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NO. COA08-726

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

STATE OF NORTH CAROLINA

v.

JAVAIR DHONEYELLE GLADDEN

Rowan County  
Nos. 05 CRS 53978-80;  
06 CRS 5010

# Court of Appeals

Appeal by Defendant from judgments entered 17 December 2007 by Judge John L. Holshouser, Jr. in Rowan County Superior Court. Heard in the Court of Appeals 8 December 2008.

*Attorney General Roy Cooper, by Special Deputy Attorney General Marc Bernstein, for the State.*

# Slip Opinion

*D. Tucker Charns, for Defendant.*

ARROWOOD, Judge.

Javair Dhoneyelle Gladden (Defendant) appeals, having reserved his right to appeal, the trial court's denial of his motion to suppress evidence seized from his residence pursuant to a search warrant. We find the affidavit was sufficient to establish probable cause and affirm the trial court's order denying Defendant's motion to suppress.

On 7 May 2005, Lieutenant J.R. Schmierer of the Town of East Spencer Police Department applied for a search warrant for a mobile home located at 416 East Henderson Street in East Spencer, seeking,

*inter alia*, cocaine and other controlled substances, instruments used in selling controlled substances, and money. In order to secure the warrant, Lieutenant Schmierer provided an affidavit which included the following facts:

East Spencer Police Officers continue to witness heavy foot and vehicle traffic coming and going from 416 East Henderson Street lot #4 East Spencer North Carolina. Known narcotics sellers, users, and prostitutes have been seen entering and exiting this residence. The East Spencer Police Department continues to receive citizen complaints concerning narcotics sales at this location.

With[in] the past 48 hours a confidential and reliable source of information has witnessed Damion Morrow, Javiar [sic] Gladden, and a black male known only as "wax" in possession of a large quantity of cocaine while inside 416 East Henderson Street lot #4 East Spencer North Carolina. This reliable informant also witnessed both Morrow and Gladden armed with semi-auto handguns.

This confidential and reliable source of information has provided information to The East Spencer Police Department in the past concerning controlled substances and has always proven to be true and correct. This confidential and reliable source has provided information concerning persons who possessed and sold controlled substances that has led to the arrests of these persons. That this source of information is familiar with cocaine and other controlled substances and how they are packaged and sold. That this confidential source fears reprisal should his/her name become known and that this would negate any further use of this confidential source by The East Spencer Police Department or any other law enforcement agency.

Consequently, on 8 May 2005 around midnight, the residence was searched. Cocaine, marijuana, a scale, three handguns, a box of

ammunition, several cell phones, and hundreds of dollars in U.S. currency were seized from the residence.

Defendant was indicted for possession with intent to sell or deliver cocaine, possession with intent to sell or deliver marijuana, possession of a firearm by a felon, and having attained habitual felon status. Prior to trial, Defendant filed a motion to suppress evidence seized from his residence. A hearing was held on the motion to suppress on 29 May 2007. On 25 July 2007, the trial court denied the motion to suppress. On 14 December 2007, pursuant to a plea agreement, Defendant pleaded guilty to all charges. In accordance with the plea agreement, the charges were consolidated for judgment and Defendant was sentenced to a term of 70 to 93 months imprisonment. Having reserved his right to appeal the denial of his motion to suppress, Defendant appeals.

On appeal, Defendant argues that the trial court erred in denying his motion to suppress because the information contained in the affidavit was insufficient to establish probable cause. We disagree.

"When evaluating a trial court's ruling on a motion to suppress, its findings of fact will be binding on appeal if supported by any competent evidence." *State v. Barnhill*, 166 N.C. App. 228, 230, 601 S.E.2d 215, 217 (2004). Where, as here, Defendant does not assign error to the trial court's findings of fact, those findings are deemed to be supported by competent evidence. See *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (2004). Thus, our review is limited to

determining whether the trial court's findings of fact support its conclusions of law. *Id.* at 132, 592 S.E.2d at 736.

Furthermore, "when addressing whether a search warrant is supported by probable cause, a reviewing court must consider the 'totality of the circumstances.'" *State v. Sinapi*, 359 N.C. 394, 398, 610 S.E.2d 362, 365 (2005) (quoting *State v. Beam*, 325 N.C. 217, 220-21, 381 S.E.2d 327, 329 (1989)). Under the totality of the circumstances test:

"The task of the issuing magistrate is simply to make a practical, common sense 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. And the duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for . . . conclud[ing]' that probable cause existed."

*State v. Arrington*, 311 N.C. 633, 638, 319 S.E.2d 254, 257-58 (1984) (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 76 L. Ed. 2d 527, 548 (1983) (citations omitted)).

Defendant challenges the affidavit by arguing that it does not state a time reference regarding the heavy foot and vehicle traffic coming and going from the residence, nor does it state how Lieutenant Schmierer came to have this information. Additionally, Defendant challenges the reliability of the confidential informant.

Defendant's argument that the affidavit does not provide a time reference regarding the heavy foot and vehicle traffic or state how Lieutenant Schmierer obtained this information is without merit. "The officer making the affidavit may do so in reliance

upon information reported to him by other officers in the performance of their duties." *State v. Horner*, 310 N.C. 274, 280, 311 S.E.2d 281, 286 (1984). Here, the affidavit states that East Spencer police officers continued to observe heavy traffic and citizens continued to complain of activities at the residence. These statements indicate that the observations and reports were of a continuing nature and do not indicate a termination of activities. Moreover, "a magistrate is entitled to draw reasonable inferences from the material supplied to him by an applicant for a warrant." *Sinapi*, 359 N.C. at 399, 610 S.E.2d at 365. Clearly, the magistrate could conclude that both the observations of the officers and the citizens' complaints were occurring reasonably contemporaneously with Lieutenant Schmierer's application for the search warrant.

Likewise, we find Defendant's challenge to the informant's reliability without merit. In *State v. Riggs*, 328 N.C. 213, 400 S.E.2d 429 (1991), the deputy's affidavit stated that the informant "previously had given accurate information which resulted in the arrest of a 'narcotics violator.'" The Supreme Court found that "[s]uch evidence established that informant's reliability." *Id.* at 218, 400 S.E.2d at 432. In this case, the affidavit states that the informant "has provided information . . . in the past concerning controlled substances and has always proven to be true and correct." Additionally, the affidavit states that the informant "has provided information concerning persons who possessed and sold controlled substances that has led to the

arrests of these persons." We find these statements establish the informant's reliability. See *State v. Brady*, 16 N.C. App. 555, 557, 192 S.E.2d 640, 642 (1972) (upholding warrant based on sworn assertion that "informant had in the past given information leading to the apprehension and arrest of two named individuals").

Based on the foregoing, we conclude that the affidavit in this case was sufficient to establish probable cause. The trial court did not err in denying Defendant's motion to suppress. Accordingly, the order of the trial court is affirmed.

Affirmed.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).