



## Drug Users, Drug Sellers, and Probable Cause

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Here's a common fact pattern: Officers find a person in possession of drugs. The officers say, in effect, "we won't arrest you if you'll tell us who sold you the drugs." The person then reports having recently purchased the drugs from a particular person at that person's home. Does this provide probable cause to support a search warrant for the supplier's home?

Yes, ruled a divided court of appeals last week on the specific facts of [State v. Jackson](#).

**Facts.** Two officers, working on a drug investigation, "conducted a knock-and-talk at the home of a person they had never met." The officers told the resident that she was facing potential criminal charges for possessing marijuana. The resident "agreed to provide information regarding where she obtained the marijuana." She told the officers that she had purchased the drugs from the person who eventually became the defendant in the case, at his residence two days earlier. She gave the defendant's name, described him, and described his home and its location.

Officers confirmed the accuracy of the defendant's name, description, and the location of his home. They also learned that the defendant had previously been charged with possessing marijuana. Relying on this information plus the fact that they had received several citizen complaints about possible marijuana dealing at the defendant's residence over the past year, the officers sought and obtained a search warrant for the defendant's home. When they executed the warrant, they found marijuana and indoor growing equipment.

**Procedural history.** The defendant was charged with a variety of drug-related offenses. He moved to suppress, arguing that the search warrant was not supported by probable cause. A judge denied the motion, and the defendant pled guilty and appealed.

**Court of appeals majority opinion.** Judge Inman, joined by Judge Stephens, affirmed. The majority reasoned that the information given to the officers during the knock-and-talk should be treated as coming from a confidential and reliable informant. The officers had never met the person before, so she had no track record of reliability. However, she made statements that were "against her penal interest" and did so in face-to-face in a setting under which she was likely to be held accountable for any false information she provided. The information was very fresh and the officers were able to corroborate at least the biographical components of the information. The majority found this to be sufficient to establish her reliability and so to support probable cause.

**Dissent.** Judge Hunter dissented. He noted that the informant's statements were made "after the officers told her she was facing criminal charges" and perhaps after some discussion of whether her daughter could be taken from her as a result of her drug activity. He did not think that the officers meaningfully corroborated the tip, since they did not confirm any of the incriminating aspects of the tip. And he noted that the citizen complaints were apparently from high school students and that little information about these complaints was elicited at the suppression hearing.

**Comment.** It will be interesting to see what the state supreme court does with *Jackson*, assuming that it is asked to review the decision. The part of *Jackson* that I found most intriguing was the majority's reliance on the fact that the

informant's statement was against her penal interest. From one perspective, this was inarguably correct, as the informant admitted buying illegal drugs from the defendant. Several North Carolina appellate cases have applied the "against penal interest" rationale to facts like these. See, e.g., *State v. Beddard*, 35 N.C. App. 212 (1978) (finding probable cause existed to support a search warrant where an untested informant who had been caught with marijuana told an officer that he had recently purchased the marijuana from the defendant at his home; the court stated that the fact that the "informant's statement [was] against penal interest was a circumstance showing the information was reliable"). Plenty of out-of-state cases are in a similar vein. See, e.g., *Gaddy v. State*, 596 S.E.2d 109 (Ga. 2004) (ruling that "inculpatory statements that are made by [an] informant can establish probable cause for issuance of a search warrant"). Many of these cases ultimately rely on the statement in *United States v. Harris*, 403 U.S. 573 (1971), that "[a]dmissions of crime, like admissions against proprietary interests, carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search."

But from another perspective, it seems likely that the informant's motivation in making her statement was not to clear her conscience by admitting wrongdoing, but rather to improve her legal situation by avoiding being charged with a crime. A few out-of-state cases view facts like those with considerable skepticism. For example, in *State v. Spillers*, 847 N.E.2d 949 (Ind. 2006), the court considered a situation in which a man was caught in possession of drugs, then told the police who had supplied them. The court found this information insufficient to support a search warrant for the supplier's home, rejecting the "against penal interest" argument. The court reasoned that "[a]lthough [the informant] admitted committing . . . possession of cocaine, his tip was less a statement against his penal interest than an obvious attempt to curry favor with the police."

I'd be interested to hear readers' thoughts and experiences concerning the reliability of statements made under circumstances like those present in *Jackson*.