STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 25, 2023)

STATE OF RHODE ISLAND	**:**	
	:	
VS.	**:**	**P1/2022-0826AG, BG**
	:	
MIGUEL CRUZ	**:**	
ANGEL CAMILO	**:**	

DECISION

KRAUSE, J. The defendants in this case seek to suppress multi-kilograms of fentanyl and other controlled substances, firearms, and related miscellaneous contraband. They claim that the search warrants issued by two district court justices are constitutionally infirm because (1) there is no probable cause within the affidavits to support the warrants, and (2) they impermissibly authorized "no-knock" searches during the day as well as at night.

The Court disagrees.[1]

* * *

The search warrants which the defendants challenge relate to the premises at 918 Cranston Street (Angel Camilo) and 330/332 Narragansett Street (Miguel Cruz) in Cranston, Rhode Island. The state does not dispute the defendants' standing to contest the warrants and, indeed, advocates their connection to those premises.[2] The defendants do not challenge the search warrant for 2

[1] The Court has reviewed the parties' memoranda in support of their respective positions and finds that neither a hearing nor oral argument would aid the decisional process. With their agreement, the Court has decided the motions based upon those written submissions.

[2] The defendants, however, have no standing to challenge any evidence collected from waste receptacles beyond the curtilage of the subject premises, and which were by the public roadway for trash pickup.

Marlborough Avenue in Providence, where the police found fentanyl, narcotics paraphernalia, and drug manufacturing implements.

Probable Cause

Courts follow certain guidelines to work their way through the probable cause matrix. First is the advisement that the standard of proof must correspond to what must be proved, which means less than evidence which would justify a conviction. *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949). Thus, the quantum of proof to establish probable cause "is significantly different from the degree needed to establish guilt," requiring "only the probability, and not a prima facie showing, of criminal activity." *State v. Pratt*, 641 A.2d 732, 736 (R.I. 1994) (internal quotation omitted); *State v. Spaziano*, 685 A.2d 1068, 1069 (R.I. 1996) ("Probability of criminal activity is the benchmark."). Applying a totality-of-the-circumstances test, the court is expected to make a practical, commonsense decision within the four corners of the affidavit, whether, given all the circumstances set forth in the affidavit, there is a fair probability that there exists evidence of criminal activity. *Pratt*, 641 A.2d at 736; *State v. Joseph*, 114 R.I. 596, 603, 337 A.2d 523, 527 (1975); *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *State v. King*, 693 A.2d 658, 661 (R.I. 1997).

Accordingly, examination of the affidavit is "not subject to rigorous and hypertechnical scrutiny," because the court may draw reasonable inferences from it and interpret it "in a realistic fashion that is consistent with common sense[.]" *State v. Byrne*, 972 A.2d 633, 638 (R.I. 2009). "In *Verrecchia*, 880 A.2d at 94, we declared in the clearest of terms that 'the approach to the probable cause question should be pragmatic and flexible.'" *Id.* at 639 (internal quotation omitted). *See Gates*, 462 U.S. at 235-39 (directing courts to apply a practical approach for determining whether an affidavit supplies sufficient probable cause).

Our Supreme Court follows Justice Rehnquist's precept that '"probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules."' *State v. Flores*, 996 A.2d 156, 161 (R.I. 2010) (quoting *Gates*, 462 U.S. at 230, 232). Each of those courts has reminded us that '"[t]here is, of course, a presumption of validity with respect to the affidavit supporting the search warrant."' *State v. Verrecchia*, 880 A.2d 89, 99 (R.I. 2005) (quoting *Franks v. Delaware*, 438 U.S. 154, 171–72 (1978).

The Affiant

Rhode Island State Police Detective Conor O'Donnell authored both search warrant affidavits. He is a seasoned investigator, firmly grounded in analyzing narcotics cases, prefacing his affidavit as follows:

> "I am a member of the Rhode Island State Police and have been continuously employed in that capacity for over ten (10) years. I am currently assigned to the Rhode Island State Police Narcotics Unit/High Intensity Drug Trafficking Area (HIDTA) Task Force. This unit is responsible for investigating and prosecuting all types of criminal narcotics related activity that is being carried out by traditional and non-traditional organized crime organizations, members, and their associates, in addition to investigating any and all crimes which violate the General Laws of the State of Rhode Island."

