

SEARCHES AND SEIZURES — INFORMATION SUPPLIED BY AN ANONYMOUS INFORMER MUST BE CORROBORATED BY ESTABLISHING THAT THE LAW IS BEING VIOLATED TO CONSTITUTE A BASIS FOR PROBABLE CAUSE TO SEARCH OR ARREST WITHOUT A WARRANT; VERIFICATION OF OTHER INFORMATION IS INSUFFICIENT CORROBORATION. *People v. Reeves* (Cal. 1964).

Inspector Martin, an experienced officer attached to the police narcotics detail, received a telephone call from an anonymous female informer with whom no previous police contact had been made. She told him that two 'narcotic losers' (persons previously convicted of narcotic offenses) named Reeves, staying at the King George Hotel, and McDonald, who operated an auto agency on Van Ness Avenue, were in possession of marijuana.

Inspector Martin knew Reeves, and had talked with him during the course of a prior narcotics investigation which had not resulted in criminal charges. During this previous conversation with Reeves, Martin had discovered that Reeves had been convicted of a narcotics offense in Texas. Martin, knowing nothing of McDonald, had the records searched and discovered that he had been convicted by a federal court of a narcotic violation. He also corroborated the fact that McDonald operated an automobile agency on Van Ness Avenue.

Martin proceeded to the automobile agency without a warrant, searched McDonald, and found marijuana on his person. McDonald admitted receiving the narcotic from Reeves. Without obtaining a warrant Martin then proceeded to the hotel where Reeves was staying, gained entry into his room by a ruse, found marijuana, and arrested Reeves.¹

During Reeves' trial Martin testified that McDonald was not prosecuted for possession of marijuana because of a search and seizure problem. The court held that the prosecution had failed to sustain the burden of showing proper justification for searching McDonald, and that therefore the evidence secured by the search was illegal. With the exclusion of this evidence there was insufficient corroboration of the information received from the anonymous informer to constitute reasonable cause to search or arrest. The search of Reeves was therefore illegal, and, as a result, all the evidence obtained by the search was inadmissible. *People v. Reeves*, 61 Cal. 2d 268, 391 P.2d 393, 38 Cal. Rptr. 1, (1964).

¹ Possession of marijuana is a violation of CAL. HEALTH & SAFETY CODE § 11530.

Since the case of *People v. Cahan*² illegally seized evidence has been inadmissible in California.³ If reasonable cause for search and seizure does not exist, the search and seizure are illegal, and all information obtained as a result thereof is not admissible in evidence. This rule has caused considerable controversy and confusion as to what constitutes reasonable or probable cause. The courts are in agreement only in that there is no exact formula for the determination of reasonable cause, and that each case must be decided on its own facts and circumstances.⁴ In making this determination the applicable test has been, "[C]onsidering all the information in the hands of the police, would a reasonable police officer act on that information or would a reasonable police officer seek further information before making the arrest and conducting the search."⁵

Information obtained from an informer may constitute grounds for reasonable cause under certain conditions. Information from a reliable informer can of itself constitute sufficient reasonable cause.⁶ A reliable informer is one whose information has in the past led the police to valid suspects.⁷ One who has not previously furnished such information to the police cannot be considered reliable in the absence of a pressing emergency, and his information *alone* cannot be a sufficient basis for a lawful search.⁸ However, information obtained from an untested informer may constitute grounds for reasonable cause if evidence is presented to the court justifying the conclusion that reliance on the information was reasonable.⁹

In the *Reeves* case several factors were considered in connection with the problem of reasonable cause. Justice Peters, speaking for the majority, said that the use of ruse or trickery to persuade Reeves to open the door rendered the evidence obtained in the room inadmissible because no reasonable cause existed prior to the employment of such ruse. The prosecution failed to sustain its burden of showing

² 44 Cal. 2d 434, 283 P.2d 905 (1955).

³ This is not a mere technical rule of evidence. It is required to give substance to the rights conferred by the state and federal constitutions. U.S. CONST. amend. IV, CAL. CONST. art. I, § 19, *People v. Cahan*, *supra* note 2.

⁴ E.g., *United States v. Rabinowitz*, 339 U.S. 56 (1950); *People v. Ingle*, 53 Cal. 2d 407, 412, 348 P.2d 577, 580 (1960).

⁵ *People v. Diggs*, 161 Cal. App. 2d 167, 171, 326 P.2d 194, 196 (1958).

⁶ *People v. Prewitt*, 52 Cal. 2d 330, 337, 341 P.2d 1, 4 (1959), 33 So. CAL. L. REV. 208 (1960), 7. U.C.L.A.L. REV. 524 (1960); *People v. Boyles*, 45 Cal. 2d 652, 290 P.2d 535 (1955).

⁷ *People v. Dewson*, 150 Cal. App. 2d 119, 128, 310 P.2d 162, 168 (1957).

⁸ *Willson v. Superior Court*, 46 Cal. 2d 291, 294 P.2d 36 (1956); *People v. Amos*, 181 Cal. App. 2d 506, 5 Cal. Rptr. 451 (1960). This rule is not limited to anonymous informers. It is applicable to any person who has not gained the status of a reliable informer. See note 26 *infra* for an example of an unreliable informer whose identity was known to the police.

⁹ *Willson v. Superior Court*, *supra* note 8, at 294, 294 P.2d at 38.

justification for the search of McDonald.¹⁰ Hence, no reliance could be placed on it as a basis for Reeves' arrest and the search of his room.¹¹ It is apparent that the court believed that the first link in the chain of events, *i.e.*, sufficient corroboration of the anonymous informer, was too weak to support a finding of reasonable cause. Justice Peters formulated the necessary requirement for corroboration of an untested informer in the following terms: "[W]hile it [the verification of names, addresses and records by the officer] amounted to corroboration of that same information given by the anonymous informer, *it was not corroboration of the essential fact, as to whether the two named men were now violating the law.*"¹² (Emphasis added.) The court found that the investigation by the police merely corroborated the fact that the informer knew the names and addresses of the two men and that they had prior narcotic convictions. There was no corroboration of the alleged violation of the law.

Justice McComb, in a dissenting opinion in which Justice Schauer concurred, agreed that the information obtained from an anonymous informer must be corroborated. He stated:

Information from an anonymous source can be sufficient probable cause, however, if it is corroborated by other facts, sources, or circumstances that would justify reliance on it. . . . *Although no single fact may justify an arrest, a combination or concurrence of facts may well do so.*¹³ (Emphasis added.)

Moreover, the dissent disagreed with the majority's refusal to use the statement of McDonald as a corroborative fact, and stated that probable cause

. . . is not limited to evidence that would be admissible at trial on the issue of guilt. The test is not whether the evidence upon which an officer acts in making the arrest is sufficient to convict but only whether the person should stand trial.¹⁴

The dissent further stated that every fact supplied by the informer, with the exception of Reeves' possession of marijuana, had been verified or corroborated, that the investigating officer had pre-existing information from which to determine that part of the anonymous information was reliable, and that McDonald's statement that he received the narcotic from Reeves was more than a verification of the information received from the anonymous informer; it was

¹⁰ The burden was on the prosecution to show proper justification for the arrest and search of McDonald. *People v. Shelton*, 60 Cal. 2d 740, 388 P.2d 665 (1964).

¹¹ 61 Cal. 2d at 278, 391 P.2d at 397, 38 Cal. Rptr. at 5.

¹² *Id.* at 274, 391 P.2d at 396, 38 Cal. Rptr. at 4-5.

¹³ *Id.* at 278, 391 P.2d at 399, 38 Cal. Rptr. at 7.

¹⁴ *Id.* at 277, 391 P.2d at 399, 38 Cal. Rptr. at 7.

independent corroboration by another source. Therefore, the dissenting Justices believed that Inspector Martin acted with probable cause when he searched McDonald and arrested Reeves.

It is a function of the trial court to appraise and weigh the evidence on the issue of probable cause,¹⁵ and, therefore, the California Supreme Court in the *Reeves* case must have found that a lack of probable cause existed either as a matter of law, or because no reasonable man could find otherwise. The court based its decision on a failure to corroborate the fact that the law was being violated. *Reeves*, therefore, holds that this requirement of corroboration must be met before the trial court may state that reasonable cause exists as a matter of law, or as a matter of fact. This requirement appears to narrow the ground for reasonable cause set forth in *Willson v. Superior Court* wherein the court stated:

[E]vidence must be presented to the court that would justify the conclusion that reliance on the information was reasonable. . . . In some cases the identity of, or past experience with, the informer may provide such evidence . . . and in others it may be supplied by similar information from other sources or by the personal observations of the police.¹⁶ (Footnote omitted.)

In *People v. Fischer*¹⁷ the court stated that the officer must present evidence to the court which would justify the conclusion that his reliance on that information was reasonable. Also, in *People v. Bates*,¹⁸ Justice Peters, who spoke for the majority in *Reeves*, stated the requirement more broadly as: "[T]he reliability of the informant . . . may be substantiated by the proven accuracy of the information given by the informant and which the officers from other sources know is accurate."¹⁹

The *Reeves* decision establishes a new requirement, corroboration of the fact that the law is being violated. The majority also cited *Willson* with approval. That case, as well as those in which the information from an unreliable informer was coupled with the defendant's furtive or suspicious conduct, is within the *Reeves* requirement. Such conduct supplies the necessary corroboration that a crime is being committed.²⁰

¹⁵ However, the findings of reasonableness by the trial court are respected only insofar as they are consistent with constitutional guarantees. *Ker v. California* 374 U.S. 23 (1963).

¹⁶ 46 Cal. 2d at 294-95, 294 P.2d at 38.

¹⁷ 49 Cal. 2d 442, 317 P.2d 967 (1957) (reliability of source of information not challenged) (court's finding of reasonable cause to arrest not based solely on information given officer).

¹⁸ 163 Cal. App. 2d 487, 330 P.2d 102 (1958).

¹⁹ *Id.* at 852, 330 P.2d at 105.

²⁰ See *People v. Maddox*, 46 Cal. 2d 301, 294 P.2d 6 (1956); *People v. Davis*, 205 Cal. App. 2d 517, 23 Cal. Rptr. 152 (1962); *People v. Reyes*, 206 Cal. App. 2d 337, 23 Cal. Rptr. 705 (1962).

However, there are cases wherein probable cause was found to exist which may no longer meet the *Reeves* criterion. In *People v. Prieto*,²¹ a warrant was issued on the basis of information supplied by an untested informer corroborated only by surveillance, prior burglary convictions, and suspicion of possession of narcotics. There was no corroboration of the fact that the law was being violated. The court stated that it could not rule that as a matter of law a reasonable person confronted by the evidence would not be convinced that probable cause for a search did not exist, and that the evidence required submission of the issue to the jury. Justice Tobriner reviewed facts which in other cases had been found sufficient to constitute probable cause. These additional corroborative circumstances included: observations of suspicious actions of the defendant, past activities, police surveillance or observation, prior conviction of the suspected offense, or prior addiction.²²

The *Reeves* decision appears to eliminate all but the first of the above circumstances as sufficient corroborative facts. The majority dismissed the pre-existing knowledge of Inspector Martin, his personal contact with Reeves concerning narcotics, and the latter's prior narcotic record by stating that they were merely corroboration of the fact that the informer knew the men and was familiar with their past activities. The court failed to appraise this independent knowledge *in conjunction with* the statements of the informer in determining whether or not the police acted reasonably. In light of the habituating (though not addictive) characteristics of marijuana and the well known recidivism of 'users,' was it unreasonable for Martin, after receiving the anonymous phone call and making the investigation, to believe that Reeves, a prior narcotic offender, would again be in possession of marijuana? Granted, he could not have been absolutely certain that the law was being violated. Still, there were sufficient facts present to allow the trial court to decide whether or not probable cause existed. A prior conviction of a suspected crime involving narcotics is a strong indication that the individual named by an informer might be repeating those acts, and greater weight should have been accorded this fact. These facts; *i.e.*, the prior narcotic convictions of both men, the prior contact with Reeves

²¹ 191 Cal. App. 2d 62, 12 Cal. Rptr. 577 (1961). An anonymous woman informed the police that if they checked a designated phone booth they would find a marijuana cigarette. She called a second time to inquire if the cigarette did contain marijuana. When the police told her that it was in the process of being analyzed, she said she would call again. Upon her final call, after the police had determined that the cigarette contained marijuana, she told them that they would find such cigarettes in a tissue box in the defendant's bedroom. The police obtained a search warrant, proceeded to the defendant's home, and arrested him after discovering the marijuana in a Kleenex box.

²² 191 Cal. App. 2d at 69, 12 Cal. Rptr. at 581.

concerning narcotics, the habituating characteristics of narcotics, and the recidivism of narcotic offenders should have been considered corroborative of the informant's statement that a crime was being committed.²³ The existence of probable cause should be evaluated in lights of what a reasonable police officer would do in the same or similar circumstances, and not what an appellate court would have done.

What further action could the police have taken in *Reeves* to obtain grounds for reasonable cause? All the information at their disposal had been verified except that the law was being violated. That fact could have been corroborated by a reliable informer or another untested informer.²⁴ Unfortunately, the police did not have these additional sources. Since, "the magistrate must be satisfied that 'there is probable cause to believe' that grounds for the search exist,"²⁵ a warrant would not have been issued because the police could not corroborate the fact that the law had been violated. The alternative would have been to initiate a surveillance in the hope that the conduct of the men would supply the necessary corroboration. If the police had been fortunate, they might have obtained the required corroboration in this fashion. If not, the surveillance would have either continued *ad infinitum*, or terminated without an arrest. The purpose of this survey of the practical aspects of the enforcement problem is to illustrate the difficulty that the *Reeves* requirement presents.

Fundamental principles of jurisprudence dictate that the individual must be given protection against unreasonable police action. It is not unreasonable to consider an untested informer an unreliable source and hold that he cannot gain the status of a reliable informer until he has proven himself. Nor is it unreasonable to hold that the information obtained from an unreliable informer *alone* is an insufficient basis for probable cause. But the court has overemphasized

²³ At this point it might be argued that anything less than the *Reeves* requirement would lead to 'rousting' and the fabrication of non-existent informers by the police. But it is presumed that the police will carry out their official duties in an honest manner and will not commit perjury. CAL. CODE CIV. PROC. § 1963 (15), *People v. Garnett*, 148 Cal. App. 2d 280, 284, 306 P.2d 571, 574 (1957).

²⁴ *People v. Weathers*, 162 Cal. App. 2d 545, 328 P.2d 222 (1958).

²⁵ CAL. PEN. CODE §§ 1525, 1528, *Arata v. Superior Court*, 153 Cal. App. 2d 767, 773, 315 P.2d 473, 478 (1957).

corroboration of untested (unreliable) informers.²⁶ It should not insist upon standards of corroboration of untested informers which unnecessarily impede law enforcement. The court should strike a balance between personal immunity from police interference and the community's interest in efficient law enforcement. Justice would be served by eliminating the *Reeves* requirement and adhering to the requirements of the *Willson*, *Fischer*, and *Bates* cases. Reasonableness should be a question of fact, and the trial courts should, in the exercise of their sound discretion, determine the weight to be accorded the information possessed by the officer at the time of arrest.

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²⁶ *E.g.*, in *People v. Cedeno*, 218 Cal. App. 2d 213, 32 Cal. Rptr. 246 (1963), an informer met the police several times concerning persons allegedly dealing in narcotics. During one meeting she was escorted to the defendant's hotel by the police who gave her money and sent her into the hotel. She returned with one marijuana cigarette, and gave it to the police. In another meeting she told the police that she had been up to the defendant's room, and that there was marijuana all over the room. The defendant was arrested and at the trial the court held that, because the informer had not in the past given information leading to valid suspects, she was unreliable, and that the police failed to corroborate any facts. It was held that there was no reasonable cause to arrest. It would seem that this is one of the many examples of instances where the community has suffered in an effort to overinsure that the informer's information was reliable.