

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-02-386

DWA - KEN - 3/5/2003

STATE OF MAINE

v.

HANS C. PEASLEE,

Defendant

ORDER ON MOTION
TO SUPPRESS

DONALD L. GARBRECHT
LAW LIBRARY

MAR 12 2003

This matter is before the court on defendant's motion to suppress evidence. As a result of a search warrant from an affidavit, a package was seized at The Mailing Center in Augusta, Maine. The defendant asserts that paragraph 2(b) of the affidavit in support of the search warrant quotes a police officer stating that a civilian owner/employee accidentally opened a box addressed to the defendant and discovered a hay-type substance wrapped in "reddish-colored cellophane." In paragraph 2(c) of the affidavit, the officer states that the civilian told him that he could "see through the cellophane enough to see that it appeared to be a hay-type substance." Defendant submits an affidavit of an individual who was sent to the Augusta Police Department to view the package in question. The individual asserts under oath that the "reddish-colored cellophane" is not opaque but is so dense that you cannot determine what it covers and therefore you cannot see through the cellophane sufficient to see the substance. It is the defendant's position that he is, therefore, entitled to a "Franks hearing" to determine whether there is specific information in the search warrant affidavit which is false, whether the false information is material to the finding of probable cause, and whether the affiant included the false information knowingly or with reckless disregard as to its falsity. *State v. VanSickle*, 580 A.2d 691 (Me. 1990).

The State resists the defendant's request for a hearing, first asserting that the statement by the police officer in the affidavit was based upon information given him by a person not associated with law enforcement and that his statement contains items substantiating the officer's conclusions that the information from the civilian is reliable and from a reliable source. The State also argues that the officer obtained the search warrant in good faith and the evidence was seized in a reasonable, good faith reliance on the search warrant. *United States v. Leon*, 468 U.S. 897 (1984).

There are seven basic elements to the affidavit supporting this search warrant. First, the officer, with considerable training and experience, is quoting a civilian known to the officer from prior criminal investigation wherein the civilian provided detailed, credible information with respect to criminal activity. The second element is that the defendant made numerous phone calls to The Mailing Center appearing anxious for the package to arrive thereby alerting personnel to its importance. The third element is the observation by the civilian that the package contained "a large bale of hay-type substance wrapped in a reddish-colored cellophane." The fourth element is that the civilian detected an odor of marijuana coming from the package. The next element is that the civilian asserts that he has had previous experience with marijuana and is familiar with its odor. The next element of the affidavit is that the return address on the package was from Berkeley, California. Finally, the officer asserts that from his training and experience he is aware that individuals will mail marijuana to friends using independent mail locations such as The Mailing Center.

At a Franks hearing, the defendant bears the burden to present a substantial showing that without the information challenged, there would have been no probable cause. *State v. Hamel*, 634 A.2d 1272 (Me. 1993). The affidavit submitted by defendant challenges the appearance of the "hay-type substance" through the cellophane.

Therefore, even if the defendant were to successfully show that the informant could not see through the cellophane sufficiently to see what appeared to be hay-type substance, there would still remain the probable cause based upon the odor and the other elements as enumerated. Therefore, the court concludes that the requirements of *Franks v. Delaware*, 438 U.S. 154 and held in *State v. VanSickle*, 580 A.2d at 693 that an alleged misstatement is necessary for the finding of probable cause does not exist.

The entry will be:

Defendant's motion to suppress is DENIED.

Dated: March 5, 2003

A handwritten signature in black ink, appearing to read 'Donald H. Marden', written over a horizontal line.

Donald H. Marden
Justice, Superior Court

STATE OF MAINE
vs
HANS C PEASLEE
135 SPEARS CORNER ROAD
WEST GARDINER ME 04345

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2002-00386

DOCKET RECORD

DOB: 07/18/1971
Attorney: SUMNER LIPMAN
LIPMAN & KATZ PA
227 WATER STREET
PO BOX 1051
AUGUSTA ME 04332-1051
RETAINED 10/18/2002

State's Attorney: DAVID CROOK

Filing Document: INDICTMENT
Filing Date: 10/18/2002

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

- | | | | |
|---|--|---------|--------------------|
| 1 | UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS
17-A 1103 | Class C | 08/29/2002 AUGUSTA |
| 2 | CONSPIRACY TO COMMIT A CLASS C CRIME
17-A 151(1) | Class D | 08/29/2002 AUGUSTA |
| 3 | CRIMINAL FORFEITURE OF PROPERTY
15 5826 | Class U | 08/29/2002 AUGUSTA |

Docket Events:

