

{¶ 1} In this case, Defendant-Appellant, Lashon Owensby, appeals from his conviction and sentence on charges of possession of cocaine and possession and trafficking in marijuana. In support of his appeal, Owensby contends that the trial court erred when it overruled his motion to suppress evidence. Owensby also contends that the trial court erred when it sentenced him.

{¶ 2} We conclude that the trial court did not err in overruling Owensby's motion to suppress evidence. The magistrate had a substantial basis for concluding that probable cause existed for the issuance of all the search warrants. In addition, Owensby did not meet his burden of showing that the affiant for the search warrants made a false statement, either intentionally or with reckless disregard for the truth. Finally, the trial court did not err in sentencing Owensby. Accordingly, the judgment of the trial court will be affirmed.

I. Facts and Course of Proceedings

{¶ 3} On November 21, 2013, Owensby was indicted on five charges: possession of cocaine on September 17, 2013, in an amount equaling or exceeding 20 grams but less than 27 grams, a second degree felony; possession of marijuana on September 17, 2013, in an amount equaling or exceeding 5,000 grams but less than 20,000 grams, a third degree felony; possession of marijuana on November 1, 2013, in an amount equaling or exceeding 5,000 grams but less than 20,000 grams, a third degree felony; trafficking in marijuana on September 17, 2013, in an amount equaling or exceeding 5,000 grams but less than 20,000 grams, a third degree felony; and trafficking

in marijuana on November 1, 2013, in an amount equaling or exceeding 5,000 grams, but less than 20,000 grams, a third degree felony.

{¶ 4} On January 28, 2014, Owensby filed a motion to suppress, contending that the affidavit for a search warrant issued for premises at 1709 West Grand Avenue was based on the use of a false statement and/or reckless disregard for the truth; that the search warrant affidavit for the premises at 4004 Larkspur Avenue was based on a lack of independent knowledge to search the property; and that search warrants used to support searches on premises at 60 E. Maplewood and 70 E. Maplewood, and storage units on Wagner Ford Road contained no reasoning other than the experience of the police officers. The trial court held a hearing on the motion on January 29, 2014, during which testimony was taken from Dayton Police Detective Gregory Orick. The court also admitted the search warrants, affidavits for the search warrants, and documents regarding the return of property found as a result of the execution of the warrants, into evidence.

{¶ 5} At the time of the suppression hearing, Orick had been an officer with the Dayton Police Department for about fifteen years, and had been a detective for three years. He had also previously spent 16 years as a military policeman.

{¶ 6} In March 2013, a confidential informant told Orick that Lashon Owensby was selling marijuana from a residence located at 1709 West Grand Avenue, in the City of Dayton. The informant indicated that Owensby had large amounts of marijuana and currency inside the premises. Orick had worked with this informant before, and the informant had previously provided information that was verified through independent investigation. In addition, information from the informant had previously led to recovery

of drugs, weapons, and money.

{¶ 7} After receiving the information about Owensby, Orick reviewed property records for the Grand Avenue property, conducted surveillance of the building, and did a trash pull. Orick also reviewed information on the police department's database, which contains every report and field interview of the police department.

{¶ 8} The informant stated that while inside 1709 West Grand Avenue on April 11, 2013, the informant saw large amounts of marijuana and a large amount of currency. In addition, the informant saw Owensby and another individual, Storm Smith, facilitating the packaging of marijuana into one-pound bags. The informant was again inside 1709 West Grand Avenue on September 9, 2013, and observed medium amounts of marijuana and a large sum of currency. According to the informant, individuals entered and purchased differing amounts of marijuana from Owensby or Smith. These individuals then either concealed small one-pound baggies on their persons or put larger amounts inside a black plastic bag, and exited the premises.

{¶ 9} Orick stated at the hearing that he had the building under constant surveillance. On several occasions, he saw Owensby drive various vehicles up onto the property.

{¶ 10} The front of the building had three doors: one on the right side; one on the left side; and one in the middle, which was a stairway going to the upstairs units. Orick only ever saw individuals going into the right door, which was the door for 1709 West Grand Avenue. Orick saw multiple individuals going to this door, and they were inside from three to 10-15 minutes. The individuals then left, often carrying small bags with them. Several had large black trash bags over their shoulders.

{¶ 11} In the affidavit for the search warrant, Orick stated that he had conducted a trash pull at 1709 West Grand Avenue on September 16, 2013. He recovered numerous items, including: a one-pound size plastic sandwich baggie; a torn, discarded baggie; a school authorization form signed by Jamila Cobb;¹ and a magazine advertisement addressed to Cobb. A K-9 dog trained in the identification of various drugs gave a positive alert to illegal narcotics, and the baggies were tagged and placed into the police property room, with a lab request for analysis.

{¶ 12} Orick detailed the above facts In the affidavit for the search warrant for 1709, and also included information about his independent investigation. He stated that multiple persons had said the building had been renovated to make it a single unit inside the 6,702 square foot building. In addition, Orick identified several vehicles that he had seen Owensby drive while at the premises, including vehicles registered to Owensby and vehicles registered to Cobb. He further stated that he had found multiple entries in the police database about Owensby, including observations of Owensby and Smith conducting a drug trafficking organization at 1709 and 1711 West Grand Avenue. \$18,000 and 16 weapons had also been recovered from a storage facility under Owensby's control. Finally, the informant identified pictures of Owensby and Smith as the person seen packaging and distributing marijuana inside 1709 West Grand.

{¶ 13} Based on this information, a search warrant was issued on September 17, 2013, allowing the police to search 1709 West Grand Avenue and the surrounding curtilage, as well as the persons of Owensby and Smith.

{¶ 14} When the police arrived at West Grand Avenue, they went into the door on

¹ Cobb was the mother of Owensby's child, and the form was for their child.

the right, which was the entrance for 1709. None of the doors inside the building had demarcations for separate units, and doors from each side of the unit were open to each other, where they had been modified. Prior to the search, Orick had information from his informant and another detective's informant, indicating that the apartments had been modified to be one building.

{¶ 15} Inside 1709, there was a large living room and a pool table. Behind the pool table, drugs were found in a locked closet. The closet was in 1709 and did not contain a door into another unit. During the search, the police recovered 28 grams of cocaine, 21 pounds of marijuana, and \$7,563. They also found items linked to Owensby, including five State of Ohio vehicle registrations; a camera with pictures of Owensby and his family; and several receipts for units D411 and G717 at the Wagner Ford Self Storage facility, including a payment receipt for "Michael Fisher." The police also found a business card for the storage facility in Owensby's wallet.

{¶ 16} The facts about the evidence discovered during the West Grand Avenue search were detailed in affidavits filed on September 17, 2013, to obtain search warrants for the storage facilities. In addition, Orick stated that the keeper of the records for the storage facility had indicated that Michael Fisher had a locker but did not pay for it. The keeper of the records identified a picture of Owensby as the individual who had paid for the storage units. Orick also stated in his affidavits that in his experience, individuals involved in sophisticated narcotics operations often store narcotics and equipment in remote locations, and maintain storage lockers as stash locations. Further, Orick stated in the affidavits that a trained K-9 dog gave positive alerts for illegal narcotic drugs at storage units D411 and G717, but not at the adjoining units.

{¶ 17} Based on this information, search warrants were issued for the D411 and G717 storage units on September 17, 2013, and were executed the same day. After searching, the police found documents and paperwork related to Owensby in G717. They also found a large freezer in the storage unit that smelled strongly of marijuana. The freezer contained two empty one-pound bags and a document addressed to Cobb under the bags, at an address located at 60 East Maplewood Avenue, Dayton, Ohio. In addition, there was a suitcase with small amounts of loose marijuana inside, like discarded material. The police further found a vehicle registered to Owensby in D411, as well as weapons, including a confirmed stolen rifle and a loaded pistol.

{¶ 18} Orick then did additional research, based on Cobb's involvement with the freezer in the storage unit and 1709 West Grand Avenue, as well as jailhouse conversations between Owensby and Cobb between September 17 and September 19, 2013, which indicated that Cobb was hiding cash, vehicles, and drugs. Orick discovered that Cobb had purchased a house at 4004 Larkspur Avenue, Dayton, Ohio, for \$5,000, on June 28, 2013. Cobb was also listed as the name holder for utility services at 60 Maplewood Avenue and 4004 Larkspur, despite the fact that she had indicated to the utility provider that she was unemployed.

{¶ 19} During a court hearing on September 18, 2013, Owensby had given his address as 70 East Maplewood Avenue, Dayton, Ohio. However, when the police investigated this address, it was apparent that it had been vacant for some time.

{¶ 20} Orick conducted surveillance of the Larkspur property in October 2013, and observed both Cobb and Owensby on or about the property. He also observed Owensby meet with multiple persons in front of the residence after they drove up to it.

Based on the above facts, Orick concluded that Cobb and Owensby were attempting to conceal their real residence, and were attempting to conceal assets.

{¶ 21} Orick's affidavit in support of a search warrant was based on the above facts, and on October 13, 2013, Orick received a search warrant for 4004 Larkspur Avenue, to search for records, communications, money and criminal tools, as well as a possessory interest. The persons to be searched in the warrant were Owensby and Cobb.

{¶ 22} While officers were searching Larkspur, they discovered a 23½ pound bale of marijuana in the master bedroom in a black bag, and a pistol in the kitchen that was not really in plain sight; the pistol was hidden above the kitchen cabinets, in a small gap between the top of the upper cabinet and the ceiling. As soon as these items were discovered, the search was suspended, and Orick filed a second affidavit for a search warrant at Larkspur, based on the items that had been found. The second warrant authorized a search for marijuana, other controlled substances or drug-related paraphernalia, and documents showing a possessory interest in 4004 Larkspur.

{¶ 23} Upon further searching the premises at Larkspur, the police discovered about 35 pounds of marijuana, including the 23½ pound bale and 11½ pounds of marijuana packaged in one-pound baggies. The police also found \$4,174 in cash, three pistols, and various documents connecting Cobb and Owensby to 60 East Maplewood and 70 East Maplewood Avenue, Dayton, Ohio. Subsequently, Orick signed another affidavit on November 8, 2013, for a search warrant for 60 East Maplewood Avenue, based on the facts in the Larkspur affidavit, as well as the additional evidence found at the Larkspur property.

{¶ 24} After hearing the evidence, the trial court overruled the motion to suppress. Owensby subsequently pled no contest to all the charges in the indictment. The court merged counts two and four, and counts three and five. Owensby was then sentenced to seven years on count one, 36 months on count four, and 36 months on count five, with the sentences on counts four and five to be served concurrent to the sentence on count one. Owensby now appeals from his conviction and sentence.

II. Alleged Error in Ruling on Motion to Suppress

{¶ 25} Owensby's First Assignment of Error states that:

The Trial Court Erred When It Overruled Owensby's Motion to Suppress Evidence.

{¶ 26} Under this assignment of error, Owensby contends that the motion to suppress should have been granted insofar as it relates to contraband found at the various locations. Owensby first argues that the contraband found at 1709 West Grand Avenue should be suppressed because the warrant was based on false statements or a reckless disregard for the truth. In this regard, Owensby contends that the building had four units inside it, with separate electric meters, and that each unit had a different utility holder. Owensby, therefore, argues that Orick's affidavit, which was based on information that the building was one unit, was clearly false, and showed that Orick's sources were unreliable.

{¶ 27} Crim.R. 41(C)(1) provides that:

A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated

to the judge by reliable electronic means establishing the grounds for issuing the warrant. In the case of a search warrant, the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located

{¶ 28} “In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, ‘[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.’ ” *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph one of the syllabus, quoting *Illinois v. Gates*, 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

{¶ 29} In reviewing the magistrate’s decision, “the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In conducting any after-the-fact scrutiny of an affidavit submitted in support of a search warrant, trial and appellate courts should accord great deference to the magistrate's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant.” *State v. Smith*, 146 Ohio App.3d 154, 158, 765 N.E.2d 433 (2d Dist.2001), citing *George* at paragraph two of the syllabus. (Other citation omitted.)

{¶ 30} “Courts have generally held that ‘in determining whether probable cause

exists to support the issuance of a search warrant, a trial court is confined to the four corners of the affidavit and any recorded testimony made part of the affidavit pursuant to Crim. R. 41(C).’ ” *State v. Mays*, 2d Dist. Montgomery No. 23986, 2011-Ohio-2684, ¶ 31, quoting *State v. O'Connor*, 12th Dist. Butler No. CA2001-08-195, 2002-Ohio-4122, ¶ 21. “To successfully attack the veracity of a facially sufficient search warrant affidavit, a defendant must show by a preponderance of the evidence that the affiant made a false statement, either ‘intentionally, or with reckless disregard for the truth.’ ” *State v. Waddy*, 63 Ohio St.3d 424, 441, 588 N.E.2d 819 (1992), *superseded on other grounds in State v. Smith*, 80 Ohio St.3d 89, 102, 684 N.E.2d 668 (1997), fn. 4, quoting *Franks v. Delaware*, 438 U.S. 154, 155-156, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). “ ‘Reckless disregard’ means that the affiant had serious doubts of an allegation's truth.” *Id.*, citing *United States v. Williams*, 737 F.2d 594, 602 (7th Cir.1984).

{¶ 31} In the case before us, the trial court concluded that Owensby failed to meet his burden under *Franks*. As a result, the court limited its consideration only to the content of the affidavits. After reviewing the record, we find no evidence that Orick made a false statement with respect to the layout of West Grand Avenue, either intentionally or with reckless disregard for the truth.

{¶ 32} As a preliminary matter, we note that Owensby’s argument is partly based on facts that are not in the record, i.e., the alleged fact that several electric meters were attached to the building, and the fact that each meter had a different utility holder. These “facts” were not established at the suppression hearing. We have stressed many times that “we cannot add new matters to the record and decide the appeal based on those facts.” *State v. Jamison*, 2d Dist. Montgomery No. 23211, 2010-Ohio-965, ¶ 32, citing

State v. Ishmail, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus.

{¶ 33} The evidence indicated that the property in question bore two numbers – 1709 and 1711 West Grand Avenue. However, the building had been modified so that it contained one large area, along with possibly a caretaker’s apartment at the back of the building. However, the latter apartment did not have any number on the door, and the doors from each side of the unit were open to one side or the other, where they had been modified, and the entire building, including the upstairs, could be reached, with open doors and open passageways, from 1709. Furthermore, with respect to the multiple trashcans at the rear of the building, Orick indicated that all the evidence in these trashcans belonged to either Owensby or Cobb. Transcript of Proceedings, p. 45.

{¶ 34} Accordingly, we see no evidence indicating that Orick’s affidavit was false or reckless with respect to the falsity of its statements, and we agree with the trial court’s decision to confine its analysis to the matters in the affidavits.

{¶ 35} Owensby’s second argument is that the evidence in the storage units should be suppressed because the receipts and business card for the units were found in the upstairs part of the premises, where the officers were allegedly not authorized to search. Owensby also relies on the fact that no storage units were being rented to Owensby.

{¶ 36} Again, this is incorrect. As was noted, Orick testified that when the officers entered the right-hand door (1709), the doors from each side of the unit were open to one side or the other, where they had been modified, and the entire building, including the upstairs, could be reached from 1709, leading the officers to believe the building was one

large unit. As a result, any evidence found upstairs was not seized in violation of the warrant. The card for the storage facility was also found in Owensby's wallet. In addition, Owensby was identified as the individual who had paid for the storage unit, and narcotics dogs alerted to both units. Under the facts as stated in the affidavit, probable cause existed to issue search warrants for the storage lockers.²

{¶ 37} Owensby's third argument is that the document search warrant for 4004 Larkspur was not based on probable cause and was overbroad. Again, we disagree. As the State points out in its brief, by the time this search warrant was issued, the police had connected Owensby and Cobb to each other and to large amounts of illegal drugs, cash and weapons. They were also connected to storage facilities where drugs appeared to have been hidden, and to attempts to conceal their real addresses, assets, and drugs. The affidavit that Orick filed indicates that these types of concealment are typical of persons involved in illicit distribution of drugs. Based on these facts, a search warrant was issued for the limited purpose of searching for records, communications, money, criminal tools, and documents relating to a possessory interest in 4004 Larkspur. Under the circumstances, " 'there is a fair probability that contraband or evidence of a crime' " would be found at 4004 Larkspur. *George*, 45 Ohio St.3d 325, 544 N.E.2d 640, at paragraph one of the syllabus, quoting *Gates*, 462 U.S. at 238-239, 103 S.Ct. 2317, 76

² We note that the case before us is distinguishable from *State v. Perez*, 2015-Ohio-1753, 32 N.E.2d 1010 (2d Dist.), in which we held that an affidavit for a search warrant of the defendant's storage locker lacked "some evidentiary support linking the storage unit to [the defendant's] drug activities." *Id.* at ¶ 19. In this regard, we observed that the "affidavit contained no information indicating that [the defendant] used the storage unit to store weapons and items related to his selling of marijuana and/or other drugs." *Id.* at ¶ 20. In contrast to *Perez*, there was evidence linking the storage unit to Owensby's drug activities. Specifically, a police dog alerted to illegal narcotics at both lockers paid for by Owensby, and did not alert to narcotics at any other lockers in the vicinity.

L.Ed.2d 527. And, while the officers were properly on the premises at Larkspur, they discovered additional evidence providing probable cause for the second warrant for the premises.

{¶ 38} The fourth issue under this assignment of error pertains to the warrant that was issued for the search of 60 East Maplewood Avenue. Owensby characterizes this as another “fishing expedition,” since the police had no probable cause to justify searching that location. However, the affidavit for this search was based on the information in the Larkspur affidavit, plus additional evidence found at Larkspur, including a large amount of guns, weapons, and cash, in addition to numerous items of documentation connecting Owensby and Cobb to the premises at 60 East Maplewood. These facts indicated a fair probability that contraband would be found at the premises.

{¶ 39} Based on the preceding discussion, the First Assignment of Error is overruled.

III. Alleged Error in Sentencing

{¶ 40} Owensby’s Second Assignment of Error states that:

The Trial Court Erred When Sentencing Owensby.

{¶ 41} Under this assignment of error, Owensby contends that the trial court erred in sentencing him to a seven-year term of imprisonment when a two-year aggregate prison term would have met the principles and purposes of sentencing in Ohio.

{¶ 42} “The standard of review in R.C. 2953.08(G)(2) applies to felony sentences.” *State v. Graham*, 2d Dist. Montgomery Nos. 26205, 26206, 2015-Ohio-896, ¶ 20, citing *State v. Rodeffer*, 2013-Ohio-5759, 5 N.E.3d 1069, ¶ 29 (2d Dist.). “Under this standard,

an appellate court may vacate a sentence if the sentence is contrary to law. R.C. 2953.08(G)(2)(b). '[A] sentence is not contrary to law when the trial court imposes a sentence within the statutory range, after expressly stating that it had considered the purposes and principles of sentencing set forth in R.C. 2929.11, as well as the factors in R.C. 2929.12.' ” *Id.*, quoting *Rodeffer* at ¶ 32, which cites *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 18.

{¶ 43} In the case before us, the trial court imposed a sentence within the statutory range, after stating that it had considered the purposes and principles of sentencing, as well as the seriousness and recidivism factors that are in R.C. 2929.12. Accordingly, the sentence was not contrary to law.

{¶ 44} Based on the preceding discussion, the Second Assignment of Error is overruled.

IV. Conclusion

{¶ 45} All of Owensby’s assignments of error having been overruled, the judgment of the trial court is affirmed.

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FROELICH, P.J. and DONOVAN, J., concur.

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