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SID J. WHITE

AUG 16 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

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STATE OF FLORIDA, :
 :
 Petitioner, :
 :
 v. : CASE NO. 83,752
 :
 YAMA BUTLER, :
 :
 Respondent. :

RESPONDENT'S BRIEF ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

ABEL GOMEZ #832545
ASSISTANT PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
CONCLUSION	12
CERTIFICATE OF SERVICE	12

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>Alabama v. White,</u> 496 U.S. 325, 110 S. Ct. 2412, 110 L.Ed.2d 301 (1990)	10,11
<u>Benfield v. State,</u> 160 So. 2d 706, 708 (Fla. 1964)	5
<u>Butler v. State,</u> 634 So. 2d 700 (Fla. 1st DCA 1994)	2,5,7,8 12
<u>Daniels v. State,</u> 543 So. 2d 363, 365 (Fla. 1st DCA 1989)	8
<u>Holmes v. State,</u> 549 So. 2d 1119, 1121 (Fla. 1st DCA 1989)	9
<u>Illinois v. Gates,</u> 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983)	5,6,9,10
<u>State v. Brown,</u> 566 So. 2d 790 (Fla. 2d DCA 1990)	9
<u>State v. Flowers,</u> 566 So. 2d 50 (Fla. 2d DCA 1990)	9
<u>United States v. Clipper,</u> 973 F. 2d 944, 9498 (D.C. Cir. 1992)	10,11
<u>United States v. Lechuga,</u> 925 F. 2d 1035, 1038 (7th Cir. 1991)	10

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :
 Petitioner, :
vs. :
 CASE NO. 83,752
YAMA BUTLER, :
 Respondent, :

STATEMENT OF THE CASE AND FACTS

Respondent, Yama Butler, is in agreement with petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

The "totality-of-the-circumstances" which confronted officer Putnam fail to establish probable cause to arrest since these circumstances do not warrant a person of reasonable caution to conclude that an offense had been committed. Consequently, if this Court grants review of the decision in Butler, it should affirm. The informant's previous reliability was the only established circumstance. Although officer Putnam may have had one circumstance strongly established, he had serious deficiencies on other important elements. For example, officer Putnam had no indication of the informant's basis of knowledge. Although the informant gave a detailed description of respondent including his location, this was information readily available to the public at large since respondent was outside in plain view. As well, officer Putnam failed to test the reliability of the information he was given. Upon arriving at the scene, officer Putnam neither observed nor did he wait to observe anything to make him reasonably suspect the appellant had violated or was violating any law.

Further respondent's presence in a high crime area and his "surprised reaction", factors which amount to less than reasonable suspicion standing alone, when coupled with a reliable informant's tip do not add up to the higher standard required to establish probable cause to arrest.

Contrary to petitioner's argument, the district court did not hold that a basis for knowledge is necessarily required for a

finding of probable cause in all cases. Rather, the district court determined that, based on the "totality-of-the-circumstances", the absence of a basis for knowledge was fatal in this case.

The district court's decision correctly suggests that merely establishing the informant's reliability is not sufficient to establish probable cause to arrest and search. Given that the totality of all the circumstances must be analyzed, the district court went on to hold that the informant's tips in such cases must be sufficiently detailed and "independently corroborated by evidence other than by the fruits of information obtained as a consequence of the search."

In order to make it probable or likely that a suspect has committed the crime alleged by a reliable informant, the police should corroborate more than innocent details. As well, the police should corroborate seemingly innocent details which contain predictions of the suspects future actions. This court should approve of the district court's opinion which enunciates this principle and reject contrary decisions of the second district court.

Based on the foregoing, this court should affirm the district court's opinion which reversed the trial court's denial of respondent's motion to suppress.

ARGUMENT1

The first district court of appeals correctly held that officer Putnam did not have probable cause to search respondent, Butler, incident to an arrest. Butler v. State, 634 So. 2d 700 (Fla. 1st DCA 1994). If this Court grants review of the decision in Butler, it should affirm.

Officer Putnam had no search warrant when he searched and arrested Butler. Consequently, the evidence seized "must be the product of a search incident to a lawful arrest." Benefield v. State, 160 So. 2d 706, 708 (Fla. 1964)(citation omitted). As this Court stated in Benefield:

The lawfulness of an arrest without warrant, in turn must be based upon probable cause, which exists, where the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been committed.

Id. In Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L Ed. 2d 527 (1983), the Court stated: "[P]robable cause is a fluid concept - turning on the assessment of probabilities in particular factual contexts - not readily, or even usefully, reduced to a neat set of legal rules." As well, the Gates

¹Citation to petitioner's brief on the merits will be as MB.(page number).

Court held that the "totality-of-the-circumstances" must be considered when determining probable cause.

The "totality-of-the-circumstances" which confronted officer Putnam fail to establish probable cause to arrest since these circumstances do not warrant a person of reasonable caution to concluded that an offense had been committed. That is, when assessing all of the facts one cannot reasonably conclude that it was probable that respondent was engaged in the criminal activity alleged by the confidential informant.

As the first district's opinion acknowledged, the confidential informant had proved reliable in the past. His credibility was adequately established. However, the informant's previous reliability was the only established circumstance. Although Gates suggested that a deficiency in one important element, such as "veracity", "reliability", or "basis of knowledge", may be compensated for by a strong showing in another, it did not hold that only one element need be proved. Again, all the circumstances confronting officer Putnam did not rise to the level of probable cause. Although he may have had one circumstance strongly in place, he had serious deficiencies on other important elements.

Officer Putnam had no indication of the informant's basis of knowledge. Although the informant gave a detailed description of respondent including his location, this was information readily available to the public at large since respondent was outside in plain view. Further, although the

informant specified how respondent packaged his drugs, he did not say he was aware of this fact from having personally observed the drugs on respondent. Any informant can provide information regarding drug packaging. The informant here was obviously quite familiar with the drug trade and with how drugs are commonly packaged for street sales. His information on the packaging thereby failed to suggest any special inside information. Consequently, officer Putnam received no information from his informant which indicated how he knew that respondent was actually in possession of powdered cocaine, and intending to sell it.

Petitioner argues that the informant's personal knowledge may be inferred from the detail contained in the tip. MB.9-10. This Court should reject this argument since, as stated above, the detail contained here was of information which was available to the public and failed to actually indicate the informant had actual inside information.

Other than the informant's previous track record, officer Putnam was aware of no other circumstance indicating the present information was reliable. That is, officer Putnam failed to test the reliability of the information he was given. As the first district stated:

Upon arriving at the scene, Officer Putnam neither observed nor did he wait to observe anything to make him reasonably suspect the appellant had violated or was violating any law. He saw no sign of suspicious behavior, drugs or weapons. Moreover, the tip contained no prediction of the

appellant's future actions. The appellant was merely standing in the location indicated by the CI.

Butler, 634 So. 2d at 704. Thus, officer Putnam could not have concluded that respondent probably was committing a crime based on the "totality-of-the-circumstances".

Petitioner argues that respondent's surprised reaction at the arrival of officer Putnam, his presence in a high crime and drug area, and the fact that a nearby house had been the scene of a crack cocaine arrest were among the circumstances giving rise to probable cause. MB.7,11. Yet as the district court stated: "it is well established that even running away in a high crime area is insufficient to establish 'reasonable suspicion' for a stop and frisk, Daniels v. State, 543 SO. 2d 363, 365 (Fla. 1st DCA 1989), much less 'probable cause' for an arrest." His presence in a high crime area and his "surprised reaction", factors which amount to less than reasonable suspicion standing alone, when coupled with a reliable informant's tip do not add up to the higher standard required to establish probable cause to arrest. At best, the informant's tip here, when coupled with factors which normally would not provide justification for a Terry Stop, provided a reasonable suspicion to stop and question respondent. But it most certainly did not establish a probability that respondent possessed drugs and could be searched and immediately arrested.

Petitioner argues that the district court erroneously held probable cause was lacking because the informant's tip lacked a

basis of knowledge. MB.8. Petitioner reads the district court's opinion too narrowly. The district court held the search and arrest invalid on two grounds, one of which was the insufficient detail regarding the source of the informant's knowledge. Butler 632 So. 2d at 704. However, the district court did not hold that a basis for knowledge is necessarily required for a finding of probable cause in all cases. First, the court recognized that the analysis of probable cause involved a "totality-of-the-circumstances" approach. 634 So. 2d at 702. Second, the court stated that Gates acknowledged veracity, reliability, and basis of knowledge, remain highly relevant in assessing the value of an informant's tip. Id. With the latter point in mind, the court determined that, based on the "totality-of-the-circumstances", the absence of a basis for knowledge was fatal in this case.

The district court's decision correctly suggests that merely establishing the informant's reliability is not sufficient to establish probable cause to arrest and search. Given that the totality of all the circumstances must be analyzed, the district court went on to hold that the informant's tips in such cases must be sufficiently detailed and "independently corroborated by evidence other than by the fruits of information obtained as a consequence of the search." Id., citing, Holmes v. State, 549 So. 2d 1119, 1121 (Fla. 1st DCA 1989). The district court's analysis of the corroboration element is what has created a possible conflict with two second

district court of appeal cases. The second district court has found sufficient probable cause even where there was no independent police corroboration of the reliable informant's tip other than thorough innocent or self-verifying details. See State v. Flowers, 566 So. 2d 50 (Fla. 2d DCA 1990), State v. Brown, 566 so. 2d 790 (Fla. 2d DCA 1990). However, this court should approve of the first district's approach in this case and in Holmes.

This first district found it significant that officer Putnam failed to wait and observe respondent for signs of suspicious behavior, drugs, or weapons. It noted that the tip contained no prediction of respondent's future actions. This approach is the correct one. Again, anyone could provide identifying information available to the public at large. In order to make it probable or likely that a suspect has committed the crime alleged by a reliable informant, the police should corroborate more than innocent details. As well, the police should corroborate seemingly innocent details which contain predictions of the suspects future actions. For example, in Gates, law enforcement collaborated numerous details of the suspects travel plans between Illinois and Florida. See also United States v. Lechuga, 925 F. 2d 1035, 1038 (7th Cir. 1991)(officer "did not rely on the tip alone but watched the defendants long enough to observe behavior tending to corroborate the tip.")

Petitioner argues that predictions are not necessarily required as a pre-condition even on an anonymous tip, and it cites to United States v. Clipper, 973 F. 2d 944, 9498 (D.C. Cir. 1992). However, as that very case states, Alabama v. White, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990)(also an anonymous tip case), held that the police's ability to corroborate the informant's predictions was an important consideration when determining probable cause under a "totality-of-the-circumstances" analysis. As the predictive corroboration in Alabama v. White, was important in establishing reasonable suspicion, the absence of any predictive corroboration under the facts here failed to establish probable cause.

Clipper, while finding reasonable suspicion in the absence of predictive corroboration, involved a tip that the suspect was armed with a gun. The Clipper court stated that the tip provided the officers with information alerting them to "an imminent danger that the police cannot ignore except at the risk to their personal or the public's safety." 973 F. 2d at 950. This was not the case here, the tip in no way suggested the presence of a dangerous weapon. Consequently, predictive corroboration was essential to establishing probable cause to search because it would have demonstrated "inside information - a special familiarity with respondent's affairs." Alabama v. White, 496 U.S. at 332.


Thus, the district court properly reversed the trial court's denial of the motion to suppress. The "totality of the circumstances" fail to show that officer Putnam had probable cause to search respondent. This court should approve the decision of the district court which under the facts of this case require independent police corroboration in order to establish probable cause to search.

CONCLUSION

Based on the foregoing this court should affirm and approve of the district court's decision in Butler v. State, 634 So. 2d. 700 (Fla. 1st DCA 1994).

Respectfully submitted,


NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT



ABEL GOMEZ
Assistant Public Defender
Public Defenders Officer
301 S. Monroe Street
Suite 401
Tallahassee, Florida 32301
(904) 488-2458

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by ^{US MAIL} ~~delivery~~ to Sonya Roebuck Horbelt, Assistant Attorney General, The Capitol, Tallahassee, Florida 32399-1050, and Yama Butler, 728 W. Beaver Street, Jacksonville, Florida 32209, this 15th day of August, 1994.



Abel Gomez