

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

12-15-2017

State v. Sutton Respondent's Brief Dckt. 44961

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Sutton Respondent's Brief Dckt. 44961" (2017). *Not Reported*. 4235.
https://digitalcommons.law.uidaho.edu/not_reported/4235

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44961
Plaintiff-Respondent,)	
)	Madison County Case No.
v.)	CR-2016-2023
)	
TYLER J. SUTTON,)	
)	
Defendant-Appellant.)	
<hr style="border: 1px solid black;"/>		

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MADISON**

HONORABLE GREGORY W. MOELLER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

DENNIS BENJAMIN
Nevin, Benjamin, McKay & Bartlett LLP
303 W. Bannock
P. O. Box 2772
Boise, Idaho 83701
(208) 343-1000

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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 The Proceedings	1
ISSUE	3
ARGUMENT	4
Sutton Has Failed To Establish That The Magistrate Court Lacked A Substantial Basis To Find Probable Cause Of Criminal Activity And Issue A Search Warrant.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. The Magistrate Court Had A Substantial Basis For Finding Probable Cause And Issuing A Search Warrant For Sutton’s Residence	5
CONCLUSION.....	11
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Brinegar v. United States</u> , 338 U.S. 160 (1949)	5
<u>Franks v. Delaware</u> , 438 U.S. 154 (1978).....	5
<u>Illinois v. Gates</u> , 462 U.S. 213 (1983)	4, 6, 7, 8
<u>Spinelli v. United States</u> , 393 U.S. 410 (1969).....	6
<u>State v. Fisher</u> , 140 Idaho 365, 93 P.3d 696 (2004).....	4, 7
<u>State v. Holman</u> , 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985)	7
<u>State v. Josephson</u> , 123 Idaho 790, 852 P.2d 1387 (1993)	5
<u>State v. Lang</u> , 105 Idaho 683, 672 P.2d 561 (1983)	6
<u>State v. Ledbetter</u> , 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).....	4, 7
<u>State v. Molina</u> , 125 Idaho 637, 873 P.2d 891 (Ct. App. 1993)	4, 5, 6, 8
<u>State v. O’Keefe</u> , 143 Idaho 278, 141 P.3d 1147 (Ct. App. 2006)	5, 6
<u>State v. Wilson</u> , 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997)	8
<u>State v. Yager</u> , 139 Idaho 680, 85 P.3d 656 (2004).....	5
 <u>CONSTITUTIONAL PROVISIONS</u>	
U.S. Const. amend. IV	5

STATEMENT OF THE CASE

Nature Of The Case

Tyler J. Sutton appeals from his judgment of conviction for possession of methamphetamine, entered upon his conditional guilty plea. On appeal, he challenges the district court's denial of his motion to suppress evidence acquired during a search, pursuant to a warrant, of his residence.

Statement Of The Facts And Course Of The Proceedings

On June 2, 2016, Sergeant Riding, with the Madison County Sheriff's Office, responded to several 911 calls from a man who sounded like he was in distress. (Tr., p.107, Ls.7-19; R., p.11.) The man would claim that he was being chased by several individuals, but then would hang up on dispatch. (R., p.11.) Dispatch was, however, able to get a general location. (Id.) After arriving on scene, officers were eventually able to locate the individual hiding in the woods and identified him as John Morton. (Tr., p.108, Ls.2-9; R., p.11.)

Mr. Morton told officers that he had been staying in a trailer belonging to Sutton in the adjacent RV park and had used methamphetamine intravenously earlier in the day. (Tr., p.108, Ls.17-20; R., pp.11, 125.) Deputies investigated the area surrounding Sutton's trailer and found needle caps. (Tr., p.108, Ls.21-25; R., p.11.) Mr. Morton's vehicle was also at the trailer. (R., p.125.) In addition, Sergeant Riding was aware that officers had contacted Mr. Morton at the trailer a couple days earlier, in relation to a report that he was suicidal, and found a needle with a substance in it. (Tr., p.109, Ls.1-10; R., p.125.)

Based on all of this information, while officers secured the scene, Sergeant Riding went before the magistrate court and applied for a warrant to search both the trailer and Mr. Morton's

vehicle. (Tr., p.109, L.11 – p.110, L.6; R., pp.11, 125.)¹ The magistrate found probable cause and granted the search warrant. (Tr., p.111, Ls.7-9; R., p.11.) A subsequent search of Sutton’s trailer resulted in the discovery of methamphetamine, marijuana residue, and several items of paraphernalia. (R., p.12.)

