

Cite as 2009 Ark. App. 676

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CACR09-495

PATSY ANN JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** October 21, 2009APPEAL FROM THE WHITE  
COUNTY CIRCUIT COURT  
[NO. CR-08-408]HONORABLE ROBERT EDWARDS,  
JUDGE

AFFIRMED

**JOHN MAUZY PITTMAN, Judge**

Patsy Ann Jones entered a conditional guilty plea to charges of possession of methamphetamine with intent to deliver, possession of drug paraphernalia, and maintaining a drug premises. She reserved the right to file this appeal challenging the denial of her motion to suppress physical evidence and statements gathered as a result of the execution of a search warrant. Specifically, she argues (1) that the warrant was not supported by probable cause because the affidavit upon which it was based failed to provide any information regarding the reliability of a confidential informant; and (2) that the warrant should never have issued because the affidavit was based upon information gathered through conversations recorded by an agent of the State who entered appellant's home without her permission.

On August 19, 2008, White County Sheriff's Department Detective Conlee Busselle prepared and presented to a magistrate an affidavit to support issuance of a warrant to search

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appellant's home, the shop next door, outbuildings, and vehicles on the premises. In the affidavit, Detective Busselle described two controlled purchases of methamphetamine from the premises. The detective stated that, on August 4, 2008, a confidential informant (CI 196) spoke to a person named Sharron about buying methamphetamine from appellant and that appellant arranged a meeting at appellant's home. CI 196 went to appellant's home that afternoon and met Sharron at the door. According to the affidavit, CI 196 gave Sharron \$25 and then observed Sharron give the money to appellant and watched appellant give a one-quarter gram bag of methamphetamine to Sharron. Sharron gave the bag to CI 196, who then left and gave the bag to the detective.

The second purchase occurred “[i]n the past 72 hours of August 18, 2008.” On this occasion, according to the affidavit, CI 196 contacted Sharron by telephone and inquired about buying methamphetamine from appellant. The detective averred that CI 196 heard Sharron ask a female, whom CI 196 believed to be appellant, whether she (appellant) had a “quarter” for sale and heard the female say “yes.” CI 196 then went to the shop next to appellant's home, met Sharron at the front door, gave Sharron \$25, and received from Sharron a bag of methamphetamine. CI 196 left the premises and gave the bag to Detective Busselle.

During each purchase, CI 196 was provided with \$25 in “buy money” and was wired with an audio transmitter. The audio of the first buy was monitored by two other sheriff's detectives. The second buy was monitored by Detective Busselle and a colleague. On each

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occasion, the substance turned over to the detective tested positive for methamphetamine.

Based on the affidavit, a district court judge issued a search warrant. Its execution assertedly yielded the physical evidence to support the charges against appellant and was followed by an interview in which appellant gave a statement to Detective Busselle.

At the hearing on appellant's motion to suppress the evidence, Detective Busselle was the only witness. He admitted that the affidavit did not provide any facts bearing on the informant's reliability. He also admitted that much of the information contained in the affidavit, including all of the evidence of appellant's personal involvement in the two sales, was simply hearsay from CI 196. However, he pointed out that two officers monitored the audio of the first sale and that he personally monitored the audio of the second sale.

The trial court held that the warrant was supported by probable cause and denied the motion to suppress, relying specifically on

the presence of law enforcement officers at both the August 4, 2008, purchase of methamphetamine at the residence . . . and the August 18, 2008, purchase of methamphetamine at the shop located next to the residence . . . , coupled with the inference that the [affidavit's] assertions [regarding the sales] . . . were either personally observed or audible by the law enforcement officers and the fact that items submitted by the CI to the officer twice tested positive for methamphetamine.

The trial court additionally held that, even if the affidavit were insufficient, the motion to suppress should be denied because the officers acted in objective, good-faith reliance on a facially valid warrant.

Rule 13.1(b) of the Arkansas Rules of Criminal Procedure provides in pertinent part

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as follows:

If an affidavit or testimony is based in whole or in part on hearsay, the affiant or witness shall set forth particular facts bearing on the informant's reliability and shall disclose, as far as practicable, the means by which the information was obtained. An affidavit or testimony is sufficient if it describes circumstances establishing reasonable cause to believe that things subject to seizure will be found in a particular place. *Failure of the affidavit or testimony to establish the veracity and bases of knowledge of persons providing information to the affiant shall not require that the application be denied, if the affidavit or testimony viewed as a whole, provides a substantial basis for a finding of reasonable cause to believe that things subject to seizure will be found in a particular place.*

(Emphasis added.) There is no fixed formula in determining an informant's reliability.

*Morgan v. State*, 2009 Ark. 357, at 12. Factors to be considered in making such a determination include whether the informant's statements are: (1) incriminating; (2) based on personal observations of recent criminal activity; and (3) corroborated by other information.

*Id.* at 12-13. Here, the informant's information was corroborated by the officers' observations while monitoring the two controlled buys. While the officers did not witness appellant's personal involvement in the sales, their observations did corroborate that methamphetamine was being sold out of appellant's home and shop, the areas authorized in the warrant to be searched. Under these circumstances, we hold that the affidavit as a whole provided a substantial basis for reasonable cause to believe that methamphetamine and material related to its sale would be found on the premises to be searched. *See Ark. R. Crim. P. 13.1(b).*

Appellant also argues that the trial court erred in denying the motion to suppress for the reason that the warrant was based on information gained as a result of unlawful intrusions onto appellant's property and secret recordings by an agent of the State. Appellant argues that

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CI 196 had no right to enter her home or to record conversations that occurred there without permission, and that the information gained should not have been used to establish probable cause for the search.

We find no merit in this argument. First, the argument is not preserved for appeal: appellant has failed to show that the trial court ever ruled on the argument. A two-page, single-spaced letter opinion was issued by the court, but this issue was not discussed. It is incumbent upon an appellant to obtain a ruling from the trial court in order to preserve an argument for appeal. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). Second, appellant's argument is premised on facts that are not in the record before us: nothing in the abstract or addendum demonstrates that CI 196 ever actually entered appellant's home or shop. The affidavit simply says that on both occasions CI 196 "made contact with Sharron at the front door," where presumably anyone could go unimpeded, and that the money and drugs were exchanged. Third, even should we assume for the purpose of argument that the informant did go inside appellant's home, appellant's argument focuses on her lack of knowledge that CI 196 was working for the police rather than asserting that the CI entered the home surreptitiously or intrusively. However, consent to enter is valid even if obtained by deception. There is no federal or state constitutional violation where a wired informant is invited into a home to conduct illegal business; audio and video made by such an informant can be admitted. *See Sherman v. State*, 2009 Ark. 275, at 8–12.

Affirmed.

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KINARD and BROWN, JJ., agree.