

STATE OF LOUISIANA

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NO. 2002-KA-0241

VERSUS

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COURT OF APPEAL

DANIEL SANTOS

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 184-135, DIVISION "A"
HONORABLE ROBERT A. BUCKLEY, JUDGE

JAMES F. MCKAY III
JUDGE

(Court composed of Judge Miriam G. Waltzer, Judge James F. McKay III,
Judge Dennis R. Bagneris, Sr.)

SHERRY WATTERS
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AFFIRMED

STATEMENT OF CASE

Daniel Santos was initially charged with possession of heroin on December 12, 1995. His case proceeded to trial and he was found guilty as charged on February 27, 1997. This conviction was reversed on appeal on the basis that Mr. Santos was denied his right to self-representation. *State v. Santos*, 99-1897 (La. 9/15/00), 770 So.2d 319. The case was remanded for a new trial.

The defendant represented himself in this matter, and an attorney was appointed to assist him. On December 4, 2000, testimony was taken pursuant to the defendant's renewed motion to suppress the evidence. The trial court denied the motion. On August 7, 2001, the defendant pled guilty as charged under *State v. Crosby*, 338 So.2d 584 (La. 1976). The defendant was sentenced to seven years at hard labor in the custody of the Department of Corrections with credit for time served from his original arrest. The defendant's motion for appeal was granted.

STATEMENT OF FACT

Sergeant Eddie Sensebe of the St. Bernard Parish Sheriff's Office, Narcotics Division received information from an anonymous caller on a drug hotline concerning a St. Bernard Parish resident who was allegedly transporting heroin into Orleans Parish for sale on Franklin Avenue. After identifying the defendant as the suspect, Officer Sensebe began a two day surveillance of the defendant beginning October 30, 1995. From Officer Sensebe's observations it appeared to him that the defendant was conducting drug transactions, and he obtained a search warrant for the defendant and his vehicle. On November 3, 1995, Sergeant Sensebe and other officers stopped the defendant in his van as he entered St. Bernard Parish. A search of the defendant revealed two packets of white powder contained in his pants. The powder tested positive for heroin.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR NUMBER 1

The defendant contends the trial court erred in denying the motion to suppress evidence. Specifically, the defendant contends that there was a lack of jurisdiction for the search warrant and further that the facts on which the warrant were based were insufficient to establish probable cause for the search.

JURISDICTION

Louisiana Code of Criminal Procedure article 161 (A) provides in pertinent part:

A. A judge may issue a warrant authorizing the search for and seizure of any thing within the territorial jurisdiction of the court which:

- (1) Has been the subject of theft.
- (2) Is intended for use or has been used as a means of committing an offense.

The defendant correctly notes that the affidavit in support of the search warrant concerned activity that largely occurred outside the territorial jurisdiction of St. Bernard Parish. However, the search itself occurred in the parish where the warrant was issued. The defendant cites *State v. Case*, 363 So.2d 486 (La. 1978), as the controlling authority in support of the claim that the evidence should have been suppressed. In *Case*, the court found that a city court judge did not have authority to issue a warrant to search a trailer, which admittedly was outside the city's territorial boundaries. Likewise, in *State v. Mathieu*, 506 So.2d 1209 (La. 1987), also cited by the defendant, the search occurred in a different parish from that where the warrant was issued. In the present circumstance, the defendant and his van were searched within the confines of St. Bernard Parish, and, as such, the warrant was in accordance with La. C.Cr.P. art. 161(A). Essentially, the defendant asks this

Court to adopt a rule that would provide a safe harbor for the concealment of evidence related to criminal conduct in adjoining jurisdictions. By its clear language, and for obvious reasons, article 161(A) does not prescribe the authority of a court by limiting its jurisdiction in such a way. The defendant's claim is without merit.

PROBABLE CAUSE FOR THE WARRANT

La.C.Cr.P. article 162 provides that a search warrant may be issued "only upon probable cause established to the satisfaction of the judge, by the affidavit of a credible person, reciting facts establishing the cause for the issuance of the warrant." The Louisiana Supreme Court has held that probable cause exists when the facts and circumstances within the affiant's knowledge, and those of which he has reasonably trustworthy information, are sufficient to support a reasonable belief that evidence or contraband may be found at the place to be searched. *State v. Duncan*, 420 So.2d 1105 (La.1982). The facts which form the basis for probable cause to issue a search warrant must be contained "within the four corners" of the affidavit. *Id.* A magistrate must be given enough information to make an independent judgment that probable cause exists for the issuance of the warrant. *State v. Manso*, 449 So.2d 480 (La.1984). The determination of probable cause involves probabilities of human behavior as understood by persons trained in

law enforcement. *State v. Hernandez*, 513 So.2d 312 (La. App. 4 Cir. 1987).

In its review of a magistrate's finding of probable cause, the reviewing court must determine whether the "totality of circumstances" set forth in the affidavit is sufficient to allow the magistrate 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 reasonable probability that contraband will be found in a particular place. In evaluating the "totality of the circumstances" deference should be accorded to the inferences and deductions of a trained police officer "that might well elude an untrained person." *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981); *State v. Huntley*, 97-0965 (La.3/13/98), 708 So.2d 1048, 1049.

The duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclu[ding] that probable cause existed." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). A magistrate's determination of probable cause should be paid great deference by the reviewing court. *Id.* 103 S.Ct. at 2321. *State v. Martin*, 97-2904 (La. App. 4 Cir. 2/24/99), 730 So.2d 1029.

Sergeant Edward Sensebe, who had been in the Narcotics Division for

approximately four years, testified at the hearing on the defendant's motion to suppress the evidence that he received an anonymous complaint on the DOPE hotline concerning a subject trafficking in heroin. The caller identified a subject by the name of Danny, a white male, approximately fifty-five years old, who resided at 2213 Corine Street. The caller related that this subject was transporting heroin in a white van with blue stripes. The caller provided a partial license plate number. It was reported to Sensebe that the subject would package the heroin in Saint Bernard and transport it to New Orleans where he would sell it on Franklin Avenue, near St. Claude Avenue from his van.

Sergeant Sensebe proceeded to the address on Corine Street where he observed a van fitting the description parked in the driveway. He obtained the license plate number and determined that the vehicle was registered to Daniel Santos. Sensebe did a criminal history check on Santos and learned that he had several felony and misdemeanor arrests, and was currently on probation for a drug law violation.

Because the suspected activity was occurring in New Orleans, Sergeant Sensebe contacted Detective Marks of the New Orleans Police Department regarding conducting a surveillance of Santos. On October 31, at approximately 6:30 a.m., Sergeant Sensebe set up surveillance on Franklin

Avenue near St. Claude and observed the van. At approximately 6:40 a.m., Sergeant Sensebe observed a white male standing on the corner outside the van. He approached the van and began a brief conversation with the defendant who was inside. About a minute later Mr. Santos handed the white male something and allowed him to enter the van on the passenger side. The man remained in the van for about three minutes and then departed.

At approximately 7:05 a.m., two black males approached the defendant. He observed Mr. Santos reach into his pocket and hand one of the two men an object. One of the men then handed Mr. Santos an object. The two men then left the area. Approximately ten minutes later a white female approached the driver's side of the van and entered into a brief conversation with the defendant and then walked to the passenger side and entered the vehicle. She remained in the van for a period of about five minutes. The woman then left the area. Sergeant Sensebe discontinued his surveillance at this time.

The following day, Sergeant Sensebe returned to the location arriving at approximately 7:00 a.m. Sergeant Sensebe observed a white male approach and hand Mr. Santos something. The officer did not see Mr. Santos hand the man anything. Thirty-five minutes later, at approximately

7:35 a.m., a white female approached and entered into a conversation with Mr. Santos and then left the area. At approximately 8:20 a.m., Santos entered a green automobile and left the area. Approximately fifteen minutes later he walked back to the van.

The defendant relies on this court's decision in *State v. McDonald*, 503 So.2d 535 (La. App. 4 Cir. 1987) in support of the contention that there was an insufficient showing of probable cause to support the warrant. In *McDonald*, the substance of the affidavit was that an unidentified but reliable informant reported drug sales at a residence. The informant told police how persons gained entry (by a method not unique); and that several hours of surveillance showed heavy pedestrian traffic into and out of the house, including, during one hour, three persons who separately entered the residence by the reported method, stayed five minutes, and left.

In concluding that the issuing magistrate did not have a substantial basis for finding probable cause, this Court noted that: (1) the affidavit did not set forth the basis of the informant's knowledge; (2) there was no allegation that the informant gained information concerning narcotics transactions through his own personal knowledge; (3) the informant's allegations were not so detailed as to justify an inference of reliability; and (4) the informant's allegations were not corroborated by the officers' report

of heavy pedestrian traffic (three people in one hour).

The defendant contends that the "totality of the circumstances" set forth in the affidavit was insufficient to allow the issuing judge to conclude that there was a reasonable probability that contraband would be found in the van. The defendant contends specifically that 1) there was no basis of knowledge provided by the informant, 2) there was no predictive information that was corroborated, and 3) the corroborative behavior observed by the officer was limited to three completely innocent actions and three which could not be concluded to be drug transactions.

A review of the record reflects that the tipster gave a considerable amount of specific information about the suspect, which included his first name, race, age, location of his residence, and the type of vehicle utilized. The officer corroborated these facts and learned further that Mr. Santos had four previous felony arrests and five misdemeanor arrests and was on probation for a drug law violation.

Furthermore, the caller provided highly predictive behavior concerning the exact location where the alleged drug transactions would occur and that they occurred on a frequent basis. The officer established surveillance at the location and in fact observed the defendant and his van at that location on two consecutive days as predicated by the caller.

Although the officer's observations of the defendant as he interacted with the various persons did not reflect conclusive evidence of drug transactions, the officer nevertheless believed the defendant was engaging in narcotic transactions. Given the surreptitious activity of entering the van for brief periods of time with pedestrians following a one sided exchange between the defendant and the persons, as well as witnessing a two sided exchange between the defendant and the two men, the officer's inferences from the facts were reasonable.

The defendant cites *State v. Martin, supra*, as indicative of a case where this Court found that there was a sufficient showing of probable cause. In *Martin*, the investigating officer received an anonymous call from a woman concerning narcotics being distributed from a specific location. The woman identified a suspect by his first name and provided a general description, which included the suspect's age and race. The woman stated that she observed activity at the apartment both day and night. The investigating officer conducted a surveillance of the apartment and observed several people enter the apartment and leave a short time later. On one occasion the officer observed a female visitor reaching for money out of her pants pocket before entering the apartment. The suspect was observed opening the door on each occasion.

In finding that the issuing magistrate had a substantial basis for finding probable cause to issue a warrant for the defendant's home, this Court stated:

In the present case the tipster gave specifics about the drug activity. The caller provided a specific address and apartment number. The caller had seen a lot of activity both at day and night. The tipster described the person involved in drug activity as a black male, being the age of about fifty, who was known as "Plat." Officer Lainez's observations corroborated the caller's allegations. The person answering the door fit the description of a black male who was about the age of fifty. The officer saw several people entering and leaving the apartment in a suspicious manner after brief stays. He saw a female reaching for money. The officer stated that the subjects did not appear to be social visitors or "to be in an official capacity such as LP & L or a service person or something who had an official reason to be there." The officer testified that he previously had investigated over 200 drug transactions. From his past experience the officer believed the defendant was engaging in narcotic transactions.

97-2904 at p. 8-9, 730 So.2d at 1033.

In distinguishing the present case from *Martin*, the defendant notes that the *Martin* tipster gave specifics about the drug activity, including a specific location and a description of the seller, which were corroborated by the surveillance. The defendant notes further that Sergeant Sensebe did not observe any currency. However, in the present case the anonymous citizen did provide as detailed a description of the seller and the location as that provided in *Martin*, and further, the information was far more predictive in

detailing the defendant's travel to and from a specified location.

Furthermore, the surveillance revealed activity, which on its own was highly suspicious in nature.

Viewing the totality of the circumstances in the present case, the issuing judge had a substantial basis for finding probable cause to issue the search warrant. There was more than a fair probability that contraband would be found in the van or on the defendant. The assignment is without merit.

Accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED