

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CACR11-206

HENRY HAMPTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 28, 2011APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT

[Nos. CR-2003-733-2-5; CR-2008-230-2-5]

HONORABLE JODI RAINES DENNIS,  
JUDGE

AFFIRMED

**LARRY VAUGHT, Chief Judge**

Appellant Henry Hampton was charged with two counts of possession of a controlled substance with the intent to deliver and one count each of possession of drug paraphernalia, simultaneous possession of drugs and firearms, and possession of a firearm by certain persons. The State also filed a petition to revoke Hampton's probation for possession of cocaine based on these newly charged offenses. After a hearing, the trial court denied Hampton's motion to suppress evidence seized as the result of the execution of a search warrant, and Hampton entered a conditional guilty plea to the five charges and the petition to revoke his probation, reserving the right to appeal the denial of his motion to suppress.

Following his plea, he was sentenced to ten years in the Arkansas Department of Correction for violating his probation; fifteen years in the Arkansas Department of Correction for the simultaneous-possession-of-drugs-and-firearms charge and the possession-with-intent-to-deliver-cocaine charge; ten years in the Arkansas Department of Correction for the possession-with-the-intent-to-deliver charge and the possession-of-drug-paraphernalia charge; and four

years in the Arkansas Department of Correction on the felon-in-possession charge. The court ordered that the sentences run together. On appeal, he challenges the denial of his motion to suppress evidence because the affidavit, which was the basis for the search warrant, failed to state probable cause for the search of appellant's home. We see no error and affirm.

In reviewing the denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion. *Blount v. State*, 2010 Ark. App. 219, at 3–4. Under Arkansas Rule of Criminal Procedure 13.1, probable or reasonable cause to believe that things subject to seizure will be found in a particular place is required, and this must be established by affidavit or recorded testimony. *Yancey v. State*, 345 Ark. 103, 110, 44 S.W.3d 315, 319 (2001). There is no substantive difference between “reasonable cause” and “probable cause.” *Id.*, 44 S.W.3d at 319.

Probable cause requires a nexus between criminal activity and the item to be seized and also a nexus between the item to be seized and the place to be searched. *Id.*, 44 S.W.3d at 319. Whether the reasonable-or-probable-cause requirement is met turns on the adequacy of the affidavit or recorded testimony. *Id.*, 44 S.W.3d at 319. The task of the issuing magistrate is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.*, 44 S.W.3d at 319. Although the existence of a fact may be proved by circumstantial as well as by direct evidence, the circumstantial evidence must be sufficient to lead

to the inference. *Id.*, 44 S.W.3d at 319. When circumstantial evidence is relied upon to establish a fact, the circumstances proven must lead to the conclusion with reasonable certainty and must be of such probative force as to create the basis for a legal inference and not mere suspicion. *Id.*, 44 S.W.3d at 319. Finally, in assessing the existence of probable cause, our review is liberal rather than strict. *Hinojosa v. State*, 2009 Ark. 351, at 5, 319 S.W.3d 258, 262. After conducting a review under these parameters, we are satisfied that the warrant survives scrutiny and that Hampton's suppression motion was rightfully denied.

At the suppression hearing, the evidence showed that on March 7, 2008, two detectives executed a search warrant on 14th and Apple Street in Pine Bluff, Arkansas. The affidavit provided that the detectives—after being informed by an unidentified informant that a black male and a white female were selling crack cocaine out of a particular house—supervised two controlled buys of cocaine by this informant. The affidavit stated how on each occasion the informant was provided funds, how the informant was as he entered the home, and then how the informant delivered the substance to the detectives. The substance was later shown to field test positive as cocaine.

Relying on *Yancey v. State*, 345 Ark. 103, 44 S.W.3d 315 (2001), Hampton argues that, because speculation was required in order for one to conclude that cocaine or other contraband would be found at his home, the trial court erred in its denial of his suppression motion. In *Yancey*, appellants were observed watering marijuana plants in a remote area of Monroe County late in the evening. *Id.*, 345 Ark. at 108, 44 S.W.3d at 318. A search warrant was issued for their homes, which were five or six miles away, despite the fact that there was no evidence that they

utilized their homes for the growing or distribution of the contraband. The appellate court concluded that there was only a speculative link or nexus between the things to be seized and the place to be searched. *Id.*, 44 S.W.3d at 318.

However, unlike the facts of *Yancey*, here the nexus is established by the detective's personal observation, not hearsay recounted by the informant. Because the affidavit contained the detective's personal observation as to the controlled buys of cocaine, the fact that the affidavit did not establish the informant's reliability was not fatal. *Fouse v. State*, 73 Ark. App. 134, 43 S.W.3d 158 (2001) (holding that even though the reliability of the informant was not established, the affidavit was adequate based on the officers' personal observations). Based on the facts of this case and accompanying case law, we are satisfied that there was adequate probable cause to issue the search warrant and that the resulting search was proper. Therefore, we see no error in the trial court's denial of Hampton's motion to suppress and affirm his conviction and revocation.

Affirmed.

HOOFFMAN and BROWN, JJ., agree.