Neither defendant disputes Detective O'Donnell's credentials.

Assessing the Affidavits

The Cranston Street warrant was issued by District Court Judge Pamela Woodcock-Pfeiffer on December 21, 2021, and the Narragansett Street warrant was approved by District Court Judge Melissa DuBose the following day. The affidavits, which comprise fifteen single-spaced pages, are generally similar, notably excepting the Cruz/Narragansett Street affidavit which includes the results from the Cranston Street and Marlborough Avenue searches the previous day. Both

affidavits describe in detail a significant illicit narcotics enterprise in Rhode Island and seeping into other states.

Camilo's probable-cause challenge is readily dispensed with, as he simply offers no basis or even a note of argument for the claim. He merely proffers, in conclusory fashion, that the searches of 918 Cranston Street and two vehicles were impermissible because they allegedly lacked a probable cause basis for their issuance. Beyond that, he articulates no reason to support that notion. Instead, he simply joins Cruz's criticism of the issuing judges for allowing the police to execute the warrants at night and without a knock-and-announce alert. That claim is addressed, *infra.*

Suffice to say, that, on the probable-cause plane, Detective O'Donnell's Cranston Street affidavit is overfull with facts and details connecting Camilo to that location, as well as supporting his assertion that Camilo is the "number two," upon whom Cruz "heavily relies . . . to distribute and transport his narcotics throughout Rhode Island and Massachusetts." Camilo has failed in any way to disengage the presumption of validity which attaches to the search warrant for those premises. *Franks*, 438 U.S. at 171-72; *Verecchia*, 880 A.2d at 99.

Codefendant Cruz's probable-cause challenge also fails. His initial boast that he is not even mentioned "until page eight of the Narragansett Street warrant" is misplaced, as he has misidentified the unnumbered pages of the affidavit. (Mem. at 12.) In fact, much of the second page of the affidavit is devoted to Cruz, whom Detective O'Donnell's confidential informant refers to as "Cirujano" and the "Surgeon," as well as his other street names of "Doctor" and "Gordo."[3]

[3] The Search Warrant and the Complaint to Search identify Cruz's aliases as "Cirujano," "Gordo," "Doctor," and "El Surgeon."

There, Detective O'Donnell recounts that Cruz is a major narcotics dealer and references the informant's detailed and explicit description and activities of Cruz:

> "Source One then explained that 'Angel [Camilo] is employed by a larger narcotics distributor and works for that distributor as a 'dealer and runner.' Source One explained that 'Angel' is this distributor's 'number two (2)' and heavily relies on him to distribute and transport his narcotics throughout Rhode Island and Massachusetts. Source One advised that she is familiar with this larger narcotics distributor and identified this larger narcotics distributor by one (1) of his nicknames, 'Cirujano.' Source One explained that 'Cirujano' is Spanish for 'Surgeon.' Source One added that 'Cirujano' is very protective and secretive about his identity and further reported that 'Cirujano' is also known as 'Doctor' and 'Gordo.' Source One reported that the second 'stash house' located at 2 Marlborough Avenue, Providence, Rhode Island, was indirectly controlled by 'Cirujano.' Source One reported that the second stash house is owned by 'Cirujano's' family member. Source One reported that 'Cirujano' is known to occasionally stay at the second 'stash house.' Source One added that 'Cirujano' will often change the location of where he stays and does not spend a significant amount of time in one location. Source One explained that 'Cirujano' is very aware of his surroundings and is constantly on the lookout for law enforcement. Source One described 'Cirujano' as being a Hispanic (Dominican) male, having a medium brown skin complexion, being in his mid-twenties, being 6'02" tall, 260 pounds, having brown colored eyes, and dark brown colored hair. Source One reported that she is unable to purchase narcotics from 'Cirujano.' However, Source One reported that she has first-hand knowledge that 'Cirujano' distributes/sells large quantities of narcotics. In addition, Source One reported that she has witnessed 'Cirujano' distributing/selling and transporting large quantities of narcotics in the recent past. Source One reported that 'Cirujano' is also known to operate several different vehicles when engaging in narcotics activity. Recently, Source One reported that she has witnessed 'Cirujano' operating a black-colored Mercedes Benz GLE53 4Matic+. Source One identified the registration displayed on this black-colored Mercedes Benz GLE53 4Matic+ as being Massachusetts passenger registration 4PSP99."

Detective O'Donnell later retrieved a DMV photo of Miguel Cruz, and the informant immediately identified him as the man whom she knows as Cirujano, "who employs Angel Camilo and distributes/sells fentanyl in the greater Providence metropolitan area." (Affidavit at 6-7.)[4]

[4] Detective O'Donnell did not identify his source's gender and simply chose to refer to the informant as a female throughout the affidavit. Accordingly, for consistency, this Court will also adopt a female pronoun when referring to Detective O'Donnell's source, unless quoting excerpts from relevant cases which refer to male informants.

In the ensuing pages, Detective O'Donnell describes how the HIDTA Task Force investigators tracked Camilo and Cruz, carrying weighted plastic shopping bags back and forth from the Marlborough Avenue and the Cranston and Narragansett Street premises, and also observing numerous hasty hand-to-hand activity with others which, in their considerable experience, reflected drug transactions. The investigators also conducted "trash pulls" from premises associated with all three of those addresses, which turned up narcotics paraphernalia and residual drug evidence from each location.

The search of the Marlborough Avenue premises the previous day had disclosed a cache of fentanyl and a room which Detective O'Donnell described as a "quasi lab" outfitted to "mass manufacture fentanyl." (Affidavit at 14.) Investigators also learned during that search that the owner of the Marlborough stash house had rented part of the premises to Cruz. The investigators also tracked Cruz coming and going from the Marlborough stash house to his Narragansett Street premises with weighted grocery bags and/or leaving with empty bags.

Cruz complains that information received from the DEA and another HIDTA investigation was stale and does not deserve credit. This Court does not find it stale. It was provided to Detective O'Donnell's task force only a handful of months before the instant warrants were issued and was, in any event, only a portion of Detective O'Donnell's investigation. It also confirmed some of what he and his investigators had already unearthed.

To the extent that Cruz somehow harbors a belief that Detective O'Donnell's confidential source is not dependable, his affidavit makes clear that the informant was not a first-time contributor. Her prior assistance had been reliable and had led to an arrest. *See United States v. Sutton*, 742 F.3d 770, 775 (7th Cir. 2014) (observing that an informant's accurate information

leading to an earlier arrest and drug seizure weighs in favor of the source's credibility, and "the fact that he did this only once is not indicative of a lack of credibility").

In addition to the informant's prior demonstrated reliability, her admission to Detective O'Donnell that she personally had purchased fentanyl directly from Camilo also heightens her credibility. An informant's trustworthiness may be enhanced not only by her proven reliability, but as well from the level of detail she recounts and the basis of her knowledge (both of which are clearly present here), and also by "the extent to which his statements are against his interest." *United States v. Tanguay*, 787 F.3d 44, 50 (1st Cir. 2015), *aff'd after remand*, 811 F.3d 78 (1st Cir. 2016).

The fact that the investigators had identified Marlborough Avenue and Cranston Street as stash-houses does not at all diminish the reasons to believe that contraband had also been secreted at Cruz's Narragansett Street premises. The investigators had already developed ample grounds to conclude that he was the principal of an illicit drug enterprise. Contraband dealers and unlawful actors frequently hide their product and paraphernalia in their residences despite using vehicles or safe houses, which can always be raided or are susceptible to theft or enemy infiltration. *See State v. Cosme*, 57 A.3d 295 (R.I. 2012), where a search was authorized for the defendant's residence even though the drug transactions were negotiated from his vehicle and there had been no activity seen at his residence.

Here, however, surveillance captured significant suspicious activity at Cruz's Narragansett Street house. His key runner, Camilo, and other suspected drug customers gathered there. As noted earlier, both Cruz and Camilo had been observed entering or exiting the premises with weighted bags, and then leaving with empty ones similar to those which had been toted back and forth to the Marlborough stash house as well as to the Cranston Street location.

Cruz's assertion that the affidavit contains no nexus at all to the Narragansett Street premises is much too sanguine, as Cruz fails to account for the clandestine nature of drug dealers. *See United States v. Feliz*, 182 F.3d 82, 88 (1st Cir. 1999) ("The nexus between the objects to be seized and the [place or person] searched need not, and often will not, rest on direct observation, but rather 'can be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide [evidence of a crime]' *United States v. Charest,* 602 F.2d 1015, 1017 (1st Cir. 1979).") *See also Byrne*, 972 A.2d at 642 (finding sufficient connection to the defendant's residence and stating that "a nexus between the items to be seized and the place to be searched does not rise or fall on direct observation, or, as the trial justice found, on the existence of 'underlying facts' connecting the two)." As stated in *United States v. Bain*, 874 F.3d 1, 23 (1st Cir. 2017):

> "'When it comes to nexus, common sense says that a connection with the search site can be deduced 'from the type of crime, the nature of the items sought,' plus 'normal inferences as to where a criminal would hide' evidence of his crime.' *United States v. Rivera*, 825 F.3d 59, 63 (1st Cir. 2016) (quoting *United States v. Feliz*, 182 F.3d 82, 88 (1st Cir. 1999)). This court has, 'with a regularity bordering on the echolalic, endorsed the concept that a law enforcement officer's training and experience may yield insights that support a probable cause determination.'" *Bain*, 874 F.3d at 23 (quoting *United States v. Floyd*, 740 F.3d 22, 35 (1st Cir. 2014)).

Detective O'Donnell's affidavit reflects a careful analysis by a savvy law enforcement officer who has spent several years examining and investigating narcotics cases. He avows that, based upon his experience and the task force's investigation, there is good reason to believe that evidence of drug dealing exists at the Narragansett Street location. As held in *Bain* and *Floyd*, courts have consistently accorded significant weight to the opinions, inferences, and experience of affiants like Detective O'Donnell in the probable-cause formula. The United States and the Rhode Island Supreme Courts have directed us to view the totality of the facts and circumstances in

affidavits "cumulatively through the eyes of a reasonable, cautious police officer guided by his or her experience and training[.]" *State v. Brennan*, 526 A.2d 483, 485 (R.I. 1987).

"'[T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" *Flores*, 996 A.2d at 162 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)); *Byrne*, 972 A.2d at 639 (noting that a reviewing court '"should take care…to give due weight to inferences drawn from those facts'" by judges and law enforcement officers) (quoting *Ornelas v. United States*, 517 U.S. 690, 699 (1996)).

Lastly, Cruz's marginalized view of Detective O'Donnell's submissions also fails to recognize that probable cause is not analyzed merely by counting its pieces and then simply dispatching them one by one. Quite to the contrary, there is a decided synergistic effect when considering the accumulation of all of the facts and circumstances which underscore the apothegm that the whole is greater than its individual parts. "While 'each piece of information may not alone be sufficient to establish probable cause and some of the information may have an innocent explanation, 'probable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observed as trained officers.'" *State v. Tejeda*, 171 A.3d 983, 999 (R.I. 2017) (quoting *State v. Storey*, 8 A.3d 454, 462 (R.I. 2010)); *accord*, *Cosme*, 57 A.3d at 303. *See United States v. Alfano*, 838 F.2d 158, 162–63 (6th Cir. 1988) (noting that "[t]here is probable cause if a 'succession of superficially innocent events ha[s] proceeded to the point where a prudent man could say to himself that an innocent course of conduct was substantially less likely than a criminal one'") (citations omitted).

As stated by Justice Rehnquist in *Gates*, 462 U.S. at 231-32, where he applied *Cortez*'s particularized-suspicion standard to the probable cause analysis:

> "The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same - and so are law enforcement officers."

As are the judges who are tasked with carrying out that process.

Withal, upon completion of the analysis, the issuing magistrate should be able to conclude from the totality of the facts and circumstances that the mosaic presented supports a finding of probable cause. Each of the issuing judges in this case made that finding, and their determinations are entitled to significant deference. *Tejeda*, 171 A.3d at 996; *Byrne*, 972 A.2d at 637; *Spaziano*, 685 A.2d at 1069 (assigning "great deference" to the magistrate's appraisal of the supporting affidavit to issue a warrant, and noting that the Supreme Court will countermand the magistrate's decision only if there is "no 'substantial basis' for finding that probable cause existed") (citing *Pratt*, 641 A.2d at 737).

Moreover, and just as importantly, Cruz overlooks that the warrant not only authorized a search for drugs but also for firearms, which both Camilo and Cruz were known to possess. It is a given that drugs and guns go hand in hand. *See* "No-Knock Warrant," *infra*.

After having reviewed Detective O'Donnell's affidavits, this Court's own conclusions differ with the issuing judges' determinations not at all. The coincidence of information Detective O'Donnell assembled is more than sufficient to support a reasonable belief that Cruz and Camilo were involved in illicit drug trafficking and also secreting contraband and firearms at the subject premises.

No-Knock Warrant

Both defendants sharply criticize the issuing judges for authorizing the police to execute the search warrants without a knock-and-announce police warning. They contend that such an omission entitles them to an order suppressing any items seized by the police. They are mistaken.

Although police officers armed with a search warrant are ordinarily expected to alert the occupants of their presence, *Richards v. Wisconsin*, 520 U.S. 385 (1997), that directive is not a strict rule. *Id.* at 394. As Judge Selya observed in *United States v. Garcia-Hernandez*, 659 F.3d 108, 111 (1st Cir. 2011), quoting Justice Stevens' margin note at page 394 of the unanimous *Richards* opinion:

> "The rule, however, is not absolute. It is well established that, in certain circumstances, officers executing a search warrant may be justified in declining to knock and announce their presence. For instance, a failure will not violate the rules when officers 'have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.'"

Notably, the Supreme Court held that the test for allowing a no-knock entry is *not* limned by the probable-cause standard, but rather by a showing of reasonable suspicion. "This standard [of reasonable suspicion] - as opposed to a probable-cause requirement - strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries." *Richards*, 520 U.S. at 394.

It was entirely reasonable in this case to dispense with knock/announce notifications when conducting these searches. The HIDTA Task Force knew that, quite aside from the contraband secreted at the Cranston and Narragansett Street locations, Camilo and Cruz were known to possess a firearm, and Detective O'Donnell expressed that concern in his affidavit. Our state Supreme Court and other tribunals have consistently recognized that "[i]n the narcotics business, 'firearms are as much "tools of the trade" as are most commonly recognized articles of narcotics paraphernalia.'" *Pratt*, 641 A.2d at 741, citing *State v. Alamont*, 577 A.2d 665, 668 (R.I. 1990) (adopting Justice Rehnquist's observation in *Ybarra v. Illinois*, 444 U.S. 85, 106 (1979); *United*

States v. Rivera, 825 F.3d 59, 65 (1st Cir. 2016) (noting "the everyday understanding of the drug trade's violent nature" and "that guns are common in the drug trade") (citing *United States v. Rivera–González*, 776 F.3d 45, 51 (1st Cir. 2015); *United States v. Crespo*, 834 F.2d 267, 271 (2d Cir. 1987) *cert. denied*, 485 U.S. 1007 (1988) (taking judicial notice that, to substantial narcotics dealers, firearms are common tools of the trade).

Accordingly, for officer safety as well as a founded concern that evidence might be lost or destroyed, especially at the Narragansett Street location, Detective O'Donnell sensibly sought a no-knock warrant. He stated at the conclusion of the Cruz affidavit:

> "Your affiant respectfully requests that said Search Warrant may be served in the daytime or nighttime, 24-hour warrant. This request is in order to successfully complete this ongoing investigation in a timely manner, your affiant requests that the search warrant be served during the daytime and/or nighttime. It is in your affiant's experience, along with other members of the Rhode Island State Police Narcotics Unit/HIDTA Task Force, that narcotics dealers will routinely attempt to dispose of the narcotics while members of law enforcement are executing a search warrant. A "knock and announce" search warrant would allow sufficient time for the targets to dispose of evidence before law enforcement gain entry into the apartment. The entry team must gain access through a common door, located at the front or side of the building, climb two (2) flights of stairs, and then gain entry into the second-floor apartment. With that in mind, a "knock and announce" search warrant would allow sufficient time for the targets to dispose of evidence before law enforcement were to gain entry into the second-floor apartment. It is in your affiant's experience that narcotics dealers are often known to possess firearms for protection when distributing narcotics. A "knock and announce" search warrant would allow sufficient time for this target to arm themselves before law enforcement were to gain entry into the second-floor apartment. During this investigation, your affiant received information through law enforcement sources that Miguel Jimenez Cruz is in possession of at least one (1) firearm (handgun). Therefore, your affiant requests that a "No Knock" search warrant be issued to prevent the destruction of evidence and to ensure officer safety."

A similar no-knock request was made in the Camilo affidavit. Although not as awkward an entry as the Cruz premises, the Camilo warrant targeted a search of one of three units in a multi-tenement structure which could not be accessed without first gaining entry to the building through a common door and hallway, and then through a separate door to the unit. The entrance also

presented sufficient impediments to delay the officers' entry and provide the occupants with a chance to arm themselves and/or hide and destroy contraband.

In any event, despite the defendants' complaints that a no-knock warrant was inappropriate, their entreaties are unavailing because the United States Supreme Court has held that "suppression is not an available remedy" for lack of such an alert. *Hudson v. Michigan*, 547 U.S. 586 (2006). As pointed out in *Garcia-Hernandez*, 659 F.3d at 112:

> "The key precedent is *Hudson*. There, the Supreme Court squarely addressed whether a violation of the knock-and-announce rule might justify the exclusion of evidence seized. Noting that exclusion of evidence 'has always been [a] last resort, not [a] first impulse,' [*id.* at 591] the Court held the exclusionary rule inapplicable to knock-and-announce violations, *id.* at 590-602[.]"

Nighttime Search

Lastly, the defendants criticize the issuing judges for granting Detective O'Donnell's request that the police be given the option of executing the warrants during the day or at night.

Rule 41(c) of the Superior Court Rules of Criminal Procedure contemplates that a search warrant should usually be served in the daytime, but the rule also allows that "for good cause shown" the warrant may be executed at any time of day or night. The Camilo warrant was executed on December 21 at 5:00 a.m., the Cruz warrant the next day at 6:15 a.m.

This Court is not troubled that those searches were conducted just before waking hours. The short answer to the defendants' complaint is that for the same prudent reasons which underlie the no-knock permission, allowing nighttime execution of these warrants, - here, during the predawn hours, and not intrusively in the middle of the night - made sense for officer safety as well as to prevent the potential loss or destruction of evidence.

The issuing judges concluded that good cause existed to accord the police the option of serving the warrants at night. Their determinations in this arena also deserve deference, and in light of all of the circumstances this Court also concurs in those determinations.

* * *

For all of the foregoing reasons, the suppression motions filed by defendants Cruz and Camilo are denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 25, 2023**
JUSTICE/MAGISTRATE:	**Krause, J.**
ATTORNEYS:	
For Plaintiff:	**Daniel Hopkins, Esq.**
For Defendant:	**John M. Cicilline, Esq.** **Jeffrey B. Pine, Esq.**