IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND RECOMMENDATION

v.

04-CR-053-S

ANGELA K. TRUDELLE,

Defendant.

REPORT

The government has indicted defendant Angela Trudelle on a charge of conspiring to traffick methamphetamine. Before the court are Trudelle's two remaining motions to quash search warrants. First, Trudelle seeks to quash two intertwined state warrants issued on July 17, 2002 to search her car and her apartment. *See* dkt. 30. Trudelle claims that these warrants were not supported by probable cause. I conclude that the warrant for Trudelle's car is invalid and unsalvageable, but that the warrant for her apartment is valid, if not because of probable cause, then because of the good faith doctrine of *United States v. Leon,* 468 U.S. 926 (1984).

Second, Trudelle seeks to quash the October 7, 2002 search warrant for her apartment. *See* dkt. 23. Trudelle claims that the warrant affiant intentionally omitted material facts that would have negated the court's probable cause finding. In response to

Trudelle's *Franks* challenge, the government agreed to supplement the warrant affidavit with the missing facts. Having considered the modified affidavit, I conclude that there still is probable cause to support the warrant; therefore, I am recommending that this court deny Trudelle's motion to quash.

I. The July 17 Warrants

On July 17, 2002, Washburn County Investigator Austin Parenteau applied for and obtained from the Washburn County Court two warrants, one to search Trudelle's 1988 Cadillac de Ville, the other to search Trudelle's apartment at 1400 Pine Drive in Spooner. In support of the search warrant application for the Cadillac, Investigator Parenteau submitted the entire incident report prepared on July 16, 2002 by Washburn County Sheriff's Sergeant Dennis David. In support of the search warrant application for Trudelle's apartment, Investigator Parenteau submitted the same report by Sergeant Dennis along with an additional three paragraphs of information. Both warrant affidavits (and the incorporated reports) are attached to dkt. 30 in this court's file and they speak for themselves. For the convenience of the reader, here is a synopsis:

A) Warrant for Trudelle's Car

Investigator Parenteau sought a warrant to search Trudelle's Cadillac for a boilerplate list of contraband, including marijuana, scales, paraphernalia, money, drug records, and

computers. Support for this warrant was based entirely on Sergeant Dennis's report, which he began writing on July 16, 2002, and apparently finished on July 17, 2002 around noon. Sergeant Dennis reported that on July 16 he received an "attempt to locate" request from police in Brainerd, Minnesota, where a suspect in a drug bust had driven away in a 1996 black Lincoln and was believed to be headed toward Spooner, Wisconsin.

Around 11:00 p.m. that evening, Spooner police located the empty Lincoln in the parking lot of the Trudelle's apartment complex. Sergeant Dennis went to surveil; eventually he saw a woman leave the apartment building and drive off in the Lincoln. Sergeant Dennis performed a pretextual traffic stop and identified the driver as Monica McCarty. Sergeant Dennis quickly learned that there was an arrest warrant for McCarty out of Polk County and that McCarty used two other aliases.

Sergeant Dennis arrested McCarty and recovered from her person during a patdown search approximately $3,700 cash in two rubber-banded bundles. McCarty provided conflicting explanations for why she had the money. Sergeant Dennis then searched McCarty's Lincoln, finding about 60 grams of methamphetamine in the passenger compartment and two one-pound bundles of marijuana in the trunk.

During post-arrest interrogation, McCarty admitted that she had been to Brainerd, Minnesota that day and that the marijuana and methamphetamine seized from the car were hers. McCarty stated that she had gone to Angela Trudelle's apartment and picked up Angela and someone named Michelle and driven to Rice Lake, later returning to Angela's apartment.

McCarty reported that she had sold $1,000 worth of marijuana to Trudelle, leaving one bundle of marijuana at Trudelle's apartment. (There was not a separate $1000 bundle in the cash recovered from McCarty).

Sergeant Dennis decided to apply for a search warrant and assigned deputies to seal Trudelle's apartment. But while he was preparing his warrant application, Sergeant Dennis learned that his deputies had screwed up: they had stopped and searched a vehicle containing people who had left Trudelle's apartment, then inexplicably had allowed those same people to return to Trudelle's apartment and enter it unchaperoned. Those people remained in Trudelle's apartment "for a period of time" then left, unchallenged. Deputies sheepishly reported that a man named Derrik Keenan "had been around the Trudelle vehicle outside of the residence and was also allowed to leave." Sergeant Dennis feared that these people had given Trudelle the heads-up. When he reported this information to the district attorney, they stopped working on the search warrant application.

That was the sum and total of the evidence offered to search Trudelle's Cadillac. Absent from Investigator Parenteau's affidavit is any evidence that Trudelle owned a 1988 Cadillac deVille, or any evidence or expert opinions that could have led the court to conclude that contraband would be found in this car.

B. Trudelle's Apartment

In support of the warrant application for Trudelle's apartment, Investigator Parenteau incorporated the same report by Sergeant Dennis synposized in the previous section, but added the following information:

At half past noon on the date of the warrant application (July 17, 2002) a "confidential and reliable informant" advised Sergeant Dennis that the informant had a key to Trudelle's apartment and was allowed to come and go from the apartment with Trudelle's permission. When the informant entered Trudelle's apartment at approximately 2:00 a.m. earlier that same morning, the informant observed approximately $9,000 in cash and drug paraphernalia on the living room floor. According to the informant, he/she was now scared of Trudelle, because Trudelle had contacted the informant to advise that "if the $9,000 was not returned Trudelle would kill [the] confidential informant."

Finally, the sheriff's department had received a teletype from Barron County requesting the arrest of Trudelle on a disorderly conduct charge from an incident in a Rice Lake motel on July 17, 2002. According to Investigator Parenteau, "Trudelle's vehicle" (not described here, either) was in the parking lot of her apartment, but nobody answered the door of the apartment when an officer knocked and announced himself.

Investigator Parenteau used this information to seek to search for the same boilerplated items specified in the separate warrant for Trudelle's car. It is worth noting that Investigator Parenteau did *not* seek to search Trudelle's apartment for Trudelle personally.

II. The October 7, 2002 Warrant

On October 7, 2002, the chief of police in Spooner, Wisconsin, Steven C. Blaeser, sought and obtained from the Washburn County Circuit Court another warrant to search Trudelle's apartment. To establish probable cause for the search, Chief Blaeser provided the following written statement:

> The facts tending to establish the grounds for issuance of this search warrant are contained in the attached written statement of Michael Francis, whom your affiant believes to be accurate and reliable because he is a private citizen and is concerned for the health and welfare of his daughter.
>
> Mr. Francis is the father of Angela Trudelle's daughter. He was at the above-referenced apartment to pick up his daughter who was visiting at Ms. Trudelle's apartment. While in the apartment, Mr Francis noticed items of drug paraphernalia alerting him to the fact that Ms. Trudelle is involved with drugs. Subsequently, Mr. Francis notified the Spooner Police Department.

Chief Blaeser attached to his affidavit Michael Francis's handwritten statement in which Francis reported:

> I was at Angie's apartment. I saw needles and little plastic bags with drugs in them. I confronted her about it because she said she had quit. I saw marijuana pipes, three crack pipes, needles with dope in them, spoons with dope on them in her cupboards where her dishes were. The dope was in her purse. She put the needles in her bathroom. There was spoons three needles in her bedroom also. We got into a fight and struggled around. She ran out the door and in her car and left. There were many little baggies on her table. I don't remember everything I saw because it was all over the place. The apartment was filled with it after

> I started looking [*around*] and I [*realized*] this and confronted her.

See attachments to motion to suppress, dkt. 23.

