

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

June 24, 2005

William B. Wilgus, Esquire  
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114 E. Market Street  
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RE: State of Delaware v. Barry A. Mitchell  
Def. ID# 0501018023

Date Submitted: April 22, 2005

Dear Counsel:

This is my decision on Barry A. Mitchell's ("Mitchell") Motion to Suppress. Mitchell was charged with Theft, Conspiracy in the Second Degree and Criminal Trespass in the Third Degree. The charges relate to Mitchell's alleged theft of construction materials from a job site.

Mitchell argues that there was not probable cause to support the issuance of the arrest warrant by the Magistrate. In reviewing a Magistrate's determination of probable cause, this Court must afford great deference to the Magistrate's decision.<sup>1</sup> The Magistrate must be presented with sufficient information to support an independent judgment of probable cause.<sup>2</sup> Probable cause is measured by the totality of the circumstance through a case by case review of "the factual and practical considerations of everyday life on which

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<sup>1</sup> *State v. Santini*, 1993 WL 55341 (Del.Super Ct.).

reasonable and prudent men [act].”<sup>3</sup> “To establish probable cause, the police are only required to present facts which suggest, when those facts are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.”<sup>4</sup> In evaluating the Magistrate’s decision, the Court must focus on the “four corners of the warrant.”<sup>5</sup> Delaware State Police Officer John E. Messick’s affidavit contained the following:

- 1) Dean Esham reported on January 18, 2005 a theft of construction materials from a job site on Frankford Avenue in Frankford, Delaware.
- 2) Mitchell was observed in front of the job site the day before the theft occurred.
- 3) Ismael Rendon (“Rendon”) saw two men on January 18, 2005 taking plywood sheets from the job site and putting them in a black pick-up truck parked in the driveway next to the job site.
- 4) Rendon said the pick-up truck had a “raised suspension” and a “loud exhaust,” just like the one owned by a neighbor, Bart Mitchell.
- 5) Rendon said that the pick-up truck was just like the one owned by Bart Mitchell, who used to live next to the jobsite, but moved out three to four weeks before the theft.
- 6) Rendon said the pick-up truck was similar to the one that used to park next to the job site.
- 7) Rendon said the pick-up truck left and then came back and then left suddenly.
- 8) Rendon saw the pick-up truck leave the job site and then turn on Main Street in Frankford.
- 9) A Delaware State Police Officer saw a black pick-up truck on Frankford Avenue off of Main Street just minutes after Rendon saw it.
- 10) A Delaware State Police Officer stopped the black pick-up truck. The driver was Bart Mitchell, who was sweating even though the temperature was below freezing. The passenger was Mitchell.

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<sup>2</sup> *Thomas v. State*, 467 A.2d 954 (Del. 1983).

<sup>3</sup> *State v. Maxwell*, 624 A.2d 926, 928 (1993).

<sup>4</sup> *Jarvis v. State*, 600 A.2d 38, 43 (1991).

<sup>5</sup> *Gardner v. State*, 567 A.2d 404 (Del. 1989).

Viewing these facts under the totality of the circumstances, including giving great deference to the Magistrate's decision, I found that there is a fair probability that crimes occurred and that Mitchell committed those crimes. The information presented to the Magistrate linked both Mitchell and the pick-up truck to the theft of construction materials from the job site both in terms of time and location.

**CONCLUSION**

Mitchell's Motion to Suppress is denied for the reasons stated above.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

ESB:lsm  
CC: Prothonotary's Office