NO. COA06-230

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

STATE OF NORTH CAROLINA

v. New Hanover County
Nos. 03 CRS 17935-36
KEMANI WALTERS 03 CRS 17938-40

Appeal by defendant from judgment entered 26 September 2005 by Judge Kenneth F. Crow in New Hanover County Superior Court. Heard in the Court of Appeals 25 September 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Dennis Myers, for the State.

Charns & Charns, by M. Alexander Charns, for defendant-appellant.

JACKSON, Judge.

Kemani Walters ("defendant") appeals pursuant to North Carolina General Statutes, section 15A-979(b) (2005), from a judgment imposed upon his guilty plea to trafficking in heroin by manufacturing, trafficking in heroin by possession, possession with intent to sell and deliver heroin, possession with intent to sell and deliver MDMA, possession of marijuana, possession of drug paraphernalia, and maintaining a dwelling for the keeping and selling of controlled substances. The trial court imposed a single term of imprisonment for a minimum of seventy months and a maximum

of eighty-four months. Defendant reserved his right to seek appellate review of the trial court's order denying his motion to suppress evidence seized during a search of a residence.

During the morning of 15 September 2003, Detective Susan Johnson of the New Hanover County Sheriff's Department received a telephone call from Keith Thompson ("Thompson"), who reported that his daughter, Blair, had stolen two rings from her mother. Detective Johnson went to Thompson's house and arrested Blair Thompson ("Blair") on charges of larceny. Upon being searched, Blair voluntarily gave Detective Johnson packets of heroin she had hidden in her shoe. Blair told Detective Johnson that she had obtained the heroin from a house where she had been staying. Blair stated she had been buying heroin there for several months. She gave a detailed description of the house, located at 917 Wooster Street in Wilmington, and identified the occupants of the house. Blair further stated that she had been to the house earlier in the day, and had seen two males packaging heroin for sale. She stated that the heroin could be found in a pillowcase in the rear bedroom of the house.

After receiving this information from Blair, Detective Johnson consulted with other officers in the vice and narcotics unit. Another officer went to 917 Wooster Street and confirmed that the residence was as described by Blair. The officers then decided to seek a warrant to search the residence at 917 Wooster Street.

In the application for the search warrant, Detective Johnson described the premises to be searched. She also stated in her

affidavit that she was aware of the following:

> Blaire [sic] Thompson who is living in the residence at 917 Wooster St. was temporarily taken into custody on this date in reference to pending warrants. Blair admits that she is a heroin addict. Blair admits that she has used heroin for six years. This affiant is convinced that Blair can recognize heroin and is familiar with how it is commonly packaged for sale. Blair was in possession of heroin at the time of her arrest. Once in custody she was read her rights and expressed that she wanted to talk with me. She told me that at the 917 Wooster St. address she saw a large quantity of heroin, knowing what heroin looks like. She was in the residence within the past twenty-four hours and has seen a large quantity of heroin. Blair states that the occupants of the residence Michael McNeil and Charles (LNU), are packaging the heroin for distribution in this community. Blair Thompson makes the above accusation without duress and of her own free will in an effort to assist law enforcement with the removal of narcotics from this community.

Finding the existence of probable cause based upon the affidavit, a magistrate issued a search warrant.

Upon receiving the signed search warrant, Detective Johnson made three copies of the warrant and notified the other officers that she had the search warrant. Detective Johnson and the other officers proceeded to 917 Wooster Street to execute the warrant. Upon arrival, the detectives announced their presence and banged on the house at least three times. One of the detectives could hear movement within the house. After five to eight seconds elapsed with no response, the officers entered the house. A male seated inside the house attempted to run out the door. The officers stopped and detained this man, identified as "John Martin." The officers also detained defendant in the living room. In searching

the house, the officers found in a bedroom a box containing several hundred glassine bags and a large quantity of a substance, subsequently identified as nineteen grams of heroin, in pillowcases.

Defendant argues the affidavit in support of the search warrant was deficient because it failed to show the informant was reliable. An application for a search warrant must contain a statement, supported by allegations of fact, that there is probable cause to believe items subject to seizure may be found on the premises sought to be searched. N.C. Gen. Stat. § 15A-244 (2005). Under the "totality of the circumstances" standard adopted by our Supreme Court for determining the existence of probable cause,

> "[t]he 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 a 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. Arrington, 311 N.C. 633, 638, 319 S.E.2d 254, 257-58 (1984) (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 76 L. Ed. 2d 527, 548 (1983)). When the application is based upon information provided by an informant, the affidavit should state circumstances supporting the informant's veracity and reliability and the belief that a search will find the items sought. *State v. Crawford*, 104 N.C. App. 591, 596, 410 S.E.2d 499, 501 (1991). A showing is not required "that such a belief be correct or more

likely true than false. A practical, nontechnical probability is all that is required." *State v. Zuniga*, 312 N.C. 251, 262, 322 S.E.2d 140, 146 (1984). Further, a magistrate's determination of probable cause should be given great deference, and an "after-the-fact scrutiny should not take the form of a *de novo* review." *Arrington*, 311 N.C. at 638, 319 S.E.2d at 258.

We hold that based upon the information supplied in the present affidavit, a magistrate reasonably could conclude that the residence probably contained heroin. The affidavit established that the informant was an admitted heroin user for six years, and as such, was familiar with the substance. She resided in the residence to be searched and saw heroin being packaged therein for distribution within the prior twenty four hours . The informant had heroin on her person at the time of her arrest. Defendant's assignment of error therefore is overruled.

Defendant next contends the officers' wait of five to eight seconds before entering the residence was too short and thus unreasonable. We reject this argument. This Court has held that a delay of six to eight seconds is not too short and unreasonable when easily destructible drugs are being sought. *State v. Reid*, 151 N.C. App. 420, 426, 566 S.E.2d 186, 190-91 (2002). Even if the wait was too short and in violation of the "knock and announce" rule, suppression of the evidence was not warranted as long as the officers had a valid search warrant. *See Hudson v. Michigan*, __ U.S. __, 165 L. Ed. 2d 56 (2006)(holding violation of the "knock and announce" rule does not require suppression of evidence found

in a search).

Finally, defendant argues that the search should be invalidated because it was conducted prior to the issuance of the search warrant. Defendant bases this argument upon evidence that the search warrant contains notations that the warrant was issued at 4:09 p.m., but that the search was executed at 4:00 p.m. All of the evidence at the hearing, however, established that the officers actually had the warrant in hand before they conducted the search. It is evident that the discrepancy appearing on the warrant is merely a clerical error. Indeed, Detective Johnson testified that she made a mistake by writing down 4:00 p.m. as the time the warrant was executed. This assignment of error is overruled.

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).