IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	Def. ID# :1906004707 A&B
	)	
ANTONIO WATERS, Defendant	)	

Submitted: May 25, 2021
Decided: June 2, 2021

Defendant's Motion to Suppress

DENIED

MEMORANDUM OPINION AND ORDER

Julie L. Johnson, Esquire, Deputy Attorney General, 114 East Market Street, Georgetown, DE19947, Attorney for State of Delaware.

Stephen E. Smith, Assistant Public Defender, Office of the Public Defender, 14 The Circle - 2nd Floor, Georgetown, DE 19947, Attorney for Defendant.

KARSNITZ, J.

INTRODUCTION

This case illustrates that police work, including obtaining a warrant for search and seizure, is never easy and not always a textbook example of execution. However, just because a particular search and seizure is not a paradigm of perfection does not mean that the State and federal constitutional rights of the defendant have been violated.

FACTUAL BACKGROUND

In February 2019, officers of the Delaware State Police began receiving information from a Confidential Informant ("CI") that Defendant Antonio Waters ("Defendant") was selling drugs out of his vehicle, a black 2007 Mercury Grand Marquis. The CI purchased heroin from Defendant during the first two weeks of February 2019 and the last two weeks of February 2019. The CI purchased cocaine from Defendant during the first two weeks of May 2019.[1] During each of these three controlled buys, the CI approached Defendant's vehicle and received the drugs from Defendant while Defendant was sitting in the driver's seat of his vehicle.

On May 29, 2019, Det. Lance Abbott applied for and obtained a search warrant for Defendant's vehicle. This warrant was based upon the three

[1] Officers used these vague dates in the warrant application in order to protect the identity of the Confidential Informant. If officers used exact dates and times, the target of the investigation might ascertain the Confidential Informant's identity, and the Confidential Informant might be at risk of harm.

controlled purchases using the CI. On June 7, 2019, the search warrant was executed. Alleged contraband, several telephones, a digital scale, and a jacket were seized. On June 7, 2019 an Inventory and Affidavit of Property Taken Under Search Warrant (the "Search Warrant Return") was signed. On June 7, 2019, the Search Warrant Return was filed with the Justice of the Peace Court.

ISSUE PRESENTED

Defendant argues that the warrant used to search the vehicle was stale since the last controlled buy was "during the first 2 weeks of May 2019," the warrant application was on May 29, 2019, and the warrant was not served until June 7, 2019. Thus, conceivably 37 days could have elapsed from the date of the last controlled buy until service of the warrant. The State counters that, since the three controlled buys were conducted over a three-month period, the warrant is not based on a single isolated event, but rather a continuous pattern of behavior by Defendant. Therefore, it was reasonable for a neutral and detached magistrate, using the "totality of the circumstances" standard,[2] to conclude that, based on that pattern of behavior, Defendant would still be using his vehicle to conduct drug transactions, and that therefore drugs would be found in Defendant's vehicle. I agree with the State, and therefore deny Defendant's Motion to Suppress.

APPLICABLE LAW

Defendant cites cases which stand for the proposition that stale information

[2] *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006).

cannot support a finding of probable cause,[3] and probable cause must exist to believe that items specified in the warrant are *presently* on the premises.[4] I have no quarrel with these cases, or with the proposition that time is of the essence in search warrant cases,[5] but the argument proves too much. The very fact that the same contraband (drugs) was repeatedly – over three months – sold from the same vehicle owned by the same person in the same manner in every instance could certainly allow a magistrate to reasonably conclude under *Pierson* that it was likely they would be sold from that vehicle again. Under the "temporal proximity" test,[6] I agree that the time between the facts in the affidavit and the issuance and execution of the warrant must be sufficiently close. Here, however, there was no risk of deterioration or change in the evidence sought, because drug traffickers usually only transport the amount of drugs necessary to complete the sale, and the connection between the evidence sought and the defendant is neither remote nor historical. Thus, in my view, the State established a strong *current* probability that drugs would again be found.

As the State notes, "the question of the staleness of probable cause depends more on the nature of the unlawful activity alleged in the affidavit than the dates and times specified therein."[7] *Harris*, quoting *U.S. v. Johnson*, 461 F.2d

[3] *Pierson v. State*, 338 A.2d 571, 573 (Del. 1975).
[4] *Id*.
[5] *Id*.
[6] *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984).
[7] *U.S. v. Harris*, 482 F.2d 1115, 1119 (3d Cir. 1973).

285 (l0th Cir. 1970), at 287, stated:

> Initially, it should be noted that the validity of probable cause cannot be qualified by simply counting the number of days between the occurrence of the facts relied upon and the issuance of the affidavit. Together with the element of time we must consider the nature of the unlawful activity. Where the affidavit recites a mere isolated violation it would not be unreasonable to imply that probable cause dwindles rather quickly with the passage of time. However, where the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant.

In this case, there is clearly a course of conduct that is outlined in the affidavit. The Delaware Supreme Court has found that the passage of time from the evidence of the location of a drug deal and the application for a warrant can be six days[8] and nine days[9] without rendering the evidence supporting probable cause stale.

With regard to the lapse of eight days between the application for the search warrant and the search itself, this was a warrant for a vehicle, not premises. Even with a known address associated with the vehicle registration, the vehicle can be driven anywhere. Locating a vehicle to serve a search warrant is therefore more difficult than serving a search warrant on premises. Moreover, enlisting the help of the CI to locate the vehicle is not feasible since

[8] *Prince v. State,* 920 A.2d 400, 403 (Del. 2007).
[9] *Windsor v. State,* 676 A.2d 909 (Del. 1996)

it would likely compromise the identity of the CI.

CONCLUSION

For the reasons stated above, I **DENY** Defendant's Motion to Suppress.

IT IS SO ORDERED.

/s/ Craig A. Karsnitz

cc: Prothonotary