

## ISSUES

Was there probable cause for a warrant to search the home of a marijuana seller? If not, should the warrant be upheld under the good faith rule?

## FACTS

In September of 2001, a confidential informant notified a Pasadena PD narcotics officer that Ricky Hulland was selling marijuana. The informant, who had been proven reliable in the past, also said the Hulland lived in a certain apartment on Crenshaw Boulevard in Los Angeles, and that he drove a green Mercedes. DMV records showed that Hulland had listed the Crenshaw address as his residence. A separate DMV report showed that a Mercedes was registered to a “Ricky Holland” at a home on Don Ricardo Drive. The officer concluded that Hulland and Holland were the same person and that Hulland lived at both addresses.

Later in September, the informant made a controlled buy from Hulland of nearly one pound of marijuana. The buy occurred in a parking lot in Pasadena. In October, officers conducted surveillance of both residences. They saw Hulland at the Crenshaw Avenue apartment but not at the house on Don Ricardo Drive. Officers also attempted to contact Hulland on his cell phone and pager, but both numbers had been disconnected.

On November 15<sup>th</sup>, the narcotics officer applied for a warrant to search the two homes, the Mercedes, and the car Hulland had driven to the parking lot in Pasadena. In the affidavit, the officer related the tip from the informant and the controlled buy; but he did not say exactly how much marijuana Hulland had sold, other than it was a “large quantity.” He also said that the U.S. Postal Inspectors Office told him that “Ricky Hulland” was currently receiving mail at both addresses. The officer concluded that, based on his training and experience, “given the large quantity of marijuana that Hulland sold and transported, it is my belief that he continues to traffic in large quantity narcotics.”

The warrant was issued and executed later that day. During a search of the Crenshaw Boulevard apartment, officers found approximately 110 grams of marijuana, 10.97 grams of rock cocaine, and \$3,800 in cash. When they executed the warrant at the home on Don Ricardo Drive, they discovered that Hulland did not live there—that Ricky Hulland and Ricky Holland were not the same person.

## DISCUSSION

Hulland argued the warrant was invalid because the affidavit did not demonstrate probable cause to believe that marijuana was currently inside his home. The People responded that, even if probable cause did not exist, the warrant should be upheld under the good faith rule.

### Probable cause

An affidavit in support of a search warrant must demonstrate, among other things, that there is a fair probability that the listed evidence is *now* located at the place to be searched.<sup>1</sup> In the absence of direct evidence, such a fair probability may be based on reasonable inference. The most common inferences are as follows:

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<sup>1</sup> See *People v. Cleland* (1990) 225 Cal.App.3d 388, 393; *People v. McDaniels* (1994) 21 Cal.App.4<sup>th</sup> 1560, 1564; *Rodriguez v. Superior Court* (1988) 199 Cal.App.3d 1453, 1464.

Nature of the evidence: It may be reasonable to infer that some types of evidence will be kept at one location for relatively long periods of time (e.g., guns, clothing, tools, child pornography, financial records, growing crop of marijuana) while other types of evidence will usually be sold or used up quickly (e.g., drugs, money).<sup>2</sup>

Ongoing crimes: When the premises to be searched are being used in connection with an ongoing criminal operation (e.g., drug sales, fencing), it may be reasonable to believe that evidence will be kept there much longer than when the crime was an isolated occurrence.<sup>3</sup>

“Fresh” information: It may be reasonable to infer that evidence is now located at the place to be searched if probable cause was based on “fresh” information; i.e., information about recent events.<sup>4</sup> On the other hand, an affidavit based on old or “stale” information is less apt to establish probable cause unless the affidavit provides reason to believe the information is still current.<sup>5</sup>

The first inference did not help the officer in *Hulland* because illegal drugs are used or sold quickly. The second inference might have helped if there was evidence that Hulland was in the business of selling marijuana. But the court ruled that the single sale of marijuana was inadequate. And although Hulland sold a fairly large quantity of it, the court pointed out that the affidavit “did not specify the amount of drugs that had been purchased.” Said the court, [N]othing about the nature of the transaction here supports an inference that Hulland continued to sell marijuana until the time of the search . . . .<sup>6</sup>

Finally, it was apparent that the information contained in the affidavit was “stale.” Although the officer testified the delay was needed to confirm that Hulland lived in both residences, the court ruled this was insufficient justification for a 52-day delay.<sup>7</sup>

#### Good faith

Under the good faith rule, evidence obtained during execution of a search warrant later declared invalid will be admissible if it was objectively reasonable for officers to believe the warrant complied with the law. This is because it is usually reasonable for officers to rely on a judge’s determination that a search warrant is valid.<sup>8</sup> If, however, a

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<sup>2</sup> See *Alexander v. Superior Court* (1973) 9 Cal.3d 387, 393; *People v. Hernandez* (1974) 43 Cal.App.3d 581, 586; *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430, 433; *People v. Mayer* (1987) 188 Cal.App.3d 1101, 1119.

<sup>3</sup> See *People v. Mikesell* (1996) 46 Cal.App.4th 1711; *People v. Gibson* (2001) 90 Cal.App.4th 371, 380-1; *People v. Hepner* (1994) 21 Cal.App.4th 761, 782-3.

<sup>4</sup> See *People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1564; *People v. Mesa* (1975) 14 Cal.3d 466, 470. See *People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1564; *People v. Mesa* (1975) 14 Cal.3d 466, 470].

<sup>5</sup> See *People v. Hernandez* (1974) 43 Cal.App.3d 581, 586; *People v. Brown* (1985) 166 Cal.App.3d 1166, 1169; *Alexander v. Superior Court* (1973) 9 Cal.3d 387, 393; *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430, 434; *People v. Gibson* (2001) 90 Cal.App.4th 371, 380.

<sup>6</sup> NOTE: The court failed to mention that, before the controlled buy, the CRI had said the Hulland was selling marijuana. Thus, the court was wrong when it said “there is no indication that Hulland ever sold marijuana prior to or subsequent to the controlled buy.”

<sup>7</sup> NOTE: The court also pointed out that there was nothing in the affidavit to demonstrate the Hulland was keeping marijuana inside his home. In most cases, it is reasonable for officers to infer that drug dealers keep a supply inside their homes. See *People v. Pressey* (2002) 102 Cal.App.4th 1178, 1183; *People v. Bennett* (1998) 17 Cal.4th 373, 388; *People v. Kraft* (2000) 23 Cal.4th 978, 1049. In *Hulland*, however, the court, having noted that the drug sale occurred in a parking lot in Los Angeles, concluded there was “nothing about the nature of the transaction here supports an inference that Hulland . . . would be keeping the drugs at his residence.”

<sup>8</sup> See *United States v. Leon* (1984) 468 US 897, 922; *Massachusetts v. Sheppard* (1984) 468 US 981, 989-90.

reasonably well-trained officer would have known the warrant was invalid—despite the judge having signed it—the good faith rule will not apply.

In *Hulland*, the court ruled the good faith rule did not apply because, for the reasons noted earlier, a “reasonably well-trained officer would have recognized that probable cause in this case had grown stale by the time the warrant was sought and executed.” Consequently, the court ruled the good faith rule did not apply, and the marijuana was suppressed.

#### DA’s COMMENT

The court obviously believed that the investigation in this case was substandard. As noted, the information was stale, there was no valid reason for waiting so long to seek a warrant, the affidavit failed to disclose how much marijuana Hulland sold during the controlled buy, and the information that “Ricky Hulland” was receiving mail at both residences was questionable.

In addition, the officer testified that the informant had told him that Hulland drove the green Mercedes that was registered to the home on Don Ricardo Drive. But, said the court, the officer failed “to explain the discrepancy between the CRI’s purported representation that Hulland drove the green Mercedes identified in the search warrant and the fact that the vehicle was actually registered to the individual named *Holland* who resided at the Don Ricardo Drive address and that no green Mercedes was ever linked to Hulland.”