

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37949

STATE OF IDAHO,)	2011 Unpublished Opinion No. 603
)	
Plaintiff-Respondent,)	Filed: September 2, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
TIMOTHY LYNN COLTON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy Hansen, District Judge.

Order denying motion to suppress evidence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant. Diane M. Walker argued.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent. Jessica M. Lorello argued.

LANSING, Judge

Timothy Lynn Colton appeals from his judgment of conviction for delivery of a controlled substance, entered upon his conditional guilty plea. He argues that the district court erred in denying his motion to suppress evidence.

I.

BACKGROUND

Colton was charged with delivery of a controlled substance, Idaho Code § 37-2732(a), and possession of a controlled substance, I.C. § 37-2732(c), after the Boise City Police Department Narcotics Unit conducted a controlled buy of methamphetamine on June 16, 2009. On that date, police used a confidential informant (the CI) to initiate the buy. In an earlier interview, the CI told police that the woman from whom he would be purchasing methamphetamine, Lisa Bolton, received her methamphetamine from Colton. The CI said he had seen Colton give drugs to Lisa Bolton on prior occasions. The CI had also been to the location at which the controlled buy was to take place--a shop in Boise operated by Colton.

On the day of the controlled buy, Detective Robert Berrier held a meeting with the officers who would be involved in the controlled buy. At this meeting, Detective Berrier related that the CI indicated a man named Tim operated the shop and was the source of the drugs to be bought that day. Upon hearing this, another officer indicated that he had heard similar information, and that this individual's last name was Colton. The CI and an undercover officer thereafter traveled to the shop. The CI was wearing an audio-transmitting device that recorded and transmitted the transaction. Detective Berrier watched the transaction from an adjacent parking lot and monitored the audio transmission of the transaction. Detective Berrier observed the CI make contact with Lisa Bolton outside the shop while the undercover officer waited in the vehicle. To Detective Berrier, it appeared that Bolton was working at the shop by cleaning a car when the CI made contact. Colton walked out of the shop and to the location where Bolton and the CI were talking and then walked back into the shop. Lisa Bolton then entered the shop. After a few minutes she returned to the CI. She told the CI that they had to leave the shop and asked where they should go. Eventually they decided that they should go to a store in Meridian. Then she and the CI got into the vehicle with the undercover officer, and Bolton indicated that they had to travel to the Meridian store because that is where she was to meet the person from whom they would acquire the methamphetamine.

The CI, Lisa Bolton, and the undercover officer then drove to the Meridian store. At that point, the audio transmission recorded Bolton seemingly engaging in a telephone conversation in which she tells the other person that she is at the location. Bolton then entered the Meridian store. Detective Berrier and another officer followed Bolton around the store but did not see her make contact with anyone. Bolton did go into the women's restroom for a period of time, but Detective Berrier monitored the bathroom entrance for about fifteen minutes after Bolton left, and did not see anyone leave who had not entered after she left.

While Bolton was in the store, the CI told the undercover officer that Bolton had the methamphetamine on her the entire time and that the trip to Meridian was a ruse, apparently undertaken at Colton's insistence. The CI said that Colton was upset because the CI had brought a third party (the undercover officer) to the shop. Although the CI did not overhear Bolton's conversation with Colton, he saw Colton talk to Bolton in an upset manner, Bolton thereafter told the CI that she was in trouble, and Bolton indicated they had to go somewhere else, whereupon she and the CI arbitrarily picked a location, the Meridian store. After Bolton

returned to the car from the store, she delivered drugs to the undercover officer in exchange for cash. The three of them then drove back to the shop to drop Bolton off.

At that point, Detective Berrier met with the CI and the undercover officer, and Detective Berrier tested the substance to verify that it was in fact methamphetamine. The CI reiterated to Detective Berrier that Colton had a conversation with Lisa Bolton wherein he appeared really upset and had directed Bolton to take the CI and the undercover officer somewhere else to do the drug transaction. Detective Berrier then decided to have both Colton and Bolton arrested. He initiated a traffic stop of Colton and informed him that he was under arrest for involvement in the controlled buy. Before Detective Berrier searched Colton, he asked if Colton had anything on his person that Detective Berrier should be aware of, and Colton admitted to having methamphetamine inside his sock. Detective Berrier also found the marked money from the controlled drug transaction.

