

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| CARLOS E. SEGARRA-RIVERA, | : | |
| | : | |
| Appellant | : | No. 1351 MDA 2012 |

Appeal from the Judgment of Sentence Entered July 16, 2012,
In the Court of Common Pleas of Lancaster County,
Criminal Division, at No. CP-36-CR-0005679-2011.

BEFORE: BENDER, SHOGAN and FITZGERALD*, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED MAY 21, 2013

Appellant, Carlos E. Segarra-Rivera, appeals from the judgment of sentence entered July 16, 2012. We affirm.

As will be discussed below, Appellant was convicted of multiple drug-related offenses in connection with contraband found while police were executing a search warrant. The search warrant was executed at a home Appellant shared with a man who was a suspect in a separate crime involving the shooting of a seven-year-old girl. The relevant facts of this case, as set forth by the trial court in its opinion, are reproduced below:

On October 18, 2011, police were dispatched to the area of James and Market Streets, Lancaster, Pennsylvania because of a report of a shooting. A seven year old girl was shot several times while playing on the front porch. Eye witness accounts established that a Mercedes and a white Jeep were seen in the area at the time of the shooting. Witnesses indicated that the

*Former Justice specially assigned to the Superior Court.

Jeep was driving at a high rate of speed. The owner of the Mercedes, Andy Irizarry, spoke with police. Irizarry stated that he passed the Jeep and then saw someone from the Jeep shooting a weapon in the area of James and Market Streets and then turning the gun toward Irizarry as he was driving out of the area. Irizarry described the Jeep in great detail. Police were unable to get the license plate number from witnesses or from surveillance cameras in the area. Nevertheless, a Ruth Garcia voluntarily went to the police station to give her account of the events on October 18, 2011. Garcia was standing in front of 25 West James Street at the time of the shooting. She stated that she knew who the shooter was personally and identified him as "Rene." Garcia stated that she was familiar with "Rene" because she had, within the last several months, purchased cocaine from him on several occasions. She also stated that she knew "Rene" to be in possession of a semiautomatic black handgun. In addition, Garcia stated that on several occasions "Rene" had her drive him home, which Garcia said was in the 800 block of North Queen Street[,] Lancaster, Pennsylvania. County of Lancaster, Search Warrant, November 5, 2011.

Police then investigated to find any information on a "Rene" from the 800 block of North Queen Street who is known to sell drugs. The police determined that the "Rene" that Garcia was talking about was a Rene Ruiz-Mayo. They put together a sketch and then called Garcia back in to the police station to see if her "Rene" matched that sketch. She positively identified the sketch as the man who drove the Jeep on October 18, 2011 and shot the seven year old girl. As a result, police had Garcia conduct another drug transaction with Ruiz-Mayo in order to begin conducting surveillance on him thereafter. As he had before, Ruiz-Mayo asked Garcia to take him home after the drug sale. This time, however, it was South West End Ave. County of Lancaster, Search Warrant November 5, 2011.

On November 4, 2011 the police witnessed Ruiz-Mayo and two other individuals exiting 724 South West End Ave[,] Lancaster, Pennsylvania. Upon following Ruiz-Mayo, the suspect detected a police presence and began to flee. He was caught hiding under the deck at 613 South West End Ave. Police then contacted the landlord for his above stated residence at 851 North Queen Street, a Guarionex Parra-Vargas, who said that Ruiz-Mayo voluntarily left that residence four days prior and now resides at an address at South West End Ave. Parra-Vargas also

stated that he personally saw to it that all of Ruiz-Mayo's belongings were out of the 851 North Queen [Street] residence. County of Lancaster, Search Warrant, November 5, 2011.

Consequently, the police executed a search warrant for the only known address of 724 South West End Ave[.], looking for the items that would link Ruiz-Mayo to the October 18, 2011 shooting. Those items were: firearm and/or any firearm projectile nine millimeter, any instrument type evidence (casings, magazines, holsters, ownership documents), a red Cincinnati Reds baseball hat, and personal papers belonging to Ruiz-Mayo. N.T. Suppression Hearing, p.8[.] At the 724 South West End Ave[.] residence, police found, behind a locked door, heroin in plain view and a firearm on the bed near the heroin. N.T. Suppression Hearing, p. 9-10. Police stated this room was checked as part of a protective sweep. N.T. Suppression Hearing, p. 13. It was determined that these items belonged to [Appellant], who also resided at that address.

Trial Court Opinion, 9/11/12, at 2-4. The trial court explained the procedural history of this matter as follows:

[Appellant] was charged with one (1) count of possession with intent to deliver heroin, one (1) count of possession with intent to deliver cocaine, one (1) count of possession of marijuana — small amount, and one (1) count of possession of drug paraphernalia.

A Suppression Hearing was held on July 12, 2012. [Appellant] argued that there was not enough to establish the probable cause needed to issue the search warrant for 724 South West End Ave[.,] Lancaster, Pennsylvania 17603. The Petitioner also argued that the information used to create probable cause was stale, and, therefore, cannot be relied upon to establish probable cause. That motion to suppress was denied on both issues. A Non-Jury/Stipulated Bench Trial was held on July 16, 2012. The Court found [Appellant] guilty of all four (4) counts. [Appellant] was sentenced that day, July 16, 2012, to not less than five (5) to not more than ten (10) years in a state correctional institution.

Trial Court Opinion, 9/11/12, at 1. Appellant timely appealed.

In this appeal, Appellant challenges the denial of his suppression motion and raises one question for this Court's consideration:

- I. Does probable cause exist to establish that a person lives at a residence when the only information connecting that person to the residence is his presence at and near the residence with other people on a single day?

Appellant's Brief at 4.

The standard of review we apply in an appeal from the denial of a motion to suppress is set forth below:

We determine whether the court's factual findings are supported by the record and whether the legal conclusions drawn from them are correct. Where, as here, it is the defendant who is appealing the ruling of the suppression court, we consider only the evidence of the prosecution and so much of the evidence for the defense which remains uncontradicted when fairly read in the context of the whole record. If, upon our review, we conclude that the record supports the factual findings of the suppression court, we are bound by those facts, and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Crork, 966 A.2d 585, 586–587 (Pa. Super. 2009) (citation omitted).

Here, Appellant argues the search warrant that targeted Ruiz-Mayo lacked probable cause, and therefore, the evidence against Appellant should have been suppressed. We disagree.

Our Supreme Court has adopted the "totality of the circumstances" test for determining whether a search warrant was supported by probable cause. ***See Commonwealth v. Gray***, 509 Pa. 476, 503 A.2d 921 (1985). This test was first set forth by the United States Supreme Court in ***Illinois v. Gates***, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). Pursuant to the totality of the circumstances test:

[T]he task of the issuing authority is to make a practical, common sense assessment whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Further, [a] magistrate's finding of probable cause must be based on facts described within the four corners of the affidavit[.]

Commonwealth v. Jones, 928 A.2d 1054, 1059 (Pa. Super. 2007) (internal quotes and citations omitted).

"[P]robable cause does not demand the certainty we associate with formal trials." [**Gates**, 462 U.S. at 246, 103 S.Ct. 2317.] Rather, a determination of probable cause requires only that the totality of the circumstances demonstrates "a fair probability that contraband or evidence of a crime will be found in a particular place." [**Commonwealth v. Torres**, 564 Pa. 86, ___, 764 A.2d 532, 537 (2001) quoting **Gates**, 462 U.S. at 238-239, 103 S.Ct. 2317]. Thus, where the evidence available to police consists of an anonymous tip, probable cause may be established upon corroboration of major portions of the information provided by the tip. **See Gates**, 462 U.S. at 246, 103 S.Ct. 2317. Similarly, where the evidence consists of the allegations of a police informant who has not previously provided information, probable cause requires only corroboration of principal elements of information not publicly available. **See Torres**, 764 A.2d at 539-540. As recognized by the Court in **Gates**, "[i]t is enough, for purposes of assessing probable cause, that '[c]orroboration through other sources of information reduced the chances of a reckless or prevaricating tale,' thus providing 'a substantial basis for crediting the hearsay.'" [**Gates**, 462 U.S. at 244-245, 103 S.Ct. 2317, quoting **Jones v. United States**, 362 U.S. 257, 269, 271, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960).]

[**Commonwealth v. Brown**, 924 A.2d [1283,] at 1286-1287 [(Pa.Super.2007)].

Commonwealth v. Otterson, 947 A.2d 1239, 1244-1245 (Pa. Super. 2008).

In this appeal, Appellant claims that, while there was suspicion that Ruiz-Mayo lived at 724 South West End Avenue, it was entirely “likely” that Ruiz-Mayo had only been there visiting a friend. Appellant’s Brief at 10 (unnumbered page).¹ However, the test we apply does not require this Court to re-weigh statements in the affidavit or the likelihood of various possible scenarios. Rather, as noted above, the decision is based on the totality of the circumstances. **Otterson**, 947 A.2d at 1244.

Here, the affidavit provided that Ms. Ruth Garcia identified Ruiz-Mayo as the shooter of the seven-year-old girl. Affidavit of Probable Cause, 11/5/11, at ¶ 16. Ms. Garcia informed police that Ruiz-Mayo had previously sold her drugs, and he lived in the 800 block of North Queen Street. **Id.** at 17-18. She knew his address because she had driven him home on prior occasions. **Id.** at 18. During their investigation, however, police discovered that Ruiz-Mayo had recently moved out of the residence at 851 North Queen Street to South West End Avenue. **Id.** at 26. Ms. Garcia, acting as an informant for police, subsequently bought drugs from Ruiz-Mayo, and again he had her drive him home. **Id.** at 22. This time, Ruiz-Mayo told Ms. Garcia to drop him off on South West End Avenue. **Id.** at 23. During subsequent surveillance, police witnessed Ruiz-Mayo exit 724 South West End Avenue.

¹ Inexplicably, many of the pages in Appellant’s brief are unnumbered.

Id. at 24. Police concluded that, because Ruiz-Mayo had moved out of his residence at 851 North Queen Street and had requested Ms. Garcia to drop him off at home, Ruiz-Mayo lived at the South West End Avenue address.

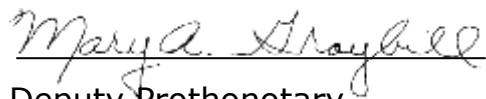
Id. at 26-27. When they saw him exit the residence at 724 South West End Avenue, based on all of the foregoing information in the affidavit, the police believed Ruiz-Mayo's belongings and evidence of the shooting would be at that location. **Id.** at 27.

Based on the totality of the circumstances, we agree that there was probable cause to secure a warrant to search 724 South West End Avenue for evidence of Ruiz-Mayo's involvement in the shooting. Because the warrant was valid, the evidence that was uncovered implicating Appellant in the crimes charged in the instant case was legally seized. Accordingly, Appellant's challenge to the suppression court's ruling is without merit.

For the reasons set forth above, Appellant is entitled to no relief. Therefore, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/21/2013