10/21/2002 FILING DOCUMENT - INDICTMENT FILED ON 10/18/2002

TRANSFER - BAIL AND PLEADING GRANTED ON 10/18/2002

TRANSFER - BAIL AND PLEADING REQUESTED ON 10/18/2002

10/21/2002 Charge(s): 1,2,3
HEARING - ARRAIGNMENT SCHEDULED FOR 10/31/2002 @ 8:30

NOTICE TO PARTIES/COUNSEL

11/01/2002 Charge(s): 1,2,3
HEARING - ARRAIGNMENT HELD ON 10/31/2002 @ 8:30
S KIRK STUDSTRUP , JUSTICE
Attorney: WALTER MCKEE
DA: ALAN KELLEY Reporter: PHILIP GALUCKI
Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO DEFENDANT. 21 DAYS TO FILE MOTIONS, BAIL TO CONTINUE AS SET IN DISTRICT COURT.

11/01/2002 Charge(s): 1,2,3
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 10/31/2002

11/01/2002 Charge(s): 1,2,3
PLEA - NOT GUILTY ACCEPTED BY COURT ON 10/31/2002

11/01/2002 BAIL BOND - CASH BAIL BOND COND RELEASE ISSUED ON 10/31/2002
ADDED CONDITION NO CONTACT WITH TODD HENDERSON

11/01/2002 BAIL BOND - CASH BAIL BOND CONTINUED AS SET ON 10/31/2002

11/08/2002 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 11/08/2002

11/08/2002 MOTION - MOTION FOR FURTHER DISCOVERY FILED BY DEFENDANT ON 11/08/2002
MOTION FOR DISCOVERY FOR EXAMINATION OF PACKAGING, DEFENSE COUNSEL WISHES TO INSPECT
PACKAGING.

11/13/2002 TRANSFER - BAIL AND PLEADING RECVD BY COURT ON 11/13/2002
AUGUSTA DISTRICT COURT DOCKET NO: CR-02-2269

11/13/2002 BAIL BOND - \$200.00 CASH BAIL BOND FILED ON 11/13/2002

Bail Receipt Type: CR
Bail Amt: \$200
Date Bailed: 08/29/2002

Receipt Type: CK
Prvdr Name: HANS PEASLEE
Rtrn Name: HANS PEASLEE

Conditions of Bail:

Refrain from possession or use of intoxicating liquor. Refrain from possession or use of any unlawful drugs.

Submit to random search and testing for alcohol, drugs upon reasonable suspicion of use or possession.

Have no contact with...

1 TODD HENDERSON

11/22/2002 MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 11/22/2002

DA: WALTER MCKEE
REQUESTING A FRANKS HEARING. SUPPRESS ALL EVIDENCE SEIZED AS A RESULT OF BOTH SEARCH
WARRANTS.

12/23/2002 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 01/06/2003 @ 9:00

NOTICE TO PARTIES/COUNSEL

01/14/2003 HEARING - MOTION FOR DISCOVERY NOT HELD ON 01/06/2003

STATE REQUESTED PROTECTION FOR THE 6TH AND 7TH.

01/14/2003 MOTION - MOTION FOR FURTHER DISCOVERY GRANTED ON 11/13/2002
DONALD H MARDEN , JUSTICE
COPY TO PARTIES/COUNSEL

01/31/2003 MOTION - MOTION FOR DISCOVERY GRANTED ON 01/27/2003

COPY TO PARTIES/COUNSEL

01/31/2003 HEARING - OTHER MOTION HELD ON 01/27/2003
DONALD H MARDEN , JUSTICE
Attorney: WALTER MCKEE
DA: PAUL RUCHA Reporter: PEGGY STOCKFORD
Defendant Present in Court

FRANK'S HEARING IS BEING CONSIDERED, JUSTICE MARDEN HAS FILE UNDER ADVISEMENT
01/31/2003 MOTION - OTHER MOTION MADE ORALLY BY DEF ON 01/27/2003

REQUEST FOR FRANK'S HEARING
01/31/2003 MOTION - OTHER MOTION UNDER ADVISEMENT ON 01/27/2003

REQUEST FOR FRANK'S HEARING
03/05/2003 MOTION - OTHER MOTION DENIED ON 03/05/2003
DONALD H MARDEN , JUSTICE

REQUEST FOR FRANK'S HEARING
03/05/2003 MOTION - MOTION TO SUPPRESS EVIDENCE UNDER ADVISEMENT ON 01/27/2003
DONALD H MARDEN , JUSTICE

03/05/2003 MOTION - MOTION TO SUPPRESS EVIDENCE DENIED ON 03/05/2003
DONALD H MARDEN , JUSTICE
COPY TO PARTIES/COUNSEL

A TRUE COPY

ATTEST: _____
Clerk