Colton was charged with delivery of a controlled substance, I.C. § 37-2732(a), and possession of a controlled substance, I.C. § 37-2732(c). He moved to suppress all evidence against him that arose as a result of his arrest on the ground that the arrest was illegal. He argued that the detective was not in possession of facts amounting to probable cause to believe that Colton had been involved in the methamphetamine transaction that had occurred earlier that day. The district court denied the suppression motion. Colton thereafter entered a conditional plea of guilty on the charge of delivery of a controlled substance, preserving his right to appeal the court's suppression decision. The State dismissed the possession charge.

Colton now appeals, arguing that his suppression motion should have been granted because the facts known to Detective Berrier at the time of Colton's arrest did not amount to probable cause to arrest Colton.

II.

ANALYSIS

Colton contends that the facts known to Detective Berrier created a "mere hunch," not probable cause to believe that Colton was involved in the drug transaction. He points out that no officer witnessed Colton with any methamphetamine nor obtained specific evidence that Lisa Bolton received the methamphetamine in question from Colton. Thus, Colton argues, Detective Berrier's reason for suspecting Colton was predicated only on his expression of anger with Bolton for attempting to conduct a drug transaction at his shop. Colton also argues that the State

did not establish the reliability and credibility of the CI, whose information that Colton was Bolton's supplier is the only evidence that directly linked Colton to the transaction.

Appellate review of the decision on a suppression motion presents mixed issues of fact and law. *State v. Lafferty*, 139 Idaho 336, 338, 79 P.3d 157, 159 (Ct. App. 2003). We accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. McCall*, 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

The Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution prohibit unreasonable searches and seizures. *State v. Grigg*, 149 Idaho 361, 363, 233 P.3d 1283, 1285 (Ct. App. 2010). Warrantless arrests constitute seizures that are unreasonable unless they fall within one of a few narrowly drawn exceptions. *See Dunaway v. New York*, 442 U.S. 200, 208-09 (1979); *State v. Chapman*, 146 Idaho 346, 349, 194 P.3d 550, 553 (Ct. App. 2008). A warrantless arrest made upon probable cause to believe that a criminal offense has been or is being committed is one such exception. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *Maryland v. Pringle*, 540 U.S. 366, 369-70 (2003); *Chapman*, 146 Idaho at 349, 194 P.3d at 553.

Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest. *Devenpeck*, 543 U.S. at 152. Probable cause for an arrest requires the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that a crime has been or is being committed by the arrestee. *State v. Julian*, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996); *State v. Finnicum*, 147 Idaho 137, 140, 206 P.3d 501, 504 (Ct. App. 2009); *Chapman*, 146 Idaho at 351, 194 P.3d at 555. *See also Beck v. Ohio*, 379 U.S. 89, 96 (1964). A probable cause determination focuses on the totality of the circumstances and the assessment of probabilities in particular factual contexts. *Pringle*, 540 U.S. at 370-71; *Chapman*, 146 Idaho at 351, 194 P.3d at 555. The facts supporting probable cause must be viewed from an objective standpoint. *Finnicum*, 147 Idaho at 140, 206 P.3d at 504; *Chapman*, 146 Idaho at 351, 194 P.3d

at 555. *See also Devenpeck*, 543 U.S. at 153-55. The expertise and experience of the officer must be taken into account, but the officer's subjective belief concerning whether probable cause to arrest existed is not determinative. *Chapman*, 146 Idaho at 351, 194 P.3d at 555. *See also Devenpeck*, 543 U.S. at 153.

Because the probable cause determination in this case relies in part on information given by the CI, we will first consider Colton's argument that information from the CI must be discounted because the CI was not shown to be a reliable source of information. The State contends that we should not address Colton's challenge to the CI's reliability because it is being raised for the first time on appeal. We find this contention to be meritless. When a suppression motion is predicated upon a claim that a warrantless arrest was unlawful, it is the State's burden to show the validity of the arrest and probable cause for the arrest. *State v. Gibson*, 141 Idaho 277, 283, 108 P.3d 424, 430 (Ct. App. 2005); *State v. Van Dorne*, 139 Idaho 961, 963, 88 P.3d 780, 782 (Ct. App. 2004). The veracity and basis of knowledge of an informant are factors for the court's consideration when probable cause is based, at least in part, upon the assertions of an informant. *Illinois v. Gates*, 462 U.S. 213, 230-33 (1983); *Chapman*, 146 Idaho at 351, 194 P.3d at 555. Therefore, because the State relied heavily on information from the CI to establish probable cause, it was the State's burden here to demonstrate the veracity and basis of knowledge of the CI. It was not necessary for Colton to specifically present argument below concerning the CI's reliability in order to challenge on appeal the sufficiency of the evidence to show the reliability of the CI whose information the State relies upon to establish probable cause.

