

SUPREME COURT OF LOUISIANA

01-KK-2529

STATE OF LOUISIANA

versus

DITRA S. HORTON

AND

JUNIUS ELI

Traylor, dissenting.

I dissent from the majority opinion because I would find probable cause existed for the issuance of a warrant to search the residences at issue in this case. I specifically take issue with three points made by the majority and the trial court. First, I strenuously disagree with the majority’s statement that the officers “conducted an extensive surveillance of both residences and followed defendants to several locations, but never observed any suspicious behavior.” Similarly, I disagree with the trial court’s finding that there was “nothing, absolutely nothing that suggest[s] that there was dope in either of these places.” Lastly, I disagree that the second line ribbon evidence somehow vitiated the police’s probable cause and invalidated the search warrant.

The magistrate's principal task is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there was a fair probability that evidence of a crime would be found in both residences. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983). The task of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Id.* at 239. As this court stated in *Gibson v. State*, 99-1730 (La. 4/11/00), 758 So. 2d 782:

The determination of probable cause, unlike the determination of guilt at trial, does not require the fine

resolution of conflicting evidence required at trial, and credibility determinations are seldom crucial in deciding whether available evidence supports a reasonable belief that the person to be arrested has committed a crime. Probable cause, as the very name implies, deals with probabilities. The probable cause standard recognizes that a degree of uncertainty may exist and that an officer need not have sufficient proof to convict but must have more than a mere suspicion. The facts need not eliminate all possible innocent explanations in order to support a finding of probable cause. (citations omitted)

In the present case, the corroborated tip for the reliable informant supported a reasonable, common sense inference made by the magistrate that the officers had a fair probability of finding evidence of drug trafficking at both residences. *See United States v. Reddrick*, 90 F.3d 1276, 1281 (7th Cir. 1996) (a magistrate may infer that in the case of drug dealers evidence is likely to be found where dealers live); *United States v. Robins*, 978 F.2d 881, 892 (5th Cir. 1992) (a residence is a convenient, commonly-used place for planning continuing criminal activities like drug trafficking); *United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986) (a magistrate is "entitled to draw reasonable inferences," including that drug dealers have drugs "where the dealers live," and when traffickers consist of ringleader and assistants a sufficient "probability exists that drugs will be at the assistants' residence as well as the ringleader's.")).

The facts accepted by the trial court in this matter reveal that the magistrate was informed that a confidential informant with a proven track record called Detective Noel with information regarding drug trafficking at both the Pritchard Place and General Ogden residences of the defendants herein. The informant stated that "Ghost" a/k/a defendant Eli used the General Ogden residence to "store the bulk of his cocaine," although he did not live at that address. The informant identified General Ogden as the residence of defendant Horton, who assisted Eli in his narcotics

trafficking. The informant provided detailed vehicle information for both defendants and alleged that his factual basis for this knowledge was from purchasing retail quantities of cocaine from “Ghost” for self indulgence within the forty-eight hours preceding the tip.

The warrant application set forth the above facts and related to the magistrate that, subsequent to the confidential tip, the police established a separate surveillance of both addresses and witnessed what would be reasonably determined by any officer of the law to be activity highly suggestive of drug trafficking. The surveillance teams witnessed Horton leave the General Ogden residence with a large paper bag, meet with Eli, and drive around the city to conduct three hand-to-hand transactions highly suggestive of narcotics transactions. The officers corroborated the informant’s tip by tying Horton and Eli together in a series of apparent narcotics transactions. This showing alone, in my view, is sufficient to corroborate the reliable informant’s tip to provide the requisite probable cause to search both Eli’s Pritchard Place residence and Horton’s General Ogden residence for contraband and fruits of the narcotic trafficking such as large amounts of cash or other evidence linking Eli and Horton in their illegal activity.

The trial judge did not find that the detective lied in the warrant application. Also, defendant Eli’s involvement in a second-line organization nor Detective Noel’s failure to reveal that the confidential informant did not see drugs or drug transactions occur at either residence would not defeat the probable cause basis of the search warrant. *See State v. Tate*, 407 So. 2d 1133, 1137 (La. 1981). My reasoning is that Eli allegedly *received* a paper bag from Coston, who was not alleged in any way to be engaged in Eli’s drug trafficking, in a transaction which occurred completely separate and apart from the suspicious activity of Horton and Eli. Eli’s seemingly

innocent receipt of a brown bag from Coston does not necessarily vitiate the highly suggestive activities of Eli and Horton in *delivering* packages around the city.

Furthermore, the majority confuses the three hand-to-hand transactions wherein Eli gave a brown paper package in exchange for cash with the interaction between Coston and Eli, wherein Eli received ribbon from Coston. The evidence shows that Eli and Horton dropped off three separate packages at South Carrollton and Baudin Streets, at Martin Luther King Boulevard and South Robertson Street, and at Philip and Dryades Street. According to a witnesses for the defense, the only person stopped after a transaction was Mr. Coston. There is no evidence that the officers searched an individual who received a bag from Eli which contained ribbon. Only Mr. Caston stated that the police searched him and that he showed them to a dumpster which contained remnants of ribbon. Additionally, Detective Noel unequivocally stated that the officers attempted to stop an individual who received a bag from Eli but made no more attempts to stop the other individuals. The trial court did not find these statements to be incredible. Therefore, none of the suspicious exchanges wherein Eli and Horton delivered suspicious packages to various individuals around the city were known by the police to contain any innocent substance.

The trial court therefore erred by second-guessing the reasonable inferences drawn by the magistrate from the circumstances in the present case. Accordingly, I dissent and would reverse the lower courts' suppression of the evidence and remand this case to the trial court for further proceedings.