



Police Law Bulletin



City Attorneys' Office

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Fourth Circuit Court of Appeals



Tip by Known Informant, Corroborated by Law Enforcement, Supplied Probable Cause to Search Defendant's Vehicle

U.S. v. Gondres-Medrano, 3 F.4th 708 (July 8, 2021).

In 2017, a known confidential informant with a track record of providing reliable information told the FBI that a man, later identified as, Maximo Humberto Gondres-Medrano, was trafficking heroin and cocaine between New York and Baltimore. Law enforcement obtained a recording between the informant and Gondres-Medrano in which the defendant talked about his trafficking activities. This information was used to obtain a warrant to track Gondres-Medrano's cellphone and the FBI located him in Baltimore.

The informant then told FBI agents that defendant intended to transport heroin from his residence on September 8, and that the informant was able to provide transportation. On that day, officers set up surveillance at Gondres-Medrano's residence. The officers watched the informant pull up to the residence, enter the home, and return with Gondres-Medrano 2-3 minutes later. The officers then witnessed Gondres-Medrano place a shoebox in the backseat of the informant's car, before getting in the passenger side and driving off. The officers stopped the car and a search of the shoebox revealed fentanyl and heroin.

The defendant was ultimately indicted, convicted, and sentenced to 121 months. He appealed, arguing in part that the police lacked probable cause to search the shoebox so the heroin should have been suppressed. The Fourth Circuit disagreed and affirmed the trial court's denial of defendant's motion to suppress.

The court stated that, in the case at hand, they had little doubt that the officers had probable cause to believe the shoebox contained drugs. The informant providing the information was known and reliable, having given the police accurate information in the past that led to several successful arrests. The officers had also met with this informant and could evaluate his demeanor and hold him responsible for lying. Moreover, officers corroborated significant parts of the informant's information. The FBI overheard a phone call between the informant and someone

the informant identified as Gondres-Medrano discussing trafficking cocaine between Maryland and New York. This provided probable cause to obtain a warrant to track Gondres-Medrano's cellphone. The officers also confirmed Gondres-Medrano's identity and residence and learned of his prior drug conviction and immigration history. Then, on September 8, officers met with the informant, searched him and the car, then surveyed Gondres-Medrano's house and told the informant when to arrive. Consistent with the informant's assertion that Gondres-Medrano would be transporting drugs from his residence on that day, when the informant pulled up to the residence, Gondres-Medrano let him in, came out with shoebox, and got in the car to drive away. That Gondres-Medrano climbed into the informant's car with a shoebox at the time and place described shows the informant's firsthand knowledge and corroborates his story. These circumstances, the court concluded, established probable cause to believe that Gondres-Medrano was trafficking drugs and had drugs in the shoebox. With probable cause, the police could search the shoebox under the automobile exception.

Probable Cause Existed to Arrest Passenger When the Vehicle Contained Evidence Indicating Drug Dealing and Neither Occupant Admitted Possession

U.S. v. Myers, ___ F.3d ___ (Jan. 26, 2021).

On February 1, 2018, Sgt. Winingear with the drug interdiction unit of the Norfolk Police Department was surveilling a parking lot bus station from where the New Everyday Bus Company operated a bus service between Norfolk and Chinatown, New York, locally referred to as "the China bus." In the past, the China bus had been used to further drug distribution from New York City, and the interdiction unit had previously made drug seizures at that location.

At 11:30 p.m., a China bus arrived at the bus stop, and Sgt. Winingear saw 20 to 30 passengers exit. Sgt. Winingear noticed Meyers because he had no bag - as might be expected for the distance from New York. Myers made a call on his cell phone and, minutes later, a silver Infiniti arrived, and Myers got into the passenger seat. Sgt. Winingear told members of his unit to follow the sedan and see if they could develop probable cause to stop the vehicle.

Officers Gibson and Todd followed the Infiniti as it passed two 7-Eleven convenience stores and then turned into a third 7-Eleven. After stopping at that 7-Eleven for a short time, the Infiniti retraced its route back to where the bus had stopped and then, by a circuitous, if not illogical, route entered Interstate 264, passing up one access to the westbound lanes and then taking another. Officer Gibson found the vehicle's overall course to be "suspicious," suggesting that its occupants might have known that they were being followed. After the vehicle entered the interstate, Gibson clocked its speed, and, both because it was speeding and because he believed that the windows were unlawfully tinted, he stopped the vehicle.

As Gibson approached the driver's side, he smelled marijuana, as did Officer Todd when approaching the passenger side. Based on that smell, the officers searched the vehicle. The search uncovered a Honey Maid graham cracker box on the floorboard

behind the front passenger seat containing a brick-like substance in a vacuum-sealed plastic bag, which field tested positive for fentanyl. The search also uncovered three cell phones, one in the driver's seat and two in the glove box, and a loaded 9mm pistol in the trunk. The driver claimed ownership of those four items. A search of Myers recovered another cell phone and approximately \$1,800 in cash. Neither the driver nor Myers, however, claimed ownership of the drugs. Both Myers and the driver were arrested based on the fentanyl.

Myers filed a motion to suppress which the district court denied. Myers pleaded guilty reserving his right to appeal. On appeal, he argued that the officers did not have sufficient knowledge to reasonably believe that he, as distinct from the driver, had anything to do with the fentanyl and therefore, the officers lacked probable cause to arrest him for its possession.

In determining whether an arrest was justified by probable cause, a court takes into account all the relevant facts known to the arresting officer and the reasonable inferences that may be drawn from those facts. In this case, officers knew the bus stop was a hub for drug smuggling; the defendant left the bus from New York without any luggage; the car that picked him up drove an unusually circuitous route; officers smelled marijuana after stopping the car; and a distribution-level amount of drugs was found, which neither occupant claimed, but which was accessible by each. While probable cause requires a reasonable belief of guilt particularized with respect to the person being arrested, and mere proximity alone to a crime is insufficient, when the circumstances justify an inference that the driver and the occupants are acting with a common purpose (as is likely with drug dealing), probable cause exists to arrest each occupant. For the foregoing reasons, the Fourth Circuit Court of Appeals unanimously affirmed the district court's denial of defendant's motion to suppress.



North Carolina Court of Appeals



Search Warrant Affidavit Was Misleading and Remaining Portions of Affidavit Failed to Establish Probable Cause

State v. Moore, ___ N.C. App. ___ (Dec. 15, 2020).

A Jones County deputy applied for a search warrant of defendant's residence. In his affidavit, the deputy represented that he had observed multiple drug transactions at the defendant's residence, 133 Harriet Lane. In fact, all the drug transactions had taken place away from the defendant's home. The defendant was charged with marijuana offenses following execution of the search warrant.

The defendant made a motion to suppress alleging that the warrant lacked probable cause and seeking a *Franks* hearing to establish false and misleading statements in the affidavit. The trial court first held a hearing on probable cause and determined it existed based on the allegations in the affidavit that a drug transaction had been observed on the defendant's property. It then turned

to the *Franks* issue and granted the defendant a hearing on the matter. The deputy-affiant testified that none of the buys occurred on the defendant's property and that he was aware of this at the time he wrote the affidavit. Nonetheless, the trial court denied the *Franks* motion as well, finding that the deputy's statements were not false or misleading. The defendant pled guilty and appealed.

Where the defendant shows by a preponderance of evidence that false or misleading statements were intentionally made, or that such statements were made in reckless disregard of the truth, those portions of the affidavit must be excised from the affidavit. The affidavit will then be examined to determine whether the remaining portions establish probable cause. *Franks v. Delaware, 438 U.S. 154 (1978)*. Here, the Court of Appeals found that the trial court's findings at the *Franks* hearing were not supported by the evidence. Contrary to the trial court's conclusion, the Court of Appeals held that the officer's statements in his affidavit indicating that the alleged controlled drug buys and meetings between 'Matt' and the informant took place at 133 Harriet Lane (defendant's residence) were false and his material omissions regarding the actual locations of the drug buys and meetings were misleading. Striking the false statements from the affidavit, the remainder of the allegations were insufficient to establish a nexus to the defendant's residence supporting a finding of probable cause. They failed to establish that drugs were sold on or from the defendant's residence and failed to allege any basis to believe the informant was reliable, among other deficiencies. Therefore, the trial court's order denying the motion to suppress was reversed, the defendant's plea vacated, and the matter sent back to the lower court for further proceedings.