

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )  
)  
v. ) Crim. No. 02-57-B-S  
)  
RICHARD FOURNIER, )  
)  
Defendant )

**RECOMMENDED DECISION ON DEFENDANT'S  
MOTION TO SUPPRESS**

Richard Fournier, charged in two counts with possession with the intent to distribute a controlled substance (oxycodone and methamphetamine) in violation of 21 U.S.C. §841(a)(1), seeks to suppress evidence seized by the police following a search of Fournier's home on July 16, 2002. The search was conducted pursuant to a warrant issued by the Maine District Court. The sole basis for Fournier's motion is that the affidavit submitted in support of the application for the warrant does not support a finding of probable cause. Finding no need for an evidentiary hearing, I now recommend that the court **DENY** the motion.<sup>1</sup>

**Review of the Sufficiency of the Affidavit**

A bedrock principle of current Fourth Amendment jurisprudence is that if there is sufficient content in the warrant affidavit to support a finding of probable cause no evidentiary hearing is required. Franks v. Delaware, 438 U.S. 155, 171-72 (1978). The

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<sup>1</sup> On September 11, 2002, Fournier filed a supplemental motion to suppress, alleging that the probable cause recitation in the affidavit was based at least in part upon information gained during the illegal arrest of his person. Fournier's contention was that there was no valid warrant of arrest at the time of his apprehension. The Government has provided certified copies of the docket entries from state court establishing the validity of the arrest warrant. Fournier has withdrawn the supplemental motion. (Docket No. 20.)

First Circuit has clearly set forth the standard this court should employ when reviewing whether a given set of facts constitute probable cause for the issuance of a search warrant:

In determining the sufficiency of an affidavit, we consider whether the "totality of the circumstances" stated in the affidavit demonstrates probable cause to search the premises. United States v. Khounsavanh, 113 F.3d 279, 283 (1st Cir.1997). We examine the affidavit in "a practical, common-sense fashion" and accord "considerable deference to reasonable inferences the [issuing justice] may have drawn from the attested facts." [United States v.] Zayas-Diaz, 95 F.3d [105,] 111(1st Cir. 1996)(internal quotations omitted). "Under the 'probable cause' standard, the 'totality of the circumstances' disclosed in the supporting affidavits must demonstrate 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" Id., (quoting Illinois v. Gates, 462 U.S. 213, 238(1983)). In a doubtful or marginal case, the court defers to the issuing magistrate's determination of probable cause. Id.

United States v. Barnard, 299 F.3d 90, 93 (1st Cir.2002).

When an affidavit relies upon the credibility of informants to demonstrate probable cause for the issuance of a warrant the informants' credibility can be established in multiple ways. See United States v. Schaefer, 87 F.3d 562, 566 (1<sup>st</sup> Cir. 1996). The informant's tale does not always need to be buttressed by attestation to his or her veracity or details as to the source of the knowledge; furthermore, these elements should not be viewed as entirely separate and independent requirements necessary in every case. Id.

Magistrate Judge Cohen recently provided the following compendium to aid in the court's determination of whether an affidavit contains sufficient indicia of the informants' credibility:

1. Consistency among independent reports.
2. Declarations against penal interest.
3. Consistency with information provided by "ordinary citizens" (such as complaints by neighbors that an individual was cultivating marijuana)--a type of report that enjoys special stature since information provided by

- ordinary citizens has particular value in the probable cause equation.
4. Corroboration by external data.
  5. Self-authentication through ... specificity and detail[.]

United States v. Adams, \_\_ F. Supp 2d. \_\_, 2002 WL 31014836, \*4 -5 (D.Me. 2002)

(citations and quotations omitted).

### **Sufficiency of the Duquette Affidavit**

Ruth Duquette, a special agent with the Maine Drug Enforcement Agency, presented the following information to Judge Jessie Gunther of the Maine District Court on July 16, 2002, in order to obtain a search warrant for the single family mobile home described as the Richard Fournier residence in Exeter, Maine.

1. On July 16, 2002, Richard Fournier was arrested by a Bangor police officer acting upon a warrant.
2. Fournier submitted to a routine search for contraband at the Penobscot County Jail during the booking procedures. A small plastic baggie containing what appeared to be controlled substances were found on Fournier's person.
3. The substances were divided among three plastic bags inside the first baggie. The corrections official turned the substances over to a narcotics officer who field tested them and ascertained that they tested positive for cocaine and methamphetamine.
4. Duquette reviewed the Maine Drug Enforcement Agency intelligence/information files after learning of this arrest and discovered that during the period between November 17, 2001, and July 10, 2002, there were six reports detailing Fournier's drug related activities.
5. Three of the reports were generated by Duquette herself. On July 10, 2002, she interviewed someone who stated that Fournier was a member of the Iron Horsemen

who knows a lot of disabled vets and gets his Oxy 80's from them to sell. Duquette's second interview took place on March 4, 2002, when someone told her that "they" had been to Fournier's trailer and purchased drugs at times. On November 17, 2001, Duquette conducted an interview with someone who had been dealing drugs for approximately one and one-half years. This person told Duquette that his/her suppliers had been Rick Fournier and Terry Williams, both members of the Iron Horsemen. In the November 2001 interview the informant gave quite detailed information as to the type of drugs s/he purchased and the ways in which s/he wired money to Fournier when he was out of state. This informant sold both Oxycodone and cocaine that s/he purchased from Fournier. Duquette did not state one way or the other whether the information in each interview came from the same individual or from three separate individuals.

6. On February 2, 2002, Special Agent Bridges interviewed an individual<sup>2</sup> of unknown gender who made a statement against penal interest, indicating that s/he sold oxycontin for extra money and received those pills from Fournier. Bridges was also told that Fournier and a Terry Williams were regular suppliers of oxycontin and that both of them were members of the Iron Horsemen Motorcycle Club. The pills provided by Fournier were most commonly Oxy 80's. The affidavit does contain some internal clues as to whether this informant was the same person as the person/s with whom Duquette communicated. For one thing the financial arrangements discussed by this informant appeared to differ from the wiring money arrangements discussed by the Duquette informant/s. Furthermore this informant emphatically denied any involvement in the use of cocaine.

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<sup>2</sup> The affidavit states there may have been more than one individual interviewed by Bridges on this date. I use the singular to avoid the awkwardness of alternating between the singular and plural.

7. On November 17, 2001, Special Agent Johnston interviewed someone who told him that s/he gets oxycontin and cocaine from Fournier. This person, like the person interviewed by Bridges on February 2, 2002, indicated that Fournier's practice was to "front" the drugs and then show up later for the money. One can infer that this informant is a different person than the Bridges' interviewee because this person/s was involved with both oxycontin and cocaine. The Bridges interviewee made it clear that s/he was not involved with cocaine. This source of information also appears to differ from Duquette's informant/s because of the way in which the money was handled.

8. In addition to the five informant conversations, the MDEA files contained a report of a conversation with a Brewer police officer on November 16, 2001. The police officer had searched a room at a Brewer motel that Fournier had stayed in. The police found a small amount of marijuana on a nightstand consistent with the use of the nightstand as a spot to break up bricks of marijuana.

9. Duquette's affidavit also attested to her training, education, and experience in the area of drug law enforcement. She specifically noted that drug dealers commonly have possession of residue, journals, ledgers, and drug paraphernalia in their homes and motor vehicles even if there are no scheduled drugs readily for sale at their premises.

Based upon all of this information, the Maine District Court judge issued a warrant authorizing the search of Fournier's residence. Giving the appropriate deference to the issuing magistrate's determination, I am more than satisfied that probable cause existed for the issuance of the warrant. More than one confidential informant had provided detailed knowledge of Fournier's drug trafficking over an extended period of time. On the day the search warrant was issued Fournier was found to be in possession of

a significant quantity of drugs, packaged in multiple bags suggesting resale potential. Rather than having stale information as argued by Fournier, the affidavit provides evidence of a continuing pattern of criminal conduct. Probable cause existed for the search of the premises.

Although I see no reason to reach the issue, the Government does argue that the “good faith” exception should apply because the officers placed an objectively reasonable reliance on a neutral and detached judge’s incorrect probable cause determination. See generally United States v. Leon, 468 U.S. 897 (1984). Defendant does not suggest that there are any facts that would undermine the conclusion that the officers were acting in good faith. I see no reason to conduct any evidentiary hearing on this issue.

### **Conclusion**

Based upon the foregoing, I recommend that the court **DENY** the motion to suppress.

### NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court’s order.

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Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated October 23, 2002

U.S. District Court  
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 02-CR-57-ALL

USA v. FOURNIER  
08/06/02

Filed:

Other Dkt # 1:02-m -00038

Case Assigned to: Judge GEORGE Z. SINGAL

RICHARD FOURNIER (1)  
defendant

JON HADDOW, ESQ.  
[COR LD NTC cja]  
FARRELL, ROSENBLATT & RUSSELL  
P.O. BOX 738  
BANGOR, ME 04402-0738  
(207) 990-3314

Pending Counts:

Disposition

21:841A=CD.F CONTROLLED  
SUBSTANCE - SELL, DISTRIBUTE,  
OR DISPENSE; DISTRIBUTION  
OF OXYCODONE; DISTRIBUTION OF  
METHAMPHETAMINE  
(1 - 2)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints

Disposition

Ct I - Distribution of  
Oxycodone - 21:841(a)(1) Ct.  
II - Distribution of  
Methamphetamine - 21:841(a)(1)  
[ 1:02-m -38 ]

U. S. Attorneys:

DANIEL J. PERRY, ESQ.  
[COR LD NTC]  
U.S. ATTORNEY'S OFFICE  
P.O. BOX 2460  
BANGOR, ME 04402