Affirmed and Memorandum Opinion filed December 2, 2010.

In The

Fourteenth Court of Appeals

NOS. 14-09-00799-CR
14-09-00801-CR

JUAN EDMUNDO TREVINO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 1137131

MEMORANDUM OPINION

Appellant, Juan Edmundo Trevino, was charged with two separate counts of possession of a controlled substance with intent to deliver: one for possession of cocaine and one for possession of methamphetamines. After the trial court denied his motion to suppress, appellant pleaded guilty to both counts. Pursuant to a plea bargain with the State, appellant was sentenced to 15 years in prison for each count to run concurrently. In a single issue on appeal, appellant contends that the trial court erred in overruling his motion to suppress because the affidavit supporting the request for a search warrant was insufficient to establish probable cause for the search. We affirm.

Standards of Review

The Fourth Amendment to the United States Constitution provides that no warrants may issue, whether for arrest or search, in the absence of probable cause. U.S. Const. Am. IV; *Henry v. United States*, 361 U.S. 98, 100 (1959); *Rodriguez v. State*, 232 S.W.3d 55, 59 (Tex. Crim. App. 2007). More specifically, a magistrate may not issue a search warrant without first finding probable cause "that a particular item will be found in a particular location." *Rodriguez*, 232 S.W.3d at 60. In reviewing an affidavit attached to an application for a search warrant, "[t]he test is whether a reasonable reading by the magistrate would lead to the conclusion that the affidavit provided a 'substantial basis for the issuance of the warrant.'" *Id*. (quoting *Massachusetts v. Upton*, 466 U.S. 727, 733 (1984)).

To determine whether probable cause exists, the magistrate must consider the totality of the circumstances in deciding whether there is a fair probability that contraband or other evidence of a crime will be found at the specified location. *Id.* A finding of "fair probability" cannot be based on "mere ratification of the bare conclusions of others." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Our review of the magistrate's determination is highly deferential and recognizes that the magistrate may draw reasonable inferences from statements in the affidavit. *Rodriguez*, 232 S.W.3d at 61. Ultimately, our inquiry focuses on "whether there are sufficient facts, coupled with inferences from those facts, to establish a 'fair probability' that evidence of a particular crime will likely be found at a given location. The issue is not whether there are other facts that could have, or even should have, been included in the affidavit . . . ." *Id*. at 62.

The Affidavit

Appellant contends that because the affidavit attached to the application for a search warrant was insufficient, the court below erred in denying the motion to suppress evidence obtained as a result of the search warrant. Because of the importance of the affidavit to our analysis, we present it below in its entirety:

> My name is Christopher Cayton and I am commissioned as a peace officer by the Houston Police Department.

1. There is in the City of Houston, Harris County, Texas, a suspected place and premises described and located as follows: 2106 Woodland Park Drive, Apartment #7108, Houston, Harris County, Texas. Said suspected place is described as: a first floor apartment located within the Archstone Westchase Apartment Complex on the south east corner of Woodland Park Drive and Westheimer. The apartment is located on the east side of the complex and the numbers "7-1-0-8" are clearly marked on the front door of the apartment. The front door to the apartment is dark green in color with the numbers "7-1-0-8" in green on a tan background. The numbers are affixed to a plaque in the center of the front door.

2. Said suspected place is in the charge of and controlled by each of the following named and/or described suspected parties (hereafter called "suspected party," whether one or more), to wit: "Jon", unknown Hispanic Male, 5'5"-5'8", 170-200 pounds.

3. It is the belief of affiant that said suspected party has possession of and is concealing at said suspected place in violation of the laws of the State of Texas the following property: a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state, to wit: illegal narcotics, including but not limited to powder cocaine.

4. Affiant has probable cause for said belief by reason of the following facts and circumstances: On or about October 12, 2007, I received information from a confidential source that the apartment located at 2106 Woodland Park Drive, Apartment #7108, was selling large amounts of powder cocaine. The confidential source stated that the unknown Hispanic male at the location recently took control of approximately 5 kilograms of powder cocaine.

The confidential source has provided me with information in the past that has led to the recovery of large amounts of illegal narcotics.

On October 12, 2007, I conducted surveillance on the location and observed vehicluar [sic] traffic consitant [sic] with illegal narcotics activity.

Officer Benavides assisted by conducting surveillance on the front door of apartment #7108 and he relayed the following facts to me:

Officer Benavides observed Gregory Hollman date of birth: 3-23-75 arrive at 2106 Woodland Park Drive, Apartment #7108, in a white Ford F-150

pickup. Officer Benavides observed Gregory Hollman go inside apartment #7108 and return to his vehicle after just a few momments [sic]. Officer Benavides observed Gregory Hollman placing an unknown object inside his pants as he was living [sic] the apartment.

I followed Gregory Hollman from the location and observed him fail to signal several lane changes as he traveled eastbound on Westheimer from Woodland Park Drive. I had Officer K. Mcdonald in a marked police unit conduct a traffic stop on Gregory Hollman for the observed traffic violations. As a result of the traffic stop I was informed by Officer K. Mcdonald that Gregory Hollman was arrested for possesion [sic] of a quantity of powder cocaine and ecstasy pills.

I interviewed Gregory Hollman and he made the following statement against his penal interest: "I went to apt# [sic] 7108 and bought cocaine and ecstasy from Jon." "I have been there before and go approximately (1) a month for the last year." "He has been consistent every time I go." "I buy $40-$60 cocaine and have bought ecstasy for $10 a piece."

I have attached a copy of the written statement provided by Gregory Hollman.

I have been a police officer for over seven years and have made numerous arrests for possession of cocaine. I tested the substance found in the possession of Gregory Hollman and it field tested positive for cocaine content.

Wherefore, affiant asks for issuance of a warrant that will authorize affiant and other peace officers to search said suspected place and premises for the property described above and seize same.

Appellant's Complaints

Appellant asserts five grounds in support of his contention that the affidavit was insufficient to support the issuance of a search warrant, *i.e.* that the affidavit: (1) transposes the numbers of a street address; (2) relies upon information from someone in police custody; (3) relies upon stale and insufficiently detailed information from an anonymous source; (4) fails to establish the credibility or reliability of the anonymous source; and (5) provides insufficient details regarding surveillance of the subject property. We will consider each ground in turn, keeping in mind the highly deferential

nature of our review and that it is the totality of the circumstances that governs whether there is a fair probability that contraband or other evidence will be found at the specified location. *See Rodriguez*, 232 S.W.3d at 60-61.

Appellant first points out that the affidavit listed the street address of the subject apartment complex as "2106 Woodland Park Drive," when the actual address was 2601 Woodland Park Drive. Appellant acknowledges, however, that this court, among others, has previously held that where, as here, a property is described in detail in the affidavit, a mere transposition of numbers in the street address will not render the affidavit insufficient. *See, e.g., Williams v. State*, 928 S.W.2d 752, 754 (Tex. App.—Houston [14th Dist.] 1996), *aff'd on other grounds*, 965 S.W.2d 506 (Tex. Crim. App. 1998). Appellant urges this court to overrule *Williams* but fails to offer any basis in support. We decline to overrule our prior precedent without a rational reason for doing so. *See Jordan v. State*, 54 S.W.3d 783, 786 (Tex. Crim. App. 2001) (discussing circumstances under which overruling prior precedent is acceptable). Appellant's first argument is without merit.

Appellant next contends that the affidavit is insufficient because it depends on information provided by someone already in police custody, Greg Hollman, who would therefore presumably have a motive to provide false information. Appellant cites *State v. Wester*, 109 S.W.3d 824 (Tex. App.—Dallas 2003, no pet.), in support of his argument. The present case, however, is readily distinguishable from the circumstances before the court in *Wester*. The *Wester* court found an affidavit insufficient where the entirety of the information offered to show probable cause was gleaned from a person in police custody. *Id*. at 825-26.[1] Here, while information from a person in custody was provided, it was

[1] The informant in *Wester* was detained on an outstanding felony warrant and then informed officers that he had marijuana in the trunk of his vehicle. 109 S.W.3d at 825-26. He further gave a statement that just prior to being stopped, he had purchased the marijuana from Wester at Wester's residence and that Wester still was in possession of a large amount of marijuana. *Id*. at 826. Other than information regarding the affiant's training and experience and the fact that marijuana and other controlled substances were found in the informant's vehicle, the affidavit provided no further details in support of probable cause. *Id*.

only one small part of the circumstances offered in support of finding probable cause. For example, the affidavit in this case includes the significant detail that the in-custody informant, Hollman, was detained and arrested shortly after leaving the subject property, thus tying him to the property in a way that was not done in *Wester*. In short, the fact that some of the information provided came from a person in police custody did not render the affidavit insufficient.

Appellant additionally complains about the lack of specificity in the affidavit regarding information from the anonymous source. Specifically, appellant argues that the affidavit does not provide a time frame for receipt of the information and does not indicate where evidence was to be found, what type of controlled substance was involved, or what the interior of the apartment looked like. In regards to the time element and the type of narcotic involved, the affiant is actually quite specific, stating that "**[o]n or about October 12, 2007**, [he] received information from a confidential source that the apartment . . . was selling large amounts of **powder cocaine**," and "[t]he confidential source stated that the unknown Hispanic male at the location **recently** took control of approximately 5 kilograms of powder cocaine." (emphasis added). Furthermore, although information regarding where the drugs could be located in the apartment and what the interior of the apartment looked like might have provided an additional level of credibility, the absence of such statements does not render the affidavit insufficient. *See Rodriguez*, 232 S.W.3d at 62 (explaining that the emphasis should not be on what could have been included in the affidavit).

Next, appellant asserts that there is no showing in the affidavit that the confidential source had provided credible or reliable information in the past. Again, this is incorrect. The affiant expressly states that the informant had "provided . . . information in the past that has led to the recovery of large amounts of illegal narcotics." The magistrate was free to infer from this statement that the informant had previously proven credible and reliable. *See id.* at 61 ("[T]he magistrate may draw reasonable inferences from statements in the affidavit.").

Lastly, appellant complains that the affidavit failed to present details of the surveillance, particularly as to whether the alleged traffic was in and out of the complex as a whole or the apartment itself. The affiant states that vehicle traffic was observed "consistent with narcotics activity." While this bare statement does not specifically tie the traffic to the apartment, the magistrate was again free to make reasonable inferences from the statement, particularly in light of the other information specifically pointing to appellant's apartment as the focal point for narcotics activity. *See id.* For example, the affiant states that Hollman was observed entering the apartment and then leaving shortly thereafter while placing something in his pocket and that Hollman was shortly thereafter arrested for possession of powder cocaine and ecstasy pills. In sum, the affidavit contained sufficient information for the magistrate to conclude that there existed a fair probability that contraband or other evidence of a crime would be found at appellant's apartment. *Rodriguez*, 232 S.W.3d at 60.

We affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges, Justice Yates, and Senior Justice Mirabal.[2]
Do Not Publish — TEX. R. APP. P. 47.2(b).

[2] Senior Justice Margaret Garner Mirabal sitting by assignment.