

## **U.S. v. Reeves**

(9th Cir. May 1, 2000) \_\_ F.3d \_\_

### **ISSUES**

Was a search warrant invalid because the affiant failed to include information tending to show an informant was not trustworthy?

### **FACTS**

Narcotics officers in Jackson County, Oregon obtained a warrant to search Reeves' home for methamphetamine and related paraphernalia. During the search, officers found one and one-half pounds of methamphetamine, plus evidence of manufacturing and distribution.

Probable cause for the warrant was based primarily on information from a confidential reliable informant (CRI). The affiant stated he believed the informant was reliable because he "had provided information which led to three search warrants, with narcotic seizures each time, and three arrests."

The affiant did not, however, mention that the informant had previously been charged with providing false information to a law enforcement officer. According to the affiant, he did not include this information because it was his department's policy "not to include background information on a CRI so as 'to maintain a vagueness.' i.e., to protect his/her identity."

### **DISCUSSION**

Reeves argued the evidence must be suppressed because the affiant intentionally or recklessly omitted material information pertaining to the CRI's reliability.

A search warrant will not be invalidated merely because the defense is able to prove that some information in the affidavit was incorrect [\(i\)](#). Instead, the defense must establish that the affiant intentionally or recklessly, (1) included false information that was necessary to establish probable cause, or (2) omitted information that would have negated probable cause [\(ii\)](#).

Reeves contended that the information omitted by the affiant-that the CRI had been arrested for providing false information to a law enforcement officer-was material information that would have negated probable cause. The court agreed the information was material, noting, "Any crime involving dishonesty necessarily has an adverse effect on an informant's credibility."

The court disagreed, however, that probable cause for the warrant would have been negated if this information had been included. This is because there was a sufficient amount of information in the affidavit which *supported* the CRI's reliability; specifically, his track record for providing reliable information. Said the court, "We hold that these facts are sufficient to outweigh the doubts about the informant's credibility raised by the history of criminal conduct involving dishonesty."

Consequently, the court ruled the search of Reeves' home was lawful.

## DA's COMMENT

*Reeves* serves as a reminder that a search warrant affidavit based wholly or in large part on information from a CRI must include any information known to the affiant that tends to show the informant was not reliable. Adding such information to an affidavit will not necessarily destroy the informant's reliability because in many cases, such as *Reeves*, the affiant can establish the informant is reliable despite reliability or honesty problems in the past.

Affiants may, of course, be concerned that including information casting doubt on the informant's reliability may inadvertently reveal the informant's identity. The court in *Reeves* was aware of this concern, noting, "Although we recognize the importance of maintaining the confidentiality of police informants, we do not approve of the practice of excluding altogether an informant's relevant criminal history from an affidavit used to support a search warrant request, particularly when lesser measures will suffice."

What lesser measures are available to affiants? The court pointed out that "an informant's criminal history may be 'sanitized' by replacing clearly identifying details with a more general description of the relevant facts, so long as the material essence remains." In addition, an affiant may request a "sealing order" which requires that all or part of the affidavit be kept confidential [\(iii\)](#).

In any event, the court emphasized that "courts should have access to all available relevant information to aid them in the determination of probable cause."

(i) See *Burke v. Superior Court* (1974) 39 Cal.App.3d 28, 35; *People v. Schmidt* (1978) 83 Cal.App.3d 968, 975; *People v. Barrett* (1969) 2 Cal.App.3d 142, 148.

(ii) See *Franks v. Delaware* (1978) 438 US 154; *People v. Rochen* (1988) 203 Cal.App.3d 684, 689-90; *People v. Wilson* (1986) 182 Cal.App.3d 742, 747-8; *People v. Aston* (1985) 39 Cal.3d 481, 497-8. **ALSO SEE** *Maryland v. Garrison* (1987) 480 US 79, 85 ["The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate."].

(iii) See *People v. Hobbs* (1994) 7 Cal.4th 948, 963, 971; *People v. Sanchez* (1972) 24 Cal.App.3d 664, 674, 678; *Swanson v. Superior Court* (1989) 211 Cal.App.3d 332, 339; *People v. Greenstreet* (1990) 218 Cal.App.3d 1516.