

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20061119-CA
v.	)	
	)	F I L E D
Darran G. Johnson,	)	(June 26, 2008)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2008 UT App 248</span>

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Fourth District, Provo Department, 051403333  
The Honorable Samuel D. McVey

Attorneys: Margaret P. Lindsay, Orem, for Appellant  
Mark L. Shurtleff and Marian Decker, Salt Lake City,  
for Appellee

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Before Judges Greenwood, Davis, and McHugh.

GREENWOOD, Presiding Judge:

Defendant Darran G. Johnson appeals from the trial court's denial of his motion to suppress evidence obtained as a result of police execution of a search warrant. Specifically, Defendant alleges that the affidavit the magistrate relied upon in issuing the search warrant was insufficient to support a determination that probable cause existed. We affirm.

In August 2005, members of the Utah County Major Crimes Task Force (the Task Force) executed a no-knock, nighttime search warrant directed at rooms one and three of the L&L Motel in Orem, Utah. The search warrant had been issued by a magistrate based upon an affidavit of Detective Beebe, a member of the Task Force and a police officer for the city of Provo, Utah. Upon entering the rooms in question, the officers discovered methamphetamine, marijuana stems, and drug paraphernalia. Defendant was present and was arrested and charged with possession of methamphetamine, marijuana, and drug paraphernalia. Defendant subsequently filed a motion to suppress the evidence obtained during the search. After denial of his motion, Defendant entered a conditional no-contest plea to Possession of Marijuana in a Drug Free Zone with a Prior Conviction, a third degree felony, see Utah Code Ann.

§ 58-37-8(2)(f) (Supp. 2004), and Possession of Paraphernalia in a Drug Free Zone, a class A misdemeanor, see id. § 58-37a-5(1) (2002).<sup>1</sup>

In reviewing the denial of a motion to suppress evidence obtained pursuant to a search warrant, we determine "whether the [issuing] magistrate had a 'substantial basis' for determining that probable cause existed." State v. Norris, 2001 UT 104, ¶ 14, 48 P.3d 872 (additional internal quotation marks omitted) (quoting State v. Thurman, 846 P.2d 1256, 1259-60 (Utah 1993)). "[W]e . . . afford the magistrate great deference and consider the affidavit relied upon by the magistrate in its entirety and in a common sense fashion." State v. Saddler, 2004 UT 105, ¶ 7, 104 P.3d 1265 (internal quotation marks omitted). Moreover, the Utah Supreme Court urges reviewing courts to avoid "[e]xcessive technical dissection of an informant's tip" and to apply a "flexible totality-of-the-circumstances standard" when reviewing a magistrate's determination that probable cause exists. Id. ¶¶ 7, 11 (alteration in original) (citations and internal quotation marks omitted).

Defendant argues that the affidavit was not sufficient to establish probable cause because much of the information contained therein had become stale.<sup>2</sup> While staleness concerns

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1. Defendant's pleas were conditioned upon his right to appeal the denial of his motion to suppress--the appeal presently at issue.

2. Defendant further contends that the nonstale information in the affidavit was inadequate because it was either benign or incorrect. While it is true that one piece of information provided by one of the informants was incorrect, the incorrectness was not discovered until execution of the search warrant. Thus, the magistrate's use of that information to determine the existence of probable cause was not inappropriate. See State v. Potter, 860 P.2d 952, 956 (Utah Ct. App. 1993) (a magistrate must make a probable cause determination based on "all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information" (additional internal quotation marks omitted) (quoting Illinois v. Gates, 462 U.S. 213, 239 (1983))). Furthermore, as discussed below, the observation and corroboration of the arguably "innocent" red Coleman cooler and surveillance camera actually strengthened the affidavit. See State v. Saddler, 2004 UT 105, ¶ 24, 104 P.3d 1265.

arise when "'so much time has passed that there is no longer probable cause to believe that the evidence is still at the targeted locale,'" Norris, 2001 UT 104, ¶ 16 n.4 (quoting Thurman, 846 P.2d at 1260), the "mere passage of time does not necessarily invalidate the supporting basis for the warrant." State v. Hansen, 732 P.2d 127, 131 (Utah 1987). Furthermore, "'where the affidavit properly recites facts indicating activity of a protracted and continuous nature . . . the passage of time becomes less significant.'" State v. Stromberg, 783 P.2d 54, 57 (Utah Ct. App. 1989) (quoting United States v. Johnson, 461 F.2d 285, 287 (10th Cir. 1972)).

While some of the information contained in the affidavit was admittedly two weeks old, Detective Beebe was actively investigating the alleged drug manufacturing throughout the two-week period leading up to the securing of the warrant. It is also important to note that Detective Beebe received corroborating information throughout that same two-week period, including significant corroboration just hours before the affidavit was submitted to the magistrate. We believe, as did the trial court, that "[p]olice should not be penalized for being thorough even though some time elapses as a result." Further, the affidavit at issue here was "couched . . . in present-tense language, described ongoing criminal activity[,] and 'clearly refute[d] any contention that it was based on stale information.'" See Norris, 2001 UT 104, ¶ 16 n.4 (final alteration in original) (quoting State v. Anderton, 668 P.2d 1258, 1261 (Utah 1983)). Moreover, the manufacture of methamphetamine is an "activity of a protracted and continuous nature." See Stromberg, 783 P.2d at 57. Consequently, we conclude that the information contained in the affidavit was not stale.

In State v. Saddler, 2004 UT 105, 104 P.3d 1265, the Utah Supreme Court examined an affidavit that was factually similar to the one relied upon in the present case. In upholding the magistrate's probable cause determination, the Saddler court noted that even if the reliability of the confidential informant were in question, the affidavit may still properly support issuance of the warrant where the police are able to corroborate detailed information given by the informant. See id. ¶ 21.

The affidavit presented to the magistrate in the instant case relayed the personal observations of two confidential informants (CI-1 and CI-2) as well as the corroborative efforts of the affiant--Detective Beebe. The affidavit stated that CI-1 had been to the motel multiple times within the prior fourteen

days and had (1) observed glassware and chemicals used in the production of methamphetamine, (2) seen a surveillance camera and a red Coleman cooler containing chemicals inside room one, and (3) witnessed sales of methamphetamine from room one. The affidavit also stated that CI-2 had seen similar glassware being moved from room one to room three and had watched individuals repeatedly arrive at and quickly depart from the motel rooms.<sup>3</sup>

In an attempt to corroborate the information provided by CI-1, Detective Beebe surveilled motel rooms one and three and witnessed a person, Travis Baum, arrive at and shortly thereafter depart from room three. Detective Beebe performed a traffic stop on Baum and found him in possession of marijuana and drug paraphernalia.<sup>4</sup> Furthermore, on a different occasion, Detective Beebe, in an undercover role, accompanied CI-1 to the door of room one. While no one in room one responded to their knocking, an occupant of room three "opened the door looked at [Detective Beebe] and then shut the door." By looking through room one's window Detective Beebe was able to personally verify CI-1's description of the presence of the red Coleman cooler and surveillance camera. Detective Beebe's corroborative effort, including corroboration of "innocent" details such as the presence of the cooler and camera, is at least equal to that of the affiant police officer in Saddler.<sup>5</sup> See 2004 UT 105, ¶¶ 14-24. Thus, we conclude that the affidavit provided a substantial basis upon which the magistrate could conclude that

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3. The affidavit noted that a brief stop is often indicative of controlled substance distribution. Furthermore, the affidavit made it clear that both of the informants were civilians, were given nothing in return for their assistance, had provided reliable assistance to police in the past, and were familiar with the drug culture due to previous involvement.

4. Implicit in the affidavit is Detective Beebe's belief that Baum purchased the marijuana from the motel room.

5. Unlike the affidavit relied upon in State v. Saddler, 2004 UT 105, 104 P.3d 1265, the present affidavit was supported with information provided to Detective Beebe by two confidential informants. See id. ¶ 12.

methamphetamine was being produced and sold in motel rooms one and three.

Based on the foregoing, we affirm.

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Pamela T. Greenwood,  
Presiding Judge

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WE CONCUR:

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge