

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	
)	I.D. No. 1104003419
MICHAEL D. HOLDEN,)	
)	
Defendant.)	
)	

Date Submitted: September 22, 2011
Date Decided: October 11, 2011

OPINION

*Upon Consideration of
Defendant's Motion to Suppress: **GRANTED***

Brian J. Robertson, Deputy Attorney General, Department of Justice, State of Delaware, 820 N. French Street, 7th Floor, Wilmington, DE, 19801, Attorney for the State.

John P Deckers, Esquire, 900 N. King Street, Suite 302, Wilmington, DE 19806, Attorney for Michael. D. Holden.

Thomas A. Foley, 1905 Delaware Avenue, Wilmington, DE 19806, Attorney for Lauren Lusby.

JURDEN, J.

I. INTRODUCTION

Before the Court is Defendant Michael D. Holden's Motion to Suppress evidence seized during a search of his residence.¹ After an investigation spanning several months, the Wilmington Police obtained a search warrant to search Holden's home. The search produced empty pill bottles, a scale, a mixing agent for cocaine, prescription pills, and two ounces of cocaine.² Holden was subsequently arrested and indicted for Trafficking in Cocaine of greater than 50 but less than 100 grams,³ Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance,⁴ Maintaining a Dwelling for Keeping or Delivering Controlled Substances,⁵ and Conspiracy in the Second Degree.⁶

Holden contends that the search warrant affidavit submitted by the police to support the search of his home lacked probable cause. As such, Holden claims that the search violated his constitutional rights under the Fourth Amendment to the United States Constitution and Article I, Section 6 of the Delaware Constitution. For the reasons that follow, Holden's Motion is **GRANTED**.

¹ Michael D. Holden's co-defendant is Lauren Lusby. (ID No. 1104003415). Because the relevant facts and arguments are essentially the same for Holden and Lusby, this decision applies to both of their cases.

² State's Response to Defendant's Motion to Suppress at p. 1.

³ 16 *Del. C.* § 4753A.

⁴ 16 *Del. C.* § 4751.

⁵ 16 *Del. C.* § 4755.

⁶ 11 *Del. C.* § 512.

II. FACTS

On December 15, 2010, a past proven reliable confidential informant (“C.I. #1”) contacted Officer Michael Rentz of the Wilmington Police Department in reference to Michael Holden.⁷ C.I. #1 told Rentz that he had spoken with Holden,⁸ and among other things, Holden told C.I. #1 how he had “beat the marijuana trafficking case.”⁹ C.I. #1 also told Rentz that Holden had not stopped selling marijuana after his arrest, and was selling oxycodone. Further information provided by C.I. #1 established that Holden lived at 514 Shue Drive, Newark, Delaware with his girlfriend Lauren Lusby, he drove a white Chrysler 300 (“Chrysler”), and that most of Holden’s customers came to his residence to buy marijuana or pills. C.I. #1 said that Holden used the Chrysler to make drug deliveries.

⁷ Officer Rentz acts as a liaison to the Drug Enforcement Administration in Wilmington, DE.

⁸ Rentz investigated Holden in a previous drug case.

⁹ Affidavit of Probable Cause (“APC”) at ¶ 3. This statement, allegedly made by Holden, is presumably in reference to Holden’s previous arrest on February 24, 2010 where the Court suppressed 11.88 pounds of marijuana because the police placed a global positioning device on Holden’s vehicle without a warrant. *See State v. Holden*, 2010 WL 5140744 (Del. Super.) (“*Holden I*”). This prior stop and arrest is prominently placed in paragraph two of Rentz’s APC. However, a magistrate may not rely on information obtained as the result of an illegal search. *See United States v. Reilly*, 76 F.3d, 1271, 1280 (2d Cir. 1996). In *Reilly*, the police entered the defendant’s property to observe a cottage closer than they could from the road. Because the police observed marijuana growing on the property while they were illegally on the premises, the court determined that this tainted the information in the warrant, and thus a magistrate could not rely upon that illegally obtained information. In *Reilly*, the court had to determine whether the initial search was illegal. Here, the Court previously determined that Holden’s search on February 24, 2010 was unlawful. *See Holden*, 2010 WL 5140744. The Court is aware that the decision to suppress the marijuana in *Holden I* is currently under review by the Delaware Supreme Court. Even if the Delaware Supreme Court finds that the actions taken by the police in *Holden I* pass constitutional muster, that information, while relevant, does not add to the State’s argument here. Nothing presented in *Holden I* linked drugs to Holden’s home. *See also Jones v. State*, 2011 WL 3890129, at *7 (Del.) (finding that the police could not rely on illegally seized evidence in the affidavit to support their application for a search warrant).

As part of Rentz's investigation, he conducted a criminal history check on Holden that linked Holden to the address provided by C.I. #1. Relying on C.I. #1's tip, Rentz conducted surveillance at Holden's home on January 5, 2011. Rentz observed the Chrysler parked in the driveway of Holden's home, and determined that it was registered to Joseph Lusby, the father of Holden's co-defendant. A DEA confidential informant ("C.I. #2") confirmed much of the information provided by C.I. #1, adding that Holden was also selling cocaine out of his house, and that Holden "maintains his stash at that location."¹⁰

During the second week of January 2011, Rentz and DEA Special Agent Robert Eiseman conducted surveillance on Holden's home. Rentz and Eiseman observed nothing out of the ordinary.

In the third week of February 2011, C.I. #1 contacted Rentz again about Holden. C.I. #1 informed Rentz that Holden was almost exclusively conducting drug sales from his home now. C.I. #1 suggested that Holden was afraid to sell drugs outside of his home because the police had stopped Holden while he was driving the Chrysler.¹¹ A few months later, in April of 2011, C.I. #1 told Rentz

¹⁰ APC at ¶5. Nothing in the APC indicates that C.I. #2 is a past proven reliable informant.

¹¹ APC at ¶7. Rentz conducted a criminal history check of Holden and discovered that Holden had been stopped and issued a ticket on February 18, 2011 for failing to signal while driving the Chrysler. No drugs or drug paraphernalia were found in Holden's car.

that Holden had received multiple ounces of cocaine to sell. At this point, C.I. #1 still believed that Holden sold marijuana and pills.¹²

After receiving this information, Rentz and Eiseman conducted surveillance on Holden's home again on April 4, 2011. Eiseman observed a silver Chrysler stop and park in front of Holden's residence at 8:20 p.m. The driver remained in the car. After approximately five minutes, Holden arrived in his Chrysler. Holden, his passenger, and the driver of the silver Chrysler then entered Holden's house. Within minutes, a white Lexus registered to Arlene Holden (Holden's mother) pulled into the driveway of Holden's residence. Two females exited the Lexus and entered the house. Approximately ten minutes later, Rentz observed the driver of the silver Chrysler leave Holden's house and return to his car.

Rentz followed the silver Chrysler out of Holden's neighborhood to a shopping center parking lot. Rentz observed the driver exit his car and put small objects into his right hand.¹³ Rentz promptly approached the driver and identified himself as a police officer. Without any mention of the reason for the stop, the driver indicated that he had a prescription for the pills. When the driver was taken into custody, he dropped six pills on to the ground. Rentz determined that these pills were 30 milligram Oxycodone pills. The driver once again insisted that he had a prescription for the pills, and told Rentz that he had the bottle in the console.

¹² See APC at ¶8.

¹³ APC at ¶9.

Rentz searched the car, but found no prescription bottle. The encounter with the driver led Rentz to believe that the driver purchased the Oxycodone from Holden.¹⁴

Based on the facts above, a magistrate granted Rentz a search warrant for Holden's residence on April 4, 2011. The search of Holden's residence produced contraband which led to his arrest.

III. THE PARTIES' CONTENTIONS

Holden argues that the affidavit of probable cause ("APC") submitted by Rentz lacked probable cause to justify a search of Holden's residence, *i.e.*, that the APC did not provide the magistrate with a substantial basis to reasonably believe evidence or contraband would be found in his home. In support of this argument, Holden contends that the facts provided by the C.I.'s in this case are "wholly uncorroborated," and thus are legally deficient.¹⁵ Holden also argues that the APC "fails to establish a legally sufficient nexus between the area to be searched and the alleged criminal acts."¹⁶ Holden avers that nothing in the APC established probable cause to believe Holden possessed drugs on his person, in his vehicle, or in his residence.¹⁷

¹⁴ The Court notes that the driver was never arrested.

¹⁵ Defendant's Motion to Suppress ("Mot. to Sup.") at p. 2.

¹⁶ *Id.*

¹⁷ *Id.*

The State argues that within the “four-corners” of the APC sufficient probable cause exists under the totality of the circumstances to justify a search of Holden’s home. The circumstances that the State relies upon are “the ongoing nature of the drug distribution crime, the use of two informants, including a past-proven reliable source, and the direct observations by investigators.”¹⁸ Given those factors, the State asserts that the police had sufficient justification to search Holden’s residence.

IV. DISCUSSION

The burden rests on a defendant moving to suppress evidence to establish that a search or seizure violated his rights under the United States Constitution, the Delaware Constitution, or the Delaware Code.¹⁹ To succeed, the defendant must demonstrate that he is entitled to relief by a preponderance of the evidence.²⁰

To protect against unreasonable searches and seizures, the Delaware and the United States Constitutions provide that “a search warrant may be issued only upon a showing of probable cause.”²¹ The requirements for obtaining a search warrant in Delaware are codified in Title 11, Sections 2306 and 2307 of the Delaware Code. Section 2306 provides that the application for a search warrant must “state that the complainant suspects that such persons or things are concealed

¹⁸ St.’s Resp. at p. 2.

¹⁹ *State v. Cannon*, 2007 WL 1849022, at *2 (Del. Super.) (citing *Rakas v. Illinois*, 439 U.S. 128, 130 n. 1 (1978)).

²⁰ *Id.*

²¹ *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006); U.S. Const. Amend. IV; Del. Const. art. 1, § 6.

in the house, place, conveyance or person designated [in the search warrant application] and shall recite the facts upon which suspicion is founded.”²²

According to Section 2307, a warrant may issue only upon a judicial determination of probable cause.²³

When reviewing a magistrate’s decision to issue a search warrant, the Court uses a “four-corners” test to determine whether an application for a search warrant demonstrates probable cause.²⁴ On its face, within those four corners, the document must present sufficient facts for a judge or magistrate to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place.²⁵

To make an initial probable cause determination, a judge or magistrate must look at the facts under the totality of the circumstances, and attempt to ascertain whether probable cause exists to justify a search.²⁶ Conducting a totality of the circumstances analysis provides a magistrate with leeway to draw reasonable

²² 11 *Del. C.* § 2306. (“The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.”).

²³ 11 *Del. C.* § 2307. (“If the judge, justice of the peace or other magistrate finds that the facts recited in the complaint constitute probable cause for the search, that person may direct a warrant to any proper officer or to any other person name for service. The warrant shall designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible, and may be returnable before any judge, justice of the peace or magistrate before whom it shall also direct to be brought the person or thing searched for if found, and the person in whose custody or possession such person or thing is found, to be dealt with according to law.”).

²⁴ *State v. Sisson*, 883 A.2d 868, 876 (Del. Super. 2005).

²⁵ *Sisson*, 903 A.2d at 296. (citing 11 *Del. C.* § 2306; *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000)).

²⁶ *Id.* (citing *Fink v. State*, 817 A.2d 781, 787 (Del. 2003)); see also *Gardner v. State*, 567 A.2d 404 (Del. 1989).

inferences from the factual allegations included within the APC.²⁷ Thus, where “there is a fair probability [under the totality of the circumstances] that contraband or evidence of a crime will be found in a particular place,” probable cause exists to search that place.²⁸

The four-corners test will “restrict[] the scope of a reviewing courts inquiry,” but a common sense analysis is still permitted.²⁹ This method of analysis avoids a “hypertechnical approach.”³⁰ With this approach, the Court gives great deference to the judge or magistrate who makes the initial probable cause determination when deciding whether to issue a search warrant.³¹ Giving deference, however, does not relieve the Court of its obligation to determine whether the information provides the magistrate with a substantial basis to find probable cause.³²

A. The Nexus Requirement

The Court must determine whether a substantial basis existed in the APC to justify a reasonable belief by the magistrate that evidence or contraband could be found in Holden’s residence.³³ In order to search a particular place, a logical nexus

²⁷ *Sisson*, 903 A.2d at 296.

²⁸ *Id.* (citing *Stones v. State*, 1996 WL 145775, at *2 (Del. 1996) (ORDER) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983))).

²⁹ See *Cannon*, 2007 WL 1849022, at *3.

³⁰ See *id.*

³¹ *Id.*

³² *Cannon*, 2007 WL 1849022, at *3. (citing *Gates*, 462 U.S. at 239)).

³³ *Sisson*, 883 A.2d at 876.

must exist between the items sought and the place to be searched.³⁴ While it is helpful in the overall analysis, probable cause to believe a crime has been committed does not always mean police have probable cause to search a person's residence.³⁵ In fact, to establish probable cause to search a residence, there must be probable cause that an individual committed a crime, and "probable cause to believe that evidence of such crime can be found *at the residence*."³⁶ A direct observation or facts placing evidence at the place to be searched are not needed to establish a nexus.³⁷ Indeed, when reviewing an affidavit supporting a search warrant, inferences may be drawn by the Court as to probable cause by considering the "type of crime that is alleged and the nature of the items sought by police."³⁸

B. The Confidential Informants

A confidential informant's tip may establish probable cause if, under the totality of the circumstances, the information is reliable.³⁹ When evaluating the totality of the circumstances, the Court must consider factors such as: (1) "the reliability of the informant," (2) "the details contained in the informant's tip", and (3) "the degree to which the tip is corroborated by independent police surveillance

³⁴ *Id.* at *4; *see, e.g., Dorsey*, 761 A.2d at 811; *Hooks v. State*, 416 A.2d 189, 203 (Del. 1980); *State v. Jones*, 1997 WL 528274, at *4 (Del. Super.).

³⁵ *Id.*

³⁶ *Cannon*, 2007 WL 1849022, at *4. (emphasis added).

³⁷ *Sisson*, at *4; *see, e.g., Dorsey*, 761 A.2d at 811; *Hooks*, 416 A.2d at 203; *Jones*, 1997 WL 528274, at *4.

³⁸ *State v. Backus*, 2002 WL 31814777, at *6 (Del. Super.).

³⁹ *State v. Ivins*, 2004 WL 1172351, at *5 (Del. Super.); *see also State v. Jones*, 2002 WL 31814516 (Del. Super.) (citing *Illinois v. Gates*, 462 U.S. 213 (1983)); *Alabama v. White*, 496 U.S. 325 (1990).

and information.”⁴⁰ When assessing reliability, “if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion that would be required if the tip were more reliable.”⁴¹

In *State v. Ivins*, three confidential informants provided the Delaware State Police (“DSP”) with information that Ivins sold drugs.⁴² Two of the three informants described Ivins’ cars and residence, and the police conducted a background check to link Ivins to each.⁴³ Further, DSP received information from Delaware Crimestoppers that Ivins traveled to Washington D.C. to purchase drugs to sell in Delaware.⁴⁴ Police used this information to apply for and execute a search warrant on Ivins’ residence.⁴⁵ The Court held in *Ivins* that under the totality of the circumstances that the information contained within the search warrant lacked the support necessary to find probable cause.⁴⁶ In so holding, the Court reasoned that two of the confidential informants “never stated that they saw Ivins sell drugs,” and the information pertaining to Ivins’ home and cars “is the type of information that any person living on Ivins’ street could have provided.”⁴⁷

⁴⁰ *Morgan v. State*, 962 A.2d 248, 252 (Del. 2008) (citing *LeGrande v. State*, 947 A.2d 1103, 1108 (Del. 2008)).

⁴¹ See *LeGrande*, 947 A.2d 1103; see also *White*, 496 U.S. at 330.

⁴² 2004 WL 1172351, at *1 (Del. Super.)

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at *9.

⁴⁷ *Id.* at *5. The Court notes that the confidential informants referenced in *Ivins* were not considered to be past proven reliable informants. But, the Court’s analysis remains the same.

In *Morgan v. State*, confidential informants provided information to the police about the defendant's drug dealing, albeit in much greater detail than in *Ivins*.⁴⁸ Specifically, the informant predicted Morgan's future actions. An accurate prediction of an individual's future actions is helpful when analyzing an informant's reliability.⁴⁹ The informant advised police that Morgan sold drugs from his mobile home, drove an older maroon Toyota Camry, and that the defendant would leave his home in the Camry at a particular time to sell ecstasy at a local Safeway supermarket.⁵⁰ The police confirmed part of the informant's statement when they observed a maroon Camry parked in front of the defendant's residence.⁵¹ Further confirmation came when the police followed Morgan as he left his residence (as the confidential informant predicted he would), and stopped him at the Safeway.⁵² When Morgan opened his glove compartment to retrieve his registration, a digital scale fell on the floor.⁵³ Morgan argued that the information relied upon to establish probable cause failed to create a sufficient nexus between his home and the evidence sought by the police.⁵⁴ The Court disagreed. In its analysis, the Court relied upon the following factors: (1) the police observed a car matching a description of the defendant's car parked in front of the defendant's

⁴⁸ See 962 A.2d at 250-51.

⁴⁹ See, e.g., *LeGrande*, 947 A.2d at 1109-10; *c.f. Bloomingdale v. State*, 842 A.2d 1212, 1220 (Del. 2004) (“a tip about readily observable criminal activity is more reliable than one concerning concealed criminal activity . . .”).

⁵⁰ *Morgan*, 962 A.2d at 250-51.

⁵¹ *Id.* at 251.

⁵² *Id.* at 253-53.

⁵³ *Id.*

⁵⁴ *Id.* at 253.

residence; (2) the confidential informant told the police that the defendant sells ecstasy from that residence; (3) the police knew the exact time the defendant would leave his home to sell ecstasy at the Safeway; and (4) upon pulling over the defendant, there was no ecstasy in the car, but there was a digital scale (which is indicative of drug sales).⁵⁵ These factors above allowed the police to verify the reliability of the confidential informant,⁵⁶ and corroborate the information he provided. With that, the Court in *Morgan* reasoned that the absence of the ecstasy in the car made it “logical for [the police] to infer that ecstasy pills might be in Morgan’s mobile home,” and that those facts established a nexus between the contraband sought and Morgan’s home.⁵⁷ The Court held that under the totality of the circumstances probable cause existed to issue the search warrant.⁵⁸

In *State v. Backus*, the defendant claimed that “finger pointing” by confidential informants accusing the defendant of keeping drugs in his home without corroboration did not establish probable cause for a search.⁵⁹ Specifically, the defendant argued that there were no controlled buys conducted at his home, nor any surveillance to support the intrusion.⁶⁰ The Court noted that controlled buys, surveillance, or informant’s statements indicating that drugs are stored in particular

⁵⁵ *Id.*

⁵⁶ The police considered this particular C.I. to be a past proven reliable informant.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Backus*, 2002 WL 31814777, at *6.

⁶⁰ *Id.*

locations are not always needed to establish probable cause.⁶¹ The Court in *Backus* relied on substantially similar facts to this case,⁶² plus one additional factor. Of particular importance in *Backus* is that the second C.I. bought cocaine from the defendant in a controlled buy immediately after the defendant left his residence.⁶³ Considering the facts as a whole, a sufficient nexus linking drugs to the defendant's home existed, and thus the Court determined that probable cause existed to search the defendant's home.⁶⁴

Here, aside from Rentz's claim that C.I. #1 is a past proven reliable informant (and C.I. #2 providing information similar to that provided by C.I. #1) nothing in the APC demonstrates C.I. #1's reliability.⁶⁵ C.I. #1 and C.I. #2 never

⁶¹ *Id.*; see *State v. Jones*, 2000 WL 33114361 (Del. Super.) (In *Jones*, the Court determined probable cause existed to search the defendant's home after (1) the defendant bought a significant amount of marijuana during a controlled buy, (2) the defendant evaded arrest in his car, and (3) police established the defendant's residence by checking the address on his car's registration and observed the defendant's car parked in front of the listed address. Using that information, coupled with statements about the officer's training and experience, the Court held there was sufficient probable cause to search the defendant's home.)

⁶² *Backus*, 2002 WL 31814777, at *6. ("(1) police received a telephone call from a past, proven and reliable informant (CS # 1) explaining that Defendant and several of his associates were cooking crack cocaine inside the residence and that Defendant had conducted many drug deals inside the residence with his brother (Maurice); 2) on more than several occasions, Defendant's vehicle was observed by police to be parked in front of the residence; 3) police received information from a past, proven and reliable informant (CS # 2) explaining that Defendant was selling crack cocaine from the residence . . .").

⁶³ *Id.*; see also *State v. Ranken*, 25 A.3d 845 (Del. Super. 2010) (TABLE) (finding probable cause to search defendant's home based upon a past proven reliable confidential informant's statement that defendant sold drugs from his home, and police found "several small pieces of marijuana" and other drug paraphernalia when searching the defendant's trash); *State v. Church*, 2002 WL 31840887 (Del. Super.) (finding probable cause to search the defendant's residence where a past proven reliable informant advised police that defendant was selling large quantities of marijuana from his dwelling, and police observed the defendant leave the dwelling with a black backpack to meet an unidentified male at a restaurant. While there, the defendant and the unidentified male entered the restroom and exited shortly thereafter. The police following the defendant suspected a drug transaction had taken place. Later surveillance revealed the defendant entering a dwelling with empty black duffel bags, and emerging with bags that appeared to be "filled and heavy." The police approached the defendant, eventually arresting him for possessing a large quantity of marijuana. Thereafter, the police applied for a search warrant to search two dwellings the police linked to the defendant through their investigation.)

⁶⁴ *Backus*, 2002 WL 31814777, at *6.

⁶⁵ The Court did not conduct a suppression hearing in this case because the parties agreed to rely on the documents submitted to the Court. The Court heard brief argument on the motion in an office conference on October 10, 2011.

bought drugs from Holden (like the C.I. did in *Backus*), nor did they state that they ever saw Holden sell drugs from his home. Moreover, the police could not corroborate the confidential informant's statements to the extent necessary for a search. Similar to *Ivins*, the information provided by the confidential informants to the police describing Holden's house and car is information that any neighbor could have provided to police. C.I. #1 told police that Holden made drug deliveries in his Chrysler. But, when the police stopped Holden in his Chrysler, no drugs were found in his car. It is also important to note that although both confidential informants claimed Holden was selling drugs from his home, during surveillance over a significant period of time (on three separate occasions) the police only saw one person come to Holden's home. The Police never observed the "foot traffic" typically associated with drug sales from a home and the neighbors never complained to the police of drug activity at Holden's home.⁶⁶ C.I. #2 said that Holden used his residence as a "stash house," yet the police did not mention suspected deliveries or people carrying bags in or out of Holden's home in the APC.⁶⁷ Further, the APC never indicates that Holden's home is in a high drug area.

⁶⁶ See *Taylor v. State*, 777 A.2d 759, 770-71 (Del. 2001) (finding that the trial court did commit an abuse of discretion when the court admitted testimony regarding "a lot of foot and vehicular traffic" in the defendant's drug trial); *State v. Bordley*, 2003 WL 22455185, at *1-2 (Del. Super.) (finding sufficient probable cause in a search warrant to search a residence where police relied upon controlled buys, foot traffic indicative of drug activity to and from the residence, and a past proven reliable confidential informant's statement that she had previously purchased crack cocaine from the defendant.).

⁶⁷ See *Church*, 2002 WL 31840887.

The Court is mindful of the great deference a magistrate's initial probable cause determination must be given. But the information provided by the confidential informants in this case, without more, does not provide the reliability and corroboration necessary to create a sufficient nexus to establish probable cause to search Holden's home.

C. The Alleged Oxycodone Purchase

In the APC, the police note that *one* individual entered Holden's home for a short period of time, and a subsequent traffic stop by police revealed that he possessed six 30 milligram Oxycodone pills. The State argues that under the totality of the circumstances this established probable cause to arrest Holden, and this created a sufficient nexus to believe drugs were located in Holden's home. The Court disagrees for the following reasons.

First (and most importantly), the alleged sale did not take place during a controlled buy. Therefore, the police had no way of knowing whether the individual carried the six pills into Holden's house. *Jones* establishes that controlled buys are not always necessary, but the facts of *Jones* are substantially different.⁶⁸ Without the control factor used in *Jones*, the Court, nor a magistrate, have a basis to determine if the drugs were present in Holden's home on that day, or if the individual had them on his person when he entered (and left).

⁶⁸ *Supra* n. 56.

Second, at the time they applied for the warrant, the police only knew of one instance where an individual entered Holden's home and had drugs on his person when he left. The absence of a controlled buy would be less important to the Court's analysis if multiple people left Holden's with drugs on their person. That would provide a better basis to suggest that drug sales were taking place at 514 Shue Drive.

Finally, the individual stopped by the police claimed he had a prescription for the Oxycodone. Although no prescription bottles were found in the car, nothing in the APC suggests the police attempted to investigate whether the driver had a prescription. Moreover, the driver was not arrested.

V. CONCLUSION

Employing a common sense review of the information provided in this case under the totality of the circumstances, the information contained in the APC is insufficient to support a magistrate's finding of probable cause.⁶⁹

Accordingly, Holden's Motion to Suppress is **GRANTED**.

IT IS SO ORDERED.

⁶⁹ The Court is not declaring that in every case involving confidential informants that "something more" or an additional factor is always needed to establish probable cause. As in *Morgan*, where a confidential informant provides information accurately predicting future activities, probable cause to search the defendant can be found. An accurate prediction of future activities demonstrates a level of knowledge that someone very familiar with the defendant would possess, and thus the information is more reliable. The general information provided by the confidential informants in this case does not demonstrate an intimate knowledge of Holden's activities. Anybody could have provided the police with this information, or worse, made it up. Consequently, the reliability of the information is much lower.

Jan. R. Jurden

cc: Prothonotary