

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-09-537
NM - KEN - 1/15/2010

STATE OF MAINE

v.

ORDER ON DEFENDANT'S
MOTION TO SUPPRESS

MATTHEW SULLIVAN,

Defendant

The defendant moves to suppress evidence seized from room number 154 of the Holiday Inn in Augusta. The defendant argues that the affidavit of MDEA Agent Jonathan Richards does not provide a substantial basis for a finding of probable cause and the authorization of a no-knock entry was improper.

The defendant moves also to suppress statements made to law enforcement officers. He argues that he was not properly informed of his Miranda rights and the statements resulted from an invalid search.

The defendant further moves for the disclosure of the identities of concerned citizens numbers 2 and 3 referenced in the Richards affidavit.

For the following reasons, the motions to suppress are denied and the motion to disclose is denied.

Findings

MDEA Agent Jonathan Richards was present on 7/7/09 when the no-knock search warrant was executed at room number 154 at the Holiday Inn. Andrew Mumbauer and the defendant were found in the room. They were searched, placed in handcuffs, and taken to the Augusta Police Station. Agent Richards informed the men

they were under arrest for drug trafficking. Cocaine, pills, scales, and a firearm were seized from the room.

The defendant was taken to a booking room at the station. The door was closed. Although he had "cycled up" at the hotel room, the defendant had calmed down at the station and was not in distress. Agent Richards introduced himself and Federal DEA Agent Christine¹ Tierney and Trooper Christopher Tupper. The defendant's name, date of birth, and address were obtained.

Agent Richards read the Miranda warnings to the defendant from a card.² After each statement, Agent Richards asked the defendant if he understood and the defendant replied each time that he understood. The defendant agreed to speak to the officers.

Agent Richards left the booking room and Trooper Tupper interviewed the defendant. The interview was not recorded in order to protect the defendant, who was cooperative. Any audio or video recording would be available to other defendants through discovery.

The defendant stated he traveled to Maine a couple of times to deliver illegal drugs. He declined to identify the owner of the drugs because of his concerns for the safety of his family. He was aware drugs were being sold in the hotel parking lot. He agreed to be photographed.

The State stipulated at the hearing on the motions that concerned citizens numbers 2 and 3 have no knowledge about the defendant.

¹ Her name may be Christina.

Conclusions

Search Warrant

The affidavit provides the officer's valid rationale for requesting a "no knock and night time warrant." See Affidavit at 20; M.R. Crim. P. 41(i). The affidavit contains sufficient facts to provide a substantial basis for a finding of probable cause. See State v. Crowley, 1998 ME 187, ¶ 4, 714 A.2d 834, 836. Based on the totality of the circumstances and, given the circumstances set forth in the affidavit, there was a fair probability that contraband or evidence of a crime would be found in the hotel room. Id., ¶ 3, 714 A.2d at 836.

Statements

The defendant was properly informed of the Miranda warnings, understood the warnings, and agreed to speak to the officers. His waiver of his rights was valid. State v. Coombs, 1998 ME 1, ¶15, 704 A.2d 387, 392. Because the warrant was valid, his statements are not the "fruit of the poisonous tree." State v. Boyington, 1998 ME 163, ¶ 9, 714 A.2d 141, 143-44.

Concerned Citizens

"Where the disclosure of an informer's identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the [informer's] privilege must give way." Roviaro v. United States, 353 U.S. 53, 60-61 (1957). In this case, there is no showing that the concerned citizens are "able to give testimony relevant to any issue in this case." State v. Chase, 505 A.2d 791, 794 (Me. 1986). Disclosure of their identities is not required.

² Agent Richards did not record in his report that he read the Miranda warnings. The reading of Miranda warnings was noted in Trooper Tupper's report.

The entry is

The Motions to Suppress Evidence Seized is DENIED.

The Motion to Suppress Statements is DENIED.

The Motion to Disclose is DENIED.

Date: January 15, 2010



Nancy Mills
Justice, Superior Court

KENN CR-09-537

STATE OF MAINE
vs
MATTHEW V SULLIVAN
26 STORY AVE
LYNN MA

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2009-00537

DOCKET RECORD

DOB: 07/30/1987

Attorney: LEONARD SHARON
LEONARD SHARON ESQ PC
223 MAIN STREET
AUBURN ME 04210-5833
RETAINED 09/16/2009

State's Attorney: EVERT FOWLE

Filing Document: CRIMINAL COMPLAINT
Filing Date: 07/08/2009

Major Case Type: FELONY (CLASS A,B,C)

Charge (s)

1 AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS 07/07/2009 AUGUSTA
Seq 9044 17-A 1105-A(1)(C-1)(1) Class A

2 AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS 07/07/2009 AUGUSTA
Seq 9044 17-A 1105-A(1)(C-1)(1) Class A Charged with INDICTMENT on Supplem

3 AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS 07/07/2009 AUGUSTA
Seq 9065 17-A 1105-A(1)(I) Class A Charged with INDICTMENT on Supplem

Docket Events:

07/08/2009 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 07/08/2009

07/10/2009 Charge(s): 1
HEARING - INITIAL APPEARANCE SCHEDULE OTHER COURT ON 07/08/2009

AUGDC

07/10/2009 Charge(s): 1
HEARING - INITIAL APPEARANCE HELD ON 07/08/2009
RICHARD MULHERN , JUDGE
Defendant Present in Court

07/10/2009 Charge(s): 1
HEARING - STATUS CONFERENCE SCHEDULED FOR 09/08/2009 @ 10:00

07/10/2009 Charge(s): 1
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 07/08/2009

07/10/2009 BAIL BOND - \$20,000.00 CASH BAIL BOND SET BY COURT ON 07/08/2009
RICHARD MULHERN , JUDGE
NO USE OR POSSESSION OF ANY ALCOHOL, ILLEGAL DRUGS, DANGEROUS WEAPONS, FIREARMS, SUBMIT TO
SEARCH AND TESTING FOR ALCOHOL, ILLEGAL DRUGS, FIREARMS, DANGEROUS WEAPONS AT ANY TIME
WITHOUT ARTICULABLESUSPICION OR PROBABLE CAUSE. NO CONTACT WITH KATHRYN BUSH, DANIEL
GRENIER, ANDREW MUMBAUER, GORDON NEWTON, ASHLEY WILLIAMS, DANIEL SULLIVAN, REVIEW UPON
APPEARANCE OF COUNSEL

07/20/2009 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 07/20/2009

07/23/2009 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 07/20/2009
NANCY MILLS , JUSTICE
COPY TO PARTIES/COUNSEL

07/23/2009 Party(s): MATTHEW V SULLIVAN
ATTORNEY - APPOINTED ORDERED ON 07/20/2009

Attorney: DAVID CROOK

07/23/2009 Charge(s): 1
HEARING - STATUS CONFERENCE NOTICE SENT ON 08/19/2009

08/03/2009 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 08/03/2009

08/11/2009 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 08/04/2009
NANCY MILLS , JUSTICE
COPY TO PARTIES/COUNSEL

08/11/2009 Party(s): MATTHEW V SULLIVAN
ATTORNEY - WITHDRAWN ORDERED ON 08/04/2009

Attorney: DAVID CROOK

08/19/2009 Party(s): MATTHEW V SULLIVAN
ATTORNEY - APPOINTED ORDERED ON 08/04/2009

Attorney: STEPHEN BOURGET

09/08/2009 Charge(s): 1
HEARING - STATUS CONFERENCE HELD ON 09/08/2009
DONALD H MARDEN , JUSTICE
Attorney: STEPHEN BOURGET

DA: BRAD GRANT

Defendant Present in Court

09/08/2009 Charge(s): 1
HEARING - STATUS CONFERENCE SCHEDULED FOR 11/10/2009 @ 10:00

09/08/2009 Charge(s): 1
HEARING - STATUS CONFERENCE NOTICE SENT ON 09/08/2009

09/16/2009 Party(s): MATTHEW V SULLIVAN
ATTORNEY - APPOINTED ORDERED ON 09/16/2009

Attorney: LEONARD SHARON

09/16/2009 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 09/13/2009

09/17/2009 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 09/16/2009
NANCY MILLS , JUSTICE
COPY TO PARTIES/COUNSEL

09/17/2009 Party(s): MATTHEW V SULLIVAN
ATTORNEY - WITHDRAWN ORDERED ON 09/16/2009

Attorney: STEPHEN BOURGET

09/21/2009 Charge(s): 1
HEARING - STATUS CONFERENCE NOT HELD ON 09/21/2009

09/21/2009 Charge(s): 1,2,3
SUPPLEMENTAL FILING - INDICTMENT FILED ON 09/18/2009

09/21/2009 Charge(s): 1,2,3
HEARING - ARRAIGNMENT SCHEDULED FOR 09/29/2009 @ 8:30

09/21/2009 Charge(s): 1,2,3
HEARING - ARRAIGNMENT NOTICE SENT ON 09/21/2009

09/23/2009 Party(s): MATTHEW V SULLIVAN
ATTORNEY - RETAINED ENTERED ON 09/16/2009

Attorney: LEONARD SHARON

09/30/2009 Charge(s): 1,2,3
HEARING - ARRAIGNMENT HELD ON 09/29/2009
NANCY MILLS , JUSTICE
Attorney: LEONARD SHARON
DA: BRAD GRANT Reporter: TAMMY DROUIN
READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO
DEFENDANT. 21 DAYS TO FILE MOTIONS

09/30/2009 Charge(s): 1,2,3
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 09/29/2009

09/30/2009 TRIAL - DOCKET CALL SCHEDULED FOR 12/09/2009 @ 8:30

10/21/2009 MOTION - MOTION DISCLOSE CONF INFORMANT FILED BY DEFENDANT ON 10/20/2009

10/21/2009 HEARING - MOTION DISCLOSE CONF INFORMANT SCHEDULED FOR 12/09/2009 @ 8:30

10/21/2009 HEARING - MOTION DISCLOSE CONF INFORMANT NOTICE SENT ON 10/21/2009

10/21/2009 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 10/20/2009

10/21/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/09/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

10/21/2009 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 10/21/2009

10/21/2009 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 10/20/2009

10/21/2009 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 12/09/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

10/21/2009 HEARING - MOTION TO SUPPRESS EVIDENCE NOTICE SENT ON 10/21/2009

10/21/2009 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 10/20/2009

10/21/2009 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 12/09/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

10/21/2009 HEARING - MOTION TO SUPPRESS EVIDENCE NOTICE SENT ON 10/21/2009

10/21/2009 Charge(s): 1,2,3

MOTION - OTHER MOTION FILED BY DEFENDANT ON 10/20/2009

MOTION FOR ACCESS TO EVIDENCE FOR INDEPENDENT TESTING.

10/21/2009 HEARING - OTHER MOTION SCHEDULED FOR 12/09/2009 @ 8:30

AUGSC

10/21/2009 HEARING - OTHER MOTION NOTICE SENT ON 10/21/2009

AUGSC

10/21/2009 MOTION - MOTION EXPERT WITNESS REPORT FILED BY DEFENDANT ON 10/20/2009

10/21/2009 HEARING - MOTION EXPERT WITNESS REPORT SCHEDULED FOR 12/09/2009 @ 8:30

10/21/2009 HEARING - MOTION EXPERT WITNESS REPORT NOTICE SENT ON 10/21/2009

12/09/2009 HEARING - MOTION EXPERT WITNESS REPORT CONTINUED ON 12/09/2009

12/09/2009 HEARING - MOTION EXPERT WITNESS REPORT SCHEDULED FOR 12/10/2009 @ 8:30

12/09/2009 HEARING - OTHER MOTION CONTINUED ON 12/09/2009

AUGSC

12/09/2009 HEARING - OTHER MOTION SCHEDULED FOR 12/10/2009 @ 8:30

MOTION TO PREPARE REPORT

12/09/2009 HEARING - MOTION TO SUPPRESS EVIDENCE CONTINUED ON 12/09/2009

12/09/2009 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 12/10/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

12/09/2009 HEARING - MOTION TO SUPPRESS EVIDENCE CONTINUED ON 12/09/2009

12/09/2009 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 12/10/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

12/09/2009 HEARING - MOTION TO SUPPRESS CONTINUED ON 12/09/2009

12/09/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/10/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

12/09/2009 HEARING - MOTION DISCLOSE CONF INFORMANT CONTINUED ON 12/09/2009

12/09/2009 HEARING - MOTION DISCLOSE CONF INFORMANT SCHEDULED FOR 12/10/2009 @ 8:30

12/09/2009 TRIAL - DOCKET CALL HELD ON 12/09/2009

NANCY MILLS , JUSTICE

Reporter: TAMMY DROUIN

Defendant Present in Court

12/17/2009 HEARING - MOTION EXPERT WITNESS REPORT HELD ON 12/10/2009

NANCY MILLS , JUSTICE

Defendant Present in Court
12/17/2009 MOTION - MOTION EXPERT WITNESS REPORT GRANTED ON 12/10/2009
NANCY MILLS , JUSTICE
12/17/2009 Charge(s): 1,2,3
MOTION - OTHER MOTION GRANTED ON 12/10/2009
NANCY MILLS , JUSTICE
MOTION FOR ACCESS TO EVIDENCE FOR INDEPENDENT TESTING.
12/17/2009 HEARING - OTHER MOTION HELD ON 12/10/2009
NANCY MILLS , JUSTICE
MOTION TO PREPARE REPORT
12/17/2009 MOTION - MOTION DISCLOSE CONF INFORMANT UNDER ADVISEMENT ON 12/10/2009
NANCY MILLS , JUSTICE
12/17/2009 HEARING - MOTION DISCLOSE CONF INFORMANT HELD ON 12/10/2009
NANCY MILLS , JUSTICE
12/17/2009 HEARING - MOTION TO SUPPRESS HELD ON 12/10/2009
NANCY MILLS , JUSTICE
Defendant Present in Court

ER, TAPE#1264, INDEX#1870-7209
12/17/2009 HEARING - MOTION TO SUPPRESS EVIDENCE HELD ON 12/10/2009
NANCY MILLS , JUSTICE
Defendant Present in Court

ER, TAPE#1264, INDEX#1870-7209
12/17/2009 HEARING - MOTION TO SUPPRESS EVIDENCE HELD ON 12/10/2009
NANCY MILLS , JUSTICE
Defendant Present in Court

ER, TAPE#1264, INDEX#1870-7209
12/17/2009 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS EVIDENCE WITHDRAWN ON 12/10/2009

AS TO THE SECOND FLOOR OF THE HOLIDAY INN
12/17/2009 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS EVIDENCE UNDER ADVISEMENT ON 12/10/2009
NANCY MILLS , JUSTICE
AS TO THE FIRST FLOOR OF THE HOLIDAY INN
12/17/2009 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 12/10/2009

01/15/2010 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS EVIDENCE DENIED ON 01/15/2010
NANCY MILLS , JUSTICE
COPY TO PARTIES/COUNSEL
01/15/2010 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS DENIED ON 01/15/2010
NANCY MILLS , JUSTICE
COPY TO PARTIES/COUNSEL
01/15/2010 MOTION - MOTION DISCLOSE CONF INFORMANT DENIED ON 01/15/2010
NANCY MILLS , JUSTICE
01/15/2010 Charge(s): 1,2,3
TRIAL - DOCKET CALL SCHEDULED FOR 03/02/2010

A TRUE COPY

ATTEST: _____
Clerk