THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2008-0540, State of New Hampshire v. John Fierley, the court on May 7, 2009, issued the following order:

The defendant, John Fierley, appeals his conviction for possession of cocaine. He argues that, because the corroboration of an informant's tip was insufficient to establish probable cause, the trial court erred in denying his motion to suppress. We affirm.

Part I, Article 19 of the New Hampshire Constitution requires that a magistrate find probable cause to issue a search warrant. State v. McMinn, 144 N.H. 34, 38 (1999). Probable cause is established where a person of ordinary caution would justifiably believe that what is sought will be found through the search and will aid in a particular apprehension or conviction. Id. "The application for a search warrant need only contain sufficient facts and circumstances to establish a 'substantial likelihood that the items sought will be found in a place to be searched.'" Id. We review the affidavit under a totality of the circumstances test; that is, given all the circumstances set forth in the affidavit before the magistrate, including the veracity and basis of knowledge of persons supplying hearsay information, was there a fair probability that contraband or evidence of a crime would be found in the particular place described in the affidavit. Id.

In this case, the affidavit executed by Officer Daisey stated that the Gorham Police Department received a telephone call from a known and reliable informant advising that he had learned from another person that there was illegal drug activity taking place at the Royalty Athletic Club/Hotel (hotel). See State v. Conant, 139 N.H. 728, 730 (1995) (informant's veracity and basis of knowledge factors to consider in applying totality of circumstances test; informant's veracity may be inferred if informant has established track record with police). The informant identified two individuals as the people involved in the illegal drug activity; one was the defendant.

The defendant argues that, because the information provided by the informant was actually provided by another individual whose veracity and reliability as an informant had not been previously established, the information was insufficient to support probable cause. The absence of information attesting to the veracity of an informant does not preclude a finding of probable cause, however, because other indicia of reliability, such as corroboration by police officers, may be used to supply the missing factors relative to the informant and the informant's information in determining whether probable cause exists. State v. Silvestri, 136 N.H. 522, 525-26 (1992).

In his affidavit, Officer Daisey also stated that he learned from a detective assigned to the New Hampshire Attorney General's Drug Task Force that the defendant was known to him, known to be a user of crack cocaine and that the defendant had admitted in the past year in an interview with the detective that he sold illegal drugs in the Berlin area. See id. (whether person implicated by informant's tip has criminal reputation relevant factor).

Officer Daisey went to the hotel where he observed three vehicles with New Hampshire registrations; one was registered to Florence Allen. Less than an hour later, Officer Daisey was on patrol when he observed the Allen vehicle traveling erratically. When he stopped her, she said that she had just come from the hotel where she was visiting the two individuals who were earlier identified in the informant's tip as involved in illegal drug activity at the hotel. See State v. Christy, 138 N.H. 352, 358 (1994) (corroboration of details that demonstrated a special familiarity with defendant's affairs relevant to totality of circumstances test). She advised that she had only been there "a few minutes." Officer Daisey also observed that it was "suspicious that three Berlin residents [were] at a Gorham hotel at approximately 2:00 a.m."; Allen did not respond.

The informant's knowledge of the defendant's activity and location, the later corroboration of the information provided by the informant and the defendant's known history of illegal drug sales would justify a reasonable and prudent person in believing that illegal drug activity was taking place in the defendant's room at the hotel. Accordingly, we affirm the trial court's denial of the defendant's motion to suppress.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

Eileen Fox,
Clerk