



USA v. MOORE

2021 | Cited 0 times | E.D. Pennsylvania | September 20, 2021

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA ::

vs. : Case No. 2:21-cr-196-JDW : JAHKEEM MOORE :

MEMORANDUM Jahkeem Moore asks the Court to suppress evidence obtained against him after execution of a search warrant for his apartment. If police officers had asked this Court for a warrant based on the evidence that they presented to a at least asked for more information before granting the warrant. But the Court does not have to conduct a de novo review to admit the evidence. Instead, it has to answer two questions. First, was there a substantial basis for the magistrate who issued the warrant to conclude that there was probable cause to conduct a search? Second, could the officers who executed the warrant rely on it in good faith, even if it was flawed?

That is, the magistrate had a substantial basis to find probable cause and issue

the warrant, and, even if she did not, the officers could rely in good faith on the warrant to obtain motion.

I. BACKGROUND

On May 27, 2020, Philadelphia Police Officers Jason Cowdery and Franklin Latorre , who was wanted on an assault warrant. (ECF No. 18 at 19.) Mr.

Moore had a vehicle registered to 3700 Gateway Drive, Apartment B118. A entrance of 3700 Gateway s Drive Apartmen Id.) Upon his arrest,

-lock packets, each heat-sealed packets of alleged crack cocaine; \$458.00 United States Currency;

four mobile telephones; and one black magnetic key later determined to fit the (Id.)

After the arrest, one of the officers the Gateway Towers rental office and determined [that Mr.] Moore reside[d] in 3700 Gateway Drive Id.) Fearing that someone might remove or destroy evidence, the officers held Apartment B118 for a search warrant and contacted Officer Jason Yerges to obtain a



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search warrant for the apartment. Officer Yerges field-tested the packages of alleged crack, and the test was positive.

Officer Yerges completed an affidavit of probable cause supporting an application for a search warrant. The application sets forth the facts set forth above and relates Officer Yerges experience in drug enforcement. Based on this information, Judge Naomi Williams of the Philadelphia Municipal Court issued a search warrant for Apartment B118, which officers executed later that

day. During the search, officers recovered additional drugs, firearms, and drug paraphernalia.

On July 7, 2021, Mr. Moore moved to suppress evidence obtained from his apartment, arguing that the affidavit of probable cause lacked evidence to establish probable cause and that the good-faith exception does not apply because the warrant is so lacking in indicia of probable cause as to render official belief in its existence unreasonable. The Court held a suppression hearing on September 2, 2021.

II. LEGAL STANDARD

The Fourth Amendment of the United States Constitution prohibits S. CONST seizure to be reasonable under the Fourth Amendment, it must be effectuated

United States v. Johnson, 592 F.3d 442, 447 (3d Cir.2010). Probable cause exists when, considering the totality of the Gates

concept that turns on the assessment of probabilities in particular factual United States v. Stearn, 597 F.3d 540, 554 (quoting Gates, 462 U.S. at 232). The defendant bears the burden of establishing that his Fourth Amendment rights were violated. Id. at 551.

Where, as here, a magistrate has made a probable cause determination and issued a search warrant, probable cause de novo Case 2:21-cr-00196-JDW Document 22 Filed 09/20/21 Page 3 of 10 substantial basis for Stearn, 597 F.3d at 554 (quoting Illinois v. Gates, 462 U.S. 213, 236 (1983)). If the court finds a substantial basis to support magistrate Id. (quoting United States v. Conley,

4 F. 3d 1200, 1205 (3d Cir. 1993)).

mean that reviewing courts should simply rubber stamp a United States v. Miknevich, 638 F.3d 178, 182 (3d Cir. 2011) (quote omitted). area should be largely determined by the preference to be accorded to

Gates, 462 U.S. at 237 n. 10 means it may only consider those facts that were before the magistrate, i.e., the

United States v. Rosario, No. CR 17-553, 2018 WL 847779, at *3 (E.D. Pa. Feb. 13, 2018), aff d, (3d Cir.



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2020). Miknevich, 638 F.3d at

182. III. DISCUSSION

A. Probable Cause United States v. Burton, 288 F.3d

91, 103 (3d Cir. 2002). Instead, probable cause from the type of crime, the nature of the items sought, the suspect's opportunity

for concealment and normal inferences about where a criminal might hide *Id.* (quoting Jones, 994 F.2d at 1056). This is particularly true when the crime under investigation is drug distribution. Indeed, the Third Circuit has dealers often store evidence *Burton*, 288 F.3d

at 104; see also *United States v. Hodge*, 246 F.3d 301, 306 (3d Cir. 2001); *United States v. Williams*, 974 F.3d 320, 351 (3d Cir. 2020). Still, a magistrate judge may make such an inference only if the evidence supports three preliminary premises: (1) the suspected person is actually a drug dealer; (2) the place to be searched was possessed by, or the domicile of, the dealer; and (3) that place. *Burton*, 288 F.3d at 104. The Third Circuit requires some evidence of each premise. See *U.S. v. Stearn*, 597 F.3d 540, 559 (3d Cir. 2010). The Court addresses each premise in turn.

1. Evidence that Mr. Moore was a drug dealer Officer Yerges affidavit provides a basis for Judge Williams to find probable cause that Mr. Moore was a drug dealer. It recites the reasons that Officer Yerges suspected that Mr. Moore was carrying heroin, including the titled to rely on the conclusion that Officer Yerges reached, based on his experience. See *United States v. Myers* may well draw The affidavit also notes that some of the packets tested positive for cocaine

base. Finally, Judge Williams could rely on the fact that Mr. Moore had 195 sealed packets on him, not just a handful. It stands to reason that the large quantity was for commerce, not for personal use, and Judge Williams could use her common sense to individual arrested as a result of the seizure is involved in selling drugs, rather

United States v. Whitner, 219 F.3d 289, 298 (3d Cir. 2000); see also *United States v. Hodge* The amount of crack cocaine Hodge possessed indicated that he was in selling drugs, rather than merely using

2. Evidence that Mr. Moore possessed or was domiciled at the

apartment affidavit contained sufficient support for the premise that 3700 Gateway Drive, Apartment B118 was M explains that Mr. Moore had a car registered there, during his arrest officers

recovered a key that fit the door of the apartment, officers observed him leaving from that location,



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and one of the officers confirmed with the d in building B. The totality of this evidence gave Judge Williams a substantial basis to conclude that Mr. Moore either possessed or was domiciled there.

3. Evidence that the apartment contained contraband The Third Circuit has devised a non-exhaustive list of factors, the existence of which help to establish the required nexus between a suspect s drug-dealing activities and his home. Stearn, 597 F. 3d at 559. These factors include(a)

probable cause to arrest the suspect on drug-related charges; (b) the proximity of the suspect s residence to the location of criminal activity; and (c) the conclusions of experienced officers regarding where evidence of a crime is likely to be found. Id. at 559-60. Id. at 560.

These factors, and other evidence, gave Judge Williams a substantial basis to conclude that the apartment contained contraband. When the officers arrested Mr. Moore, he was carrying a large quantity of drugs, he had just left the apartment, and Officers had reason to think he lived there. Those facts, coupled with the common sense conclusion that drug dealers often store drugs at their home, was enough to create the required substantial basis. To be sure, the evidence could have been stronger, and the officers could have gathered additional evidence to tie Mr. Moore (or his illegal activity) to the apartment. But the Court cannot say that Judge Williams lacked a substantial basis to infer a

B. Good Faith Exception Even if there is no probable cause for a warrant, a court will admit evidence gathered pursuant to that warrant if officers act in reasonable reliance on a search warrant that a detached and neutral magistrate issued. See *United States v. Leon*, 468 U.S. 897, 926 (1984). reasonably well-trained officer would have known that the search was illegal

Leon The mere existence of a warrant typically suffices to prove that an officer conducted a

search in good faith and justifies applica *United States v. Hodge*, 246 F.3d 301, 307-308 (3d Cir. 2001) (citing *Leon*, 468 U.S.

at 922).

where the good faith doctrine is not sufficient to override the w Stearn, 597 F.3d at 561. Of these four, only one is relevant here: the

good faith exception does not apply where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. See *Leon*, 468 U.S. at 923. Id. at

926. These are the rare circumstances in which, although a neutral magistrate has found probable cause to search, a lay officer executing the warrant could not reasonably believe that the magistrate



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was correct. Stearn, 597 F.3d at 561.

This is not such a case. T document. It described the drugs that officers recovered from Mr. Moore and provided information on where Mr. Moore lived. To be sure, as Mr. Moore points out, the affidavit of probable cause could have been more fulsome. But if Judge Williams wanted more information, she could have requested it. The officers knew that she did not ask for more detail, so it was fair for them to assume that she had the information she thought she needed to make a determination. a close call. But, Hodge, 246 F.3d at 309. contrary would put officers in the impossible position of having to review a

magistrate decision and substitute their own judgment about whether the magistrate had enough detail to satisfy the probable cause requirement. Officers do not have to do so; they c she has enough information to rule.

The only exception to that rule is a true bare-bones affidavit with no meaningful information, containing unsupported bald assertions. Officers who see that type of affidavit cannot rely on it in good faith. But they can rely on an affidavit with more detail, even if the detail falls short of establishing probable cause.

reliance on two Third Circuit cases, United States v. Zimmerman, 277 F.3d 426 (3d Cir. 2002) and Virgin Islands v. John, 654 F.3d 412 (3d Cir. 2011), does not change this outcome. In both cases, the Third Circuit refused to employ the good faith exception for a warrant supported, in part, by possess child pornography. That is, in both cases police officers tried to use

evidence of one crime to suggest probable cause for the presence of evidence of a different crime. The Third Circuit rejected that as too big a logical leap. In contrast, Officer Yerges had evidence that Mr. Moore distributed drugs, and he asked Judge Williams to permit him to search for evidence of that crime. Officers could rely in good faith on the warrant that Judge Williams issued, authorizing them to search for that evidence.

IV. CONCLUSION

A different judge might have reached a different conclusion when gave Judge Williams a substantial basis to conclude that probable cause

existed. Even if it did not, the offi issue the warrant. T Amendment rights, and the Court will deny Mr. Moore motion to suppress the

evidence that officers obtained in that search. An appropriate Order follows.

BY THE COURT: /s/ Joshua D. Wolson JOSHUA D. WOLSON, J.

