

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-370

Filed: 17 April 2018

Wake County, No. 15CRS208027

STATE OF NORTH CAROLINA

v.

KURT DEION FREDERICK, Defendant.

Appeal by defendant from an order entered 7 June 2016 by Judge W. Osmond Smith III in Wake County Superior Court. Heard in the Court of Appeals 5 October 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Aldean Webster III, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Hitchcock, for defendant-appellant.

BERGER, Judge.

On June 8, 2016, a Wake County jury found Kurt Deion Frederick (“Defendant”) guilty of trafficking heroin, maintaining a dwelling used for keeping or selling heroin, and possession with intent to sell or deliver a Schedule I controlled substance. Prior to trial, Defendant moved to suppress evidence obtained pursuant to a search of his residence. Defendant appeals from the order denying his motion to suppress, contending that the search warrant was improperly issued because it lacked probable cause. We disagree.

Factual and Procedural Background

On April 8, 2015, Detective J. Ladd with the Raleigh Police Department applied for a warrant to search the premises of 3988 Neeley Street in Raleigh for heroin, firearms, drug transaction records, and cash. The residence belonged to Defendant.

Detective Ladd attached a sworn affidavit to the search warrant which testified to his more than thirteen years of law enforcement experience, his work with Raleigh's drug and vice unit, and his specific drug interdiction training. The affidavit also set forth the following facts:

Over the last sixty days, I received information from a confidential source regarding a mid-level MDMA, heroin[,] and crystal methamphetamine dealer in the Raleigh, NC area. *This source has always been trustworthy and truthful with [d]etectives[,] and I consider his/her information reliable.* This confidential source is familiar with MDMA, heroin[,] and crystal methamphetamine and the way it is packaged and sold. *This confidential source has always provided [d]etectives with information in the past concerning other criminal drug investigations that I have been able to corroborate and determined to be truthful.*

Within the last week, this confidential source was used to arrange a controlled purchase of a quantity of "Molly" (MDMA) from 3988 Neeley St[,] Raleigh, NC 27606. The confidential source met with [d]etectives prior to making the controlled purchase of "Molly". The confidential source and his/her vehicle were searched for any illegal contraband. There was none located. The confidential source was provided with a sum of money from the Raleigh Police Department's informant funds. The confidential source arranged to meet a middle man prior to

going to 3988 Neeley St[.] Raleigh, NC 27606. Detectives[] maintained constant surveillance on the confidential source while traveling to meet the middle man. Once the source met with the middle man, they traveled to 3988 Neeley St[.] Raleigh, NC 27606. *The middle man was observed entering 3988 Neeley St[.] Raleigh, NC 27606 and returning to the source approximately two minutes later. Based on my training and experience, this was indicative of drug trafficking activity.* The source met with me at a pre-determined meet location after the middle man was returned to his residence. The source provided me with a quantity of “Molly”. The source and his/her vehicle were searched again for any illegal contraband. There was none located.

Within the last 72 hours, the confidential source was used to arrange a controlled purchase of heroin [from] 3988 Neeley St[.] Raleigh, NC 27606. The confidential source met with [d]etectives prior to making the controlled purchase of heroin. The confidential source and his/her vehicle were searched for any illegal contraband. There was none located. The confidential source was provided with a sum of money from the Raleigh Police Department’s informant funds. The confidential source arranged to meet a middle man prior to going to 3988 Neeley St[.] Raleigh, NC 27606. Detectives[] maintained constant surveillance on the confidential source while traveling to meet the middle man. Once the source met with the middle man, they traveled to 3988 Neeley St[.] Raleigh, NC 27606. *The middle man was observed entering 3988 Neeley St[.] Raleigh, NC 27606 and returning to the source approximately three minutes later. Based on my training and experience, this was indicative of drug trafficking activity.* The source met with me at a pre-determined meet location after the middle man was returned to his residence. The source provided me with a quantity of heroin. The source and his/her vehicle was searched again for any illegal contraband. There was none located. A small sample of the heroin field tested positive for heroin.