In response to Trudelle's *Franks* challenge to alleged material omissions from this affidavit, the government agreed to supplement the search warrant affidavit by including Chief Blaeser's written report regarding his first contact with Francis that day. That report reads as follows:

> A call to the WBSO at 10:27 a.m. stated that a male subject was chasing Angela Trudelle through the Pine Apt. Complex, and then chased her in a dark colored truck while she was in her car. When I arrived on scene, I saw Investigator Richter and Deputy Frey talking with a male subject in the parking lot of the Pine Apts. This male was identified as Michael Francis, who is the father of a female child Angela and Mike had together, as well as an old boyfriend.
>
> Michael told us that he had brought the child to see Angela at the Apt. as Angela had not seen their daughter for awhile. Michael had noticed some needles and little plastic bags with drugs in them. Michael confronted her about the drugs and she had told him that she was not using any more. Michael told us he saw marijuana pipes and cigarette papers, as well as needles with dope in them. He also states that he saw drugs in her purse. Mike also saw needles in the bathroom.
>
> Mike then said that when he confronted her about this, Angela got mad and hit him. Mike says he grabbed her arms, and sat her down on the couch. There was a struggle. Mike says she then ran out the door, got in her car and left.
>
> Angela not being there, and with this information, I instructed Michael to go to the police department and write out a statement, which he did. At that point we decided that a search warrant of the apartment was in order.

See Id.

III. Applicable Law

Trudelle's challenges to each of these three warrants is that none of them established probable cause to search. If Trudelle is correct, then the next step ordinarily would be to apply the good faith doctrine to see if the searches nonetheless were reasonable. In this case, however, the good faith doctrine cannot be applied to the October 17, search warrant because we have added information to it as a result of Trudelle's *Franks* challenge. The relevant law follows:

A. Probable Cause

A court that is asked to issue a search warrant must determine if probable cause exists by making a practical, common-sense decision whether given all the circumstances, there exists a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Walker*, 237 F.3d 845, 850 (7th Cir. 2001), quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1982).

To uphold a challenged warrant, a reviewing court must find that the affidavit provided the issuing court with a substantial basis for determining the existence of probable cause. In the Seventh Circuit, this standard is interpreted to require review for clear error by the issuing court. Reviewing courts are not to invalidate a warrant by interpreting the affidavits in a hypertechnical rather than a common sense manner. *Id.*

Put another way, a court's determination of probable cause should be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the court reasonably could conclude that the items sought to be seized are associated with the crime and located in the place indicated. Doubtful cases should be resolved in favor of upholding the warrant. *United States v. Quintanilla*, 218 F.3d 674, 677 (7th Cir. 2000), quoting *United States v. Spry*, 190 F.3d 829, 835 (7th Cir. 1999), *cert. denied*, 528 U.S. 1130 (2000).

The Supreme Court has declined to define "probable cause" precisely, noting that it is a commonsense, nontechnical concept that deals with the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act. *Ornelas v. United States*, 517 U.S. 690, 695 (1996). Despite the lack of a firm definition, the Supreme Court tells us that probable cause to search exists

> where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.

Id. at 696, citations omitted. Probable cause is a fluid concept that derives its substantive content from the particular context in which the standard is being assessed. *Id.*, citations omitted.

"Probable cause requires only a probability or a substantial chance of criminal activity, not an actual showing of such activity." *United States v Roth*, 201 F.3d 888, 893 (7th

Cir. 2000), *quoting Illinois v. Gates*, 462 U.S. 213, 244 (1983); *see also United States v. Ramirez*, 112 F.3d 849, 851-52 (7th Cir. 1997)("all that is required for a lawful search is *probable* cause to believe that the search will turn up evidence or fruits of crime, not certainty that it will") (emphasis in original). Although people often use "probable" to mean "more likely than not," probable cause does not require a showing that an event is more than 50% likely. *See United States v. Garcia,* 179 F.3d 265, 269 (5th Cir. 1999); *see also Edmond v. Goldsmith*, 183 F.3d 659, 669 (7th Cir. 1999)(Easterbrook, J., dissenting) (probable cause exists somewhere below the 50% threshold).

In drug investigations, courts issuing search warrants are entitled to infer in a drug case that evidence likely will be found where the drug dealer lives. *See United States v. Koerth*, 312 F.3d 862, 870 (7th Cir. 2002); *United States v. McClellan*, 165 F.3d 535, 546 (7th Cir. 1999).

When police use informants to establish probable cause, the Seventh Circuit suggests that a court assess their credibility by considering four factors: (1) firsthand observation by the informant, (2) the degree of detail provided by the informant, (3) corroboration of the informant's information by the police, and (4) testimony by the informant at a probable cause hearing. *United States v. Walker*, 237 F.3d 845, 850 (7th Cir. 2001). In most cases, the affiant has not appeared before the court, so the fourth factor disappears immediately; however, no one factor is dispositive in the credibility analysis, and a deficiency in one may

be compensated by a strong showing of another. *United States v. Brack*, 188 F.3d 748, 756 (7th Cir. 1999).

If a search warrant affiant characterizes an informant as "reliable," he must support this claim with facts or the court will deem that informant "of unknown reliability." *Id.*; *see also United States v. Koerth*, 312 F.3d 862, 867 (7th Cir. 2002). But even statements from an informant of unknown reliability might establish probable cause if, under the totality of circumstances, a reasonable person might consider the statements worthy of credence. *Koerth*, 312 F.3d at 867-68. But conclusory statements without corroboration do not establish probable cause. *Id.* ("To uphold the state judge's ruling in this case would be to ratify the search of a home based on the use of essentially conclusory statements without corroboration. . . . Due to the lack of the necessary quantum of reliable information, we hold that the warrant was invalid.")

It also is important for the police to reveal any potential biases of their informant. In *United States v. Peck*, 317 F.3d 754 (7th Cir. 2003), the court found that there was no probable cause to support a state warrant issued solely on the sworn but uncorroborated testimony of a confidential informant who was mad at the defendant because he was not paying for diapers for their child, and who claimed that within the past two days, the defendant had shown her large amounts of substances he claimed to be crack and marijuana that he intended to sell, and which the CI recognized as crack and marijuana from her

personal experience. The court still upheld the warrant pursuant to *Leon's* good faith doctrine, noting that

> Most CIs have a bias against the defendant or something to gain from giving their statement. The fact that the police used [the CI's] statement even when they knew she was biased was not unreasonable. In fact, her relationship with Peck may have made her story more credible because, as someone close to Peck, she was more likely to know that drugs were in the house other than someone not close to Peck.

317 F3d at 758.

When informants start pointing fingers as a result of their own arrest, courts must weigh their allegations carefully. On the one hand, an informant's admission of personal involvement in criminal activity is presumed reliable. *See, e.g.,* F.R.Ev. 804(b)(3); *United States v. Harris*, 403 U.S. 573, 583-84 (1971); *United States v. Johnson*, 289 F.3d 1034, 1039-40 (7th Cir. 2002) (collecting recent cases). On the other hand,

> A person arrested in incriminating circumstances has a strong incentive to shift blame or downplay his own role in comparison with that of others, in hopes of receiving a shorter sentence and leniency in exchange for cooperation.

Williamson v. United States, 512 U.S. 594, 607-08 (1994)(Ginsberg, Blackmun Stevens and Souter, JJ. concurring in part and concurring in the judgment). Such statements are inherently suspect. *Id.*; *see also id.* at 601 (opinion of the court); *United States v. Bernal-Obeso*, 989 F.2d 331, 333-34 (9th Cir. 1993).

Which is not to say that informants don't play a valuable role in helping the police root out crime, *id.* at 334-35, but their value depends on the police and the courts ensuring

the integrity of the system by closely scrutinizing them and their claims. *Id; see also United States v. Leidner*, 99 F.3d 1423, 1430 (7th Cir. 1996)("Even if we entertain some doubt as to an informant's motives, his explicit and detailed description of the alleged wrongdoing, along with a statement that the event was observed first hand, entitles his tip to greater weight than might otherwise be the case,"quoting *Illinois v. Gates*, 462 U.S. at 234).

In *United States v. Peck*, 317 F.3d 754, the court found that there was no probable cause to support a state warrant issued solely on the sworn but uncorroborated testimony of a confidential informant who had diaper payment issues with Peck, and who claimed that within the past two days, Peck had shown her large amounts of substances he claimed to be crack and marijuana that he intended to sell, and which the CI recognized as crack and marijuana from her personal experience. The court found that there was no probable cause because the CI had failed to provide specific details such as where the drugs were hidden, the total amount possessed, the frequency with which Peck sold the drugs, how the CI knew that these really were drugs, and because she had not made statements against her own interest (for instance by admitting that she knew what crack looked like because she used to sell it). *Id*. at 756. The court also was troubled because even though the CI claimed to be the defendant's girlfriend, she could not describe him physically, except that he was a "black male." *Id.* Finally, the police failed to corroborate these statements in any fashion except to run a criminal record check showing a prior drug arrest. *Id.* at 757. Even so, the court

upheld the warrant pursuant to the *Leon* good faith doctrine, finding that although the warrant was bare bones, it was not so lacking as to make it facially deficient. *Id.*

In *United States v. Reddrick*, 90 F.3d, 1276 (7th Cir. 1996) the court was troubled by the sparse evidence provided by the informant. There, the informant provided a first hand account of seeing drugs at the house to be searched, but provided little detail except for the quantity. There was no corroboration of the informant's information and the informant had not appeared for a demeanor check before the issuing judge. The court concluded that "in these circumstances, the information from the informant alone could not have supported the issuance of a search warrant." *Id.* at 1280-81. What saved the warrant was that the informant had made three additional buys of illegal drugs from the defendant. This was enough to put the warrant over the top. *Id.*

In *United States v. Jones*, 208 F.3d 603 (7th Cir. 2000), an informant told a police officer that she had gone to defendant's house to purchase marijuana the day before. She claimed to have bought a total of 12 pounds from defendant on three previous occasions; this time, she claimed to have paid $1100 to square up a "front" and to have received a new pound of marijuana on a front. The informant told the police that she had seen another pound of marijuana on the defendant's kitchen table and that the defendant told her he kept a gun in the house to protect his drugs. The defendant also claimed to have been in jail in the past. The police corroborated this information by driving by the house with the informant, then checking the license plates of cars parked there, one of which turned out to

be registered to the defendant. The police also ran a records check on the defendant and found that he had 27 arrests with 8 convictions, five for dangerous drugs, two for armed robbery. The officers presented this information to the court in an affidavit *and* presented the informant to the court to swear to her affidavit in person. *Id.* at 606. The court upheld the search warrant against the defendant's probable cause challenge because the informant had provided detailed first hand information and had made statements against her penal interest, the informant had appeared personally before the court for a credibility review, and the police had corroborated as much of the informant's information as they could. The court decided that "all of this, taken together, establishes the requisite indicia of reliability." *Id.* at 609.

B. Nexus Between Contraband and Place to be Searched

The Fourth Amendment's particularity clause requires the government to limit the scope of its searches to the places in which there is probable cause to believe that evidence may be found. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). The "particular place" half of the equation often is overlooked, but it is important:

> The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought.

U.S. v. Reddrick, 90 F.3d at 1281, *quoting Zurcher v. Stanford Daily*, 436 547, 556 (1978).

It is up to the police to make a sufficient showing that the described items are to be found in a particular place. *United States v. Nafzger*, 965 F.2d 213, 214 (7th Cir. 1992). Put another way, there is no probable cause to search a location absent information linking the illegal activity to the place to be searched. *See United States v. Johnson*, 289 F.3d at 1039, *citing United States v. Danhauer*, 229 F.3d 1002, 1006 (10th Cir. 2000).

As noted in the previous section, this circuit operates under the presumption that "in the case of drug dealers, evidence is likely to be found where the dealers live," but the parties have offered no cases (and I haven't found any) that have extended this presumption to a purported drug dealer's unoccupied car. *Cf. United States v. Brown*, 64 F.3d 1083, 1088 (7th Cir.1995)(government's serpentine justification of searches was unpersuasive absent opinion testimony or other evidence that this was a common practice amongst drug dealers).

C. Searches for People

When police have an arrest warrant or probable cause to arrest a person, in the absence of exigent circumstances they cannot enter that person's home to arrest her without first obtaining a search warrant allowing entry into the home to locate her. *Groh v. Ramirez*, ___ U.S. ___, 124 S.Ct. 1284, 1290-91 (2004); *Payton v. New York,*445 U.S. 573, 586 (1980)*; Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984); *United States v. Marshall*, 157 F.3d 477, 481-82 (7th Cir. 1998).

D. The Good Faith Doctrine

In *United States v. Leon,* 468 U.S. 926 (1984) the Court held that:

> In a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.
>
> * * *
>
> We have . . . concluded that the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination. Deference to the magistrate, however, is not boundless.

Having so stated, the Court then held that

> In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.

Id. at 926.

Such determinations must be made on a case-by-case basis with suppression ordered "only in those unusual cases in which exclusion will further the purpose of the exclusionary rule." 468 U.S. at 918. When the officer's reliance on the warrant is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule because it is

> painfully apparent that the officer is acting as a reasonable officer would and should act in similar circumstances. . . . This is particularly true . . . when an officer acting with objective good faith has obtained a search warrant from a judge . . . and acted within its scope. . . . Once the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law. Penalizing the officer for the [court's] error rather than his own cannot logically contribute to the deterrence of Fourth Amendment violations.

Id. at 920-21, internal quotations omitted.

The Court noted the types of circumstances that would tend to show a lack of objective good faith reliance on a warrant, including reliance on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or reliance on a warrant so facially deficient that the officer could not reasonably presume it to be valid. *Id*. at 923. The Court observed that "when officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time." *Id*. at 924. *See also Arizona v. Evans*, 514 U.S. 1, 11-12 (1995)(reaffirming the Supreme Court's reluctance to suppress evidence obtained in good faith but in violation of a defendant's Fourth Amendment rights).

E. The *Franks* Challenge to the October 7 Warrant

Trudelle asked this court to hold a *Franks* hearing on her motion to quash the October 7, 2002 search warrant, contending that Chief Blaeser had omitted material facts from his search warrant affidavit. To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing that: 1) the search warrant affidavit contained a false material statement or omitted a material fact; 2) the affiant omitted the material fact or made the false statement intentionally, or with reckless disregard for the truth; and 3) the false statement is necessary to support the finding of probable cause (or any material omissions would have affected the court's decision to issue the warrant). *See United States v. Marrow*, 272 F.3d 817, 821 (7th Cir. 2001). If a defendant makes this showing, then it is his burden at the hearing to establish these three points by a preponderance of the evidence;

if he does so, then the court must quash the search warrant. *Franks*, 438 U.S. at 577. A warrant quashed under *Franks* cannot be rescued by the good faith doctrine of *Leon*, 486 U.S. 897 (1984). *See United States v. Garey*, 329 F.3d 573, 577 (7th Cir. 2003) *citing Illinois v. Gates*, 462 U.S. 213, 263-64 (1983) (White, J., concurring).

In the instant case, the government does not concede that Trudelle has established bad faith or recklessness in their presentation of evidence in support of the October 17 warrant, but it has agreed to supplement the warrant affidavit with the material Trudelle wants added. So, this court will conduct a de novo review of the modified affidavit to determine whether it provides probable for the search.

IV. Analysis

A. The July 17 Warrant for Trudelle's Car

This warrant is invalid because of two avoidable but fatal blunders by the police: 1) they failed to establish that Trudelle actually owned the Cadillac deVille they wished to search; and 2) they failed to establish even the most frail evidentiary nexus between a purported drug dealer's contraband and her unoccupied automobile.

True, the report attached to the affidavit mentioned Trudelle's "car" in passing, and the *warrant* identified the deVille by VIN number and stated that Trudelle owned it, but this pivotal information was absent from the warrant application, so there is no evidence establishing this critical point. Even if the police had attended to this ministerial detail, they

had no evidence linking the deVille to the activities reported in their affidavit, and they neglected to put in even a one-sentence opinion by their affiant establishing that in his experience, drug dealers often stored contraband or other relevant evidence in their cars when they weren't in them. Because a reasonable person could argue both sides of this proposition, the issuing court could not simply assume that Trudelle's car–if she actually owned one–contained seizable evidence.

The good faith doctrine cannot overcome these glaring facial deficiencies because they are so fundamental to probable cause. There was no evidence whatsoever that Trudelle owned the targeted car, or that evidence likely would be found in it. Apparently everyone was asleep at the switch on these mistakes, because they sneaked past both the police and the judge. After re-reading their application and slapping themselves on their foreheads, the police could not reasonably presume that the warrant for Trudelle's car was valid. Trudelle is entitled to suppression of this evidence.

B. The July 17 Warrant for Trudelle's Apartment

There was probable cause to support the July 17 warrant for Trudelle's apartment. Trudelle does a nice job of deconstructing the two main sources of information (McCarty and the unnamed informant), but when the snitches are considered in tandem, along with what little independent corroboration the police attempted on their own, the *gestalt* of the situation surpasses the probable cause threshold.

McCarty, having been arrested with lots of cash and lots of drugs, immediately after leaving Trudelle's apartment on July 16, had a huge incentive to point fingers in order to curry favor with the police. But rather than downplay her own role at Trudelle's expense, McCarty characterized herself as the muskie and Trudelle as the minnow: McCarty admitted that *she* had purchased a cornucopia of drugs up in Brainerd that afternoon (which dovetailed neatly with the "attempt to locate" request from Minnesota), and then had sold a portion of her goods to Trudelle for $1000, leaving one bundle of marijuana with Trudelle at Trudelle's apartment. In the balance the detailed, self-inculpatory nature of McCarty's admissions, coupled with the corroborative objective information known to the police, established probable cause to search.

But as Sergeant Dennis noted in his report, before he could obtain a warrant, Trudelle's associates learned that the police were sniffing around and obtained access to Trudelle's apartment. Sergeant Dennis decided to pull the plug.

But the next afternoon, an unnamed informant called Investigator Parenteau to provide new information. Although Parenteau called the informant "reliable," he didn't back this up, so the informant must be deemed of unknown reliability. That informant claimed to be sufficiently close to Trudelle to have obtained a key to her apartment and the right to unfettered entry. According to the informant, about 10 hours earlier (2:00 a.m. that same morning), s/he had let himself/herself into Trudelle's apartment and stumbled across $9000 cash and "drug paraphernalia" in the living room. The informant stole the cash, leading

Trudelle to call him/her with a death threat if s/he didn't return the money. Fearing for his/er life, the CI turned to the drug cops. The CI's admission of grand theft qualifies as a genuine statement against interest because it came out of the blue and appeared motivated by a genuine fear that Trudelle would retaliate. No rational person in the CI's position would implicate himself in a non-existent theft in order to seek protection from his victim.

But even so, by itself, the CI's information would not have supported a search warrant. There is no indication from the CI that the $9000 was related to drug trafficking, or that the CI knew what "drug paraphernalia" was. The critical import of the CI's phone call is that it surmounted Sergeant Dennis's staleness concerns: even after Trudelle's associates learned that the police were poking around, Trudelle had not bothered to sanitize her apartment. There still was a good chance that evidence of drug dealing–perhaps even the bundle of marijuana itself–still was there.

Therefore, under the totality of circumstances, there was probable cause to support this warrant. Even if it were a close call, the good faith doctrine would save the seized evidence from suppression. The police and the court each performed their functions appropriately, and there was sufficient evidence to support the warrant application that the officers could harbor an objectively reasonable belief in the existence of probable cause.

Finally, for what it's worth, the information in the warrant affidavit regarding an arrest warrant for Trudelle based on an incident in Rice Lake earlier that same day did nothing to establish probable cause to search Trudelle's apartment for the drug evidence

listed in the search warrant application. However, it probably could have supported entry to search for Trudelle herself to execute the arrest warrant. I can't think of any other reason to include this information in the affidavit, but since the police did not pursue this angle it becomes irrelevant to this court's analysis.

C. The October 7 Warrant for Trudelle's Apartment

Less than three months later police obtained another warrant to search Trudelle's apartment, this time based on the heated allegations of Michael Francis, her estranged and infuriated former boyfriend. As noted earlier in this report, the government has agreed to supplement the actual warrant application with an additional police report, and to eschew reliance on the good faith doctrine's safety net. So the only question before this court is whether the amplified affidavit provides probable cause for the search of Trudelle's apartment that day.

Trudelle argues that it does not, comparing her fact situation to that found insufficient in *United States v. Peck*, cited above. There are similarities: the informant in both cases is an estranged lover with an admitted axe to grind, and Francis does not provide a foundation for his proclaimed knowledge of what dope, crack pipes and marijuana look like. But there are substantial differences that distinguish the facts here from *Peck*.

Francis did not seek out the police for the purpose of getting Trudelle in trouble; to the contrary, he was engaged in unlawful self-help when the police caught up with him and

prevented him from continuing his pursuit and physical altercation with Trudelle. According to Francis, Trudelle struck the first blow after he confronted her about continued drug use. Maybe this was untrue and self-serving, but it didn't impeach Francis's claimed motive for confronting Trudelle, which is the salient probable cause question: is his report of the contents of Trudelle's apartment sufficiently believable and detailed to support a warrant?

First, his report was sufficiently believable. Accusations of leaving hazardous drug contraband scattered about in the presence of the child certainly qualifies as conduct likely to lead to a heated confrontation between estranged parents of a minor child. Could Francis have made up this story to get Trudelle in trouble? Sure, but if this simply had been a Machiavellian ploy to snitch on Trudelle, Francis blew it by acting the role of Hot-headed Dad caught pursuing Bad Mom rather than the calm-but-concerned father who proactively called the police to express shock and dismay at what Trudelle kept in her apartment. The fact that Francis stuck with his story and wrote it down in order to trigger a police search warrant application lent additional credibility to his account. If Francis had fabricated his story to get Trudelle in trouble, he risked having the whole charade blow up in his face by agreeing to take it to the next level. So the police were justified in believing that Francis was telling them the truth.

Francis's accusations also were sufficiently detailed. Although he did not explain how he knew what dope looked like, his quantitative and qualitative listing of what he recalled seeing and where he saw it were the recitations of a man who knew of what he spoke. Even

setting aside his generic mention of "drugs" and "dope,"Francis differentiated between crack pipes and marijuana pipes, then catalogued a pharmacy's worth of needles and spoons scattered at specified locations in the kitchen, bathroom and bedroom. Even if Francis was wrong about the pipes, his report of the needles was sufficient to establish probable cause. Could Trudelle just have been an insulin-dependent diabetic or other legitimate drug-injector? Perhaps, but it was unlikely, particularly given the number of needles lying in various locations, and the close proximity of spoons. (Obviously, the police had a lot of other background information about Trudelle's alleged involvement in drug trafficking that they could have included to provide context, but they didn't, so it's not part of today's analysis). Unlike the informant in *Peck*, Francis provided detailed information that established probable cause to support the search warrant.

The government is correct: the warrant was sufficient as written, and it remains sufficient (and perhaps is stronger) once the court includes Chief Blaeser's report. There is no basis to suppress the fruits of the October 17 search.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court:

1) Grant Angela Trudelle's motion to quash the July 17, 2002 search of her automobile;

1) Deny Angela Trudelle's motion to quash the July 17, 2002 search of her apartment; and

2) Deny Angela Trudelle's motion to quash the October 7, 2002 search of her apartment.

Entered this 6th day of July, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge