STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'clock _____M
CLERK, DISTRICT COURT

_____
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

CHARLES MICHAEL EASLEY,

Defendant.

Case No. **CRF 2010 10615**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Arthur Verharen, Deputy Prosecuting Attorney, lawyer for the Plaintiff.
Dennis Reuter, Coeur d'Alene, lawyer for Defendant Easley.

****

I. FACTUAL BACKGROUND.

Defendant Charles Michael Easley (Easley) states law enforcement obtained information about him and his wife Tammy Easley from an informant named Jamie Harris in March 2010. Motion to Suppress, p. 2. Easley claims: "The police did not provide any information to the magistrate who issued the search warrant about Ms. Harris' veracity." *Id.* Easley argues because the search warrant was issued based on Harris' statements, this Court should suppress all evidence seized during the execution of the search warrant. *Id.,* p. 3.

At the conclusion of a hearing held on June 3, 2010, Magistrate Judge Robert Caldwell found probable cause to issue a search warrant. Easley's Motion to Suppress was filed on August 26, 2010. A Motion to Transcribe the June 3, 2010, hearing was not

filed until September 23, 2010. Such transcript was filed on October 22, 2010. On October 28, 2010, Easley filed a "Supplement to Motion to Suppress." On November 2, 2010, the State filed its "Brief in Opposition to Motion to Suppress." Oral argument on Easley's Motion to Suppress was held on November 10, 2010.

II. STANDARD OF REVIEW.

In an appeal from an order denying a motion to suppress, the Court of Appeals will not disturb findings of fact supported by substantial evidence, but will freely review whether the trial court's determination as to whether constitutional requirements were satisfied in light of the facts. *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993); *State v. Atkinson,* 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz,* 144 Idaho 906, 908, 174 P.3d 876, 878 (Ct. App. 2007). When evaluating the trial court's determination of voluntariness of consent given, reviewing courts will not disturb such a decision on appeal if the trial court's finding is based on reasonable inferences to be drawn from the record. *State v. Post,* 98 Idaho 834, 837, 573 P.2d 153, 156 (1978). Whether consent to a search was voluntary is a question of fact and reviewing courts accept the factual findings of a trial court unless they are clearly erroneous. *State v. McCall,* 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). Findings are not deemed clearly erroneous when supported by substantial evidence in the record. *State v. Benson,* 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct.App. 1999).

III. ANALYSIS.

For a search warrant to be valid it must be supported by probable cause to believe evidence or fruits of a crime may be found in a particular place. *State v. Belden,* 148 Idaho 277, ____, 220 P.3d 1096, 1098 (Ct.App. 2009) (citing *State v. Josephson,* 123 Idaho 790, 792-93, 852 P.2d 1387, 1389-90 (1993)).

> The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of the persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2333 (1983). In *Belden,* the Idaho Court of Appeals wrote:

> Probable cause to search requires a nexus between criminal activity and the item to be seized, and a nexus between the item to be seized and the place to be searched. U.S. Const. amend. IV; *State v. Yager,* 139 Idaho 680, 686, 85 P.3d 656, 662 (2004). Most courts require that a nexus between the items to be seized and the place to be searched must be established by specific facts, and an officer's general conclusions are not enough. *Yager,* 139 Idaho at 686, 85 P.3d at 662. Although probable cause to believe that a person has committed a crime does not necessarily give rise to probable cause to search that person's home, magistrates are entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense. *State v. Molina,* 125 Idaho 637, 642, 873 P.2d 891, 896 (Ct.App. 1994).

148 Idaho 277, ___, 220 P.3d 1096, 1099. Importantly, in Idaho, "[w]here the information has come from a citizen informant, disclosure of the person's name and address will ordinarily be sufficient to show the informant's veracity and reliability." *State v. Chapman,* 146 Idaho 346, 351, 194 P.3d 550, 555 (Ct.App. 2008) (citing *State v. Zapata-Reyes,* 144 Idaho 703, 708, 169 P.3d 291, 296 (Ct.App. 2007); *Dunlap v. State,* 126 Idaho 901, 907, 894 P.2d 134, 140 (Ct.App. 1995)). It is the risk of accountability if allegations turn out to be fabricated which make a tipster's disclosure of identity adequate to show veracity and reliability. *Zapata-Reyes,* 144 Idaho 703, 707-08, 169 P.3d 291, 295-96.