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While conducting surveillance during the controlled buy of heroin, two males were observed entering 3988 Neeley St[.] Raleigh, NC 27606. The two individuals exited 3988 Neeley St[.] Raleigh, NC 27606 approximately two minutes later and returned to their vehicle. Based on my training and experience, this was indicative of drug trafficking activity.

(Emphasis added).

This search warrant was granted by a magistrate, and officers executed it at the residence. More than 4.0 grams of heroin, 3.4 grams of MDMA, drug packaging materials, and \$600.00 in cash were discovered in the residence. Officers observed Defendant leaving his residence with a Crown Royal bag, and detained him a short time later in his vehicle. Officers found heroin packaged for sale and more than \$2,500.00 in cash in the Crown Royal bag located in the vehicle.

Defendant was arrested and charged with trafficking heroin, maintaining a dwelling for keeping or selling controlled substances, and possession of MDMA. The Wake County Grand Jury indicted Defendant on June 1, 2015 for trafficking in heroin by possession, maintaining a dwelling for keeping or selling controlled substances, and possession with intent to sell or deliver a Schedule I controlled substance.

Defendant filed a motion to suppress evidence obtained from the searches prior to trial in Wake County Superior Court. In his motion, Defendant conceded that during the first transaction, the middleman “entered the residence and approximately three minutes later came out with what appeared to be a Molly.” For

the second transaction, Defendant conceded that the middleman “entered the residence and returned in approximately three minutes with what appeared to be heroin.” Defendant presented no evidence to support his motion, simply arguing the search warrant was facially insufficient. The trial court denied Defendant’s motion, finding there was no conflict in the information provided in Detective Ladd’s application for the search warrant, and the affidavit was sufficient to establish probable cause and justify issuance of the search warrant by the magistrate.

Defendant was convicted of trafficking in heroin by possession, maintaining a dwelling for keeping or selling controlled substances, and possession with intent to sell or deliver a Schedule I controlled substance. He was sentenced to a term of seventy to ninety-three months in prison. It is from the order denying his motion to suppress that Defendant timely appeals.

Standard of Review

“[A] reviewing court is responsible for ensuring that the issuing magistrate had a substantial basis for concluding that probable cause existed.” *State v. McKinney*, 368 N.C. 161, 165, 775 S.E.2d 821, 825 (2015) (citation, quotation marks, brackets, and ellipses omitted). Our Supreme Court has stated, “[t]he applicable test is whether, given all the circumstances set forth in the affidavit before the magistrate, . . . there is a fair probability that contraband . . . will be found in a particular place.”

State v. Riggs, 328 N.C. 213, 218, 400 S.E.2d 429, 432 (1991) (citation and brackets omitted).

Analysis

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. “Article I, Section 20 of the Constitution of North Carolina likewise prohibits unreasonable searches and seizures and requires that warrants be issued only on probable cause.” *State v. Allman*, 369 N.C. 292, 293, 794 S.E.2d 301, 303 (2016). “Probable cause . . . means a reasonable ground to believe that the proposed search will reveal the presence upon the premises to be searched of the objects sought and that those objects will aid in the apprehension or conviction of the offender.” *State v. Campbell*, 282 N.C. 125, 128-29, 191 S.E.2d 752, 755 (1972) (citation omitted).

The quantum of proof required to establish probable cause is different than that required to establish guilt. *Draper v. United States*, 358 U.S. 307, 311-12, 3 L. Ed. 2d 327, 331 (1959). “Probable cause requires not certainty, but only *a probability or substantial chance* of criminal activity.” *McKinney*, 368 N.C. at 165, 775 S.E.2d at 825 (emphasis in original) (citation and quotation marks omitted). “[The] standard for determining probable cause is flexible, permitting the magistrate to draw

‘reasonable inferences’ from the evidence” *Id.* at 164, 775 S.E.2d at 824-25 (citation omitted).

To determine if probable cause exists, we look at the totality of the circumstances known to the magistrate at the time the search warrant was issued. *State v. Arrington*, 311 N.C. 633, 638, 643, 319 S.E.2d 254, 257, 261 (1984); *see Illinois v. Gates*, 462 U.S. 213, 76 L. Ed. 2d 527, *reh'g denied*, 463 U.S. 1237, 77 L. Ed. 2d 1453 (1983). This test asks “whether the evidence as a whole provides a substantial basis for concluding that probable cause exists.” *State v. Williams*, 319 N.C. 73, 81, 352 S.E.2d 428, 434 (1987). In applying this test, “great deference should be paid a magistrate's determination of probable cause and . . . after-the-fact scrutiny should not take the form of a *de novo* review.” *Arrington*, 311 N.C. at 638, 319 S.E.2d at 258.

As stated above, an affidavit is sufficient to establish probable cause “if it supplies reasonable cause to believe that the proposed search for evidence *probably* will reveal the presence upon the described premises of the items sought and that those items will aid in the apprehension or conviction of the offender.” *Id.* at 636, 319 S.E.2d at 256 (emphasis added) (citation omitted). Our Supreme Court noted that federal courts have found “direct evidence linking the crime to the location to be searched is not required to support a search warrant” *Allman*, 369 N.C. at 297, 794 S.E.2d at 305.

In *State v. Riggs*, the search warrant application provided that law enforcement officers obtained information from a confidential informant that the defendant was selling marijuana. *Riggs*, 328 N.C. at 214, 400 S.E.2d at 430. Officers used two different confidential informants to set up two drug transactions with the defendant. *Id.* at 214-15, 400 S.E.2d at 430. Prior to meeting a middleman, officers searched the confidential informant and his vehicle, provided him with money to purchase drugs, and equipped him with a recording device. *Id.* at 214, 400 S.E.2d at 430. The confidential informant met the middleman, and the two went to defendant's residence, where the middleman purchased drugs from defendant. *Id.* at 215, 400 S.E.2d at 431. A similar transaction with a separate confidential source was undertaken approximately one month prior. *Id.* at 215, 400 S.E.2d at 430. Our Supreme Court upheld the magistrate's determination of probable cause, stating:

Where, as here, information before a magistrate indicates that suspects are operating, in essence, a short-order marijuana drive-through on their premises, the logical inference is that a cache of marijuana is located somewhere on those premises; that inference, in turn, establishes probable cause for a warrant to search the premises, including the residence.

Id. at 221, 400 S.E.2d at 434.

The only practical difference between *Riggs* and the case *sub judice* was the use of a recording device by the confidential informant. However, the *Riggs* Court focused its discussion of probable cause, not on the communication between the

middleman and the confidential source, but rather on the officers' experience, the conduct of the middleman, and the reasonable inferences drawn from the officers' observations. *Id.* at 219-21, 400 S.E.2d at 433-34.

Here, Detective Ladd received information from a reliable confidential source regarding a mid-level drug dealer who sold MDMA, heroin, and crystal methamphetamine. The confidential source had previously provided truthful information that Detective Ladd could corroborate, and the confidential source was familiar with the packaging and sale of MDMA, heroin, and crystal methamphetamine.

The same confidential source had assisted Detective Ladd with the purchase of MDMA one week prior to issuance of the search warrant. At the time of that purchase, Detective Ladd provided the confidential source with money to purchase MDMA, and he searched the confidential source and his vehicle prior to any interaction with the middleman. The confidential source met the middleman prior to going to Defendant's residence, and "[d]etectives[] maintained constant surveillance on the confidential source while traveling to meet the middle man." The confidential source and the middleman then traveled to Defendant's residence. Detectives observed the middleman enter Defendant's residence and return to the confidential source after approximately two minutes in Defendant's house. Detective Ladd swore in his affidavit that this conduct "was indicative of drug trafficking activity" based on

his training and experience. The middleman returned to his residence, and the confidential source met Detective Ladd. The confidential source provided him with MDMA, and no other contraband was found on the confidential source or in his vehicle.

A subsequent purchase of heroin took place seventy-two hours prior to issuance of the search warrant. The details of that drug transaction are nearly identical to those set forth above, except the middleman was in Defendant's residence for approximately three minutes. Further, while observing the second transaction, Detective Ladd saw two males enter Defendant's residence and exit approximately two minutes later. Detective Ladd again indicated that the conduct he observed on this occasion was "indicative of drug trafficking activity" based on his training and experience.

On two occasions, Detective Ladd personally observed his confidential source meet the middleman and travel to Defendant's residence, where the middleman entered and exited shortly thereafter. The confidential source, who had been searched and supplied with money to purchase controlled substances, provided Detective Ladd with MDMA and heroin after his interaction with the middleman. Detective Ladd also observed other traffic in and out of Defendant's residence. Detective Ladd's experience and personal observations set forth in the affidavit were

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sufficient to establish probable cause to believe that controlled substances would probably be found in Defendant's residence.

Based on Detective Ladd's training and experience, the conduct of the middleman, and Detective Ladd's personal observations, the magistrate here could reasonably infer that the middleman obtained MDMA and heroin from Defendant's residence. Further, the magistrate could reasonably infer that there would probably be additional controlled substances at that location. Moreover, the magistrate could reasonably infer that the middleman did not have the MDMA or heroin in his possession when he met the confidential source, and his purpose in traveling to Defendant's residence was to obtain the controlled substance the confidential source supplied to Detective Ladd. Based on the totality of the circumstances, the magistrate had a substantial basis for concluding probable cause existed to believe controlled substances were located on the premises of 3988 Neeley Street in Raleigh.

Conclusion

As our Supreme Court has stated, "[t]he resolution of *doubtful or marginal cases* in this area should be largely determined by the preference to be accorded to warrants." *Riggs*, 328 N.C. at 222, 400 S.E.2d at 435 (emphasis added) (citations and quotation marks omitted). That reasonable minds could disagree, as shown by the dissent, demonstrates that this may be a marginal case. As such, the magistrate's

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probable cause determination is upheld and the trial court's denial of Defendant's motion to suppress is affirmed.

AFFIRMED.

Judge DAVIS concurs.

Judge ZACHARY dissents with separate opinion.

ZACHARY, Judge, dissenting

The Fourth Amendment functions at its core to prohibit the government from subjecting its citizens to unreasonable searches and seizures. The existence of a warrant supported by probable cause protects this right, but only if it is inherently dependable. *E.g., Brinegar v. United States*, 338 U.S. 160, 175, 93 L. Ed. 1879, 1890 (1949). Because of the lack of information concerning the reliability of the unknown middleman, the lack of detail regarding the controlled purchases, and the lack of independently corroborated facts contained in the affidavit, probable cause to search defendant’s home was not established, and I respectfully dissent.

I.

The majority quotes *State v. Riggs* and insists that our inquiry today is limited to determining “whether, given all the circumstances set forth in the affidavit before the magistrate, . . . there is a fair probability that contraband . . . will be found in a particular place.” 328 N.C. 213, 218, 400 S.E.2d 429, 432 (1991) (citations and quotation marks omitted). The full scope of this Court’s review, however, is “whether, given all the circumstances set forth in the affidavit before the magistrate, *including veracity and basis of knowledge of persons supplying hearsay information*, there is a fair probability that contraband . . . will be found in a particular place.” *Riggs*, 328 N.C. at 218, 400 S.E.2d at 432 (citations and quotation marks omitted) (emphasis added). Probable cause to search “exists where ‘the facts and circumstances within . . . the officers’ knowledge, and of which they had reasonably trustworthy information,

are sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Brinegar*, 338 U.S. at 175-76, 93 L. Ed. at 1890 (quoting *Carroll v. United States*, 267 U.S. 132, 162, 69 L. Ed. 543, 555 (1925)) (alterations omitted). The requirement that an inquiry be conducted into the "veracity and basis of knowledge of persons supplying hearsay information" provides the degree of reliability necessary to protect the security of citizens in their homes from the unwarranted intrusion of the government long contemplated by the Constitution. This is the basis of my dissent.

II.

In the instant case, the only information contained in the affidavit supporting the application for search warrant that ties this defendant's home to the sale of narcotics was the hearsay information related to the two controlled purchases. An unidentified "middleman" conducted the controlled purchases rather than the confidential informant, and no basis was provided which would justify reliance on the middleman. Nevertheless, in holding that the magistrate had a substantial basis for concluding that probable cause existed, the majority focuses on Detective Ladd's experience and his report that:

[o]n two occasions, Detective Ladd personally observed his confidential source meet the middleman and travel to Defendant's residence, where the middleman entered and exited shortly thereafter. The confidential source, who had been searched and supplied with money to purchase controlled substances, provided Detective Ladd with

MDMA and heroin after his interaction with the middleman. Detective Ladd also observed other traffic in and out of the residence.

This statement establishes merely that the unknown middleman entered defendant's home, and that the confidential informant provided law enforcement officers with drugs at some time thereafter. Under this analysis, the focus is on the drugs that the confidential informant delivered to the officers, which ostensibly were acquired inside Defendant's home. Without that connection, there can be no probable cause.

III.

To be sure, the facts provided in an application for a search warrant need not always have been personally observed or obtained by a law enforcement officer in order to support a finding of probable cause. Information gleaned from a third-party may support a finding of probable cause. *Jones v. United States*, 362 U.S. 257, 269, 4 L. Ed. 2d 697, 707 (1960). In the context of third-party information, however, the totality of the circumstances test requires that the nature of the third-party information "be such that a reasonably discreet and prudent person would rely upon [it.]" *State v. Arrington*, 311 N.C. 633, 636, 319 S.E.2d 254, 256-57 (1984); *see also Illinois v. Gates*, 462 U.S. 213, 238, 76 L. Ed. 2d 527, 548 (1983); *State v. Johnson*, 143 N.C. App. 307, 310, 547 S.E.2d 445, 448 (2001). Accordingly, where an officer applies for a search warrant in reliance upon information that was supplied by a

third-party, probable cause demands an analysis of whether there is “a substantial basis for crediting the hearsay[.]” *Jones*, 362 U.S. at 269, 4 L. Ed. 2d at 707; *see also Alabama v. White*, 496 U.S. 325, 328, 110 L. Ed. 2d 301, 308 (1990) (“[A]n informant’s ‘veracity,’ ‘reliability,’ and ‘basis of knowledge’ . . . remain ‘highly relevant in determining the value of [the officer’s] report.’”) (quoting *Gates*, 462 U.S. at 230, 76 L. Ed. 2d at 543); *Arrington*, 311 N.C. at 643, 319 S.E.2d at 261 (adopting *Gates* regarding “the sufficiency of probable cause to support the issuance of a search warrant”).

There are various factors relevant to the determination of whether there is a substantial basis for crediting third-party information. A recurrent consideration is whether the tip is accompanied by statements in the affidavit establishing that the informant is a reliable source. *See e.g., Riggs*, 328 N.C. at 219, 400 S.E.2d at 433. The affiant’s statement that the informant has provided law enforcement officers with accurate information in the past is usually sufficient to establish the informant’s reliability under this standard. *E.g., id.* at 218, 400 S.E.2d at 432 (“[T]he informant . . . had made two prior controlled purchases of drugs and also previously had given accurate information which resulted in the arrest of a ‘narcotics violator.’ Such evidence established that informant’s reliability.”).

In contrast, probable cause is more difficult to satisfy under the totality of the circumstances test where the information supporting an officer’s application for

search warrant was provided by an unverified or an anonymous source. In such a case, additional indicia of reliability must be present. *See Gates*, 462 U.S. at 237-38, 244, 76 L. Ed. 2d at 548, 552. A tip that was provided by an anonymous source will often be unable to satisfy the requisite indicia of reliability without a generous level of detail, or without essential facts that law enforcement officers were able to independently corroborate. *See e.g., White*, 496 U.S. at 329, 110 L. Ed. 2d at 308 (“Some tips, completely lacking in indicia of reliability, would . . . require further investigation before a [search] would be authorized[.]”) (citation and quotation marks omitted); *State v. Trapp*, 110 N.C. App. 584, 588-89, 430 S.E.2d 484, 487-88 (1993). The extent of the details provided in the tip and the officer’s ability to corroborate the information will factor considerably into the totality of the circumstances to be reviewed. *Gates*, 462 U.S. at 241-42, 245, 76 L. Ed. 2d at 550-51, 552.

Likewise, where law enforcement officers apply for a search warrant based upon information gleaned from a controlled purchase that was executed by a third-party informant, the reliability of the controlled purchase itself must be analyzed in order to determine whether it was sufficient to support a finding of probable cause. Relevant indicia of reliability often include statements in the affidavit that either: (1) the source was reliable; (2) the source was searched for drugs immediately before and after the controlled purchase; (3) the source wore a hidden video or audio surveillance device during the controlled purchase; or (4) law enforcement officers observed the

source engaging in the hand-to-hand sale with the defendant. *See e.g., Riggs*, 328 N.C. at 214-16, 400 S.E.2d at 430-31; *State v. Stokley*, 184 N.C. App. 336, 341, 646 S.E.2d 640, 644 (2007). Where such protective measures are taken, this Court has generally held that information obtained from a controlled purchase was sufficiently reliable under the totality of the circumstances to support the issuance of a search warrant. *See e.g., Stokley*, 184 N.C. App. at 341, 646 S.E.2d at 644; *Johnson*, 143 N.C. App. at 311, 547 S.E.2d at 448; *Cf. State v. Collins*, 216 N.C. App. 249, 250, 716 S.E.2d 255, 255-56 (2011). Where such protective measures are circumvented, however, the courts become more concerned with the satisfaction of the constitutional requisites for issuance of a search warrant.

The reliability of a controlled purchase must be particularly scrutinized by magistrates where the reliability of the source of the operation cannot be shown. In such a case, a greater level of detail or independent corroboration must be present in order for the operation to support a finding of probable cause. *See State v. Brody*, ___ N.C. App. ___, ___, 796 S.E.2d 384, 388 (2017) (“The difference in evaluating an anonymous tip as opposed to a reliable, confidential informant’s tip is that the overall reliability is more difficult to establish, and thus some corroboration of the information or greater level of detail is generally necessary.”) (citation and quotation marks omitted) (alteration omitted).

IV.

While controlled purchases are often employed as a means to independently corroborate an anonymous tip, in the instant case, the operations are themselves the subject of the anonymity. Thus, the pertinent question is whether the controlled purchases offer sufficient indicia of reliability to support a finding of probable cause under the totality of the circumstances.

As the majority notes, the reliability of a narcotics operation that was conducted by an anonymous or unknown source has been addressed by this Court on only one prior occasion, in *State v. Riggs*. A comprehensive analysis of *Riggs* is necessary in order to understand its application to the instant case.

In *Riggs*, the application for search warrant provided that law enforcement officers had obtained information from a confidential informant that the defendant Bobby Riggs was selling narcotics. *Riggs*, 96 N.C. App. 595, 386 S.E.2d 599 (1989), *rev'd*, *Riggs*, *supra*. The confidential informant himself was shown to be reliable and, thus, so too was his tip. In light of that reliable tip, the officers subsequently conducted a controlled purchase in which the confidential informant arranged for an unwitting middleman to purchase narcotics from the defendant Bobby Riggs. *Riggs*, 328 N.C. at 214, 400 S.E.2d at 430. The confidential informant was searched before and after the operation and was equipped with an audio surveillance device during his interactions with the middleman. *Id.* As officers watched, the middleman

traveled by himself to the residence of defendants Bobby and Pamela Riggs and purchased narcotics from defendant Bobby Riggs outside in the driveway. *Id.* at 214-16, 400 S.E.2d at 430-31. The middleman then returned to his home and gave the narcotics to the confidential informant. *Id.*

On appeal from the trial court's denial of the defendants' motions to suppress, this Court concluded, in part, that a controlled purchase conducted outside of the defendants' home was insufficient to establish probable cause that narcotics would be found inside the home. *Riggs*, 96 N.C. App. at 598, 386 S.E.2d at 601. Our Supreme Court reversed and concluded that, because the magistrate was simply required to make a "common sense determination" of whether there was a fair probability that narcotics would be found in the home, the fact that the defendant had conducted the sale in the driveway to his home was sufficient to support the magistrate's finding of probable cause that narcotics would also be found inside the home. *Riggs*, 328 N.C. at 220-21, 400 S.E.2d at 434.

The majority maintains that "[t]he only practical difference between *Riggs* and the case *sub judice* was the use of a recording device by the confidential informant[.]" This distinction is, by itself, significant. However, it is also not the "only practical difference" involved. While the existence of the audio recordings alone certainly could have been sufficiently corroborative to support a finding of probable cause from the operation, the officers in *Riggs* were provided with reliable information tying the

defendants to drug trafficking from the start. *Id.* at 215, 400 S.E.2d at 430. Thus, the controlled purchase in *Riggs* was both corroborated and corroborative. The combination of these factors provides the underpinning for our Supreme Court's determination in *Riggs* that the information in the affidavit was sufficient to support the magistrate's finding of probable cause. The initial suspicions were corroborated by the tips, the tips were corroborated by the controlled purchase, and the controlled purchase was corroborated by its own separate indicia of reliability.

The same cannot be said here. Although the confidential informant's veracity was established by his history of reliability with law enforcement, the confidential informant did not accompany the middleman into defendant's home. The confidential informant did not observe the alleged drug transactions taking place, nor is this a case in which any hand-to-hand transactions were observed by law enforcement officers. *Cf. Stokley*, 184 N.C. App. at 340-41, 646 S.E.2d at 644. Further, the affidavit does not contain information implicating defendant's home from the outset, such as, for example, that the confidential informant had claimed to have purchased narcotics from defendant in the past. *Cf. id.* The middleman was not searched before or after the alleged purchases, and the confidential informant was not searched after he met privately with the middleman before traveling to defendant's home. The confidential informant did not wear an audio or video surveillance device during his interactions with the unknown middleman.

The existence of any one of these safeguards would have helped to establish the reliability of the operations. However, no further details concerning the events inside defendant's home are provided. Rather, the only corroboration provided in the affidavit is the fact that the middleman and two other individuals were observed entering defendant's residence. This alone is wholly insufficient to establish probable cause in the instant case. *E.g., State v. Ford*, 71 N.C. App. 748, 752, 323 S.E.2d 358, 361 (1984); *State v. Hunt*, 150 N.C. App. 101, 107, 562 S.E.2d 597, 601 (2002). Beyond the middleman having entered defendant's home, the affidavit sets forth no basis to otherwise justify law enforcement officers' or the magistrate's reliance on the assumption that the unknown middleman purchased the narcotics while he was inside.

While probable cause may indeed be established where the reliability of the source of an operation is wanting, such is the case only where the operation itself furnishes highly detailed information, or where the presumptions gathered from the operation have been independently corroborated. *Gates*, 462 U.S. at 234, 76 L. Ed. 2d at 545. The reliability of the *operation* must be strong enough to compensate for lack of reliability of the source. Absent any such corroboration or additional detail, the essence of the affidavit in the case at bar established at most that the unknown middleman claimed to have purchased the drugs when he was inside defendant's

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home. I do not believe that it is constitutionally permissible for the officers or the magistrate to take an unknown middleman at his word, and I will not do so.

* * *

I am reluctant to allow an affidavit describing the anonymous purveyance of narcotics, and otherwise lacking in detail or corroboration, to serve as the primary justification for an intrusion into a private residence, “the most highly protected of all places under the Fourth Amendment[.]” *Riggs*, 328 N.C. at 222, 400 S.E.2d at 435. In upholding the issuance of the search warrant in the instant case, despite the insufficiency of the initial information leading to the operations and despite the use of a middleman whose identity and veracity remain a mystery, I fear that the majority has created a dangerous precedent allowing for the issuance of search warrants upon a finding of less than probable cause. I would hold that, given the unusual facts of this case together with the absence of safeguards and indicia of reliability that are typically present in a controlled purchase, the application for a search warrant was insufficient to support the magistrate’s finding of probable cause.