ROP v. Dolmers, 10 ROP 217 (Tr. Div. 2003)

REPUBLIC OF PALAU,
Plaintiff,

v.

SHIRLEY SIABAL DOLMERS,
Defendant.

CRIMINAL CASE NO. 01-183

Supreme Court, Trial Division
Republic of Palau

Decided: February 4, 2003

LARRY W. MILLER, Associate Justice:

This matter is before the Court on ⊥218 defendant's motion to suppress evidence found and seized from her home in the execution of a search warrant issued by the Chief Justice. Defendant's motion presents alternative theories: that the affidavit submitted in support of the search warrant application was not sufficient to show probable cause; and that even if it had been sufficient, the affidavit omitted facts that should have been included and that would have vitiated any such showing. For the reasons stated below, the motion is denied.

The affidavit of probable cause, signed by "a police officer with the Drug Enforcement Division of the Bureau of Public Safety," stated the following:

> 2. On April 4, 2001, the Narcotics Division of the Bureau of Public Safety received information from an unknown caller that methamphe[ta]mine was being sold at the residence of Shirley Siabal Dolmers on a daily basis. The next day I contacted a confidential informant to discuss making a controlled buy from the residence of Shirley Siabal Dolmers. During my discussion with the CI, I was informed that the CI could only make a buy worth $2,000 which is about 3.5 grams.
>
> 3. Based on our discussion, we conducted a controlled buy from the house of Shirley Siabal Dolmers with the confidential informant ("CI") on April 5, 2001. The CI proved to be [a] reliable individual during this investigation. Officers met with the CI at about 1932 hours at designated area and I first searched [the] CI to make sure he had no money or drugs in his possession. CI was then given $2,000 in prerecorded funds and was instructed to purchase methamphetamine from the house of Shirley Siabal Dolmers. The CI then went to the residence of Shirley Siabal Dolmers and the CI requested to purchase methamphetamine from her. At about 2051 hours, CI then met with myself and other Narcotic Officers. CI handed myself, 1 clear plastic tube, sealed at both ends, containing white crystals

> suspected to be methamphetamine. CI informed me that he bought it from Shirley Siabal Dolmers for $640.00. The clear plastic tube, sealed at both ends containing white crystals was taken to the Narcotics Office in Koror and tested positive for methamphetamine with a gross weight of 0.7 grams.

Affidavit of Julio Ringang, April 6, 2001.

As the Appellate Division said long ago, "an affidavit is sufficient when it demonstrates in some trustworthy fashion the likelihood that an offense has been committed and that there is sound reason to believe that a particular search will turn up evidence of it." *ROP v. Gibbons*, 1 ROP Intrm. 547A, 5471 (1988). The Court believes that the affidavit quoted above is sufficient to meet this standard. The Court agrees with defendant that the "information from an unknown ⊥219 caller," of whom nothing more is said, adds little or nothing to the analysis. But the following paragraph details that a confidential informant who had been searched by the police "to make sure he had no money or drugs in his possession," went to defendant's residence, and emerged with a tube containing methamphetamine (at least as shown by a field test) and stated that he had purchased it from defendant. These facts "are sufficient to warrant a man of reasonable prudence in the belief that an offense"–trafficking in methamphetamine–"has been . . . committed," *id.* at 547M, and that a search of defendant's home would turn up evidence of that offense.

All of which is not to say that the affidavit could not have been better. Defendant is quite right that, although the Republic's brief says that the confidential informant was monitored entering and exiting defendant's house, and although that appears to have happened,[1] the affidavit does not say that. Nevertheless, the affidavit *does* say that a "controlled buy" was conducted. While that term does not have a single meaning, *see, e.g.*, *United States v. Olson*, 978 F.2d 1472, 1475 n.3 (7th Cir. 1992) (describing the standard procedure for a "controlled buy" by the DEA), the Court believes that it has been used in Palau long enough to convey to the judge reviewing the warrant that the statement that the confidential informant "went to the [defendant's] residence" was based on the observations of police officers and not merely on the CI's say-so.[2] With that understanding, there is ample authority for the proposition that a "controlled buy," even one that may have been imperfectly carried out, *see* n.l *supra*, may be

---

[1]The Court accepts defendant's contention that the sufficiency of an affidavit should be based on what was known to the issuing judge and not on the additional information brought out at a suppression hearing. The Court makes this observation to emphasize that there has been no argument (nor any basis for one) that the affidavit was false, but only that it was not sufficiently detailed.

Defendant did argue based on the facts adduced at the hearing that the patdown search of the CI prior to his entry into defendant's home was not thorough enough. This argument posits that, having just been arrested for trafficking, and while cooperating with police in a bid for leniency, *see infra*, the CI secreted methamphetamine on his body before meeting with the police in the hope that it would not be discovered. Leaving aside whether that might give rise to reasonable doubt, that mere possibility is not enough to render unreasonable the Chief Justice's finding of probable cause.

[2]The Court says this with the knowledge that it has previously convicted of perjury–and would do so again–a (now former) police officer who falsely described an entirely unmonitored drug purchase as a "controlled" buy.

sufficient to establish probable cause. *E.g.*, *United States v. Khounsavanh*, 113 F.3d 279, 286 (1st Cir. 1997) (upholding warrant where "the controlled buy was less than ideal").

Defendant's second argument flows from the facts that the confidential informant, who is not further identified in the affidavit, had been arrested for trafficking in methamphetamine, was faced with the mandatory minimum 25-year jail term, and was acting as an informant in an effort to gain leniency. These facts, it is argued, so undermined his credibility as to render untenable any finding of probable cause. Where it is alleged that pertinent facts have been omitted from an affidavit the question to be determined is "whether the warrant would have been issued if a reasonable magistrate ⊥220 had had that information." *State v. Payne*, 946 P.2d 353, 356 (Or. Ct. App. 1997) (citation omitted). But as one of the cases relied upon by defendant recognizes, "informants frequently have criminal records and often supply information to the government pursuant to plea arrangements." *United States v. Allen*, 297 F.2d 790, 796 (8th Cir. 2002). Any judge in Palau familiar with prior cases and with the provision for reduction in sentencing on the basis of cooperation–as all judges are–would not have been surprised to learn that the CI in this case was an accused (or about-to-be-accused) drug trafficker.

That is not to say that the information provided by informants should not be viewed with caution: juries are routinely told that they should examine "with great care" the testimony of witnesses who have an interest in testifying.[3] But since interested witnesses may nevertheless be relied upon in determining whether a defendant is guilty beyond a reasonable doubt, the Court is not prepared to find that an interest in testifying necessarily cancels out the much lesser proof required to make a finding of probable cause. Here, where the showing of probable cause rested not on a mere tip, but on the acquisition of apparent contraband, the Court is inclined to view the credibility of the CI as less critical,[4] and to conclude that the affidavit as a whole "was sufficiently corroborated to support a finding of probable cause even with the additional negative information about [the informant]." *Allen*, 297 F.3d at 796.

Defendant's motion is accordingly denied, and a status conference to set a new trial date is scheduled for February 14, 2003, at 1:30 p.m. So Ordered.

---

[3]*See* S. Saltzburg & H. Perlman, Federal Criminal Jury Instructions (1985), § 3.12:

> You may consider whether a witness has a particular interest in testifying that might affect his reliability.
>
> A witness who has agreed to testify in return for some promise of leniency . . . by the government might have a special reason to testify in a particular way. You should examine the testimony of such witness with great care.
>
> A witness who hopes to attain leniency, although it has not been promised, also may have an interest in testifying in a particular way. You should also examine his testimony with care.

[4]The credibility of the CI is not irrelevant: it remains possible that the CI already had the suspected methamphetamine and lied to the police about what transpired in defendant's home. *See* n.1 *supra*. Nevertheless, it seems to the Court that discounting that possibility requires a smaller leap of trust than relying on an informant's tip as *the* basis for a finding of probable cause.