

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP2080-CR

Cir. Ct. No. 2005CF68

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KIM ELLEN MILLER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Burnett County:
MICHAEL J. GABLEMAN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J. Kim Miller appeals an order finding there was probable cause to search her residence for methamphetamine. Miller argues there was not probable cause for the search warrant because the informant's statements

upon which the affidavit in support of the warrant was based were not reliable. We disagree and affirm.

BACKGROUND

¶2 On May 10, 2005, Miller was charged with possession of methamphetamine in violation of WIS. STAT. § 961.41(1m)(e)4. The State's case relied on evidence seized at Miller's residence under a search warrant. Miller moved for suppression of the evidence seized from her residence and dismissal of the case. At the motion hearing, Miller argued the issuance of the search warrant was based upon an insufficient showing of probable cause.

¶3 Officer Michael Rossow's affidavit, upon which the application for the search warrant was based, refers to an unnamed probationer who was taken into custody for suspected parole violations. In a post-arrest custodial interview, the probationer told Rossow that he had purchased methamphetamine from Miller at the two locations specified in the affidavit. The probationer also claimed to have purchased methamphetamine from Miller on other occasions. The court denied Miller's motions noting "the totality of the circumstances would lead a reasonable and fair-minded person to believe that the State had met its burden of establishing probable cause."

DISCUSSION

¶4 When reviewing a circuit court's grant of a search warrant, we pay great deference to its determination of probable cause. *Illinois v. Gates*, 462 U.S. 213, 236 (1983). We will let a determination of probable cause stand unless "the facts are clearly insufficient to support a finding of probable cause." *State v. Multaler*, 2002 WI 35, ¶7, 252 Wis. 2d 54, 643 N.W.2d 437. An affidavit relying

on an unnamed informant's statements must be analyzed under the "totality of the circumstances" test. *Gates*, 462 U.S. at 213; see also *State v. Boggess*, 115 Wis. 2d 443, 453, 340 N.W.2d 516 (1983).

¶5 Specifically, Miller argues the informant's statements were unreliable and insufficient to support a finding of probable cause because the information was not more specific, the informant does not have a track record of providing police with reliable information, and the police did not conduct an independent investigation. Conversely, the State argues the information was reliable and supported a finding of probable cause because it was specific enough, and because the unnamed informant was in custody, his statements further incriminated himself, and if those statements proved to be false, he faced additional criminal penalties. We agree with the State.

¶6 Courts have recognized two significant factors that enhance an informant's reliability. First, informants who disclose facts that incriminate themselves, as well as defendants, enhance their own credibility. In *United States v. Harris*, 403 U.S. 573, 583 (1971), the United States Supreme Court explained: "People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime ... carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search." See also *State v. Anderson*, 138 Wis. 2d 451, 470-71, 406 N.W.2d 398 (1987).

¶7 Second, an unnamed informant who is known to the police, or whose identity is easily discoverable by the police, is vulnerable to prosecution for giving false information to the police. In *Gates*, the Supreme Court recognized an informant gains credibility if his identity is known to the police because "his [or

her] report of criminal activity ... if fabricated would subject him [or her] to criminal liability.” *Gates*, 462 U.S. at 233; *see also State v. Rutzinski*, 2001 WI 22, ¶20, 241 Wis. 2d 729, 623 N.W.2d 516.

¶8 Here, the totality of the circumstances supports a finding of probable cause because the informant made specific admissions against his penal interest and the police knew his identity and location. The informant had first-hand knowledge of Miller’s methamphetamine operation and two of its locations because he was a customer of hers. The informant visited Miller’s property several times over a period of months, including two visits in the week before his interview with Rossow. His eyewitness account revealed a strong basis of knowledge and provided probable cause to believe that the police would probably find methamphetamine at the two locations identified.

¶9 The informant’s credibility is enhanced by the fact that his statement was made against his penal interest. *See, e.g., Anderson*, 138 Wis. 2d at 470-71. The informant spoke against his own penal interest by admitting that he possessed methamphetamine and purchased it from Miller over a period of several months. The informant’s admissions established he violated the terms of his probation at least once. His admissions in the course of implicating Miller revealed that the violations of his supervision and the drug statute did not consist of a single incident already known to the agents, but were long-term and on-going.

¶10 Additionally, the probationer potentially faced increased penalties for his parole violation if the tip proved to be fabricated. *See Rutzinski*, 241 Wis. 2d 729, ¶32. Since the probationer was already being held in jail, an additional charge under WIS. STAT. § 946.41 could have had serious repercussions for him. As the circuit court noted:

[T]his person is under the supervision of the Department of Corrections which, as every probationer knows, the Department has a lot of latitude when it comes to doling out sanction times which could ... include increased conditions such as jail time, or at least seeking the same from a court if some kind of aggregious [sic] misconduct would take place such as ... giving law enforcement false information about who gave them drugs.

In totality, these circumstances supported the common sense decision by the warrant-issuing judge that “there is a fair probability that contraband or evidence of a crime will be found in a certain place.” *Gates*, 462 U.S. at 238. Thus, we are satisfied there was sufficient probable cause to support the search warrant.

By the Court.—Order affirmed.

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