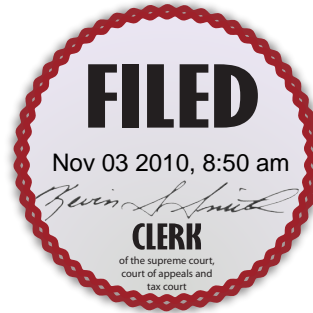


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
 Appellant-Plaintiff,)
)
 vs.) No. 02A03-1003-CR-139
)
 JERMAIN BLUE,)
)
 Appellee-Defendant,)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0602-FA-12

November 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

The State of Indiana appeals the trial court's grant of Jermain¹ Blue's motion to suppress evidence against him. The State raises the sole issue of whether the trial court improperly suppressed the evidence. Concluding the trial court's grant of Blue's motion to suppress was not contrary to law, we affirm.

Facts and Procedural History

In January 2006, a tipster who identified himself by first and last name telephoned James Enea, an intelligence analyst of the Drug Enforcement Agency ("DEA"), to report cars were abnormally coming to and leaving the home of his neighbor, Blue. Enea passed this information along to John Greenlee, a detective of the Fort Wayne Police Department, who recognized Blue's name from several anonymous tips of illegal drug activity, the most recent in 2002. None of the previous tips concerned the address of Blue's home in 2006. Detective Greenlee called the tipster and received additional information, including where the tipster lived and information about the vehicles that came to and left Blue's home. The tipster told Detective Greenlee that when he had his garage door open one day, a male knocked on the tipster's door to his house from inside his garage and stated "I'm looking for Blue." Exhibit B at 2. The tipster "became suspicious" because the male "did not look like he had good intentions." *Id.* The tipster also observed vehicles that did not belong to Blue or his wife drive into Blue's garage and leave after about half an hour.

¹ The captions of Appellant's brief and the trial court order suppressing evidence spell Appellee-Defendant's first name as "Jermaine"; Appellee's brief and the appellate court docket spell his name "Jermain." Neither the spelling of his name nor false identity of Blue is at issue on appeal.

On January 13, 2006, officers conducted a trash pull at Blue's home and found remnants of cocaine and marijuana. On January 17, 2006, officers observed Blue and another individual ride in a car from Blue's residence to a nearby gas station where Blue entered another vehicle for about three minutes and then returned to his vehicle and left the area. According to the observing officers, this behavior is consistent with drug transactions.

On January 20, January 27, and February 10, 2006, officers conducted three more trash pulls and found marijuana each time. Also on February 10, 2006, Detective Greenlee submitted a search warrant and supporting affidavit to search Blue's residence. This affidavit included the information passed along from the tipster to Enea; Detective Greenlee's personal conversation with the tipster; a note that "tips and/or information from anonymous sources and various confidential informants since at least 2000² that Jermain Blue has been actively involved in drug trafficking," ex. A at 1; a description of Detective Greenlee's observations on January 17, 2006; the results of trash pulls on January 20, January 27, and February 10, 2006; and stated Enea passed along information to Detective Greenlee regarding other calls from other neighbors about numerous vehicles at Blue's home over the weekend of January 21, 2006. No information regarding the January 13, 2006 trash pull was included in the search warrant or affidavit.

The trial court granted the search warrant, and on February 17, 2006, officers executed it and recovered cocaine and marijuana. The State subsequently charged Blue

² The suppression hearing revealed the error of this date. Prior to the tip that began this case, the latest tip was in 2002, as noted above. Detective Greenlee revealed at the suppression hearing that upon further investigation after executing the warrant but prior to the hearing, a tip referred to Blue as early as 1994, and there had been "more than eight." Transcript at 53.

with various offenses. Blue moved to suppress the evidence recovered from his residence on the basis that the officers did not have a reasonably articulable suspicion to conduct the trash pulls because they were based on uncorroborated hearsay. The trial court granted the motion, and the State now appeals.

Discussion and Decision

I. Standard of Review

When reviewing a trial court's ruling on a motion to suppress evidence, we must determine whether substantial evidence of probative value supports the trial court's decision. State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006). Where a trial court granted a motion to suppress, the State appeals from a negative judgment and must show that the trial court's grant of the motion was contrary to law. State v. Carlson, 762 N.E.2d 121, 125 (Ind. Ct. App. 2002). We will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. Id. We will not reweigh the evidence nor judge witnesses' credibility, and will consider only the evidence most favorable to the trial court's ruling. State v. Friedel, 714 N.E.2d 1231, 1235 (Ind. Ct. App. 1999).

II. Suppression of Evidence

The trial court concluded the search warrant was invalid. Search warrants and their underlying supporting affidavits must be supported by probable cause. Jackson v. State, 908 N.E.2d 1140, 1143 (Ind. 2009). The State argues that the warrant was weakened not strengthened by omitting information about the January 13, 2006 trash pull, and therefore omitting the information alone could not render the warrant invalid.

The State further argues that because the warrant contained sufficient information to be valid, it is irrelevant whether the warrant included all known information.

This argument is a bit disingenuous because if the January 13, 2006 trash pull was invalid then under the “fruit of the poisonous tree” doctrine the subsequent trash pulls and surveillance – which were the basis of the search warrant and underlying affidavit – would have been invalid too, rendering the search warrant invalid. The fruit of the poisonous tree doctrine bars evidence directly obtained and “derivatively gained as a result of information learned or leads obtained during an unlawful search or seizure.” State v. Farber, 677 N.E.2d 1111, 1114 (Ind. Ct. App. 1997), trans. denied.

The primary issue then, is whether the January 13, 2006 trash pull was based on “articulable individualized suspicion” – or the equivalent “reasonable suspicion” – that illegal drug activity was taking place. Litchfield v. State, 824 N.E.2d 356, 364 (Ind. 2005); see State v. Harmon, 846 N.E.2d 1056, 1059 (Ind. Ct. App. 2006) (equating articulable individualized suspicion with reasonable suspicion), trans. denied. Reasonable suspicion “can arise from information that is less reliable than that required to show probable cause,” but we consider the totality of the circumstances including “both the content of information possessed by police and its degree of reliability.” Washburn v. State, 868 N.E.2d 594, 601 (Ind. Ct. App. 2007), trans. denied. “The reasonable suspicion requirement is met where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur.” L.W. v. State, 926 N.E.2d 52, 55 (Ind. Ct. App. 2010). “[R]easonable suspicion must be comprised of more

than an officer's general hunches or unparticularized suspicions." Id. (quotation omitted).

Prior to the trash pull on January 13, 2006, the State's information came solely from the tipster. In his initial call to Enea, the tipster identified himself by first and last name, gave his phone number and address, and according to Enea, called

to report some activity. I believe that my neighbor has got something going on. There's multiple vehicles coming to and from, . . . and I just wanted to make sure that it was reported because it just doesn't seem like it's normal activity.

Tr. at 12. Enea testified that the tipster provided several specific license plates and vehicle types, times of the visits, and Blue's name, although Enea heard it as "Termain Blue." Id. at 15. Enea testified that the tipster called "a couple days" later to follow up, and gave Enea more information. Id. at 17. Enea looked in the DEA database to see if there were any names close to Termain Blue, and found the name of Jermaine Blue and that he had a criminal record. Enea attempted to confirm that Jermaine Blue was the same person whom the tipster identified, but was unsuccessful. Enea passed along all information to Detective Greenlee shortly after the first phone call. He passed along information from the second phone call on January 25, 2006. Detective Greenlee's follow-up call to the tipster revealed additional but minimal similar information.

Considering the totality of the circumstances, reasonable suspicion was absent prior to the January 13, 2006 trash pull. In State v. Glass, 769 N.E.2d 639, 643 (Ind. Ct. App. 2002), trans. denied, we held that "[t]he fact that a named caller with an untested reputation called the police does not in itself establish reasonable suspicion." Although the tipster provided his name, phone number, and address to Enea and Detective

Greenlee, the tipster's reputation was untested and he did not provide inside knowledge nor significant information by which officers could corroborate that legal wrongdoing had occurred or was going to occur. The tips were too general in nature and there was no direct evidence of drug activity; only patterns of vehicles coming and going in a manner that the tipster, not the officers, directly observed to be suspicious. The other tips that referred to Blue could not be reliable as to this crime because they were four or more years old, and when Detective Greenlee submitted the warrant he thought the tips were six or more years old. Aside from the tips, the officers did no other investigatory work to seek or obtain reasonable suspicion prior to pulling Blue's trash on January 13, 2006. Accordingly, the facts known to Detective Greenlee and their reasonable inferences would not have caused an ordinarily prudent person to believe criminal activity had occurred or was about to occur.

Conclusion

The trial court's grant of Blue's motion to suppress evidence was not contrary to law. We therefore affirm the trial court's order granting the motion to suppress.

Affirmed.

MAY, J., and VAIDIK, J., concur.