The affidavit in support of the warrant application is not before the Court as part of the case file. However, as part of the State's Notice of Filing Factual Basis for I.R.E. 404(b) Evidence, the Narrative of Sgt. Hildebrandt's Report for incident no. 10-12201 is attached. The report sets forth that Hildebrandt was contacted by Idaho Department of Corrections (IDOC) Probation and Parole regarding a marijuana grow operation at the home of Jamie

Harris, a probationer from California seeking an interstate compact to Idaho. After Probation and Parole located five marijuana plants at Harris' home, Harris informed Hildebrandt she had been gifted the five plants from Easley. Harris also admitted to having purchased marijuana from Easley approximately six times. Hildebrandt testified before Judge Caldwell on June 3, 2010, and requested a search warrant for Easley's address. At that hearing, Hildebrandt testified to the same information contained in his incident report. Transcript, June 3, 2010, Search Warrant Hearing, p. 4, L. 4 – p. 8, L. 18.

In his motion to suppress, Easley argues "there was not information that established the reliability of the informant." Motion to Suppress, p. 1. Further, Easley argues there *may* have been material statements by Harris purposefully omitted by law enforcement in seeking the search warrant, but because counsel for Easley has been unable to locate Harris, this possibility has not been examined yet. *Id.,* p. 3. At the hearing on the motion to suppress, Easley had Hildebrandt subpoenaed, Hildebrandt was present in the courtroom, and Easley's attorney attempted to call Hildebrandt as the defendant's witness. The State objected. The Court inquired of the purpose of Hildebrandt's testimony at the motion to suppress. Counsel for Easley stated it was to see if there were any promises given by Hildebrandt to Harris, for the purpose of a possible *Franks* argument (*Franks v. Delaware,* 438 U.S. 154, 98 S.Ct. 2674 (1978), that there were promises that should have been brought to the magistrate's attention. The Court sustained the State's objection because as framed by Easley, Easley's motion to suppress is entirely a legal issue, that being whether Harris' information about Easley given to Hildebrandt needed corroboration, and if so, was such information corroborated. No additional facts or testimony can be given to this Court as all that is relevant is what was laid before Judge Caldwell on June 3, 2010. The Court also stated that even if there *is* a *Franks* issue, such has never been the factual focus of

Easley's motion to suppress. Finally, for the past three months, nothing has kept Easley's attorney from talking to Hildebrandt, to find out if there *is* a *Franks* issue. Even if it were the situation that Hildebrandt would not return Easley's counsel's phone calls (the Court has no indication that such is the case), there has been nothing in the past three months that has kept Easley from serving a subpoena on Hildebrandt and taking Hildebrandt's deposition. I.C.R. 15 and 17. It is certainly not the best use of judicial resources to allow Easley to conduct a discovery deposition of Hildebrandt at the November 10, 2010, hearing on Easley's motion to suppress, when all Easley had previously done is mention the *possibility* of a *Franks* issue in passing. It would not be fair to the State from a notice standpoint to allow such discovery to occur in open court. A hearing on Easley's motion to suppress, which motion raised only the credibility of the informant Harris, is not the place for such a *Franks* fishing expedition.

Here, Hildebrandt testified before Judge Caldwell that the Idaho Department of Corrections, Community Corrections (Probation and Parole) had identified Harris, that Hildebrandt had Harris date of birth (Tr. p. 4, Ll. 9-21), that he interviewed Harris (Tr. P. 5, L. 7 – p. 6, L. 2), that Harris agreed to take Hildebrandt to the Easley residence (Tr. P. 6, L. 20 – p. 7, L. 1), Hildebrandt testified the telephone number in the Spillman system for Easley was the same as the one given to Hildebrandt by Harris and identified by her as belonging to Easley (Tr. p. 7, Ll. 2-21), and the license plate of the vehicle parked at the home indentified as Easley's by Harris came back to Michael and Tammy Easley. *Id.*

Probable cause, as discussed above, requires a reasonable belief that evidence or fruits of a crime may be found in a specific location. There must be a nexus between: (1) criminal activity and the items(s) sought to be seized and (2) the item to be seized and the location to be searched. Here, the items sought were marijuana and other items used to

grow, sell, store, and traffic marijuana in derogation of Idaho Code Title 37. The items sought to be seized were believed to be in Easley's home. Both nexuses discussed in *Belden* were present here. And, despite Easley's counsel's inability to locate Harris, Harris' name and address were disclosed to Hildebrandt.

Easley has not provided this Court with evidence that Harris' veracity and reliability should be called into question. In his supplemental brief, Easley argues that Harris is a part of the "criminal milieu" and as such, not entitled to the same presumption of veracity as a citizen informant. Supplement to Motion to Suppress, p. 4, citing *State v. Chandler,* 140 Idaho 760, 763, 101 P.3d 704, 707 (Ct. App. 2004). "The information given to the police by Jamie Harris was not reliable in and of itself without more verification." *Id.,* p. 8. It is Easley's contention that mere police corroboration of innocuous factors, like his address and telephone number, is insufficient to meet the requirements that an informant's veracity be evaluated by the police. *Id.,* p. 3.

The State replies the information supplied by Harris was not vague, but that she informed the officers where in Easley's home the marijuana plants were located, what state of growth the plants were in, that Easley went by the name "Mike", and that she had previously purchased marijuana from Easley. Brief in Opposition to Motion to Suppress, pp. 3-4. The State argues Harris' implicating herself in criminal activity "will boost the informant's veracity and reliability." *Id.,* p. 2, citing *Woodward v. State,* 142 Idaho 98, 106 (Ct. App. 2005). Additionally, since Harris is on probation, Harris' discussions with Hildebrandt expose Harris to revocation of her probation and service of the remainder of her prison sentence.

As argued by the State, a magistrate's probable cause finding for purposes of search warrant is reviewed for abuse of discretion. In *State v. Belden,* 148 Idaho 277, ___,

220 P.3d 1096 (Ct. App. 2009), the Court of Appeals wrote:

> When probable cause to issue a search warrant is challenged on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In this evaluation, great deference is paid to the magistrate's determination. The test for reviewing the magistrate's action is whether he or she abused his or her discretion in finding that probable cause existed. When a search is conducted pursuant to a warrant, the burden of proof is on the defendant to show that the search was invalid. (Citations omitted)

148 Idaho 277, ____, 220 P.3d 1096, 1099. The case law cited to and quoted by Easley does not support his position that Judge Caldwell's probable cause finding was an abuse of discretion. The language in *State v. Chapman,* 146 Idaho 346, 351, 194 P.3d 550, 555 (Ct.App. 2008), is *permissive*, not *mandatory*: "…but where an informant is part of a "criminal milieu," more information *may* be necessary [to establish the informant's veracity and reliability]." *Id.* Easley is simply wrong in his claim that "When an informant is part of a criminal group, more verification is needed than would be required for a known citizen informant." Supplement to Motion to Suppress, p. 3. That is an incorrect statement of the law. Easley continues: "When an informant is part of a criminal group, more verification is needed than would be required for a known citizen informant." That is an incorrect statement of the law. No citations are given by Easley to support these incorrect assertions. Nothing in *Chapman* makes it *mandatory* that there be "more information" in order to establish Harris' reliability, simply because she is on probation and possessed marijuana.

Even if this Court were to graft a "mandatory" requirement of "more information" upon Harris, "more information" is present here which corroborates Harris' statements to Hildebrandt about what Hildebrandt would find at Easley's house. After being caught with immature marijuana plants in her house, Harris told Hildebrandt that Easley had given her small marijuana plants growing in cups two days before Hildebrandt's visit with Harris;

Harris told Hildebrandt Easley had been selling Harris marijuana for about two months, told Hildebrandt the frequency, quantity and price which she purchased, that all the buys took place in Easley's home; Harris took Hildebrandt to Easley's home; Harris' cell phone had Easley in her phone contacts; and Hildebrandt confirmed the vehicle outside of Easley's home was registered to Easley. Tr. p. 5, L. 25 – p. 7, L. 12; p. 7, L. 22 – p. 8, L. 18. Most corroborating is the fact that Harris knew Easley as Mike, when Easley's full name is Charles Michael Easley. When Hildebrandt checked on the Spillman system, he found a notation that Easley goes by the name "Mike", and Hildebrandt also found Easley's cell phone number in the Spillman system, the same number Hildebrandt found on Harris' cell phone. Tr. p. 7, Ll. 13-21.

Three of the Idaho cases quoted by Easley are distinguishable based on the informants in each having been anonymous, therefore, *State v. Deccio,* 136 Idaho 442, 445-56, 34 P.3d 1125, 1128-29 (Ct.App. 2001); *State v. Prestwich,* 110 Idaho 966, 967-68, 719 P.2d 1226, 1227-28 (Ct.App. 1986); and *State v. Mason,* 111 Idaho 916, 919, 728 P.2d 1325, 2328 (Ct.App. 19896), are inapposite. Supplement to Motion to Suppress, pp. 5-6. *Deccio, Prestwich* and *Mason* all involved an *anonymous* informant. Harris was a *known* informant, she was *identified* by Hildebrandt. Tr. p. 4, Ll. 9-21. Hildebrandt went to a specific address at the request of the Idaho Department of Corrections Probation and Parole Officers, contacted Jamie Ann Harris, got her date of birth, knew she was a probationer who had requested an interstate compact from California to Idaho, to assist probation officers who were there with Hildebrandt on their initial contact of Harris and inspection of her residence which she intended to more into in Idaho, if the Department of Corrections approved such. *Id.* The Idaho Court of Appeals in *Chapman* gave an excellent explanation as to why these facts about Harris are important:

> Here, by the time that Hanson [the informant] disclosed to the officer that Chapman was carrying cocaine, she was aware that the officer knew her true identity, and she was already under arrest for driving without a license. Therefore, Hanson was aware that she could suffer adverse consequences if she gave false information to the officer. Indeed, she may have been motivated to provide helpful information to the state trooper in hope of gaining a more favorable disposition of her driving offense. Thus, her circumstance tended to indicate that the information she gave would be reliable. *State v. Peterson,* 1133 Idaho 44, 48, 981 P.2d 1154, 1158 (Ct.App. 1999).

146 Idaho 346, 351-52, 194 P.3d 550, 555-56. Harris knew she was caught with immature marijuana plants by Hildebrandt and her probation officers. It was in her best interest to cooperate with law enforcement as she at that moment faced new charges in Idaho and revocation of her California probation, let alone having her hopes for an interstate compact to Idaho dashed. The detail of the information Harris gave about Easley to Hildebrandt, coupled with the corroborating information about Easley (the name "Mike", taking Hildebrandt to Easley's home, Easley's phone number in Harris' cell phone, and Easley's address, preferred name, address and vehicle registration being confirmed on Spillman) show Harris was not fabricating this information about Easley.

At oral argument, counsel for Easley argued that there was a mid-level analysis that applied to Harris' situation, where the informant is known, but part of the criminal milieu. Easley's argument is an unknown informant obviously needs corroboration, and an known citizen informant does not need corroboration, the identification of the person alone is all that is needed. When the informant is known but part of the criminal milieu, Easley claims additional corroborating information is required. Supplement to Motion to Suppress, p. 3. That is an incorrect reading of *Chapman*, there is no middle level. This Court specifically finds that Harris' identity being known, coupled with her involvement on probation and with a potential new crime is sufficient to provide all the corroboration necessary for her information given to Hildebrandt about Easley. Even if there were a third mid-level on

known criminal milieu informants (there isn't), even if *Chapman* required additional corroborating information (it doesn't), that additional corroborating information is present in this case in spades.

There is nothing before the Court to indicate Judge Caldwell erred in finding probable cause to issue the search warrant in this matter. Harris was known to her probation officer, her name address and other identifying information were clearly made known to Hildebrandt. It cannot be said that her veracity or reliability would be similar to that of an anonymous informant, from the standpoint of the officers receiving the information. Easley has not met his burden of demonstrating the search was invalid or that Judge Caldwell abused his discretion in making his probable cause finding for the search warrant in this case. Easley's motion to suppress must be denied.

IV. ORDER.

IT IS HERBY ORDERED THAT CHARLES MICHAEL EASLEY's Motion to Suppress is **DENIED**.

DATED this 12th day of November, 2010.

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of November, 2010 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Dennis Reuter
Prosecuting Attorney - Art Verharen

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy