

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

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

OCT 8 2009

SUPREME COURT DOCKET NO. 2008-522

OCTOBER TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Addison Circuit
	}	
Rondelle Esters	}	DOCKET NO. 420-9-08 Ancr
	}	
	}	Trial Judge: Cortland Corsones

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

Following his conditional plea of guilty to the charge of conspiracy to distribute heroin, defendant challenges on appeal the district court's denial of his motion to suppress the State's evidence and dismiss the charges against him, arguing that the State lacked probable cause for issuance of a search warrant. We affirm.

On August 26, 2008, the informant who provided the statement to police that led to defendant's arrest was stopped by police for a traffic violation. A record check revealed that the informant's license had been suspended and that there was an outstanding New York warrant for her arrest. She was arrested and taken to the local police barracks, where she turned over to police heroin that she said she had purchased at a camper trailer in a remote area of Goshen, Vermont. The next day, the informant returned to the barracks and provided a sworn statement describing and giving directions to the trailer. The informant stated that she had purchased heroin on approximately five occasions through an acquaintance, who would drive with her to the location, go inside the trailer with her cash and make the purchase, and then return to her car and split the heroin between her and himself. The informant reported that her acquaintance told her that the men in the trailer were armed and dangerous and were selling large quantities of heroin. Upon receiving this information, the police located and videotaped the entrance to the trailer. On August 27, the police applied for and obtained a search warrant based on the above information. Upon executing the warrant on September 4, the police seized a large quantity of heroin, as well as other drugs, drug paraphernalia, and firearms.

Defendant and two other individuals were charged as the result of the search. Defendant was charged with trafficking heroin, possession of heroin, and conspiracy to deliver heroin. Before trial, the defense moved for suppression of the evidence, arguing that the search warrant was invalid for lack of probable cause. The trial court denied the motion, concluding that the informant's statements were reliable and provided a sufficient basis to believe that the place to be searched would reveal evidence of a crime. On appeal, defendant argues that the information in the police affidavit was insufficient to demonstrate probable cause for issuance of a search warrant.

“Our review of the trial court’s finding of probable cause is deferential.” State v. Robinson, 2009 VT 1, ¶ 6, 969 A.2d 127. In general, probable cause exists when the information contained in the warrant is sufficient for a judicial officer to reasonably conclude that a crime was committed and that evidence of the crime would be found in the place to be searched. Id. Courts view affidavits in a “common sense manner” and do not subject them to “hypertechnical scrutiny.” Id. (citation omitted). When the finding of probable cause rests on hearsay, we apply a two-part test requiring “ ‘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.’ ” Id. (quoting V.R.Cr.P. 41(c)). The first part of the rule tests the credibility of the source of the information, while the second part tests the source’s basis of knowledge regarding the information.

Defendant first argues that the affidavit failed to provide a substantial basis to believe that the informant in this case was credible. We disagree. Credibility may be established by showing either that the informant was inherently credible or by showing the reliability of the information provided by the informant on the particular occasion in question. State v. Goldberg, 2005 VT 41, ¶ 11, 178 Vt. 96. The State relies on the second basis in this case. Particular information is deemed reliable if the informant acted against penal interest or the police corroborated the information to the point that it would be reasonable to rely upon it. Id. In this case, the informant was a named individual, and her criminal background as well as the circumstances of her providing the information was set forth in the affidavit. See Commonwealth v. Harding, 539 N.E.2d 83, 86 (Mass. App. Ct. 1989) (citation omitted) (“Information provided by a named informant is generally accorded more weight.”); State v. Dietrich, 2009-NMCA-031, ¶ 12, 145 N.M. 733, 204 P.3d 748 (identifying informant by name is significant factor in determining reliability of information because named informant has greater incentive to provide truthful information to avoid unfavorable consequences of giving false information). Further, she made a sworn statement that subjected her to criminal penalties for providing false information. Moreover, much of the information she provided was based on her personal observation. See State v. Wesson, 516 S.E.2d 826, 829 (1999) (“When a named informant makes a declaration against his interest and based on personal observation, that in itself provides a substantial basis for the magistrate to credit his statement.”). Most importantly, as the trial court found, her statements were against her penal interest. See Goldberg, 2005 VT 41, ¶ 11 (stating that “particular information is generally deemed inherently reliable if the informant acted against penal interest”); see also State v. Ballou, 148 Vt. 427, 435 n.3 (1987) (stating that admissions against penal interest are one factor, but not necessarily controlling, as to whether information was reliable). Police also corroborated some of the information provided by the informant, but only neutral facts; thus, this corroboration, standing alone, would not have demonstrated the reliability of the information. Cf. Goldberg, 2005 VT 41, ¶ 14 (noting that police’s only attempt at corroboration was driving by residence of suspected drug activity).

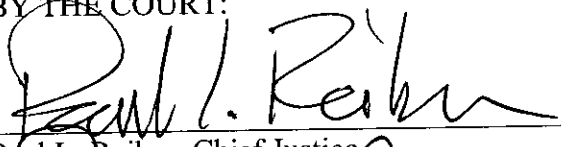
Nevertheless, all of the above facts, taken together, were sufficient for the trial court to reasonably conclude that the informant was a credible source for the information provided on this occasion. This case is quite different from Robinson, 2009 VT 1, ¶ 9, where the police made only general statements about the informant’s credibility, and Goldberg, 2005 VT 41 ¶ 13, where the informant provided information in exchange for consideration in an unrelated pending criminal prosecution. Here, defendant speculates on appeal that the informant provided her statement to police based on an offer of leniency as to pending criminal charges. Apart from the fact that the argument is based on little more than conjecture, defendant waived it before the district court. Defendant suggested that the informant’s statement may have been provided based on promises of leniency. The State asked for a hearing to address that question and others, but the defense attorneys insisted that the trial court should decide the credibility of the informant

and the reliability of her statement based on the four corners of the police affidavit. The court agreed and found that nothing in the affidavit indicated that the informant provided her statement in consideration of the effect it would have on pending charges against her.

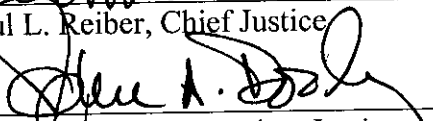
Defendant also argues that there was insufficient evidence for the court to believe that there was a factual basis for the information provided by the informant. Again, we disagree. Defendant points out that the informant saw her acquaintance enter the trailer with cash and return with heroin, but did not observe the actual transactions; he suggests that the acquaintance may have been the actual drug trafficker who was scamming the informant. The trial court rejected this speculation as totally unsupported by the evidence. We conclude that based on the information provided by the informant, including a statement of her personal observations, the court could reasonably conclude that a crime had been committed and that evidence of the crime would be found at the place to be searched. Goldberg, 2005 VT 41, ¶ 10 (stating that “factual basis” prong is satisfied if court can make its own direct analysis based on information provided). The trial court accepted the acquaintance’s double-hearsay statements as against his penal interest and therefore reliable, but even without those statements, the informant’s statement as to her personal observations supported issuance of the search warrant. See Id. (stating that “factual basis” prong was satisfied because informant’s statements were based on his personal observations).

Affirmed.

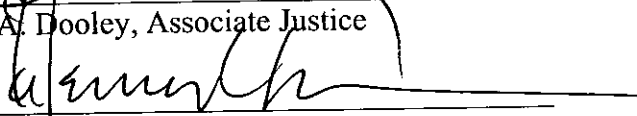
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice