

## ISSUE

If a suspect is arrested for possession of two types of drugs for personal use, and the suspect appears to be under the influence of both drugs, is it reasonable for a magistrate to conclude there is probable cause to search the suspect's house for more drugs?

## FACTS

At about 4:30 P.M. two Napa police narcotics officers in an unmarked car saw Pressey driving "erratically." At their request, an officer in a patrol car made the traffic stop. As the officers spoke with Pressey they "detected a strong odor of marijuana" and, apparently based on his driving and their observations of Pressey and his conduct, they believed he was "under the influence of marijuana and a central nervous system stimulant." They then arrested him, presumably for possession of drugs and driving under the influence of drugs.

During a search incident to the arrest, the officers found 1.5 grams of methamphetamine in a glass vial inside a fanny pack Pressey was wearing, and a marijuana cigarette in an ashtray in the car. The officers immediately sought a warrant to search Pressey's home in Napa for more drugs and paraphernalia. The affidavit in support of the warrant was based on the following:

- The affiant had been a police officer for five years, he had received training in drug enforcement, he had worked the last two and a half years as an undercover narcotics officer.
- Based on his training and experience, and based on information he received from other experienced officers, the affiant believed that people who use methamphetamine and marijuana normally have more of it inside their homes. In other words, they don't usually walk around with their entire supply in their possession. The affiant also explained that one of the reasons they keep a supply at home is "so they always have a source to satisfy their addition or habit."

Based on this information, the magistrate issued the warrant. During a search of Pressey's home, officers found 10.3 grams of methamphetamine, 20.2 grams of marijuana packaged for sale in small plastic baggies, scales, \$1,335 in cash, and "various items of drug paraphernalia."

## DISCUSSION

Pressey contended that the information contained in the affidavit did not constitute probable cause to search his home. The court agreed. Although it acknowledged that it is usually reasonable for narcotics officers and magistrates to believe that drug *sellers* have a supply of drugs inside their homes, it is not reasonable for them to believe that suspects who are in possession of two kinds of drugs, and are under the influence of both drugs, will have additional drugs inside their homes.

The court added that it was not ruling that probable cause to search a suspect's home could never exist based on straight possession. "This does not mean," said the court, "that probable cause to search a home could never arise from the particularized suspicions of an experienced narcotics officer, or the circumstances of an arrest for drug possession, only that illegal drug use does not necessarily provide probable cause to search the user's residence, and that such cases must be decided on their own facts."

Although the court ruled that Pressey's conviction should be affirmed under the good faith rule because "the issue of probable cause was 'debatable' when the warrant herein

was sought,” it stated that because of its decision, the good faith rule would not be available in such cases in the future.

#### DA’s COMMENT

This is a troubling decision. Although we disagree with the court’s conclusion that probable cause did not exist, we understand that reasonable minds may differ in evaluating probable cause. Instead, our concern here is the manner in which the court analyzed probable cause. Or, more accurately, failed to analyze it.

Specifically, the court failed to follow the nationwide standard for reviewing search warrant affidavits. That standard was summarized by the court in *People v. Tuadles* as follows:

Our task, as a reviewing court, is to determine whether the magistrate had a substantial basis for concluding that a search warrant would uncover evidence of wrongdoing. All conflicts must be resolved in favor of the respondent, and *all legitimate and reasonable inferences indulged* to uphold the findings of the magistrate if possible. Moreover, doubtful or marginal cases should be resolved in favor of upholding the warrant.<sup>1</sup>

Although the courts must give “great deference” to a magistrate’s conclusion that a search warrant affidavit was sufficient, and must indulge in all reasonable inferences to uphold the warrant,<sup>2</sup> the *Pressey* court did neither. Not only did the court fail to indulge in all legitimate and reasonable inferences, it did not even mention the inferences the magistrate might have made.

This was, of course, a crucial omission because, (1) courts are required to do this, and (2) the information contained in the affidavit reveals several circumstances and inferences that would have supported the magistrate’s determination. For example:

- (1) Pressey was in possession of two different types of drugs.
- (2) Pressey was under the influence of both drugs when he was arrested.
- (3) People who ingest combinations of illegal drugs at the same time (people who need combinations of drugs to get the desired effect) are habitual users.
- (4) Habitual users of drugs do not ordinarily carry their entire supply of drugs in their possession.
- (5) There is a fair probability that habitual users of drugs keep some of their drugs and paraphernalia inside their homes. See *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1206 [(A) number of California cases have recognized that from the nature of the crimes and the items sought, a magistrate can reasonably conclude that a suspect’s residence is a logical place to look for specific incriminating items.].

It appears, therefore, the *Pressey* court’s failure to follow the proper procedure in analyzing the search warrant affidavit may have resulted in an erroneous probable cause determination.

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<sup>1</sup> (1992) 7 Cal.App.4<sup>th</sup> 1777, 1784. Quoting from *Illinois v. Gates* (1983) 462 US 213, 236. Emphasis added. ALSO SEE *People v. Weiss* (1999) 20 Cal.4<sup>th</sup> 1073, 1082-3 and *People v. Superior Court (Corona)* (1981) 30 Cal.3d 193, 206-7 which provides an excellent example of how the courts should evaluate affidavits.

<sup>2</sup> See *Illinois v. Gates* (1983) 462 US 213, 236; *People v. Weiss* (1999) 20 Cal.4<sup>th</sup> 1073-4.