

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-533

AUGUST TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Vicky Mott and Arthur Mullen	}	
	}	DOCKET NO. 3357/3358-7-05 CnCr

Trial Judge: Dean B. Pineles

In the above-entitled cause, the Clerk will enter:

Following the denial of their motion to suppress evidence seized at their home, co-defendants Vicky Mott and Arthur Mullen entered conditional pleas of no contest to charges alleging felony possession of cocaine and misdemeanor possession of a depressant/stimulant. On appeal, they argue that the police affidavit was insufficient to support issuance of the warrant authorizing the search of their home. We affirm.

On April 8, 2005, police executed a warrant obtained the previous day to search defendants' home, where they found regulated drugs that led to the charges against defendants. Defendants filed a joint motion to

suppress, arguing that the affidavit accompanying the warrant application was insufficient to support the warrant. The superior court denied the motion. On appeal from their conditional no-contest pleas, defendants reiterate their argument that the hearsay claims in the police affidavit stating that their home was the source of the drugs supplied to the police informant were not sufficient to support granting the request for a search warrant.

The law in this area is well settled. The police must establish probable cause to obtain a search warrant. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. V.R.Cr.P. 41(c). In reviewing a warrant for compliance with Rule 41(c), the key inquiry is whether the information provided in the affidavit reveals circumstances from which a person of reasonable caution would conclude that a crime has been committed and that evidence of the crime will be found in the place to be searched. State v. Cooper, 163 Vt. 44, 51 (1994) (internal quotations omitted). In making this inquiry, the affidavit must be viewed in a common sense manner and not be subjected to hypertechnical scrutiny. State v. Ballou, 148 Vt. 427, 434 (1987). Moreover, we give the district court great deference in reviewing its determination of probable cause. Id.

Here, the affidavit accompanying the warrant application alleged the following relevant facts. On March 31, 2005, a person who had been arrested for possession of crack cocaine offered to cooperate with police regarding the source of his drugs in exchange for the reduction of the charges against him. The informant identified a man named Ryan Cook as his immediate source of cocaine and stated that Cook travels to a house next to a church on Main Street in Colchester to obtain the cocaine. The informant advised police that he himself had never been in the house, but Cook had told him about it and its residents. The informant told police that he could purchase cocaine that evening from Cook. The police wired the informant's vehicle and kept it under surveillance that evening when the informant met Cook. Cook entered the informant's vehicle and discussed a cocaine transaction. While police were listening, Cook stated that he would be obtaining the cocaine in Colchester but would also be going to a house on Gentes Road to smoke with a friend. After Cook and the informant split up, police followed Cook first to an address on Gentes Road and then to the residence on Main Street in Colchester that was later the subject of the search warrant. After remaining in the Main Street

house approximately twenty minutes, Cook left and headed back toward where he had met the informant. Police lost sight of Cook=s vehicle on Gentes Road, but shortly thereafter Cook called the informant from the house of Cook=s friend who lived on Gentes Road. Cook then met the informant again and completed the cocaine transaction.

At the request of the police, the informant set up a second drug transaction with Cook on April 6, 2005. Once again, the informant=s vehicle was wired when he met Cook. After Cook entered the informant=s vehicle at the meeting place, he told the informant that he would be obtaining the cocaine from ATom,@ who was the nephew of the couple that lived at the Main Street house in Colchester. When the informant asked Cook how long it would take to get the drugs, Cook stated that they were running to Colchester right away and would be back soon. Shortly after Cook left the informant=s vehicle, the informant called police to tell them that Cook was going to meet Tom at Essex High School and then they were going to get the cocaine from the house in Colchester. Police followed Cook, who met with someone in another vehicle and then went to several different locations. When police called the informant a little later to ask what was going on, the informant advised the police that Cook had given the money to Tom, and that Tom was going to get the cocaine. A surveillance team that was set up at the Main Street house reported that there was a flurry of activity at the house, with people coming and going. Approximately thirty-five minutes after he contacted the other vehicle, Cook called the informant and told him that he was on his way to meet Tom. Shortly thereafter, Cook met with the informant and completed the drug transaction.

Based on a detailed, six-page affidavit setting forth these events, the police applied for and obtained a warrant to search the Main Street house. Defendants filed a motion to suppress the evidence obtained during the search of the home. The superior court denied the motion, noting that Cook=s statements were reliable because everything he did was consistent with his claim that the drugs he provided to the informant came from the Main Street house in Colchester. On appeal, defendants argue that the affidavit lacked substantial evidence from which one could reasonably infer that evidence of a crime would be found at the Main Street house. Defendants point out that the only information connecting their home to illegal activity was hearsay statements in which Cook told the informant that he got the cocaine from that house. Defendants contend that Cook=s

presence at the Colchester house on March 31, 2005 does not lead to a logical inference that he obtained drugs there. According to defendants, there is neither a factual basis for Cook=s hearsay claims nor any independent police corroboration of Cook=s reliability. See State v. Alger, 151 Vt. 315, 318 (1989) (when hearsay is component of information provided to court as basis for probable cause, Rule 41(c) requires that (1) information show basis of knowledge from which court can draw its own conclusions about probable cause and (2) veracity of information be demonstrated either by inherent credibility of source of hearsay or presence of factors reasonably demonstrating reliability of information).

We find these arguments unavailing. During the first controlled purchase, while Cook was being monitored by police without his knowing it, he told the informant that he was going to get the cocaine from the Main Street house in Colchester. Shortly thereafter, he stopped briefly at the Colchester house and returned to the informant to complete the drug transaction. The reasonable inference that Cook obtained drugs at the Main Street house is not undermined by his planned stop at a friend=s house to smoke or by the police temporarily losing sight of his vehicle in the same area. The events witnessed by the police provided a factual basis and reliability to Cook=s statements, which were made while he was unaware that his conversation with the informant was being monitored. The reliability of his statements regarding the Main Street house was further bolstered by what transpired during the second controlled transaction, even though the police were never able to positively confirm that the drugs in that transaction came from the Main Street house. In short, there was substantial evidence for the district court to conclude that a search of the Main Street home would uncover evidence of a crime.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice