IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA

Petitioner,

v. CASE NO. 83,752

YAMA BUTLER,

Respondent,

_____/

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as "Petitioner," "the prosecution," or "the State." Respondent, Yama Butler, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as "Respondent" or by his proper name.

References to the opinion of the First District Court of Appeal, found in the Appendix of this brief, will be noted by its Florida Law Weekly citation.

The symbol "R" will refer to the record on appeal, and the symbol "T" will refer to the transcript of the trial court's proceedings; the symbol will be followed by the appropriate page number in parentheses.

All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The Respondent, Yama Butler, was charged with one count of possession of cocaine. (R 6). Respondent filed a motion to suppress which was denied by the trial court after a hearing. (R 11-14; 31; T 1-27). Respondent subsequently entered a plea of nolo contendere, reserving the right to appeal the denial of the motion of suppress, and was sentenced to eight months in the Duval County Jail. (R 37-39).

At the hearing on the motion to suppress, Police Officer Stanley Putnam testified that at approximately 11:30 p.m. on April 25, 1992, he met with a known, previously reliable, confidential informant. (T 5-7). The informant described a man who he said was selling powdered cocaine in front of 726 West Beaver Street. (T 5-6; 8). Officer Putnam had received information from this informant on at least 20 occasions since February. (T 6). The information supplied by the informant had led to felony arrests 60-70 percent of the time, most of the arrests being drug related. (T 6-7).

On April 25, the informant told Officer Putnam that a black male, 5'10" tall, wearing a black jacket, white t-shirt and blue jeans was standing on the sidewalk in front of 726 West Beaver Street selling powdered cocaine. (T 7-8). The informant also told Putnam that the individual liked to wrap the cocaine inside one-dollar bills and that he kept the bills in his pants pocket. (T 7).

Officer Putnam further testified that 726 West Beaver Street was located in a high-crime drug area, and that two months previously, he had served a search warrant on, and seized crack cocaine from, the house in front of which Respondent was standing. (T 8).

After receiving the information from the confidential informant, Officer Putnam immediately called another Officer for assistance. The two Officers went to 726 West Beaver Street, where they saw Respondent - who matched the description given by the informant - standing on the sidewalk in front of the house. (T 9, 18, 25). No more than 15 minutes had passed since Putnam received the information. Officer Putnam knew Respondent was the described suspect because he was wearing a black jacket, white t-shirt and blue jeans, and was about 5'10" tall. (T 9). There was no one else in the vicinity that matched this description, and the only other black male in the area was over 6 feet tall. (T 9-10).

Officer Putnam got out of his car and approached Respondent Butler on foot. (T 11). Butler began walking away. (T 20). When Officer Putnam asked Respondent how it was going, Respondent's eyes got real big, as if in surprise. (T 11). Officer Putnam stopped Butler, patted him down for weapons, and felt a large bulge in his front pants pocket, which he suspected was money. (T 11-12; 21). Because the bulge was soft, Officer Putnam knew it was not a weapon and asked Butler what it was. (T 12). Butler responded that it was 28 one-dollar bills. (T 12). Because the

confidential informant had told Putnam that the seller liked to wrap his cocaine in one-dollar bills, Putnam reached into Butler's left front pants pocket and pulled the money out. (T 12). Putnam counted the money, which was 27 or 28 one-dollar bills. (T 12, 15, 22). Putnam then asked Butler if he had any more money in his pocket, to which Butler responded either "no" or "I don't know." (T 13). Putnam then reached into Butler's pocket again and found one more one-dollar bill which was tightly folded. (T 13). This bill contained powdered cocaine. (T 13-14). Putnam then arrested Butler. (T 14).

On cross-examination, Officer Putnam testified that he did not know what time the confidential informant had seen the individual he described. (T 17). The confidential informant did not mention that the described individual was armed, and Officer Putnam had no reason to believe he was armed. (T 20-21). Officer Putnam did not see Butler talk to any one or exchange anything with anyone. (T 23-24).

On appeal, the First District Court of Appeal reversed the trial court's denial of Respondent's motion to suppress and certified conflict with the decisions of the Second District Court of Appeal in State v. Flowers, 566 So. 2d 50 (Fla. 2d DCA 1990) and State v. Brown, 556 So. 2d 790 (Fla. 2d DCA 1990). Butler v. State, 19 Fla. L. Weekly D 585 (Fla. 1st DCA 199).

Thereafter, the State sought timely review in this court.

SUMMARY OF ARGUMENT

The first District Court of Appeal held that the search in the instant case violated the Fourth Amendment. The State respectfully submits that this holding was erroneous.

The search in the instant case was based on a tip from a previously reliable confidential informant whose past tips had resulted in felony arrests, mostly drug related, sixty to seventy percent of the time. The tip included a detailed description of Respondent Butler, his exact location, the type of drugs involved, how they were packaged, and where on Respondent's person the drugs were located. Upon arriving at the location specified by the informant, which Officer Putnam knew to be a high-crime drug area, Officer Putnam observed Respondent, who exactly matched the description given by the informant, standing at the exact address given by the informant. Officer Putnam had previously served a search warrant on, and seized crack cocaine from, the exact house in front of which Respondent was standing. Upon seeing Officer Putnam, Appellant reacted with surprise and began walking away. The State submits that the totality of these circumstances - the detailed description given by the informant, Respondent's reaction of surprise, the Officer's knowledge that the area was a high-crime drug area and that crack cocaine had recently been seized from the house in front of which Respondent was standing - was sufficient to established probable cause for the search and arrest of Respondent.

ARGUMENT

ISSUE

WHETHER THE CORROBORATION OF INNOCENT DETAILS MUST BE CONSIDERED WHEN APPLYING THE TOTALITY OF THE CIRCUMSTANCES TEST TO DETERMINE WHETHER A TIP FROM A PREVIOUSLY RELIABLE CONFIDENTIAL INFORMANT ESTABLISHES PROBABLE CAUSE.

The First District Court of Appeal held that the search in the instant case violated the Fourth Amendment because there was no showing of the confidential informant's basis of knowledge and because the police corroborated only innocent details of the tip, which did not include any predictions of future actions. Butler v. State, 19 Fla. L. Weekly D 585 (Fla. 1st DCA 199). The State respectfully submits that this holding was erroneous.

The search in the instant case was based on a tip from a previously reliable confidential informant whose past tips had resulted in felony arrests, mostly drug related, sixty to seventy percent of the time.[1] The tip included a detailed description of Respondent Butler, his exact location, the type of drugs involved, how they were packaged, and where on Respondent's person the drugs were located. Upon arriving at the location specified by the informant, which Officer Putnam knew to be a high-crime drug area, Officer Putnam observed Respondent, who exactly matched the description given by the informant, standing

[1] This high percentage of reliability is even more significant when one considers that non-arrest in the minority of instances does not indicate a lack of reliability, only that for whatever reasons, arrests were not made in the particular cases.

at the exact address given by the informant. Officer Putnam had previously served a search warrant on, and seized crack cocaine from, the exact house in front of which Respondent was standing. Upon seeing Officer Putnam, Appellant reacted with surprise and began walking away. The State submits that the totality of these circumstances - the detailed description given by the informant, Respondent's reaction of surprise, the Officer's knowledge that the area was a high-crime drug area and that crack cocaine had recently been seized from the house in front of which Respondent was standing - was sufficient to established probable cause for the search and arrest of Respondent.

The First District's holdings - that corroboration of innocent details is insufficient to support a finding of probable cause unless there is corroboration of predictive information, and that the lack of evidence of the informant's basis of knowledge precludes a finding of probable cause - are erroneous.

"Probable cause means a 'fair probability that contraband or evidence of a crime will be found.'" State v. Diamond, 598 So. 2d 175, 177 (Fla. 1st DCA 1992)(citing, United States v. Sokolow, 490 U.S. 1, 109 S. Ct. 1581, 104 L. Ed. 2d 1, 10 (1989) and Aderhold v. State, 593 So. 2d 1081 (Fla. 1st DCA 1992)). The standard for determining probable cause for a warrantless search based on information received from a confidential informant is the totality of the circumstances test. Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Furthermore, " 'only the probability, and not a prima facie showing, of

criminal activity, is the standard of probable cause.'" Gates, 103 S. Ct. at 2330 (quoting, Spinelli v. United States, 393 U.S. 410, 419, 89 S. Ct. 584, 590, 21 L. Ed. 2d 637,-(1969)). The totality of the circumstances surrounding the search in the instant case clearly provided Officer Putnam with probable cause to arrest and search Appellant.

By holding that probable cause did not exist because the informant did not indicate how he acquired his information, the First District focused undue attention on the isolated issue of the informant's basis of knowledge. The United States Supreme Court, in Gates, warned against such

> an excessively technical dissection of informants' tips, with undue attention being focused on isolated issues[.]

Gates, 103 S. Ct. at 2330, 462 U.S. at 234-235. Establishing the informant's basis of knowledge is not crucial to a determination of probable cause. Although an informant's veracity, reliability, and basis of knowledge are relevant in determining whether probable cause exists, they are not "entirely separate and independent requirements to be rigidly exacted in every case." Gates, 103 S. Ct. at 2328. "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 indication of reliability." Gates, 103 S. Ct. at 2329. Thus, the State is not required to show both the informant's reliability and the basis of his knowledge. United States v. Phillips, 727 F. 2d 392, 395 (5th Cir. 1984).

Any deficiency in the establishment of the informant's basis of knowledge in the instant case is compensated for by the specificity of the tip and the strong showing of the informant's reliability. Past tips from the informant resulted in felony arrests sixty to seventy percent of the time. This strong showing of the informant's reliability, along with the specificity of the tip, Officer Putnam's knowledge that the area was a high crime drug area, Respondent's reaction of surprise, and Officer Putnam's corroboration of the tip by acting promptly and finding Respondent - who exactly fit the description provided - at the named location, establish probable cause. See, State v. Hetland, 366 So. 2d 831, 839 (Fla. 2d DCA 1979), approved, 387 So. 2d 963 (Fla. 1980)("information is corroborated when Officers act promptly and find an individual in the named location who exactly fits the description[.]") See also Ker v. California, 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963). (information from a reliable informer, corroborated by Officer's observations as to accuracy of informer's description of accused and his presence at particular place is sufficient to establish probable cause).

Furthermore, although the confidential informant in the instant case did not specifically state how he knew that Appellant was selling cocaine, the detail contained in the tip indicates that the information was based on the personal observation of the informant. See, Hetland, supra 366 So. 2d at 839 (A detailed tip "carries a strong indication that the information is based on the personal observation of the

informant.") The tip included a detailed description of Appellant, the exact address where he could be located, the type of drugs involved, how they were packaged, and their location on Appellant's person. Thus, personal knowledge can be inferred from the detail contained in the tip. Wooten v. State, 385 So. 2d 146 (Fla. 1st DCA 1980); Hopkins v. State, 524 So. 2d 1136 (Fla. 1st DCA 1988); State v. Perry, 234 Ga. 842, 218 S.E. 2d 559 (1975); Swanson v. State, 591 So. 2d 1114 (Fla. 1st DCA 1992); and State v. Cash, 595 So. 2d 279 (Fla. 3d DCA 1992). Thus, the First District's holding that probable cause did not exist because of a lack of evidence of the informant's basis of knowledge was erroneous.

The First District's holding that corroboration of innocent details is insufficient to establish probable cause unless there is corroboration of predictions made by the informant is also erroneous. It is immaterial that corroboration is of innocent details. United States v. McBride, 801 F. 2d 1045, 1047 (8th Cir. 1986), cert. denied, 479 U.S. 1100, 107 S. Ct. 1325, 94 L. Ed. 2d 177 (1987). Predictions are not necessarily required as a pre-condition to reliance on even an anonymous tip. United States v. Clipper, 973 F. 2d 944, 949 (D.C. Cir. 1992), cert. denied, 113 S. Ct. 1025, 122 L. Ed. 2d 171 (1993). Thus, it would be illogical to conclude that a tip from a previously reliable informant must include predictions and corroboration of these predictions. Rather, corroboration of predicted behavior should be viewed as one way to establish the reliability of an anonymous or untested informant. When the police rely on an

informant whose credibility is established, predictions are not necessary. Corroboration of predictive information is merely one method of establishing or bolstering the reliability of the informant and his information. It is one circumstance to be considered in weighing the totality of the circumstances. Because the reliability of the informant in the instant case was established by his previous dealings with Officer Putnam and by the detailed information included in the tip, the lack of predictive information does not weaken the tip's value, and does not prevent a finding of probable cause.

When the totality of the circumstances test is applied to the instant case, it is clear that Officer Putnam had probable cause to search and arrest Respondent. The informant's past reliability, the detailed tip, Officer Putnam's knowledge of the area, Respondent's reaction of surprise, and the prompt corroboration of description and location, was sufficient to allow Officer Putnam to determine that there was a "fair probability" that Respondent was committing or had committed a felony. The district court's refusal to consider innocent details as a component of the totality of circumstances is erroneous as a matter of law and contrary to controlling decisions in both state and federal courts.[2] Thus, the District

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[2] When ruling on search and seizure issues, the courts of Florida are constitutionally obligated to follow the United States Supreme Court's rulings. Bernie v. State, 524 So. 2d 988 (Fla. 1988).

Court erred in reversing the trial courts' denial of Respondent's motion to suppress.

CONCLUSION

The District Court should be reversed.

Respectfully submitted,

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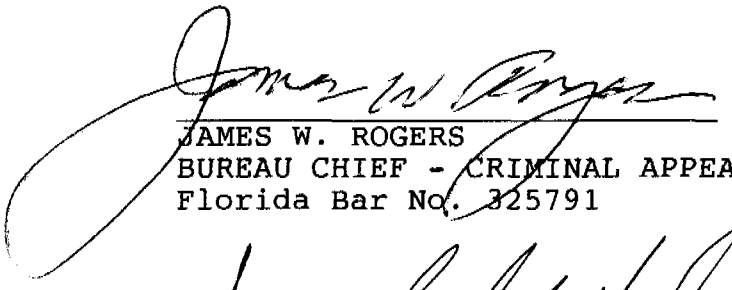

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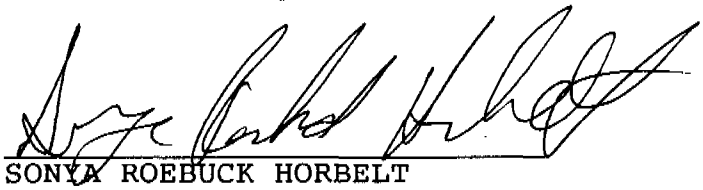

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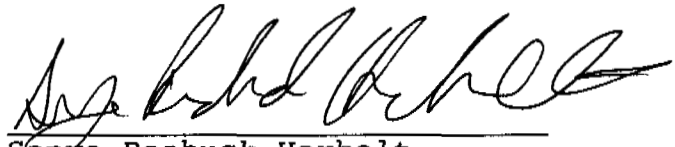
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S BRIEF ON THE MERITS and its Appendix, have been furnished by U.S. Mail to Abel Gomez, Assistant Public Defender, Leon County Courthouse Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida, 32301, this 20 day of July, 1994.



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