

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PIERRE STARKEY,	§
	§ No. 215, 2013
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. I.D. No. 1205019677
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: September 4, 2013
Decided: September 10, 2013

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

O R D E R

This 10th day of September 2013, it appears to the Court that:

- 1) The defendant-appellant, Pierre Starkey (“Starkey”), appeals from Superior Court’s denial of his Motion to Suppress evidence and judgments of conviction for Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, and Resisting Arrest.
- 2) Starkey raises one claim on appeal. Starkey claims that the search warrant was defective because it failed to set forth sufficient facts necessary to establish probable cause within the “four corners” of the document.

3) We have concluded that argument is without merit. Therefore, the judgments of the Superior Court must be affirmed.

4) On May 10, 2012, Tamekia Kearney (“Kearney”) and two friends were inside her home at 212 N. Franklin Street, when Tymire Perez (“Tymire”) knocked on the door and asked for Kearney’s roommate. Kearney told Tymire that her roommate was not home, and as she began to close the door, Tymire and four other individuals forced themselves into her home armed with handguns. Three of the individuals went upstairs and ransacked the bedrooms, while the other two forced Kearney and her two friends into the living room. The intruders stole money, Kearney’s laptop computer, and her AT&T serviced HTC cell phone (“the HTC cell phone”).¹ All five intruders then fled. As Kearney ran to a friend’s house for safety, two of the intruders fired shots at her. Police recovered a shell casing on the 100 block of South Franklin Street and the front door of Kearney’s home had damage consistent with forced entry.

5) Later that day, Kearney walked into the Wilmington Police station and reported the home invasion/robbery at her residence. She stated that she knew some of the individuals and gave descriptions to the police. In addition to Tymire, Kearney recognized and was able to describe to police

¹ The number of the HTC cell phone that was stolen was (302) 565-8159.

two of the other intruders: Talib Perez (“Perez”), Tymire’s brother,² and Shakur Black (“Black”). She was able to identify all three of these individuals from photographs. She did not know the other two suspects, but described one as “tall” and the other as “short.”

6) Police were aware of another investigation involving Tymire and a man named Lynel Cooper (“Cooper”). Cooper matched the description of the “tall” intruder given by Kearney, and she later confirmed that Cooper was the fourth assailant. The remaining unidentified “short” intruder was described by Kearney as light-skinned black or Hispanic male, wearing a gray fitted hat, blue and white jacket, and black cargo shorts.

7) Kearney told police that Perez and Tymire lived at 1303 Lancaster Avenue. At the same time Kearney was giving her statement, Wilmington police responded to the area of Lancaster Avenue and Franklin Street regarding a complaint of shots fired. Descriptions of the suspects were given to the responding officers and once at the scene, police saw Perez exiting 1303 Lancaster Avenue. The police took Perez into custody, and once back at the station, he was immediately identified by Kearney as one of the home-intruders.

² Kearney knew Talib Perez by the nickname of “Libby.”

8) Shantell Pritchett (“Pritchett”), the mother of Tymire and Perez, contacted Detective Chaffin and told him that Perez was not involved in the home invasion. She informed Detective Chaffin that Black had told her that Perez was not involved in the incident and that it was a man named “Peedie” that Kearney was confusing for Perez. According to Pritchett, Black also told her that Kearney had made up the story about the home invasion. Further, Pritchett told police that Peedie himself had called her from Verizon wireless number (302) 256-6123 and told her Perez was not involved. Police knew from previous investigations that Pierre Starkey’s (“Starkey”) nickname was Peedie, and that he was wanted by police for an earlier robbery/shooting.

9) Pritchett told police that Peedie had called her a second time from the same phone number, and that she had found out that his real name was Pierre Starkey. Pritchett identified Starkey in a lineup. Starkey was arrested as he was leaving his grandfather’s residence at 1325 Chestnut Street. At the time of his arrest, Starkey was in possession of two cell phones: (1) an LG model serviced by Verizon (the “LG cell phone”) and (2) an HTC model serviced by AT&T. Police seized both phones pending search warrants.

10) The police obtained three search warrants. The first was issued for 1325 Chestnut Street, where police discovered an SKS, 7.62 mm loaded assault rifle in a bedroom, and a pair of black cargo shorts in the living room with a 7.62 mm rounds of ammunition in the pocket. The cargo shorts matched the description of the kind that the unidentified home invasion suspect was wearing. Based upon these findings, the police obtained a search warrant for the LG cell phone.

11) A forensic examination determined that the phone number attributed to that cell phone was the same number used to call Pritchett. The phone also contained photographs of Starkey posing with what appeared to be the assault rifle that was recovered from 1325 Chestnut Street. There were also photographs of handguns, which were the type of weapon Kearney described the five home-intruders to be carrying, found stored in the phone. Based on the information recovered, the police obtained a third warrant for the HTC cell phone.

12) A Grand Jury indicted Starkey for Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Possession of a Destructive Weapon, and Resisting Arrest. Starkey filed a Motion to Suppress Evidence, which was denied after a hearing. The case proceeded to a stipulated non-jury bench trial. The State entered a *nolle*

prosequi on the charge of Possession of a Destructive Weapon and the Superior Court found Starkey guilty of the remaining charges.

13) Starkey argues that there was insufficient information of probable cause provided in the affidavits to support the issuance of the two search warrants for the cell phones found on his person. He contends that the vague description of the suspect given by Kearney and the general type of cell phone (HTC) that was taken was not enough to establish probable cause for a search warrant.

14) He further argues that the search warrants were overbroad, ambiguous, and fail to provide the relevance of Starkey's cell phone files in regard to the crimes for which he was being sought. He contends that there were no details provided in the affidavit about the cell phone conversation between Pritchett and Starkey, thus, the assertion that Starkey may have "relayed possibly incriminating information" to Pritchett, as stated in the affidavit of Detective Chaffin, is completely unsupported.

15) Under the United States and Delaware Constitutions, a search warrant may only be issued upon a showing of probable cause, and must describe with particularity the places to be searched or persons or things to be seized.³ "An affidavit in support of a search warrant must, within the

³ U.S. Const. Amend IV; Del. Const. art. I, § 6.

four-corners of the affidavit, set forth facts adequate for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place.”⁴ The determination of whether the facts in the affidavit demonstrate “probable cause requires a *logical* nexus between the items being sought and the place to be searched.”⁵ A determination of probable cause requires an inquiry into the “totality of the circumstances” alleged in the warrant.⁶

16) The record reflects that the first affidavit provided by Detective Chaffin sufficiently established probable cause to search the LG cell phone. The affidavit only needed to provide the trial court with enough information to form a reasonable belief that evidence of the crimes for which Starkey was being sought would be found on the cell phones.⁷ Here, the facts presented within the four corners of the affidavit are sufficient to make such a finding. The affidavit provided a physical description of a suspect that matched Starkey. This description included the fact that he was wearing

⁴ *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006) (citing *Fink v. State*, 817 A.2d 781, 787 (Del. 2003)).

⁵ *Jones v. State*, 28 A.3d 1046, 1057 (Del. 2011) (citing *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000)).

⁶ *LeGrande v. State*, 947 A.2d 1103, 1008 (Del. 2008) (quoting *Sisson v. State*, 903 A.2d at 296).

⁷ *Sisson v. State*, 903 A.2d at 296 (“An affidavit in support of a search warrant must, within the four-corners of the affidavit, set forth facts adequate for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place.”).

black cargo shorts at the time of the home invasion. Significantly, black cargo shorts containing ammunition and an assault rifle were found at the home of Starkey's grandfather, where Starkey was staying. Further, he was found with two cell phones upon his arrest, one of which was an HTC model, the same type of phone that was stolen from Kearney's home.

17) The affidavit of Detective Chaffin stated, “[P]ersons involved in criminal acts will utilize Mobile Electronic Devices such as cellular telephones to further facilitate their criminal acts and/or communicate with co-conspirators.” It also stated that retrieval of the cellular data could reveal the identity owner of the phone as well as provide a list of all calls made and received by that cell phone. The affidavit provided that Tymire was still wanted by police and that Starkey had called Pritchett from a Verizon-serviced cell phone to inform her that Perez was not involved in the home invasion. Extracting information from the LG cell phone could, and did, confirm that Starkey called Pritchett, thus corroborating her story as true. Further, if the phone number of the LG cell phone matched the number that called Pritchett, it would show that Starkey had knowledge of the home invasion. Based on the four corners of the affidavit, this information was enough to make a finding that probable cause existed to issue a search

warrant on the LG cell phone, and Starkey's Motion to Suppress was properly denied.

18) The record reflects that the second affidavit provided by Detective Chaffin sufficiently established probable cause to search the HTC cell phone. After properly searching the specified files and data of the LG cell phone, police found photographs of Starkey holding the assault rifle found at 1325 Chestnut Street, and other photographs of him holding handguns. The handguns were the type of weapon that Kearney described the men who invaded her home as brandishing. Most importantly, the phone number of the LG cell phone matched that of the number used to call Pritchett. Based on this new-found evidence, and the fact that the phone was of the same type as the cell phone stolen from Kearney, the magistrate properly granted a third search warrant on the HTC cell phone. Viewing the totality of circumstances, the trial judge correctly denied the Motion to Suppress.

19) The record reflects that both warrants issued by the magistrate stated with particularity what contents of the cell phone were to be searched by police. The warrant issued by the magistrate to search the LG cell phone read as follows:

[A]ny and all data stored by whatever means, or through normal course of business of Verizon Wireless services, and/or through

the forensic examination of said telephone, *to include but not limited to* registry entries, pictures, photographs, images, audio/visual recordings, multi-media messages, web user names, subscriber identifiers, buddy names, screen names, calendar information, call logs, electronic mail, telephone numbers, any similar information/data indicia of communication, any other information /data pertinent to this investigation within said scope.

The language of the warrant issued for the HTC cell phone was similar to that of the LG cell phone warrant, except it stated “through the normal course of business of AT&T Wireless services,” and additionally included the search of “micro SD memory card(s),” and the “subscriber identity module (SIM) card.”

20) In *Fink v. State*, this Court upheld a warrant with similar language to the two in this case as meeting the particularity requirements for a search warrant affidavit.⁸ In *Fink*, the State obtained a warrant to search the residence and car of the defendant.⁹ Similar to the warrants here, the warrant in *Fink* contained the phrase “Client files including but not limited to.”¹⁰ The court held that the phrase was not overbroad or vague, stating:

The purpose of requiring specificity in warrants is to avoid general exploratory searches, leaving little discretion to the officer executing the warrant There is no question about what the searcher should have been seeking or that there were reasonable limitations inherent in the scope of the search. Items

⁸ *Fink v. State*, 817 A.2d at 785-86.

⁹ *Id.*

¹⁰ *Id.* at 785.

indicative of probable criminal conduct discovered during the scope of the search were properly seized under the specific terms of the warrant.¹¹

21) Similar to *Fink*, the warrants here were not vague as they specifically limited the officer's search of the cell phones to certain types of data, media, and files that were "pertinent to this investigation." This language effectively limited the scope of the warrants, and prevented a boundless search of the cell phones.¹² Because probable cause for such information had been established by the affidavits of Detective Chaffin, "[i]tems indicative of probable criminal conduct discovered during the scope of the search were properly seized under the specific terms of the warrant."¹³

In denying the Motion to Suppress the trial court explained:

So we have the cargo pants, we have him fitting the description, we have him named as the person involved in the incident with Ms. Kearney, and we have a phone that is the same brand of phone. The Court does not see any contradictory evidence in the four corners of the warrant. The purpose of the warrant is clearly stated and set forth [T]he magistrate needs to form a reasonable belief and is allowed to look at the totality of circumstances and apply common sense So in reviewing the four corners of the warrant, it is this Court's conclusion that the warrant is sufficient, and that based on the four corners of the warrant contain enough information, so that this motion to suppress is denied.

¹¹ *Id.* at 786 (internal citations omitted).

¹² *Fink v. State*, 817 A.2d at 786 ("There is no question about what the searcher should have been seeking or that there were reasonable limitations inherent in the scope of the search.").

¹³ *Id.*

The Superior Court did not err in denying the Motion to Suppress the evidence.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice