

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JORGE ANTONIO RAMIREZ,
Appellant.

No. 2 CA-CR 2018-0355
Filed January 8, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Cochise County
No. CR201700384
The Honorable James L. Conlogue, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Heather A. Mosher, Assistant Attorney General, Tucson
Counsel for Appellee

Janelle A. Mc Eachern, Chandler
Counsel for Appellant

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 Jorge Ramirez appeals from his convictions and sentences for possession of drug paraphernalia, possession of methamphetamine for sale, and possession of marijuana. Ramirez argues that the warrants authorizing searches of his residence were not supported by probable cause and were executed improperly, and thus the trial court erred in denying his motion to suppress evidence collected pursuant to those warrants. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A). We affirm.

Factual and Procedural Background

¶2 When reviewing a trial court's ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, and we view that evidence in the light most favorable to upholding the court's ruling. *State v. Moran*, 232 Ariz. 528, ¶ 2 (App. 2013). In April 2017, law enforcement officers discovered illegal drugs and drug paraphernalia in Ramirez's residence during the execution of two search warrants. The first warrant authorized officers to search the premises for evidence relating to a stolen tractor. However, upon conducting a primary search of the house while executing that warrant, officers saw methamphetamine and drug paraphernalia in plain view. They obtained a second warrant allowing them to search for, *inter alia*, illegal drugs and paraphernalia. Ramirez was subsequently charged with possession of drug paraphernalia, possession of methamphetamine, and possession of marijuana for sale.¹

¶3 At the end of a five-day trial, a jury found Ramirez guilty on all counts except for the charge of possession of marijuana for sale, finding him guilty of the lesser-included offense of simple possession. The trial court sentenced him to concurrent terms of imprisonment, the longest of

¹Ramirez was charged with several other crimes involving weapons misconduct, but the trial court variously severed and dismissed those charges upon the state's motions.

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which is 15.75 years. Ramirez now appeals his convictions and sentences. He contends the court erred by denying his motion to suppress the drugs and drug paraphernalia found during the execution of the search warrants.

Discussion

¶4 We review a trial court’s ruling on a motion to suppress for an abuse of discretion. *State v. Adair*, 241 Ariz. 58, ¶ 9 (2016). However, we review *de novo* the court’s legal conclusions, such as its “determination as to the existence of probable cause.” *State v. Goudeau*, 239 Ariz. 421, ¶ 26 (2016). In his motion to suppress, Ramirez argued the first warrant had been issued without probable cause. He maintained that the second warrant was also invalid because the first was invalid and because officers discovered the drugs and drug paraphernalia only by exceeding the parameters of the first warrant. He further argued that the first search was pretextual because Ramirez was known to law enforcement officers as an individual who dealt in stolen property and drugs.

¶5 A search warrant is supported by probable cause when “a reasonably prudent person . . . 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.” *State v. Carter*, 145 Ariz. 101, 110 (1985). “This ‘practical and common-sense’ standard depends on the totality of the circumstances.” *State v. Sisco*, 239 Ariz. 532, 535 (2016) (quoting *Florida v. Harris*, 568 U.S. 237, 244 (2013)).

¶6 The probable cause threshold was easily met here for both warrants. At the hearing on the motion to suppress, the state presented the testimony of two detectives from the Cochise County Sheriff’s Office, as well as the two search warrants and the affidavits supporting those warrants. The first detective testified that during the course of investigating a series of burglaries, officers received information that a stolen tractor was located on a residential property on Burro Drive in Hereford. Ramirez lived in one of multiple buildings on the property.² He gathered this information through multiple interviews that substantially corroborated one another.

² The detective testified that Ramirez “was not part of [the] investigation” until he was specifically named by the informants, and that the search of Ramirez’s property was not “an excuse” to investigate whether Ramirez, who was known to the sheriff’s department as having a prior criminal history, was involved with drugs. He did note that he “suspected” a search would reveal “drugs and or drug paraphernalia.”

