271).

In this case, after reading the affidavit, we are satisfied that the confidential sources, particularly CS-4, had personal knowledge of the Defendant’s criminal activities through interactions in furtherance of the drug operation. In addition, it is clear that the investigators independently verified much of the information provided by the confidential sources. For example, CS-4 provided investigators with the Defendant’s cellular phone number. (Search Warrant Aff. ¶ 79.) The investigation corroborated this information. (*Id.* ¶ 82.) CS-4 described how Defendant and co-Defendant Baukman traveled together in Baukman’s car, for which CS-4

provided the license plate number. (*Id.* ¶ 79.) The investigators confirmed this information as well. (*Id.* ¶ 82.) Moreover, it is clear from the affidavit that CS-4 not only knew Defendant, but CS-4 had, in fact, been inside Defendant's home, the home named in the warrant. (*Id.* ¶ 85.)

Taken together, the corroborated details in the affidavit demonstrate that the Government was not basing probable cause upon unreliable informants. The agents developed relationships with their confidential sources through interviews and contact. The agents did not simply rest upon the statements of the confidential sources, but independently investigated the information received. Moreover, they did not offer merely conclusory statements by the informants. Rather, the affidavit demonstrates that the confidential sources were in a position to relay information gathered from personal interactions with, or observations of, Defendant. The Magistrate Judge had a substantial basis for concluding that the information provided by the confidential informants was reliable.

B. Nexus Between Criminal Activities and Defendant's Property

Defendant next argues that the search warrant affidavit fails to connect drug or other criminal activity to 957 N. 66th Street property. (Doc. No. 518 at 5.) Defendant argues that “[t]here is no nexus between any references of TUCKER and illegal activity or probability of contraband to be found in 957 N. 66th Street.” (*Id.* at 6.)

We are satisfied, based on the affidavit, that Magistrate Judge Rueter had a substantial basis for concluding that there was a fair probability that contraband or evidence of a crime would be found at 957 N. 66th Street. *See Jones*, 362 U.S. at 271; *Gates* 462 U.S. at 238. The affidavit explained that there was a large number of properties and cars involved in this drug conspiracy. (Search Warrant Aff. ¶ 9.) The affiant, Special Agent Anthony M. Tropea,

explained that based upon his extensive knowledge, experience, and training, drug equipment, contraband, weapons, and non-contraband evidence would be found at the residences and stash houses connected to the co-conspirators. (*Id.* ¶¶ 10, 11, 155.) The affidavit identified Defendant who lived at 957 N. 66th Street, as a courier and an armed bodyguard for Coles and co-defendant Timothy Baukman. (*Id.* ¶ 13(1)(d).) Agent Tropea stated that based upon his knowledge and experience he knew it to be common for drugs, drug paraphernalia and guns to be widely disbursed in the stash houses and residences of drug gang members. (*Id.* ¶¶ 10, 14.)

Based upon the evidence gained from the wiretap, the investigators knew Defendant to be in daily contact with Coles and believed him to be one of Coles' main couriers. (*Id.* ¶ 15(g).) The Defendant also picked up cash proceeds from drug sales. (*Id.* ¶ 78.) The investigators intercepted phone calls between Coles and Defendant, telling Defendant to go see "Hak" (co-defendant Hakiem Johnson) regarding the delivery of cocaine. (*Id.* ¶¶ 36, 122.) Defendant, who had been convicted of at least two firearm offenses, was also known as a "gun" for Coles and Baukman. (*Id.* ¶ 137.) Defendant and Baukman traveled together in Baukman's car. (*Id.* ¶ 79.) The investigators also intercepted several calls among the Defendant, Coles, and Baukman regarding drugs and drug delivery. (*Id.* ¶¶ 82, 117.) CS-4 informed the investigators that the Defendant was armed. (*Id.* ¶ 78.) CS-4 also described to the investigators being inside Defendant's home at 957 N. 66th Street and seeing the Defendant place a locked grey floor safe in the house. (*Id.* ¶ 85.) CS-4 told investigators that he believed that the Defendant had drug proceeds or a firearm inside of the safe and the special agent stated that he knew that it was common for drug traffickers to maintain safes in stash locations for that purpose. (*Id.*)

The investigators also intercepted a call between Coles and Defendant in which the

Defendant said that he was going home. (*Id.* ¶ 86.) Investigators watched Defendant enter 957 N. 66th Street. (*Id.*) Later, when Coles called Defendant and asked where he was, Defendant answered that he was at the Overbrook house, meaning 957 N. 66th Street. (*Id.*) Coles asked Defendant whether Keith should come to Defendant or vice-versa. (*Id.*) Defendant stated that he had the kids at the house, and Coles explained, ““No, he’s just going to give you some dough.”” (*Id.*) Based upon wiretap interceptions of calls between Coles and Keith, the “investigators concluded that Keith was dropping off drug proceeds to COLES who was attempting to have Keith either deliver the cash to TUCKER or have TUCKER meet Keith to pick up the proceeds.” (*Id.*) In the context of the Defendant’s role in the drug organization, the conversation suggests that the Defendant’s house was the site for drop-offs. Moreover, since Coles advised that on this occasion it was only money that was to be delivered, it is reasonable to conclude that drugs were also delivered on occasion. The totality of the evidence clearly created a substantial basis for a finding of probable cause to believe that contraband or evidence of criminality would be found at 957 N. 66th Street.

The Defendant also argues that, based on the information from CS-4, the affidavit did not establish probable cause to search the safe in his home. (Doc. No. 518 at 3.) The affidavit sought evidence of contraband, such as guns and drugs, as well as non-contraband, such as documents and records. (*Id.* ¶ 11.) CS-4, who interacted with the Defendant, stated that it was his belief that the safe contained cash proceeds or a firearm. (*Id.* ¶ 85.) Moreover, Agent Tropea stated that, based upon his experience and training, he knew that it was common for drug traffickers to have safes for holding drugs and guns. (*Id.*) The agents reasonably believed that the evidence that they sought might be found in the safe. The agents did not exceed the scope of

the search warrant by examining the inside of the safe.

An appropriate Order follows.

