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(2) a Pachmayer .45 caliber handgun loaded with seven live rounds;
(3) several bags of chunky white powder believed to be cocaine base
("crack"); and (5) various drug paraphernalia.

On February 26, 1999, the Defendant filed a motion to suppress the physical evidence seized during the search at 4519 Hurley Street. On March 24, 1999, the Court held a hearing. At the hearing, the Government submitted the search warrant and affidavits of probable cause to the Court. The Defendant, without presenting any witnesses or evidence, argued that the search warrant was not valid.

II. FINDINGS OF FACT

Two informants advised the Government that the Defendant distributed drugs to the 3000 block of Swanson Street. One informant-- a first time informant-- told police that the Defendant lived with his wife, "Nissy," at 4519 Hurley Street. This informant also stated that the Defendant had large quantities of money from illegal sales of drugs at this residence and that the Defendant was moving from Hurley Street to a new location in "northeast Philadelphia."

The Philadelphia police confirmed that Nizeneida Carrero, Nissy, owned the property at 4519 Hurley Street. The police also conducted a surveillance of the Defendant in which they observed the Defendant move back and forth from the 3000 block of Swanson

Street and 4519 Hurley Street. During the surveillance, the police also observed the Defendant and Nissy drive from 4519 Hurley Street to 1226 Passmore Street. The police further observed the Defendant at the property located at 1226 Passmore Street while several pieces of furniture were loaded into the house.

On December 17, 1998, Philadelphia Police Officer Antonio Morrone applied for a search warrant for 4519 Hurley Street, Philadelphia, Pennsylvania. On December 17, 1998, Judge McCaffery of the Philadelphia Municipal Court issued a search warrant for 4519 Hurley Street for "any and all evidence relating to an illegal drug operation." On December 18, 1998, Officer Morrone and other members of the Philadelphia Police Department conducted a search at 4519 Hurley Street. The officers discovered the Defendant inside the house. The officers also found: (1) a Taurus 9mm handgun loaded with five live rounds of ammunition; (2) a Pachmayer .45 caliber handgun loaded with seven live rounds; (3) several bags of chunky white powder believed to be cocaine base ("crack"); and (5) various drug paraphernalia.

III. DISCUSSION

A. Validity of Search Warrant

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)).

“The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes clear that the use of fruits of a past unlawful search or seizure works no new Fourth Amendment wrong.” United States v. Leon, 468 U.S. 897, 906 (1984). Thus, enforcement of the Fourth Amendment depends upon judicial application of the exclusionary rule. See id. (“The rule . . . operates as a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.”). Application of the exclusionary rule requires that evidence obtained during a search or seizure violative of the Fourth Amendment must be suppressed. See id.

Where a search has been conducted pursuant to a warrant approved and issued by a magistrate judge, this Court must exercise

a deferential review of the initial probable cause determination made by the magistrate. See Illinois v. Gates, 462 U.S. 213, 238 (1983). According to the Supreme Court, the warrant is upheld so long as the magistrate had a "substantial basis for . . . conclud[ing] that probable cause existed." Id. The Supreme Court 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 a fluid concept--turning on the assessment of probabilities in particular factual contexts--not readily, or even usefully, reduced to a neat set of legal rules." Id. at 232.

The test to determine whether probable cause exists to support the issuance of a search warrant is the totality of the circumstances approach. See id. Among the factors that are relevant, but not necessarily dispositive, to a court's determination of probable cause under this approach are the reliability of an informant, the informant's basis of knowledge, corroboration of information through other sources, an informant's predictions of future plans, and the level of detail of the information provided. See id.

In applying the totality of the circumstances approach to adjudicate motions to suppress evidence for lack of probable cause to support a search warrant, the Third Circuit and the Supreme Court have cautioned against the application by a reviewing court of "an unduly narrow standard for evaluating probable cause."

United States v. Conley, 4 F.3d 1200, 1203 (3d Cir. 1993). The

Third Circuit has stated that:

[T]he district court [may] exercise only a deferential review of the initial probable cause determination by the magistrate. A magistrate's determination of probable cause should be paid great deference by reviewing courts. The duty of the reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. Keeping in mind that the task of the issuing magistrate is simply to determine whether there is a fair probability that contraband or evidence of a crime will be found in a particular place, a reviewing court is to uphold the warrant as long as there is substantial basis for a fair probability that evidence will be found.

Id. at 1205 (internal quotations omitted). "[A] reviewing court may not conduct a de novo review of a probable cause determination. Even if a reviewing court would not have found probable cause in a particular case, it must nevertheless uphold a warrant so long as the issuing magistrate's determination was made consistent with the minimal substantial basis standard." Id. The Third Circuit has further noted that "courts . . . must bear in mind that search warrants are directed, not at persons, but at property where there is probable cause to believe that instrumentalities or evidence of crime will be found. The affidavit in support of a warrant need not present information that would justify the arrest of the individual in possession of or in control of the property." Id. at 1207.

In this case, the gravamen of Defendant's motion is that

"[there was absolutely no probable cause to search 4519 Hurley Street." R. at 6. This Court disagrees and finds that the magistrate judge had a substantial basis for concluding that probable cause existed to search 4519 Hurley Street. There was "a fair probability that contraband of evidence of a crime [would] be found" at that residence based upon information received from the two informants and substantial corroboration of this information by the police. Gates, 462 U.S. at 238. Both informants advised the Government that the Defendant distributed drugs and the first time informant told police that the Defendant had large quantities of money from illegal sales of drugs at the residence located at 4519 Hurley Street. The Government then corroborated this information by conducting a surveillance of the Defendant in which they observed the Defendant move back and forth from the 3000 block of Swanson Street and 4519 Hurley Street. Moreover, at the suppression hearing, the Defendant failed to present any evidence or argument which even suggests that the magistrate judge did not have substantial basis for concluding that probable cause existed to issue the search warrant. Accordingly, the Court denies the Defendant's motion.

B. Good Faith Reliance on Search Warrant

Finally, in United States v. Leon, 468 U.S. 897, 918-25 (1984), the Supreme Court held that when officers obtain and execute a search warrant in the "good faith" belief that the

warrant is valid, the fruits of the search should not be suppressed if the search warrant is later found invalid. See id. Thus, even if the Court were to find that the magistrate judge did not have a substantial basis for issuing the search warrant, the evidence would be admissible because the Philadelphia police officers relied on the search warrant in good faith. The Defendant failed to present any evidence to the contrary or to suggest that any of the four exceptions to Leon apply in this case. Therefore, the Court denies the Defendant's motion on this ground as well.

An appropriate Order follows.