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He further testified that the information provided by one interviewee eventually led to criminal charges being brought against that individual, which bolstered her credibility. After conducting these interviews, officers drove by the property in question and observed a tractor that fit the description of the tractor reported as stolen.

¶7 At that point, investigators submitted an affidavit requesting a warrant to search the property on Burro Drive. The affidavit contained a detailed description of the burglaries, including the reported theft of the tractor, as well as the contents of the interviews that led law enforcement officers to believe the tractor would be found at Burro Drive. It noted that the interviews had led officers to recover other property stolen in the series of burglaries. It also attested that one informant had specifically admitted to having driven a stolen tractor to Ramirez's residence on Burro Drive. Finally, it noted that officers had driven by the property and had observed a similar tractor on the grounds.

¶8 Based on this affidavit, a justice of the peace issued a warrant that authorized officers to search the Burro property for a stolen tractor, cellular phones and electronic devices, items that possession of would constitute a violation of the Arizona criminal code, and indicia of occupancy. The warrant specifically excluded a search for drugs and drug paraphernalia, although the officers had requested authorization to search for such items.

¶9 Because of Ramirez's criminal history, the sheriff's office sent a Special Weapons and Tactics (SWAT) team to execute the first search warrant. An officer who participated in that search testified that as a matter of practice when securing a building, SWAT officers conduct a primary search, during which they observe only what is obviously in view. While conducting this primary search of the first building, the officer noticed a substance that appeared to be methamphetamine inside a transparent salt shaker and glass smoking devices on a counter or table.³

¶10 As a result of the officer's observation of what appeared to be illegal drugs and paraphernalia during the search of Ramirez's residence, law enforcement officers submitted a second affidavit to procure an

³This officer testified that he had been assigned as a narcotics detective for the prior 4.5 years and that he came into contact with methamphetamine on a daily basis and was able to recognize it as easily as "any other everyday item."

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amended warrant to include those items. That affidavit noted that during the primary search, drug paraphernalia, a digital scale, and “what appear[ed] to be methamphetamines was located in plain sight on a table.” It further attested that while searching for electronic communication devices, officers had located items suggesting Ramirez was involved in criminal activity, including five vacuum-sealed packages of a substance appearing to be “high grade marijuana.” The judge issued a second warrant to include a search for “[d]rugs, drug paraphernalia to include scales, packaging, and ledgers.” Investigators then seized the items leading to the charges against Ramirez.

¶11 Viewed in the light most favorable to upholding the ruling below, the trial court did not err in concluding that both warrants were supported by probable cause and that the officers did not exceed the scope of the first warrant when discovering the drugs and drug paraphernalia. As the officers testified at the suppression hearing, they received information from multiple sources, whose stories substantially corroborated one another. The officers’ observation of a similar tractor on the Burro property further justified their suspicion that they would find evidence of criminal activity as a result of their search. And although the record does reflect that law enforcement officers suspected Ramirez of drug- and weapon-related criminal activity unrelated to the stolen tractor, these suspicions do not undermine the solid foundation for probable cause supporting the original search warrant.

¶12 Likewise, the trial court did not err in finding that law enforcement officers permissibly observed suspected drugs and drug paraphernalia in plain view during the first, valid search of the premises. *See Sisco*, 239 Ariz. 532, ¶ 11 (even absent warrant, police may seize object they are lawfully positioned to view if “its incriminating character is immediately apparent” and if officers “have a lawful right of access to” the object (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 374-75 (1993))). The original warrant authorized officers to ascertain whether a stolen tractor and any evidence connecting Ramirez to the tractor would be found on the property. To that end, officers were authorized to search for items ranging from as large as the tractor itself to as small as electronic communication devices. Thus, even had the methamphetamine and paraphernalia not been discovered in plain sight, the officers would not have exceeded their authority in viewing items smaller than a tractor during their primary search.

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Disposition

¶13 The trial court did not err in finding both search warrants were valid and supported by probable cause. We therefore affirm Ramirez's convictions and sentences.