The state originally charged Sutton with possession of methamphetamine with the intent to deliver and possession of paraphernalia. (R., pp.48-49.) Sutton filed a motion to suppress, asserting that his Fourth Amendment rights had been violated because, he alleged, probable cause did not exist for the issuance of a search warrant. (R., pp.54-55.) The district court denied the suppression motion. (R., pp.63-64; Tr., p.161, L.22 – p.162, L.8.) Sutton then filed a motion for reconsideration on the grounds that the officer’s affidavit was vague and failed to specify the address of his residence or specifically articulate what the officer believed he would find. (R., pp.68-69.) This motion, too, was denied. (R., p.75; 12/19/2016 Tr., p.10, L.3 – p.12, L.23.)

Sutton then negotiated a binding plea agreement with the state, under which the state amended the first count in its information to mere possession of methamphetamine and Sutton pleaded guilty to the charge. (R., pp.79-84.) Sutton also specifically reserved his right to appeal from the district court’s denial of his suppression motion. (R., p.80.) Pursuant to the plea agreement, the district court entered judgment against Sutton and imposed a unified sentence of five years with two years fixed, suspended that sentence, and placed him on probation for a period of five years. (R., pp.88-92.) Sutton filed a timely notice of appeal. (R., pp.109-12.)

¹ On appeal, Sutton claims that the “magistrate only considered [the] affidavit and some photographs of the trailer.” (Appellant’s brief, p.2.) That does not appear to be the case. Sergeant Riding testified that, in addition to the affidavit and photographs, he also provided statements to the magistrate. (Tr., p.129, Ls.5-9.)

ISSUE

Sutton states the issue on appeal as:

Reviewing the magistrate's decision with due deference, did the state establish probable cause for the search warrant for Mr. Sutton's home?

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Sutton failed to establish that the magistrate court lacked a substantial basis to find probable cause and issue a warrant for the search of his home?

ARGUMENT

Sutton Has Failed To Establish That The Magistrate Court Lacked A Substantial Basis To Find Probable Cause Of Criminal Activity And Issue A Search Warrant

A. Introduction

After finding probable cause, the magistrate court issued a search warrant for Sutton's residence. (R., pp.11, 126; Tr., p.111, Ls.7-9.) Police, executing that warrant, discovered methamphetamine and paraphernalia. (R., p.12.) Sutton moved to suppress the evidence, arguing that the magistrate lacked probable cause to issue the search warrant. (R., pp.54-55.) The district court denied Sutton's suppression motion, finding that the warrant was supported by probable cause. (R., pp.63-64; Tr., p.161, L.22 – p.162, L.8.)

On appeal, Sutton asserts that the information provided to the magistrate was insufficient to support the issuance of the search warrant. (Appellant's brief, pp.5-11.) Application of the correct legal standards to the facts of this case shows that the magistrate had a substantial basis to find probable cause and that the district court therefore did not err when it denied Sutton's suppression motion.

B. Standard Of Review

In reviewing whether a magistrate court properly issued a search warrant, "the appellate court's function is limited to insuring that the magistrate had a 'substantial basis' for concluding that probable cause existed, with great deference paid to the magistrate's determination." State v. Fisher, 140 Idaho 365, 369, 93 P.3d 696, 700 (2004) (citations omitted). See also Illinois v. Gates, 462 U.S. 213, 239 (1983); State v. Molina, 125 Idaho 637, 639, 873 P.2d 891, 893 (Ct. App. 1993). In determining whether probable cause existed, the reviewing court should give preference to the validity of the warrant. State v. Ledbetter, 118 Idaho 8, 10-11, 794 P.2d 278,

280-81 (Ct. App. 1990); see also Franks v. Delaware, 438 U.S. 154, 171 (1978) (there is a presumption of validity in the affidavit supporting the issuance of a search warrant). A defendant challenging a search pursuant to a search warrant bears the burden of proving any constitutional violation. State v. O’Keefe, 143 Idaho 278, 287, 141 P.3d 1147, 1156 (Ct. App. 2006).

C. The Magistrate Court Had A Substantial Basis For Finding Probable Cause And Issuing A Search Warrant For Sutton’s Residence

The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. In order for a search warrant to be valid, it must be supported by probable cause to believe that evidence or fruits of a crime may be found in a particular place. State v. Josephson, 123 Idaho 790, 792-93, 852 P.2d 1387, 1389-90 (1993); Molina, 125 Idaho at 639, 873 P.2d at 893. Probable cause to search requires a nexus between criminal activity and the item to be seized, and a nexus between the item to be seized and the place to be searched, established by specific facts. State v. Yager, 139 Idaho 680, 686, 85 P.3d 656, 662 (2004).

But probable cause does not require a high evidentiary standard. Rather, probable cause deals “with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” Brinegar v. United States, 338 U.S. 160, 175 (1949). As the United States Supreme Court has further stated,

[f]inely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate’s decision. While an effort to fix some general, numerically precise degree of certainty corresponding to “probable cause” may not be helpful, it is clear that “only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.”

Gates, 462 U.S. at 235 (quoting Spinelli v. United States, 393 U.S. 410, 419 (1969)). Probable cause is a fluid concept, “turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.” Gates, 462 U.S. at 232.

To determine whether probable cause exists, the magistrate court applies a “totality of the circumstances” test. See Gates, 462 U.S. at 230-41; State v. Lang, 105 Idaho 683, 684, 672 P.2d 561, 562 (1983). Under this totality of the circumstances test,

[t]he task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, 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.

Gates, 462 U.S. at 238; see also O’Keefe, 143 Idaho at 287, 141 P.3d at 1156; Molina, 125 Idaho at 639, 873 P.2d at 893.

Despite Sutton’s assertions to the contrary, the specific facts set forth by Sergeant Riding provided the magistrate court with a substantial basis to determine that probable cause existed and to issue a search warrant for Sutton’s residence. In his affidavit, the officer set forth clear nexuses between Mr. Morton and recent intravenous methamphetamine use; between Mr. Morton and Sutton’s trailer; and between Sutton’s trailer and syringes. (See R., p.125.) Mr. Morton’s behavior and paranoia, as observed by the police on initial contact, was typical of someone who was under the influence of drugs. (R., p.125; see also Tr., p.131, L.16 – p.132, L.14.) Mr. Morton admitted that he used methamphetamine earlier in the day, and that he used

needles to shoot methamphetamine. (R., p.125; see also Tr., p.108, Ls.17-20.) Mr. Morton also said he had come from Sutton's trailer. (R., p.125; see also Tr., p.116, Ls.5-11.) And it appears Mr. Morton had been staying there for some time; as the district court noted, the police had recently responded to an attempted suicide by Mr. Morton at Sutton's trailer. (R., p.125; see also Tr., p.120, L.21 – p.121, L.2; p.141, L.23 – p.142, L.2.) Syringe caps were found in close proximity to Sutton's trailer. (R., p.125; see also Tr., p.121, L.14 – p.122, L.8.) And, during the prior contact with Mr. Morton at Sutton's trailer, police found a syringe with a white substance in it consistent with (though not definitively shown to be) methamphetamine. (R., p.125; see also Tr., p.109, Ls.1-10; R., p.125.) Based on the totality of the circumstances, there was a fair probability that officers would find drugs or other contraband in Sutton's trailer.

Notwithstanding this, Sutton asks this Court to review the affidavit and essentially pass its own judgment on whether probable cause existed to issue the search warrant. (See Appellant's brief, pp.9-10.) But the Supreme Court of the United States has explicitly stated that "after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review." Gates, 462 U.S. at 236. Rather, "the appellate court's function is limited to insuring that the magistrate had a 'substantial basis' for concluding that probable cause existed, with great deference paid to the magistrate's determination," Fisher, 140 Idaho at 369, 93 P.3d at 700, giving preference to the validity of the warrant, Ledbetter, 118 Idaho at 10-11, 794 P.2d at 280-81. As shown above, the magistrate had a substantial basis for concluding that probable cause existed. Further, the test for reviewing the magistrate court's actions is whether it abused its discretion in finding that probable cause existed. State v. Holman, 109 Idaho 382, 387, 707 P.2d 493, 438 (Ct. App. 1985). Applying the correct legal standards, Sutton has failed to show that the magistrate abused its discretion in finding probable cause.

Sutton attacks Mr. Morton's statements to police as being unreliable, due to his being high on drugs. (Appellant's brief, pp.6-7.) The state would agree that, due to his drugged state, Mr. Morton's statements indicating that he was being chased by several people were probably less reliable; however, his statements indicating that he had been using methamphetamine earlier in the day would seem corroborated by that drugged state. Mr. Morton's other relevant statement, that he was coming from Sutton's residence, was also corroborated: Mr. Morton's vehicle was parked at the RV Park where Sutton's trailer was located (Tr., p.120, Ls.1-12; R., p.125); police had responded to Sutton's trailer two days earlier² in reference to the attempted suicide of Mr. Morton (R., p.125); and Mr. Morton was located by police in a wooded area adjoining the RV park where Sutton's trailer and Mr. Morton's vehicle were located (R., p.11). Mr. Morton's relevant statements, that he had been using drugs and that he had come from Sutton's trailer, were corroborated and are therefore reliable.

Sutton also claims that Mr. Morton's statements "did not link" criminal activity to Sutton's residence because "Mr. Morton never stated that he was *inside* Mr. Sutton's home." (Appellant's brief, pp.7, 11 (emphasis added).) In making its probable cause determination, the magistrate court is allowed to draw reasonable inferences from the evidence presented. Gates, 462 U.S. at 240; see also State v. Wilson, 130 Idaho 213, 216, 938 P.2d 1251, 1254 (Ct. App. 1997); Molina, 125 Idaho at 642, 873 P.2d at 896. As the district court suggested, inferring that coming *from* the trailer meant coming from *inside of* the trailer, based on people's normal speech patterns, would not be improper. (See Tr., p.143, L.12 – p.144, L.4.) And this is especially true when Mr. Morton claimed he had been staying at Sutton's trailer and the police had responded to

² Sutton asserts that "the May 31 contact between Mr. Morton and Officer Lemieux was three days old by the time the search warrant was issued." (Appellant's brief, p.9.) May 31 to June 2, however, is two days.

his attempted suicide at Sutton's trailer only two days earlier. (Tr., p.109, Ls.15-20; p.120, L.21 – p.121, L.2; p.141, L.23 – p.142, L.4; see also R., p.125.) Besides, it appears counsel below acknowledged that there was information placed before the magistrate that Morton was residing at Sutton's trailer, "has been living there, has been sleeping there, has been inside that place." (Tr., p.150, Ls.11-13.) There was sufficient evidence linking Mr. Morton to Sutton's trailer to support the magistrate's probable cause finding, and Sutton has failed to show that the magistrate court lacked a substantial basis for its probable cause determination.

Sutton argues that "it is legal to possess syringes and the fact that the caps were found somewhere outside [of Sutton's trailer] is not evidence that controlled substances are probably inside." (Appellant's brief, pp.7-8.) First, in this case, there was a clear nexus between the syringes and drug use: Mr. Morton admitted "that he used needles to shoot meth." (R., p.125.) Thus, while syringes standing alone may not always suggest illegality, this case had more information indicating illicit use. And, again, the magistrate is allowed to draw reasonable inferences from the evidence presented. Paraphernalia surrounding the trailer would give rise to a reasonable inference that there may have been drugs or other paraphernalia inside of the trailer. Here, too, Sutton has failed to show that the magistrate court lacked a substantial basis for its probable cause determination.

Sutton further posits that the scattered syringe caps, found "around the trailer," do not support a probable cause finding to search his trailer because they could have been nearer to Mr. Morton's vehicle. (Appellant's brief, p.7.) This is incorrect on several grounds. First, as noted above, the magistrate is entitled to make reasonable inferences. Sutton's argument that Mr. Morton's vehicle may have been closer is just a contrary inference and does not show any error by the magistrate. Second, in addition to the affidavit, the warrant affidavit was supported by

photographs of the trailer. (Tr., p.109, Ls.20-23.) It appears that those photographs showed the relationship between Sutton's trailer and the syringe caps. (Tr., p.121, L.22 – p.122, L.2.) Finally, as adduced at Sutton's suppression hearing below, the syringe caps were found within a few feet of Sutton's trailer, and nowhere near any of the other trailers. (Tr., p.121, L.14 – p.122, L.8.) In fact, the nearest trailer to Sutton's was parked some 20 to 30 feet away. (Tr., p.132, Ls.15-22.) Furthermore, Mr. Morton's car was not parked next to the trailer; it was located in a parking lot area at the front entrance of the trailer park. (Tr., p.120, Ls.1-12; see also R., p.125 (Sutton's trailer located at specific lot number; Mr. Morton's vehicle only generally located at RV Park).) Again, Sutton has failed to show that the magistrate court lacked a substantial basis for its probable cause determination.

Ultimately, between his claims that Mr. Morton was unreliable (despite the corroboration of his relevant statements) and that Mr. Morton's statements failed to conclusively establish that contraband would be found *inside* of (as opposed to *at*) Sutton's trailer, Sutton's argument appears to be that before police could get a warrant for his residence, they first had to enter that residence and obtain independent knowledge that items of evidentiary value would be located inside of the residence. But that gets the warrant standard completely backwards. When information shows that there is a reasonable probability—though by no means a certainty—that contraband will be located in a residence, police should first go before an impartial magistrate and apply for a search warrant. And that is exactly what they did in this case.

In this case, an impartial magistrate issued a search warrant for Sutton's residence. That warrant was correctly issued on a finding of probable cause. That probable cause finding is supported by substantial evidence and is therefore proper. Sutton has failed to show an abuse of the magistrate's discretion. He has failed to show that the district court erred when it affirmed

that exercise of discretion. The decision of the district court denying Sutton's suppression motion should therefore be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Sutton's suppression motion.

DATED this 15th day of December, 2017.

/s/ Russell J. Spencer

RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of December, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

DENNIS BENJAMIN
NEVIN, BENJAMIN, McKAY & BARTLETT LLP

at the following email addresses: db@nbmlaw.com and lm@nbmlaw.com.

/s/ Russell J. Spencer

RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd