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State v. Mitchell Appellant's Brief Dckt. 42422

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42422
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 2014-5493
v.)	
)	
TODD CHARLES MITCHELL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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District Judge

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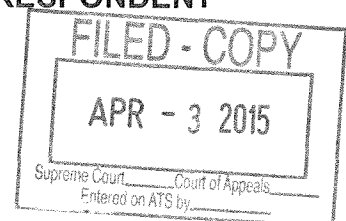


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings.....	1
ISSUE PRESENTED ON APPEAL	4
ARGUMENT.....	5
The District Court Erred When It Denied Mr. Mitchell’s Motion To Suppress	5
A. Introduction	5
B. Standard Of Review	5
C. The District Court Erred When It Denied Mr. Mitchell’s Motion To Suppress Because There Was Insufficient Probable Cause To Support The Issuance Of The Search Warrant	5
CONCLUSION	8
CERTIFICATE OF MAILING	9

TABLE OF AUTHORITIES

Cases

<i>Dunlap v. State</i> , 126 Idaho 901 (Ct. App. 1995)	1, 5, 7
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	6
<i>State v. Carlson</i> , 134 Idaho 471 (Ct. App. 2000)	5
<i>State v. Cutler</i> , 143 Idaho 297 (Ct. App. 2006)	5
<i>State v. Maddox</i> , 137 Idaho 821, 54 P.3d 464 (Ct. App. 2002).....	6
<i>State v. Prestwich</i> , 110 Idaho 966 (1986)	6
<i>State v. Vargovich</i> , 113 Idaho 354 (Ct. App. 1987).....	7

Constitutional Provisions

U.S. Const. amend. IV	6
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STATEMENT OF THE CASE

Nature of the Case

Todd Charles Mitchell entered a conditional plea of guilty to the charge of possession of methamphetamine with intent to deliver, preserving his right to challenge the district court's order denying his motion to suppress. Mindful of the discretion afforded to the trial court in determining whether probable cause exists to support the issuance of a search warrant and the decision of the Court of Appeals in *Dunlap v. State*, 126 Idaho 901 (Ct. App. 1995), Mr. Mitchell nevertheless contends that the information contained in Detective Cwick's affidavit in support of the application for a search warrant was insufficient to amount to probable cause.

Statement of the Facts and Course of Proceedings

An informant, Barney Shaw, contacted Detective Cwick from jail and told him that he had information. (Plaintiff's Motion to Suppress Exhibit 1.) Mr. Shaw told Detective Cwick that he had bought drugs three times from Mr. Mitchell at Mr. Mitchell's house. (Plaintiff's Motion to Suppress Exhibit 1.) On the second and third visit, Mr. Shaw said that he personally bought methamphetamine from Mr. Mitchell and that he smoked the methamphetamine with two of his friends and Mr. Mitchell at the house. (Plaintiff's Motion to Suppress Exhibit 1.) The most recent visit occurred three days before his conversation with Detective Cwick. (Plaintiff's Motion to Suppress Exhibit 1.) Mr. Shaw took Detective Cwick to the house, and Detective Cwick determined through his computer system that the house belonged to Mr. Mitchell. (Plaintiff's Motion to Suppress Exhibit 1.) Detective Cwick showed a picture of Mr. Mitchell to Mr. Shaw, and Mr. Shaw said it was the person from whom he bought methamphetamine. (Plaintiff's

Motion to Suppress Exhibit 1.) Mr. Shaw also told Detective Cwick that he was familiar with methamphetamine because he has used it his entire life. (Plaintiff's Motion to Suppress Exhibit 1.) Detective Cwick determined that Mr. Mitchell was on felony probation, but that he and Mr. Shaw were both out of custody on the days that Mr. Shaw said he bought drugs from Mr. Mitchell. (Plaintiff's Motion to Suppress Exhibit 1.) Detective Cwick also saw a vehicle parked outside of Mr. Mitchell's residence and matched the plate to Dylan Drury, an individual that Detective Cwick knew from prior drug-related incidents. (Plaintiff's Motion to Suppress Exhibit 1.)

Detective Cwick applied for a warrant for Mr. Mitchell's home. (Tr., p.7, L.20 – p.8, L.6.) He provided the magistrate judge with an affidavit regarding his investigation, and the judge issued the warrant. (Tr., p.11, L.22 – p.12, L.4.) Mr. Mitchell was ultimately charged with possession of methamphetamine with intent to deliver. (R., p.31.)

Mr. Mitchell filed motion to suppress wherein he challenged the warrant based on the fact that there was no affidavit or recording in support of the warrant. (R., pp.46-47, 50-52.) Prior to the hearing on the motion to suppress, the prosecutor provided a copy of Detective Cwick's affidavit to defense counsel. (Tr., p.4, Ls.1-7.) At the hearing on the motion to suppress, Mr. Mitchell argued, in the alternative, that probable cause did not exist to support the issuance of the warrant. (Tr., p.20, L.3 – p.23, L.21.) The district court denied the motion to suppress. (Tr., p.31, Ls.2-3.)

Mr. Mitchell entered a conditional plea to one count of possession of methamphetamine with intent to deliver, preserving his right to appeal the district court's

order denying his motion to suppress. (R., pp.89-91.) The district court entered a judgment of conviction, and Mr. Mitchell timely appealed. (R., pp.104-08, 115-17.)

ISSUE

Did the district court err when it denied Mr. Mitchell's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Mitchell's Motion To Suppress

A. Introduction

Mindful of the discretion afforded to the trial court in determining whether probable cause exists to support the issuance of a warrant and the decision of the Court of Appeals in *Dunlap v. State*, 126 Idaho 901 (Ct. App. 1995), Mr. Mitchell nevertheless contends that the information contained in the affidavit in support of the application for a search warrant was insufficient to amount to probable cause. As such, he asserts that the district court's order denying his motion to suppress should be reversed.

B. Standard Of Review

In *State v. Carlson* 134 Idaho 471 (Ct. App. 2000), the Court of Appeals articulated the following standard of review for an appeal from a motion to suppress regarding probable cause to support a search warrant:

When probable cause to issue a search warrant is challenged on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In this evaluation, great deference is paid to the magistrate's determination. The test for reviewing the magistrate's action is whether he or she abused his or her discretion in finding that probable cause existed.

Id. at 474-75 (citations omitted).

C. The District Court Erred When It Denied Mr. Mitchell's Motion To Suppress Because There Was Insufficient Probable Cause To Support The Issuance Of The Search Warrant

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

U.S. Const. amend. IV. The purpose of this constitutional right is to “impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby safeguard an individual’s privacy and security against arbitrary invasions.” *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002).

A search warrant must be based upon probable cause to believe that evidence of, or contraband from, a crime is located at the premises to be searched. Probable cause is determined by examining the totality of the circumstances and making a “practical common-sense decision whether, given all the circumstances set forth in the affidavit before [the court], including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Where the warrant application is based in part upon information provided by an informant, factors supporting probable cause may include facts in the affidavit indicating the reliability of the informant and the basis of the informant’s knowledge. *State v. Prestwich*, 110 Idaho 966, 968 (1986).

Here, Mr. Mitchell asserts that, because the informant, Mr. Shaw, was part of the “criminal milieu,” additional corroborating evidence was required to support a finding of probable cause, and the corroborating evidence provided by Detective Cwick – confirmation that the house belonged to Mr. Mitchell, confirmation that the man that Mr. Shaw bought drugs from matched a picture of Mr. Mitchell, that both Mr. Mitchell and Mr. Shaw were out of custody during the time period cited by Mr. Shaw, and the presence of a known drug-related individual at the home on the day the warrant was issued – was not sufficient to support a finding of probable cause. *See Dunlap, supra*,

126 Idaho at 907. In *Dunlap*, a named informant told police that she had been in a residence that day where she observed marijuana, hashish, and devices for “cooking” cocaine. *Id.* at 908. She explained that she knew what marijuana and hashish looked like because she had used both in the past. *Id.* She further admitted that she had been present at the house eight days earlier when the cocaine was being prepared. *Id.* The Court of Appeals held that the informant’s particularized knowledge of the premises, the fact that she had knowledge about drug use and manufacturing, the fact that her statements were against her penal interest, and the fact that her observations were based on personal knowledge were sufficient for the magistrate to make a finding of probable cause based on the totality of the circumstances. *Id.*

Despite the similarity between the facts here and those in *Dunlap*, Mr. Mitchell contends that Mr. Shaw’s statements were not sufficient to support a finding of probable cause because Mr. Shaw’s veracity had not been established through either a finding of past reliability or present credibility. See *State v. Vargovich*, 113 Idaho 354, 356 (Ct. App. 1987). There is no evidence of Mr. Shaw’s past reliability in the affidavit. (Plaintiff’s Motion to Suppress Exhibit 1.) Further, Mr. Mitchell contends that the particularity of Mr. Shaw’s information and the corroborating information provided by Detective Cwick were not sufficient to establish present credibility because the corroborating information only supported the fact that the house belonged to Mr. Mitchell, not that Mr. Mitchell was using or selling drugs in the house.

Mindful of the Court of Appeals’ Opinion and analysis in *Dunlap*, which addressed facts very similar to those here, Mr. Mitchell contends that the district court abused its discretion when it denied his motion to suppress.

CONCLUSION

Mr. Mitchell respectfully requests that this Court vacate the district court's order of judgment and commitment and reverse the order which denied his motion to suppress.

DATED this 3rd day of April, 2015.

A handwritten signature in black ink, appearing to read 'Kimberly E. Smith', is written over a horizontal line.

KIMBERLY E. SMITH
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of April, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TODD CHARLES MITCHELL
2115 E LAKESIDE AVENUE
COEUR D'ALENE ID 83814

JOHN T MITCHELL
DISTRICT COURT JUDGE
E-MAILED BRIEF

JAY LOGSDON
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EVAN A. SMITH
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KES/eas