



506 N.E.2d 530
 69 N.Y.2d 814, 506 N.E.2d 530, 513 N.Y.S.2d 960
 (Cite as: 69 N.Y.2d 814, 506 N.E.2d 530, 513 N.Y.S.2d 960)

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Court of Appeals of New York.
 The PEOPLE of the State of New York, Respondent,
 v.
 Vernon EDWARDS, Appellant.
 Feb. 19, 1987.

Defendant was convicted in the County Court, Westchester County, Martin and Braatz, JJ., of third-degree criminal possession of weapon, second-degree criminal use of drug paraphernalia, and seventh-degree criminal possession of controlled substance. He appealed. The Supreme Court, Appellate Division, 114 A.D.2d 467, 494 N.Y.S.2d 995, affirmed, and defendant appealed. The Court of Appeals held that affidavit submitted in support of application for search warrant was insufficient to support reasonable belief that evidence of illegal activity would be present where affidavit relied primarily on hearsay information but failed to satisfy basis of knowledge requirement.

Reversed.

West Headnotes

[1] Criminal Law 110 **1158.2**

110 Criminal Law
 110XXIV Review
 110XXIV(O) Questions of Fact and Findings
 110k1158.2 k. Search and Arrest. **Most Cited Cases**

(Formerly 110k1158(2))

Probable cause determinations that involve questions of fact, or mixed questions of law and fact, are generally beyond scope of review of Court of Appeals.

[2] Searches and Seizures 349 **111**

349 Searches and Seizures
 349II Warrants

349k111 k. Factual Showing, in General.
Most Cited Cases

Although there is strong judicial preference for search warrants, and courts should not analyze applications in grudging or hypertechnical manner when determining whether they meet constitutional standard, search warrant application must provide magistrate with information sufficient to support reasonable belief that evidence of illegal activity will be present at specified time and place of search.

[3] Controlled Substances 96H **146**

96H Controlled Substances

96HIV Searches and Seizures

96HIV(C) Search Under Warrant

96Hk144 Affidavits, Complaints, and Evidence for Issuance of Warrants

96Hk146 k. Probable Cause in General. **Most Cited Cases**

(Formerly 138k188(2), 138k188 Drugs and Narcotics)

Affidavit submitted in support of application for search warrant which relied primarily on hearsay information but failed to satisfy basis of knowledge requirement for use of information did not adequately support application for search warrant, where results of pen register and surveillance of defendant's activities were as consistent with innocence as with guilt, and positive reaction at door of defendant's apartment by dog trained to detect odor of narcotics was not so closely related to time of issuance of warrant as to justify finding of probable cause.

***815 ***960 **531 Joel A. Brenner**, East Northport, for appellant.

Carl A. Vergari, Dist. Atty. (Diane E. Selker and Anthony Joseph Servino, White Plains, of counsel), for respondent.

OPINION OF THE COURT

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MEMORANDUM.

The order of the Appellate Division, 114 A.D.2d 467, 494 N.Y.S.2d 995, should be reversed, defendant's motion to suppress granted, the judgments of conviction vacated and the indictments dismissed.

[1][2] Although probable cause determinations that involve questions of fact, or mixed questions of law and fact, are generally beyond the scope of review of this court (*see, People v. McCray*, 51 N.Y.2d 594, 601, 435 N.Y.S.2d 679, 416 N.E.2d 1015), where, as here, the issue is the minimum showing necessary to establish probable cause, a question of law is presented (*People v. Bigelow*, 66 N.Y.2d 417, 420-421, 497 N.Y.S.2d 630, 488 N.E.2d 451; *People v. Johnson*, 66 N.Y.2d 398, 497 N.Y.S.2d 618, 488 N.E.2d 439). Although there is a strong judicial preference for search warrants (*People v. Potwora*, 48 N.Y.2d 91, 95, 421 N.Y.S.2d 850, 397 N.E.2d 361; *People v. Vaccaro*, 39 N.Y.2d 468, 472, 384 N.Y.S.2d 411, 348 N.E.2d 886; *816 *People v. Hanlon*, 36 N.Y.2d 549, 369 N.Y.S.2d 677, 330 N.E.2d 631) and courts should not analyze applications in a grudging or hypertechnical manner when determining whether they meet constitutional standards (*People v. P.J. Video*, 65 N.Y.2d 566, 571, 493 N.Y.S.2d 988, 483 N.E.2d 1120, *rev'd sub nom. New York v. P.J. Video*, 475 U.S. 868, 106 S.Ct. 1610, 89 L.Ed.2d 871, *on remand* 68 N.Y.2d 296, 508 N.Y.S.2d 907, 501 N.E.2d 556; *People v. Hanlon*, 36 N.Y.2d 549, 558, 369 N.Y.S.2d 677, 330 N.E.2d 631, *supra*), a search warrant application***961 must provide the magistrate with information sufficient to support a reasonable belief that evidence of illegal activity will be present at the specific time and place of the search (*People v. Bigelow*, 66 N.Y.2d, at p. 423, 497 N.Y.S.2d 630, 488 N.E.2d 451, *supra*).

[3] The affidavit submitted in support of the application for the search warrant here fails to meet that minimum standard. That affidavit relied primarily on hearsay information but failed to satisfy the "basis of knowledge" requirement for use of such information (*People v. Bigelow*, 66 N.Y.2d 417,

423, 497 N.Y.S.2d 630, 488 N.E.2d 451, *supra*; *People v. Rodriguez*, 52 N.Y.2d 483, 490, 438 N.Y.S.2d 754, 420 N.E.2d 946). The results of a pen register and **532 surveillance of defendant's activities were as consistent with innocence as with guilt (*see, People v. Yedvobnik*, 48 N.Y.2d 910, 911, 425 N.Y.S.2d 50, 401 N.E.2d 173; *People v. Wirchansky*, 41 N.Y.2d 130, 134-135, 391 N.Y.S.2d 70, 359 N.E.2d 666; *People v. Germano*, 91 A.D.2d 1137, 1138, 458 N.Y.S.2d 713). Finally, the positive reaction at the door of defendant's apartment by a dog trained to detect the odor of narcotics, even if otherwise lawful and sufficient to establish probable cause, was not "so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time" (*Sgro v. United States*, 287 U.S. 206, 210, 53 S.Ct. 138, 140, 77 L.Ed. 260).

In light of this disposition, we find it unnecessary to reach any of defendant's remaining contentions.

WACHTLER, C.J., and SIMONS, KAYE, ALEXANDER, TITONE, HANCOCK, and BEL-LACOSA, JJ., concur in memorandum.
 Order reversed, etc.

N.Y., 1987.
 People v. Edwards
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