IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 12/06/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

STATE OF ARIZONA,	)	1 CA-CR 11-0109
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
RONALD LINDSEY,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Navajo County

Cause No. S0900CR20080614

The Honorable Donna J. Grimsley, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Linley Wilson, Assistant Attorney General
Attorneys for Appellee

Emery K. La Barge — Snowflake
Attorneys for Appellant

G E M M I L L, Judge

¶1 Ronald Lindsey appeals his convictions and sentences for one count of trafficking in stolen property and two counts of theft of means of transportation. Lindsey seeks a new trial,

arguing that the trial court abused its discretion by failing to suppress evidence seized as a result of serving a search warrant. For the following reasons, we affirm Lindsey's convictions and sentences and deny his request for a new trial.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the evidence in the light most favorable to upholding the jury verdict and all reasonable inferences are resolved in favor of the prevailing party at trial." *State v. Mitchell*, 204 Ariz. 216, 217, ¶ 3, 62 P.3d 616, 617 (App. 2003) (citing *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997)). With these principles in mind, the following facts were revealed at trial.

¶3 On August 9, 2007, Navajo County Sheriff's Deputy B.B. was alerted to and investigated a burglary. Some of the items reported stolen were a Yamaha Banshee four-wheeler, other four-wheelers, and some tools. After further investigation and a tip from a confidential informant, Sergeant T.W. of the Navajo County Sheriff's office swore out an affidavit for a search warrant on August 9, 2007. The affidavit included the following information: the address for a home in Silver Lake Estates on Deer Run Road; a detailed description of the outside of the home; that stolen property was located there including *inter alia* a Polaris Ranger and a Yamaha Banshee four-wheeler or quad. The affidavit further provided that on August 9, 2007, the above

items had been reported stolen and Deputy B.B. investigated the burglary. Also, on August 9, 2007, Sergeant T.W. received a phone call from a "reliable confidential informant" and the informant described seeing two four-wheelers matching the stolen property. The informant stated that the four-wheelers were taken to Silver Lake Estates to "Ron's house" located on Deer Run Road. Moreover, the affidavit additionally provided that Sergeant S.B. on July 20, 2007, went to the home and identified a Ron Lindsey as a resident of the Deer Run home. Further, Deputy B.B. performed a roll-by of the Deer Run residence on August 9, 2007, and saw a four-wheeler in the driveway that matched the one that was reported stolen.

¶4 Sergeant T.W. also stated in the affidavit that the confidential informant was reliable because he or she had previously provided accurate information about a homicide case and more than five burglary cases. In each case, the information given by the informant "lead to the recovery of evidence and stolen property." Based on the aforementioned information contained in the affidavit, the magistrate issued a search warrant for the home.

¶5 Both parties briefed the trial court and participated in a suppression hearing on May 27, 2010. During the suppression hearing, Sergeant W.'s testimony mirrored the statements he made in the affidavit. Sergeant S.B. also

testified during the suppression hearing. He was uncertain whether he actually told Sergeant T.W. about Lindsey being present at the Deer Run home on exactly July 20, 2007, as Sergeant T.W. attested in the affidavit. However, Sergeant S.B. did testify that he had seen Lindsey at the Deer Run residence "several times" and he may have mentioned it to Sergeant T.W. Moreover, he spoke with Lindsey at the residence approximately two weeks prior to service of the warrant. Deputy B.B. was also called to testify during the suppression hearing. He was dispatched to the Deer Run address to perform a roll-by to see if he could locate any evidence in plain sight. He stated that there was a four-wheeler in the Deer Run driveway that matched the description the burglary victim gave him. Furthermore, he communicated that information to Sergeant T.W.

¶6 The trial court ruled that Lindsey did not meet his burden to overcome the presumption of the validity of the search warrant. The trial court found that "[t]he warrant on its face does establish probable cause to search the residence [on] Deer Run Road." The trial court found the only issue that was questionable was whether Sergeant S.B. told the affiant (Sergeant T.W.) that Lindsey was staying at that residence. The trial court further stated that even if Sergeant S.B.'s information was excluded from the warrant, there was still enough of a showing of probable cause based on the reliability

of the confidential informant and Deputy B.B.'s subsequent corroboration that the stolen four-wheeler was present at the Deer Run home.

¶7 Lindsey timely appeals, and we have jurisdiction pursuant to Arizona Constitution Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21 (2003), 13-4031 (2010), and 13-4033(A) (2010).[1]

ANALYSIS

¶8 Lindsey argues that the trial court abused its discretion when it failed to deny the motion to suppress the evidence found by exercising the search warrant. Lindsey contends the search warrant used to obtain evidence against him was defective because the information was stale, the informant was not credible, and there was no proper corroboration of the informant's information.

¶9 We review a trial court's denial of a motion to suppress evidence for abuse of discretion. *See State v. Prince*, 160 Ariz. 268, 272, 772 P.2d 1121, 1125 (1989). "We restrict our review to consideration of the facts the trial court heard at the suppression hearing." *State v. Blackmore*, 186 Ariz. 630, 631, 925 P.2d 1347, 1348 (1996); *see also State v. Zamora*, 220 Ariz. 63, 67, ¶ 7, 202 P.3d 528, 532 (App. 2009). Search

[1] We cite to the current versions of applicable statutes when no revisions material to this decision have occurred since the incidents herein.

warrants are presumed valid and the defendant carries the burden of proving the invalidity of the warrant. *State v. White*, 145 Ariz. 422, 427, 701 P.2d 1230, 1235 (App. 1985) (citations omitted).

