

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0792
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DELBERT ALLEN LAMBSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court of Apache County

Cause No. CR2007357

The Honorable Michael P. Roca, Judge Pro Tem

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Michael J. Mitchell,
Assistant Attorney General
Attorneys for Appellee

Emily Danies Tucson
Attorney for Appellant

T H O M P S O N, Judge

¶1 After a bench trial, Delbert Allen Lambson (defendant)
was convicted of conspiracy to possess a dangerous drug for

sale, possession of a dangerous drug, possession of drug paraphernalia, and using a building for sale of dangerous drugs. On appeal, defendant argues that the trial court erred in denying his motion to suppress evidence obtained from a search pursuant to a warrant. For the following reasons, we hold that the trial court properly denied defendant's motion to suppress and affirm his convictions and sentences.

FACTUAL AND PROCEDURAL BACKGROUND

¶12 On December 12, 2007 agent C.W., an officer with the St. Johns Police Department on temporary assignment to the Apache County Cooperative Enforcement Narcotics Team (A.C.C.E.N.T), submitted an affidavit requesting a search warrant for defendant, his wife, their vehicles, and their residence. Agent C.W. proffered that probable cause existed for the warrant because within the seventy-two hours prior to filing for the warrant a reliable confidential informant entered the home of defendant and noticed a useable amount of drugs and drug paraphernalia. The confidential informant had previously made two controlled buys of methamphetamine and one controlled buy of marijuana under the supervision of the affiant, agent C.W. The issuing magistrate found that probable cause existed to issue the warrant.

¶13 Later that day, members of various local law

enforcement agencies went to defendant's residence and executed the search warrant. The officers searched defendant and found drug paraphernalia on his person. During the search of the residence the officers found methamphetamine and various drug paraphernalia. Once the search was completed, defendant was arrested and charged with possession of a dangerous drug for sale (count 1), conspiracy to possess a dangerous drug for sale (count 2), possession of a dangerous drug (count 3), possession of drug paraphernalia (count 4), and using a building for sale of dangerous drugs (count 5).¹

¶4 Prior to trial, defendant moved to suppress evidence recovered from his home, contending that the search warrant was not supported by probable cause. The trial court held a hearing on the motion to suppress on July 24, 2008. At the suppression hearing agent C.W. testified and both sides made arguments. Following the hearing, the trial court concluded that probable cause existed to issue the search warrant and denied the motion to suppress. On April 21, 2009 defendant agreed, in writing, to waive his right to a trial by jury and to submit his case to the trial court to determine the issue of his guilt and the existence of aggravating circumstances and prior convictions.

¹ Defendant's wife was also arrested and charged with crimes related to the search in question. She is not a party to this appeal.

Among other things, the agreement stated that if defendant were found guilty of count two then count one would be dismissed with prejudice. The trial court found defendant guilty and sentenced him to the aggravated term of ten years for count two, the presumptive term of 4.5 years for count three, and presumptive terms of 1.75 years for counts four and five, to be served concurrently, with credit for 544 days of presentence incarceration. The trial court dismissed count one. Defendant timely appealed. On appeal, defendant argues that the trial court erred in denying the motion to suppress because probable cause did not exist to issue the warrant. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2010), 13-4031 and -4033(A)(1)(2010).

DISCUSSION

A. Standard of Review

¶15 In reviewing a trial court's ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, which we view in the light most favorable to sustaining the ruling. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007) (citations omitted). We will not disturb a trial court's ruling on a motion to suppress evidence absent a clear abuse of discretion. *State v. Carter*, 145 Ariz.

101, 110, 700 P.2d 488, 497 (1985). This court reviews the totality of the circumstances in determining if a substantial basis existed for the magistrate's decision. *State v. Crowley*, 202 Ariz. 80, 83, ¶ 7, 41 P.3d 618, 621 (App. 2002) (citations omitted). Additionally, appellate courts give much deference to the issuing magistrate's decision. *State v. Hyde*, 186 Ariz. 252, 272, 921 P.2d 655, 675 (1996) (citation omitted). Finally, appellate courts are not to review the sufficiency of the affidavit *de novo*. *Illinois v. Gates*, 462 U.S. 213, 236 (1983). "A grudging or negative attitude by reviewing courts toward warrants' is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant 'courts should not invalidate . . . warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner.'" *Id.* (quoting *U.S. v. Ventresca*, 380 U.S. 102, 108-109 (1965)). We review the factual findings underlying the trial court's determination for an abuse of discretion but review the court's legal conclusions *de novo*. *State v. Moody*, 208 Ariz. 424, 445, ¶ 62, 94 P.3d 1119 (2004) (citations omitted).

B. Motion to Suppress

¶6 "No search warrant shall be issued except on probable cause, supported by affidavit, naming or describing the person and particularly describing the property to be seized and the

place to be searched." A.R.S. § 13-3913 (2007). Here, the affidavit clearly names the person and adequately describes the place to be searched. Thus, the main issue is whether adequate probable cause existed to issue the warrant. There is "probable cause to conduct a search if a reasonably prudent person, based upon the facts known by the officer, would be justified in concluding that the items sought are connected with criminal activity and that they would be found at the place to be searched." *Carter*, 145 Ariz. at 110, 700 P.2d at 497 (citation omitted).

¶17 At the suppression hearing, the court heard testimony from agent C.W. concerning the confidential informant and the information presented to the issuing magistrate on the affidavit. C.W. testified that by A.C.C.E.N.T.'s standard the confidential informant was considered reliable because he had participated in three controlled purchases, two methamphetamine purchases and one marijuana purchase. C.W. also testified that the confidential informant had, within seventy-two hours of the filing of the affidavit, observed a usable quantity of methamphetamine in defendant's residence. *See State v. Albert*, 115 Ariz. 354, 355, 565 P.2d 534, 535 (App. 1977) (affidavit sufficient where officer "received information within the past 72 hours from a confidential and reliable informant" who had

personally observed drugs in defendant's home). C.W. also stated that along with the information provided by the confidential informant, "other people" had contacted the police telling them that defendant was selling methamphetamine from his home. This additional information serves to corroborate the information provided by the confidential informant stating that methamphetamine was present in defendant's home.

¶18 Additionally, this particular confidential informant had previously made controlled purchases of both methamphetamine and marijuana under the direct supervision of agent C.W. During these controlled purchases, the confidential informant identified drugs that were later tested and proven to be the drugs that he purported them to be. While the confidential informant had no formal training in drug recognition, his ability to correctly identify drugs in controlled purchases add to his reliability as an informant. See *State v. Vail*, 158 Ariz. 334, 335, 762 P.2d. 621, 622 (App. 1988) ("The informant's past track record established his credibility.").

¶19 Evaluating the totality of the circumstances presented, it is clear that the issuing magistrate had a substantial basis to conclude that probable cause existed for a search warrant. The confidential informant had previously worked with agent C.W. and had proved to be reliable in both

recovering and recognizing methamphetamine. The informant's controlled purchases serve to establish his credibility. Furthermore, C.W. received information from "other people" as well as from the confidential informant that methamphetamine was in defendant's home within the seventy-two hours prior to filing for the search warrant.

¶10 In sum, the evidence presented to the issuing magistrate and the trial court met the threshold required for upholding the search. The issuing magistrate had a substantial basis for concluding that probable cause existed, and the trial court did not abuse its discretion in denying the motion to suppress the evidence.

CONCLUSION

¶11 Based on the foregoing, we conclude the trial court did not abuse its discretion in denying defendant's motion to

suppress. We therefore affirm defendant's convictions and sentences.

/s/

JON W. THOMPSON, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Chief Judge

/s/

PATRICIA K. NORRIS, Judge