In *Gates*, 462 U.S. at 230, the United States Supreme Court noted that "an informant's 'veracity,' 'reliability,' and 'basis of knowledge' are all highly relevant in determining the value of [an informant's] report." Nevertheless, "they should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause' . . . [and] as relevant considerations in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* *See also Chapman*, 146 Idaho at 351-52, 194 P.3d at 555-56. If the information is from a citizen informant, disclosure of the person's name and address to the police is generally sufficient to show the informant's veracity and reliability because such disclosure carries the risk of accountability if the allegations turn out to be

fabricated. *Chapman*, 146 Idaho at 351-52, 194 P.3d at 555-56; *State v. Zapata-Reyes*, 144 Idaho 703, 708, 169 P.3d 291, 296 (Ct. App. 2007). However, where the informant is part of the “criminal milieu” more information may be necessary. *Chapman*, 146 Idaho at 351, 194 P.3d at 555; *Dunlap v. State*, 126 Idaho 901, 907, 894 P.2d 134, 140 (Ct. App. 1995). Even where an informant’s motives are in doubt, an explicit and detailed description of an alleged wrongdoing, along with firsthand observation, will entitle the informant’s information to greater weight than might otherwise be the case. *Gates*, 462 U.S. at 234.

In this case we are not dealing with an anonymous tipster; it is apparent that the identity of the CI was known to the officers at the time of the controlled buy, and the CI therefore would have known that he could be held accountable if his allegations were found to be false. Even if the CI was part of the “criminal milieu,” because the CI was participating in the criminal transaction here at the behest of and under the supervision of the police, he had no discernible motive to blame another for criminal activity in order to exculpate himself. There is no obvious motive in this case that would cause a reviewing court to question the CI’s credibility or reliability. The CI’s report that he had seen Colton deliver drugs to Lisa Bolton for past transactions was reportedly based on direct personal knowledge, not hearsay nor inference. The CI provided a description of prior drug exchanges between Bolton and Colton, witnessed firsthand by the CI, at the very place where the controlled drug buy was originally scheduled to take place. Although the State certainly could have presented more testimony addressing why and to what degree the officers had found the CI to be reliable, the evidence presented was sufficient to show the officers could reasonably rely on information from the CI.

Detective Berrier not only had information from the CI that Colton had supplied drugs to Bolton in prior transactions; the detective also witnessed Colton make contact with Bolton and the CI when the CI appeared at Colton’s shop for the controlled buy. Although the significance of the initial stop at Colton’s shop could have been weakened by the trip to the Meridian store before the drugs were delivered (with Bolton indicating to the undercover officer that she was meeting her supplier there), the CI sufficiently explained the deception: Colton had required Bolton to conduct the transaction elsewhere to make it appear that there was another source because he was concerned about the undercover officer’s presence. This explanation was corroborated by the fact that Bolton had no specific destination planned for this “meeting,” as evidenced by the recorded conversation between her and the CI discussing where they should go.

It was additionally corroborated by the officers' surveillance disclosing that Bolton made no contact with anyone inside the store she entered on the pretext of meeting with the supplier. Corroboration of the details of an informant's tip by independent police work supports a probable cause determination. *Gates*, 462 U.S. at 241-43; *Chapman*, 146 Idaho at 351-52, 194 P.3d at 555-56. Based on the CI's information and the officers' corroborating observations on the day of the controlled buy, there was probable cause for Detective Berrier to entertain a reasonable and honest belief that Colton had delivered a controlled substance, which justified a warrantless arrest. As the arrest was lawful, Colton was not entitled to the suppression of any evidence found incident to the arrest.

The district court's order denying Colton's motion to suppress evidence is affirmed.

Judge GUTIERREZ and Judge MELANSON **CONCUR.**