¶10 The State contends that the search warrant was valid because it was based on a sufficient probable cause affidavit including information from a "reliable and credible informant." Alternatively, if the warrant is deemed flawed, the State argues that the officers' good faith belief in the warrant's validity is an exception to the exclusionary rule, and accordingly, the trial court did not err. Because we agree that the search warrant was valid, we need not address the State's alternative contention concerning the good faith exception.

¶11 At the suppression hearing concerning the search warrant, the State argued that Lindsey needed to come forward and establish a prima facie case that the evidence should be suppressed pursuant to Arizona Rules of Criminal Procedure 16.2(b). We agree with the State's position.

¶12 Rule 16.2(b) states in part:

> The prosecutor shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial. . . . [When] evidence [is] obtained pursuant to a valid search warrant, the prosecutor's burden of proof shall arise only after the defendant has come forward with evidence of specific

> circumstances which establish a prima facie case that the evidence taken should be suppressed.

See also State v. Hyde, 186 Ariz. 252, 266, 921 P.2d 655, 669 (1996) (stating "when a defendant moves to suppress evidence that the state has obtained under defined circumstances, [including a search warrant,] the burden of going forward rests on the defendant").

¶13 The Arizona Supreme Court in *Hyde* provided guidance on how a defendant may meet his prima facie burden for suppressing a warrant. 186 Ariz. at 268-70, 921 P.2d at 671-73. The court determined that a "defendant must present sufficient evidence to dispel the warrant's presumption of regularity." *Id.* at 269, 921 P.2d at 672. "This will usually require a showing that the magistrate's procedures in determining whether there was probable cause did not adequately safeguard the defendant's constitutional rights." *Id.* This can be done by "calling the weaknesses in the state's argument to the trial court's attention 'through argument, legal theory or testimony.'" *Id.* (quoting dictum in *State v. Hocker*, 113 Ariz. 450, 455 n.1, 556 P.2d 784, 789 n.1 (1976)) However, the court cautioned that argument and legal theory alone may not be enough. *See id.* (citing *State v. Fimbres*, 152 Ariz. 440, 442, 733 P.2d 637, 639 (App. 1986)).

¶14 The primary constitutional right pertaining to search

warrants is the right that no warrant shall issue without probable cause. *See* U.S. Const. amend. IV ("[N]o Warrant shall issue but upon probable cause, supported by Oath or affirmation."). The Arizona constitutional framers were of similar mind: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Ariz. Const. art. 2, § 8. The test for determining probable cause focuses on the totality-of-the-circumstances. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Arizona adopted this test in *State v. Buccini*, 167 Ariz. 550, 556, 810 P.2d 178, 184 (1991), stating: "Under *Gates*, probable cause exists if 'given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" (quoting *Gates*, 462 U.S. at 238). The Supreme Court in *Gates* further offered that the totality test is a simple one for the reviewing magistrate. *Gates*, 462 U.S. at 238. All that is required is a "practical, common-sense decision" based on the totality of the circumstances found in the affidavit and this includes the veracity, basis of knowledge, and any hearsay statements from persons supporting a probable finding of evidence pertaining to a crime. *Id.*

¶15 The use of a confidential informant adds another layer to our analysis. The primary issue concerning informants is whether the information provided is inherently reliable. *State*

ex rel. Flournoy v. Wren, 108 Ariz. 356, 364, 498 P.2d 444, 452 (1972). Moreover, "[t]he real issue involved in the determination of . . . probable cause is not whether the informant lied to the officers but whether the affiant is truthful in his recitation of what he was told and whether that information is credible and reliable." *State v. Keener*, 110 Ariz. 462, 464, 520 P.2d 510, 512 (1974).

¶16 Here, the trial court had a copy of the affidavit and the actual search warrant submitted as exhibits through the briefing of the parties. All three sheriff's department officers named in the affidavit also testified in the suppression hearing. All three officers gave testimony that was in accord with the information found within Sergeant T.W.'s affidavit with the exception of a lack of a clear timeline from Sergeant S.B. concerning Lindsey's residential status.

¶17 Sergeant T.W. restated his confidence in his confidential informant through his testimony. He articulated that he had worked with this informant in the past and that several times this informant had provided useful information leading to evidence and stolen property, including one homicide and at least five burglaries. The informant provided the name Ron, an address on Deer Run Road, and a description of the stolen four-wheelers. Sergeant T.W. dispatched Deputy B.B. to perform a roll-by to look for any stolen property in plain view

at the Deer Run address. Deputy B.B. was also confident that the description he received from the burglary victim matched the four-wheeler's appearance in the driveway of the Deer Run home during his roll-by investigation. Deputy B.B.'s roll-by assessment was deemed sufficient by the magistrate and the trial judge as necessary secondary corroboration to support the information provided by the confidential informant. Based on the totality of the circumstances found in this record, we conclude that the trial court did not abuse its discretion in determining that the evidence supported the reliability of the confidential informant. Therefore, there was a sufficient showing of probable cause for the magistrate to issue the warrant.

CONCLUSION

¶18 We agree with the trial court that Lindsey did not present sufficient evidence to rebut the presumption that the warrant was valid. We conclude, based on the totality of the circumstances and the evidence provided in this record, that there was substantial information to support the reliability of the informant. Additionally, the trial court did not err in sustaining the validity of the search warrant because there was a sufficient showing of probable cause.

¶19 For the foregoing reasons, we affirm the trial court's denial of Lindsey's motion to suppress the evidence found

pursuant to the search warrant, and we affirm Lindsey's convictions and sentences.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

__/s/_____
JON W. THOMPSON, Presiding Judge

__/s/_____
MAURICE PORTLEY, Judge