

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

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Case No. 1:02CR00134

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v.

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OPINION AND ORDER

GREG STUART,

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By: James P. Jones

United States District Judge

Defendant.

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R. Lucas Hobbs, Assistant United States Attorney, Abingdon, Virginia, for United States of America; B. L. Conway, II, Conway Law Firm, P.L.L.C., Abingdon, Virginia, for Defendant.

For the reasons set forth in this opinion, I will deny the defendant's Motion to Suppress.

The defendant Greg Stuart is charged in a multicount indictment with drug trafficking offenses relating to manufacturing methamphetamine, an illegal controlled substance.¹ He has filed a pretrial Motion to Suppress pursuant to Federal Rule of

¹ In particular, Stuart is charged with attempting to manufacture methamphetamine (Count One of Superceding Indictment); possession of a precursor chemical with the intent to manufacture methamphetamine (Count Two); using or possessing a firearm in connection with a drug trafficking offense (Count Three); maintaining a place for the purpose of manufacturing methamphetamine (Count Four); and eight incidents of using a communication facility to facilitate the manufacture of methamphetamine (Counts Five through Twelve). See 18 U.S.C.A. § 924(c)(1) (West 2000); 21 U.S.C.A. §§ 841(a)(1), 843(b), 856(a)(1) (West 1999); 21 U.S.C.A. § 841(c)(1) (West 1999 & Supp. 2003).

Criminal Procedure 12(b)(3)(C), requesting the court to exclude any evidence taken in connection with a search of his residence by law enforcement officers on October 3, 2002. An evidentiary hearing has been held on the motion, and the parties have briefed the issues. The Motion to Suppress is thus ripe for decision.

Based on the evidence presented and my opportunity to observe the witnesses and make credibility determinations, the following are my findings of fact as required by Federal Rule of Criminal Procedure 12(d).

Glen D. Hyatt is the chief investigator with the Grayson County, Virginia, Sheriff's Department. On August 30, 2002, he interviewed a confidential informant ("CI") who told him that the defendant was a distributor of methamphetamine. The CI gave details of the defendant's alleged operation and stated that he did not believe that the drug was being manufactured on the defendant's property, "but [did] not know for sure." (Def.'s Ex. 2.) In addition, Hyatt had learned earlier that day from the Virginia State Police that a FedEx package had been intercepted by police in California addressed to the defendant (called Greg "Steward" on the package) containing Pyrex flasks and graduated cylinders, with a fictitious return address in California.

Hyatt knew the defendant because, about a year earlier, the defendant had cooperated with Hyatt in destroying marijuana growing on or near the defendant's

property. Based on the CI's information, on August 31, 2002, the next day, Hyatt conducted a surveillance of the defendant's property but learned nothing further.

On the morning of October 3, 2002, the Sheriff's Department received a complaint from a neighbor of the defendant, Mr. Sturgill, that certain of his Christmas trees had been damaged by some unidentified person riding a "four-wheeler."² Sturgill advised that he had tracked the vehicle back to the defendant's property. That afternoon, after lunch, Hyatt and another local officer, Deputy Taylor, drove to the defendant's property to investigate. The defendant's residence consists of a cabin with a small separate garage located nearby. The officers drove up the driveway from the public road to the cabin and knocked on the door, but no one responded. From the porch of the cabin, they could see tracks from a four-wheeler leading up to the closed door of the garage. The officers walked to the garage and from the front of the garage saw three containers in a small ditch to the side of the garage. One of the containers was covered with a flannel shirt, and the other two contained a red liquid. Based on his experience and the prior information Hyatt had received about the defendant's possible drug involvement, Hyatt believed that the red liquid "was something used in making meth." (Tr. 37.) The officers then left the premises, drove

² While it was not made explicit in the evidence, it is apparent that these were trees being grown on a Christmas tree farm, of which there are many in mountainous Grayson County. The "four-wheeler" was apparently a so-called "all-terrain vehicle" or "ATV."

to a place where they could use a cellular phone, and called the State Police and agents of the federal Drug Enforcement Administration.

Sometime later that day, State Police Special Agent Bartlett joined Hyatt and returned to the defendant's home. This time the defendant and his girlfriend, Tracie Call were present. The defendant was asked about the Christmas tree damage and told the officers that his girlfriend's fourteen-year-old son had been riding the four-wheeler and that Stuart would pay for any damage done to the trees. Hyatt then asked him what was in the containers next to the garage. The defendant immediately became upset and refused to answer any further questions, although at some later point he said the containers contained wine. (Tr. 53.) Hyatt told the defendant about the prior information he had received indicating that the defendant was making methamphetamine and advised him that he would "secure the premises" and obtain a search warrant. (Tr. 41.) The defendant told Hyatt that he was leaving, and "[j]ust go ahead and search. I'll give you permission to search." (Tr. 42.) Hyatt replied, "Under the circumstances, I think it's better that I obtain a search warrant." (*Id.*)

Leaving the defendant's premises, Hyatt went before a state magistrate and obtained a warrant for the residence and garage to search for items relating to the manufacture of methamphetamine. In his affidavit presented to the state magistrate, Hyatt recited the information received from the CI about the defendant and stated that

the credibility or reliability of his information could be determined because the CI “has in the past made controlled buys under controlled situations for Officer April Halsey of the Marion Police Department.” (Gov. Ex. 1.) Hyatt also explained the interception in California of the package addressed to the defendant. Finally, he recited his observation of “several plastic containers containing a dark red liquid” on the defendant’s premises. (*Id.*)

The defendant asserts that his Motion to Suppress ought to be granted because the state magistrate did not have probable cause to issue the search warrant. He contends that the affidavit given by Investigator Hyatt was inadequate or based on information obtained from an illegal, warrantless search. The government argues that the motion should be denied because the defendant consented to the search and that, in any event, the state magistrate properly found probable cause to issue the warrant.

Search warrants must be supported by probable cause in order to satisfy the Fourth Amendment. *See United States v. Harris*, 403 U.S. 573, 577 (1971). “A magistrate’s ‘determination of probable cause should be paid great deference by reviewing courts.’” *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)). “[T]he task of a reviewing court is not to conduct a de novo determination of probable cause, but only to determine whether

there is substantial evidence in the record supporting the magistrate's decision to issue the warrant." *Massachusetts v. Upton*, 466 U.S. 727, 728 (1984).

In making a probable cause determination, a judicial officer considering the issuance of a search warrant based on information received from an informant must use a "totality of [the] circumstances analysis" that considers the informant's reliability. *Illinois*, 462 U.S. at 233. Here the reliability of the CI's information was supported by his prior undercover purchase of drugs for the police and by the interception of the package addressed to the defendant containing possible drug manufacturing equipment. It is established that where police officers are acting on an informer's tip, there is no necessity that they "corroborate that tip in some specific way such as conducting an independent investigation." *United States v. Miller*, 925 F.2d 695, 699 (4th Cir. 1991).

The portion of Hyatt's affidavit relating to containers of "dark red liquid" was not necessary to a finding of probable cause and thus would not invalidate the warrant even if the information had been obtained by an earlier illegal search. *See United States v. Veillette*, 778 F.2d 899, 903-04 (1st Cir. 1985) (holding evidence admissible because search warrant application contained sufficient independent evidence to support probable cause). In any event, I accept Investigator Hyatt's testimony that the containers were in plain view when he was on the premises conducting a lawful

investigation. *See United States v. Cephas*, 254 F.3d 488, 493-94 (4th Cir. 2001) (holding that Fourth Amendment is not implicated when a law enforcement officer approaches a dwelling to speak with the occupant).

Moreover, I find that even if probable cause was lacking, Investigator Hyatt had an objectively good faith belief that the search warrant was based on probable cause. *See United States v. Leon*, 468 U.S. 897, 920-22 (1984) (holding that good faith reliance by officer on search warrant later held to be invalid permits admission of evidence under Fourth Amendment). There is no claim that Hyatt deliberately omitted or misrepresented any facts to the state magistrate that were necessary to the finding of probable cause at the time the warrant was issued. There is no evidence that the magistrate abandoned his neutral and detached judicial role, and the affidavit here is not so lacking in indicia of probable cause as to render belief in its assertions unreasonable. *See United States v. Wilhelm*, 80 F.3d 116, 120 (4th Cir. 1996) (holding that reliance was unreasonable because the affiant merely asserted that the informant “projected a truthfull [sic] demeanor” to support her credibility).

For these reasons, I find that the search of the defendant's premises was lawful.³ Accordingly, it is **ORDERED** that the Motion to Suppress [Doc. No. 18] is **DENIED**.

ENTER: October 9, 2003

United States District Judge

³ It is thus unnecessary for me to consider the government's alternative argument that the defendant consented to the search.