

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-538  
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Wilkes County  
Nos. 09 CRS 54065-66, 54089

CHRISTOPHER DEYON HART

Appeal by Defendant from judgment entered 22 September 2010 by Judge Calvin E. Murphy in Superior Court, Wilkes County. Heard in the Court of Appeals 1 November 2011.

*Attorney General Roy Cooper by Assistant Attorney General Derrick C. Mertz, for the State.*

*Winifred H. Dillon for Defendant-Appellant.*

McGEE, Judge.

Christopher Deyon Hart (Defendant) appeals from judgment entered upon his conviction following a jury trial. We find no error.

Deputy C.A. Dancy (Deputy Dancy) of the Wilkes County Sheriff's Office obtained and executed a search warrant for Defendant's residence on 20 October 2009. Defendant filed a pretrial motion to suppress evidence seized during the 20

October 2009 search of his residence. The trial court conducted a pretrial hearing on Defendant's motion on 20 September 2010. The trial court denied Defendant's motion to suppress and the case proceeded to trial. A jury found Defendant guilty of trafficking in methamphetamine, possession with intent to sell or deliver methamphetamine, maintaining a dwelling for the keeping and selling of controlled substances, possession of a weapon of mass destruction, possession of drug paraphernalia, and possession of less than a half ounce of marijuana. The trial court consolidated the charges for judgment and sentenced Defendant to 225 to 279 months in prison. The trial court also fined Defendant \$250,000.00. Defendant gave notice of appeal in open court.

Defendant contends the trial court erred in denying his motion to suppress because an affidavit filed by Deputy Dancy in support of the search warrant application failed to establish probable cause. Specifically, Defendant contends the facts alleged in Deputy Dancy's affidavit failed to establish the reliability of the confidential sources. Additionally, Defendant contends that Deputy Dancy's affidavit lacked sufficient corroboration of the informants' statements as to the

accusations that Defendant was dealing methamphetamine from his residence. We disagree.

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 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. Barnhardt*, 92 N.C. App. 94, 96, 373 S.E.2d 461, 462 (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 76 L. Ed. 2d 527, 548 (1983)), *disc. review denied*, 323 N.C. 626, 374 S.E.2d 593 (1998). If the circumstances set forth in the affidavit are "established through the use of a reliable confidential informant's tip and supplemented by an officer's credentials and experience, it can amount to a substantial basis for a magistrate's determination that probable cause existed." *State v. Rodgers*, 161 N.C. App. 311, 314, 588 S.E.2d 481, 483 (2003) (citation omitted).

"The indicia of reliability of an informant's tip 'may include (1) whether the informant was known or anonymous, (2) the informant's history of reliability, and (3) whether

information provided by the informant could be independently corroborated by the police.'" *Id.* (citation omitted). In this case, Deputy Dancy indicated he received information from two "true reliable and confidential" sources (CS-1 and CS-3). Deputy Dancy stated that CS-1 had provided information in the past that had led to the seizure of methamphetamine and the subsequent arrest and conviction of those involved. Additionally, CS-1 alleged that Defendant was being supplied by an Hispanic male who lived in Millers Creek. CS-1 showed Deputy Dancy the residence where the Hispanic male lived. Deputy Dancy confirmed this by going to the residence and speaking with an Hispanic male (CS-2). CS-2 admitted to Deputy Dancy that he knew Defendant and that he dealt methamphetamine with Defendant. Deputy Dancy stated that CS-3 had also provided information in the past that had led to the seizure of cocaine.

We note that "[s]tatements against penal interest carry their own indicia of credibility sufficient to support a finding of probable cause to search." *State v. Beam*, 325 N.C. 217, 221, 381 S.E.2d 327, 330 (1989) (citation omitted). Furthermore, CS-2 informed Deputy Dancy that another Hispanic male, from Virginia, would be traveling to Defendant's residence to receive payment for methamphetamine. Based on that information, Deputy

Dancy set up surveillance of Defendant's residence on 20 October 2009 and was able to independently corroborate CS-2's tip. Deputy Dancy observed an Hispanic male driving to Defendant's residence in a vehicle with Virginia license plates. Two other officers stopped the vehicle upon its leaving Defendant's residence and found a large sum of money in the Hispanic male's pocket and in a hidden compartment of a cooler.

Moreover, "[t]he experience and expertise of the affiant officer may be taken into account in the probable cause determination, so long as the officer can justify his belief to an objective third party." *Barnhardt*, 92 N.C. App. at 97, 373 S.E.2d at 462. In this case, the first two paragraphs of Deputy Dancy's affidavit set forth his training and experience with drug activities.

"[T]he application for a search warrant must be viewed using the 'totality of circumstances test' when determining whether there was sufficient probable cause to issue the warrant." *Rodgers*, 161 N.C. App. at 314, 588 S.E.2d at 483. Based on the confidential sources' tips and Deputy Dancy's training and experience, we conclude there was sufficient probable cause to support the issuance of the search warrant for

Defendant's residence. Thus, the trial court did not err in denying Defendant's motion to suppress.

No error.

Judges ELMORE and McCULLOUGH concur.

Report per Rule 30(e).