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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

PAUL J. ...
CLERK OF COURT
CLERMONT COUNTY, OHIO

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| STATE OF OHIO | : | |
| Plaintiff | : | CASE NO. 2015 CR 00608 |
| vs. | : | Judge McBride |
| AMANDA LILLY | : | DECISION/ENTRY |
| Defendant | : | |
| | | |
| STATE OF OHIO | : | |
| Plaintiff | : | CASE NO. 2015 CR 00609 |
| vs. | : | Judge McBride |
| PERRY J. WORKMAN | : | DECISION/ENTRY |
| Defendant | : | |

Thomas W. Scovanner, assistant prosecuting attorneys for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103;

George P. Montgomery, attorney for the defendants Amanda Lilly and Perry Workman, 45 North Market Street, Batavia, Ohio 45103.

This cause is before the court for consideration of the motions to suppress filed in their respective cases by the defendants Amanda Lilly and Perry Workman on February 2, 2016.

Although there has not been a motion to consolidate filed in the two cases, the parties agreed to the motions, which are identical, being heard together. The court scheduled and held an evidentiary hearing on the motions to suppress on February 29, 2016.

Upon consideration of the motions, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

On June 17, 2015 the Union Township Police Department obtained a warrant from the Clermont County Municipal Court to search the residence of the defendants Amanda Lilly and Perry Workman.¹ The warrant identified the residence as 864 Hawthorne Drive, Cincinnati, Ohio 45245 and provided a physical description of the property.

Judge Kevin Miles, who issued the warrant, found that probable cause existed to believe that multiple pieces of evidence and contraband were being stored on the property.² These items related to alleged crimes of Bobby Crooks, a juvenile who resided in the home.³ The defendant Amanda Lilly, who is Bobby Crooks' mother, owned the home, and her husband and Bobby Crooks' stepfather, who is the defendant Perry Workman, also resided there.⁴

¹ State Ex. 1.

² Id.

³ Id.

⁴ Id.

The warrant commanded the police to search and seize Amanda Lilly's cellphones; multiple pieces of clothing belonging to Bobby Crooks; an alcohol monitor; Bobby Crooks' cell phones, computers, tablets, and other multimedia devices; multimedia memory storage devices including SD cards, thumb drives, external hard drives, compact disks, and other multimedia storage devices; cigarette packages; and other items located in violation of the Ohio Revised Code.⁵ These items were believed to relate to Bobby Crooks' suspected crimes of pandering obscenity to a juvenile, breaking and entering, obstructing justice, obstructing official business, and criminal damage.⁶ The warrant permitted officials to search all containers or safes (locked or unlocked), vehicles, and outbuildings within the curtilage of the residence.⁷

The warrant was issued based on the affidavit of Detective Ken Mullis of the Union Township Police Department.⁸ It detailed the above information and included five pages describing the circumstances of Bobby Crooks' alleged crimes and various witness statements linking him to the crimes. Included in the recitation of the witness statements was information from the defendant Amanda Lilly that Bobby Crooks had stopped by their home to change his clothing during the time period of his alleged crime spree. This led the police to believe that clothing linking Bobby Crooks to the crimes, as well as stolen cigarette packages, may be at the defendants' home,⁹

Additionally, according to the affidavit, the defendant Amanda Lilly reported she had received text messages from a friend of Bobby Crooks which connected him to the

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

crime spree.¹⁰ Although she told the police she would allow the detectives to view her cell phone once she picked it up from a family member's home, she failed to do so.¹¹ Moreover, the warrant also noted that police were looking for photos Bobby Crooks took that involved juveniles engaged in sexual acts, and as such, the police wanted to seize Bobby Crooke's multimedia devices and multimedia storage devices.¹²

On June 18, 2015 the Union Township Police Department executed the search warrant on the defendants' residence.¹³ During the search, a different police officer was assigned to each room in the home and an evidence scene control log was kept for each room.¹⁴

In the master bedroom, the police recovered multiple cell phones, large sums of cash, a zip lock bag of containing 193.3 grams of marijuana, three vacuum bags containing 3.03 pounds of marijuana, a bottle of miscellaneous pills, and a zip lock back containing 228 pills.¹⁵ Of the pills collected, 62 tested positive as Tramadol, 18 pills were negative for any controlled substance, and 142 pills were not tested.¹⁶

In Case No. 2015-CR-000608, the defendant Amanda Lilly is charged with one count of trafficking in drugs in violation of R.C. 2925.13(B), a fifth degree felony.¹⁷ In Case No. 2015-CR-000600, the defendant Perry Workman is charged with (1) one count of trafficking in drugs in violation of R.C. 2925.03(A)(2), a second degree felony, (2) one count of corrupting another with drugs in violation of R.C. 2925.02(A)(4)(c), a

¹⁰ *Id.*

¹¹ State Ex. 1, Bill of Particulars in Case Nos. 2015-CR-000608, 2015-CR-000609.

¹² State Ex. 1.

¹³ Testimony of Det. Ken Mullis (2/29/2016).

¹⁴ Testimony of Det. Ken Mullis (2/29/2016).

¹⁵ State Ex. 1.

¹⁶ Bill of Particulars in Case Nos. 2015-CR-000608, 2015-CR-000609.

¹⁷ Bill of Particulars in Case No. 2015-CR-000608.

fourth degree felony, (3) one count of possession of drugs in violation of R.C. 2925.11(A), a third degree felony, and (4) one count of possession of drugs contrary to R.C. 2925.11(A), a fifth degree felony.¹⁸

On February 2, 2016, the defendants both filed motions to suppress all (1) evidence seized from the residence at 864 Hawthorne Drive, Cincinnati, Ohio 45245, (2) statements by the defendants and their family members, (3) observations and opinions from officers who interviewed or investigated the defendants and their family members, (4) items seized on June 18, 2015, and (5) subsequent items, statements, and interviews seized by law enforcement from June 18, 2015 to present.¹⁹

The defendants argue that the search warrant had “no parameters, no specificity or particularity in the determination of places to be searched or objects to be seized.”²⁰ They also posit that “[g]iven that the search warrant’s probable cause requirement was based upon an affidavit of a different crime, there was no probable cause in the case at hand.”²¹

The court held oral argument on this matter on February 29, 2016. At that time the defendants additionally argued that the police exceeded the scope of the search warrant by seizing items unrelated to Bobby Crooks’ alleged crimes.

¹⁸ Bill of Particulars in Case No. 2015-CR-000609.

¹⁹ Def. Motion, pg. 1.

²⁰ Def. Motion, pg. 2.

²¹ Def. Motion, pg. 2.

STANDARD OF REVIEW

Pursuant to Crim.R. 12(C), before trial "any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue." A motion to suppress evidence "on the ground that it was illegally obtained" must be made prior to trial.²²

In the particular context of Fourth Amendment searches and seizures, the burden is upon the state if the contested evidence was obtained without a warrant, but upon the defendant if the search or seizure was pursuant to a warrant.²³ When a motion to suppress attacks the validity of a search conducted under a warrant, the burden of proof is on the defendant to establish that evidence obtained pursuant to the warrant should be suppressed.²⁴ In either event, the burden is on the applicable party to prove the matters required by a preponderance of the evidence.

A motion to suppress typically "presents mixed questions of law and fact."²⁵ In reviewing such a motion, "the court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses."²⁶

²² Crim.R. 12(C).

²³ *State v. Childs*, 88 Ohio St.3d 558, 567, 728 N.E.2d 379, 2000-Ohio-425, citing *United States v. Carhee* (C.A.10, 1994), 27 F.3d 1493, 1496.

²⁴ *State v. Dennis*, 79 Ohio St.3d 421, 426, 683 N.E.2d 1096 (1997); *State v. Carter*, 2d Dist. No. 2011 CA 11, 2011-Ohio-6700, 2011 WL 6835278, ¶ 11.

²⁵ *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7 citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5373, 797 N.E.2d 71, ¶ 8.

²⁶ *Id.*

LEGAL ANALYSIS

The Fourth Amendment to the United States Constitution protects people against “unreasonable searches and seizures,” and prescribes that warrants require “probable cause, supported by Oath or affirmation, and particularity in describing the place to be searched, and all persons or things to be seized.”²⁷ Hence, the Fourth Amendment imposes two requirements: (1) that all searches be reasonable and (2) that a warrant may only be issued if there is probable cause and the scope of the warrant is particularized.²⁸

Similarly, the Ohio Constitution provides: “The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person or things to be seized.”²⁹

Crim.R. 41(C) governs the procedural requirements of a search warrant, and requires the search warrant to be directed to a law enforcement officer, to command the officer to search within three days, and to designate to whom it should be returned.³⁰ Similarly, R.C. 2933.24 sets forth requirements for the contents of search warrants, stating, in pertinent part:

²⁷ Fourth Amendment to the United States Constitution.

²⁸ (Citation omitted) *State v. Loung*, 977 N.E.2d 1075, 2012-Ohio-4519, ¶ 22 (12th Dist.). See *State v. Morse*, 12th Dist. Warren No. CA2001-11-099, CA 2001-11-100, 2002-Ohio-3873, ¶ 9 (stating that a judge issuing a search warrant may only do so upon determining that probable cause for the search exists).

²⁹ Ohio Constitution, Article I, Section 14.

³⁰ Crim.R. 41(C), *Morse*, 2002-Ohio-3873 at ¶ 15.

"A search warrant shall be directed to the proper law enforcement officer or other authorized individual and * * * shall show or recite all the material facts alleged in the affidavit, and particularly name or describe the property to be searched for and seized, the place to be searched, and the person to be searched. * * * The warrant shall command the officer or individual to search the place or person named or described for the property, and to bring them, together with the person, before the judge or magistrate. The command of the warrant shall be that the search be made in the daytime, unless there is urgent necessity for a search in the night, in which case a search in the night may be ordered."

A search warrant must be "sufficiently definite" such that the executing law enforcement officer can identify the property to be seized "with reasonable certainty."³¹

To determine whether probable cause exists, courts must make "a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before [the court], there is a fair probability that contraband or evidence of a crime will be found in a particular place."³² The judge may draw "reasonable inferences concerning where the evidence referred to in the affidavit is likely to be kept, taking into account the nature of the evidence and the offense."³³ In making this determination the judge is limited to the four corners of the affidavit and any recorded testimony made part of the affidavit under Crim.R. 41(C).³⁴

The Fourth Amendment does not explicitly exclude evidence obtained in contravention of its requirements, but there exists a "judicially crafted exclusionary rule [that] mandates suppression of evidence obtained from a constitutional violation."³⁵

³¹ (Citation omitted.) *Morse*, 2002-Ohio-3873 at ¶ 16.

³² *Id.* at ¶ 9, citing *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 660 (1989).

³³ (Citation omitted.) *O'Connor*, 2002-Ohio-4122 at ¶ 19.

³⁴ *O'Connor*, 2002-Ohio-4122 at ¶ 21, citing *State v. Wesseler*, 12th Dist. No. CA96-07-131 (Feb. 17, 1998).

³⁵ *U.S. v. Garcia*, 496 F.3d 495, 505 (6th Cir. 2007), citing *Arizona v. Evans*, 514 U.S. 1, 10-11, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995). See *State v. O'Connor*, 12th Dist. Butler No. CA2001-

Although a search may begin upon the authority of a valid search warrant, it may "devolve" into an invalid search.³⁶ Such is the case when a law enforcement officer "exceed[s] the scope of the warrant *in the places to be searched* * * *."³⁷ The Sixth Circuit Court of Appeals has instructed that "[t]he test for determining if the officers engaged in an impermissible general search is whether their search *unreasonably* exceeded the scope of the warrant."³⁸

When a warrant authorizes law enforcement officers to look anywhere on a property to find "small, easy-to-conceal item[s], it would be extremely difficult * * * to establish that the officers searched in places not authorized" under the warrant.³⁹ In other words, the scope of the search is "logically, whatever is necessary to serve the purpose of that particular search, but don't look for an elephant in a matchbox."⁴⁰ Thus, under a properly executed search warrant, law enforcement officers may search "personal effects" if those could contain the items described in the warrant.⁴¹

For instance, in *State v. Thompson*, 6th Dist. Lucas No. L-08-1052, 2009-Ohio-3193, the court concluded that law enforcement officers had not exceeded the scope of their search warrant. They had a warrant to search the defendant's home for clothing,

08-195, 2002-Ohio-4122, ¶ 11, quoting *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961).

³⁶ *Garcia*, 496 F.3d at 507.

³⁷ (Emphasis original.) *Id.* at 507, citing *Walter v. Georgia*, 467 U.S. 39, 43 n. 3, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).

³⁸ (Emphasis original.) *Garcia*, 496 F.3d at 705, citing *Brindley v. Best*, 192 F.3d 525, 531 (6th Cir. 1999).

³⁹ *Garcia*, 496 F.3d at 508.

⁴⁰ *State v. Thompson*, 6th Dist. Lucas No. L-08-1052, 2009-Ohio-3193, ¶14, quoting *Dotson v. Commonwealth*, 47 Va.App. 237, 243 (2005). See *State v. Simmons*, 12th Dist. Warren No. CA2004-11-138, 2005-Ohio-7036, ¶ 17, quoting *United States v. Ross*, 456 U.S. 798, 82021, 102 S.Ct. 2157, 72 L.Ed.2d 572(1982) ("When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home * * * must give way to the interest in prompt and efficient completion of the task at hand.").

⁴¹ *Simmons*, 2005-Ohio-7036 at ¶ 18.

cell phones, and pocket knives.⁴² One of the officers discovered a bag of cocaine inside a pants pocket, and the defendant was charged with drug possession.⁴³ The defendant filed a motion to suppress, arguing that the search of his pants pocket where the cocaine was found exceeded the scope of the warrant.⁴⁴ The trial court denied this motion and the appellate court affirmed, finding that the police had a lawful right to search a pants pocket because it would have been a logical place to search for a cell phone or pocket knife.⁴⁵ The court concluded that the "fact that cocaine was not listed in the search warrant was of no consequence."⁴⁶

An exception to the requirement for a warrant is the "plain view doctrine."⁴⁷ The plain view doctrine permits:

"police officers to seize evidence, instrumentalities, or fruits of a crime without first obtaining a search warrant specifically naming such items if (1) the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed, (2) the incriminating character of the evidence is 'immediately apparent'; and (3) the officer has a lawful right to access to the object itself."⁴⁸

An item's incriminating character is immediately apparent when an officer has probable cause to believe that the item was contraband.⁴⁹ This does not mean that the

⁴² *Thompson*, 2009-Ohio-3193 at ¶ 2.

⁴³ *Id.* at ¶ 3.

⁴⁴ *Id.* at ¶ 11.

⁴⁵ *Id.* at ¶ 15.

⁴⁶ *Id.* at ¶ 16.

⁴⁷ *Garcia*, 496 F.3d at 508.

⁴⁸ *Simmons*, 2005-Ohio-7036 at ¶ 20, quoting *Horton v. California*, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990).

⁴⁹ *Simmons*, 2005-Ohio-7036 at ¶ 21, citing *Arizona v. Kicks*, 480 U.S. 321, 326, 107 US.Ct. 1149, 94 L.Ed.2d 347 (1987). Courts have reached different conclusions as to whether pills are immediately apparent as contraband. See *State v. Grant*, 12th Dist. Preble No. CA2014-12-014, 2015-Ohio-2464, ¶ 18 (holding that, based on the totality of circumstances, an officer had probable cause to believe pills wrapped in cellophane found in a defendant's sock were contraband, and it was immaterial that the officer could not specifically identify the pills as Xanax or Valium); *Simmons*, 2005-Ohio-7036, ¶ 21 (holding that an officer's seizure of

officer needs to be “certain”⁵⁰ or believe it to be “more likely true than false” that the items are contraband.⁵¹ Rather, the officer needs to only have in his mind “a fair probability” that the item is illegal contraband.⁵²

In the instant matter, the defendants first argue that the search warrant had “no parameters, no specificity or particularity in the determination of places to be searched or objects to be seized.”⁵³ The warrant’s content does not support the defendants’ argument. The warrant specified that that the officers had probable cause to seize Amanda Lilly’s cellphones, Bobby Crooks’ clothing, cigarette packages, and Bobby Crooks’ multimedia devices and storage devices (including but not limited to SD cards, thumb drives, external hard drives, and compact disks).⁵⁴ Moreover, the warrant specifically permitted officials to search all containers or safes (locked or unlocked),

morphine pills from the defendant’s purse was unlawful because the incriminating nature of the pill bottle was not immediately apparent, as illustrated by the fact that the officer had to ask the defendant what was in the pill bottle); *State v. Wehr*, 20 N.E.3d 1116, 2014-Ohio-4396, ¶ 28 (5th Dist.) (finding that an Advil bottle concealed in the defendant’s sock after his passenger took flight was immediately apparent as concealing contraband), *State v. Jackson*, 5th Dist. Stark No. 2010CA00058, 2011-Ohio-1225, ¶¶ 38-40 (holding that a bag of pills found on a bedroom floor were covered under the plain view doctrine), *State v. Stiffler*, 2d Dist. Montgomery No. 21008, 2006-Ohio-46, ¶ 18 (holding that an officer had probable cause to believe that an unlabeled pill bottle, discovered in a home that also had marijuana and baggies, likely contained incriminating evidence); *State v. Lovett*, 2d Dist. Greene No. 2004 CA 117, 2005-Ohio-4601, ¶ 15 (finding that an officer had probable cause to believe pills in a plastic bag, which looked like Xanax, were contraband), *State v. Belair*, 9th Dist. Summit No. 9891, 1981 WL 3910, *2 (Mar. 18, 1981) (determining that a large bag of pills found in a stereo were immediately apparent as incriminating in nature).

⁵⁰ *Grant*, 2015-Ohio-2464 at ¶ 18, quoting *State v. Kursim*, 12th Dist. Clermont No. CA2002-04-034, 2002-Ohio-6880, ¶ 17.

⁵¹ *Wehr*, 2014-Ohio-4396 at ¶ 27, quoting *Texas v. Brown*, 460 U.S. 730, 742, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983). See *Stiffler*, 2006-Ohio-46 at ¶ 14 (“At one time, this [immediately apparent] might have been understood to have excluded the exercise of the police officer’s reasoning process, requiring that the incriminating nature of the item must be intrinsically apparent, without regard to any facts or circumstances external to the item itself. If that was ever the law, it clearly no longer is the law.”).

⁵² *Wehr*, 2014-Ohio-4396 at ¶ 28, citing *George*, 45 Ohio St.3d at paragraph one of the syllabus.

⁵³ Def. Motion, pg. 2.

⁵⁴ State Ex. 1.

vehicles, and outbuildings within the curtilage of the residence.⁵⁵ The court finds that the warrant satisfies all constitutional, procedural, and statutory requirements.⁵⁶

During oral argument, the defendants additionally argued that the officers exceeded the scope of the search warrant by searching for items related to Bobby Crooks' crimes in the defendants' master bedroom. This argument ignores the fact that the search warrant permitted seizure of the defendant Amanda Lilly's cell phones. Accordingly, it was reasonable for the police to search her bedroom, including inside the nightstand and dresser, given that cell phones are small and easily concealed in such spaces.⁵⁷ In fact, multiple cell phones were collected from on top of and inside of the dresser and nightstand.⁵⁸

Moreover, it was likewise reasonable for the police to search in the master bedroom's closet because, not only could it easily have concealed Amanda Lilly's cell phones, but it would be a reasonable place to look for soiled clothing. While it was not Bobby Crooks' bedroom, it is not unreasonable to believe that a mother may collect her child's misplaced dirty laundry and place it in her hamper, for example. Indeed, Bobby Crooks' clothing was found strewn in multiple rooms throughout the residence, not only in his bedroom.⁵⁹

Finally, the defendants argue that "[g]iven that the search warrant's probable cause requirement was based upon an affidavit of a different crime, there was no

⁵⁵ State Ex. 1.

⁵⁶ More specifically, the warrant complies with both the U.S. and Ohio Constitutions, Crim.R. 41(C), and R.C. 2933.24.

⁶⁷ *Garcia*, 496 F.3d at 508.

⁵⁸ State Ex. 1.

⁵⁹ State Ex. 1.

probable cause in the case at hand.”⁶⁰ The defendants ask: “When the initial search warrant is based upon the probable cause of a different crime, what is the basis for seizing evidence of a crime unrelated?” At oral argument the state’s answer to this question was that the plain view doctrine applies. The defendants did not offer any counterarguments as to why the plain view doctrine is inapplicable.

The court finds that the plain view doctrine applies, and therefore the law enforcement officers were permitted to seize the marijuana, pills, and large sums of money discovered in the defendants’ bedroom.⁶¹ The police officers did not violate the Fourth Amendment in being at the residence and in searching the defendants’ bedroom. As discussed, their intrusion into the home was lawful. Additionally, the officers’ access to the items found in the master bedroom was lawful because the officers had reason to believe that items named in the search warrant could be in the master bedroom. In the course of this lawful search, the seized items came into the officers’ plain view. Finally, upon finding bags of marijuana, hundreds of pills, and large sums of cash, all in a close proximity, under the totality of the circumstances the officers had probable cause to believe that these items were illegal contraband or evidence.⁶² Accordingly, because the plain view doctrine applies, none of the seized evidence is required to be suppressed.

⁶⁰ Def. Motion, pg. 2.

⁶¹ *Simmons*, 2005-Ohio-7036 at ¶ 20 quoting *Horton*, 496 U.S. at 136-37.

⁶² *Wehr*, 2014-Ohio-4396 at ¶ 28 citing *George*, 45 Ohio St.3d at paragraph one of the syllabus. As discussed earlier, courts have reached different conclusions as to whether pills are immediately recognized as contraband. In the instant case, the large volume of pills in a plastic bag, coupled with the discovery of the cash and marijuana nearby, could lead a police officer to reasonably believe that there was a fair probability the pills were contraband. The defendants have not offered any argument as to whether the items were immediately recognizable as evidence or contraband.

CONCLUSION

For the foregoing reasons, the defendants' motion to suppress is not well-taken and denied.

IT IS SO ORDERED.

DATED: _____



Judge Jerry R. McBride