ATTORNEY FOR APPELLANT:

ANDREW B. ARNETT
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JAMES B. MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 73A01-0703-CR-140
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE SHELBY CIRCUIT COURT
The Honorable Charles D. O'Connor, Judge
Cause No. 73C01-0507-FA-7

December 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James B. Miller (Miller), appeals his conviction for Count I, conspiracy to deal/manufacture methamphetamine, a Class A felony, Ind. Code § 35-41-5-2; Count II, manufacturing methamphetamine, a Class A felony, I.C. § 35-48-4-1; Count III, dealing in methamphetamine, a Class A felony, I.C. § 35-48-4-1; Count IV, illegal drug lab/possession of precursors, a Class C felony, I.C. § 35-48-4-14.5; and Count V, possession of paraphernalia, a Class A misdemeanor, I.C. § 35-48-4-8.3.

We affirm.

ISSUE

Miller raises one issue on appeal, which we restate as follows: Whether the trial court properly admitted evidence obtained as a result of a search warrant at trial.

FACTS AND PROCEDURAL HISTORY

In December 2004, Detective Todd McComas (Detective McComas) of the Indiana State Police received information from Indiana State Police Trooper Ryan Harshman (Trooper Harshman) that Miller purchased a large quantity of Sudafed from a Target store in Indianapolis, Indiana. A vehicle, later determined to belong to Miller's mother, was identified as being driven away from the Target store by Miller. Detective McComas spoke with Miller's mother at her home in Shelby County, Indiana. Miller's mother confirmed that her son was the only other person to drive her vehicle. Upon returning home, at the request of his mother, Miller admitted to Detective McComas that he purchased Sudafed at Target

while driving his mother's car. Miller lived with his mother. Miller also had a blue Dodge Dakota registered in his name, with a homemade toolbox in the back.

Timothy Hensley (Hensley) is Miller's brother-in-law. Miller's mother informed Detective McComas that Miller and Hensley spend a lot of time together at a building Hensley used for his business on County Road 700 South. Hensley lived with his family in Shelbyville, Indiana.

In the spring of 2005, the Shelby County Sheriff's Department received several complaints that methamphetamine was being produced at 345 West County Road 700 South. The owner of the property rented the barns on the property to Hensley.

On June 9, 2005, Deputy Darrin Chandler (Deputy Chandler) of the Shelby County Sheriff's Department received a call from an employee at Builder's Lumber in Shelbyville. The employee noticed an individual who came into Builder's Lumber three times in one week to purchase Liquid Fire. The frequency of these purchases was unusual for this particular product. The employee copied the license plate of the customer who purchased the Liquid Fire and contacted Deputy Chandler. Deputy Chandler ran the plates, which came back registered to Miller. The Builder's Lumber employee later identified Miller as the customer who purchased large quantities of Liquid Fire, a common precursor for manufacturing methamphetamine.

One month later, on July 9, 2005, Officer Lewis Hill informed Shelbyville Police Officer Mike Polston (Officer Polston) that he received an anonymous tip from a female caller reporting that Hensley was manufacturing methamphetamine at a property on North

Little Blue Road in Shelby County. Officer Polston reported the information to Deputy Chandler who immediately began to investigate the North Little Blue Road property for signs of Miller and Hensley. That night Deputy Chandler observed both Miller's truck and Hensley's truck in the driveway at the North Little Blue Road address. The property included an old farmhouse and outbuildings.

Two days later on the morning of July 11, 2005, Detective McComas drove by Miller's residence but did not see his truck out front which, based on his investigation, he found unusual for that time of day. Detective McComas then drove to North Little Blue Road and observed both Miller's truck and Hensley's truck in the driveway of the North Little Blue Road property. Detective McComas slowed down and passed by the property with his window down. He noticed an organic solvent odor, such as ether. Detective McComas parked his vehicle, walked across a neighboring bean field and again smelled an organic solvent associated with manufacturing methamphetamine. From that vantage point he could see the residence and outbuildings. He saw an individual carrying items from the barn, but did not recognize the individual as Miller or Hensley. Detective McComas contacted Deputy Chandler and reported his recent discoveries. Detective McComas also confirmed Hensley had electricity run to the location beginning June 9, 2005.

Later that morning, Detective McComas, Deputy Chandler, and Officer Polston applied for a search warrant. A hearing was held that same day at the conclusion of which the trial court issued a search warrant to conduct a search of "the residence, as well as all vehicles and outbuildings, located on the curtilage of the residence." (Appellant's App. p.

179). When the police executed the search warrant, Miller was found in the driver's seat of his vehicle talking with Hensley who was sitting on a lawnmower. A handgun was found in Miller's waistband, along with a second handgun and several knives in his glove compartment. In addition, Miller had a zippered pouch containing drug paraphernalia and four moist bundles of methamphetamine. The largest bundle of methamphetamine weighed 3.29 grams; the remaining bundles weighed between one-half of a gram and one-gram each. In total, Miller had 4.38 grams of methamphetamine on his person, which translates to approximately 109 individual doses of methamphetamine. In the bed of Miller's truck, equipment used for HCL generators, plus an empty container of toluene and a funnel were found. Miller also admitted to using methamphetamine and purchasing precursors for Hensley to use to manufacture methamphetamine, but he denied ever manufacturing methamphetamine himself.

In and around the farmhouse, Trooper Dave Madison of the Indiana State Police Clandestine Lab Enforcement Team found a tank of anhydrous ammonia, propane tanks, organic solvents, butane tanks and fittings, almost 100 grams of pseudoephedrine pills, Klean Strip Metal Stripper, a jar with pill dough and lithium strips in a reactive state, jars with organic solvent salt, HCL generators, aluminum foil, duct tape, plastic bottles, coffee filters, a Dremel case to cut batteries, Liquid Fire, glass jars, clamps, muriatic acid, camp fuel cans, and two burn piles with methamphetamine lab remnants. A strong odor indicative of manufacturing methamphetamine also permeated the premises.

On July 12, 2005, the State filed an Information charging Miller with Count I, conspiracy to deal/manufacture methamphetamine, a Class A felony, I.C. § 35-41-5-2; Count II, manufacturing methamphetamine, a Class A felony, I.C. § 35-48-4-1; Count III, dealing in methamphetamine, a Class A felony, I.C. § 35-48-4-1; Count IV, illegal drug lab/possession of precursors, a Class C felony, I.C. § 35-48-4-14.5; and Count V, possession of paraphernalia, a Class A misdemeanor, I.C. § 35-48-4-8.3. On February 2, 2006, Miller filed a Motion to Suppress Evidence. On April 18, 2006, the trial court heard testimony on the Motion and took the matter under advisement. On June 5, 2006, the trial court issued its Order denying Miller's Motion to Suppress Evidence finding Miller did not have standing to bring a Motion to Suppress because he did not have any possessory interest in the property. On July 5, 2006, Miller filed a Motion to Certify Question for Interlocutory Appeal, which was subsequently denied by the trial court.

On January 8 and 9, 2007, a bench trial was held, wherein Miller renewed his Motion to Suppress. At the conclusion of the evidence the trial court took the matter under advisement. On January 12, 2007, the trial court first addressed Miller's Renewed Motion to Suppress. While the trial court found that Miller did have standing to bring the Renewed Motion to Suppress, it again denied Miller's Motion finding Detective McComas was appropriately on the neighboring bean field reasoning that there was no evidence presented to conclude whether "that particular part of the real estate was part of any lease if, in fact, such [a] lease existed." (Transcript p. 632). The trial court then found Miller guilty of Count I, conspiracy to deal/manufacture methamphetamine, a Class A felony; Count II, manufacturing

methamphetamine, a Class A felony; Count III, dealing in methamphetamine, a Class A felony; Count IV, illegal drug lab/possession of precursors, a Class C felony; and Count V, possession of paraphernalia, a Class A misdemeanor.

On February 6, 2007, the trial court conducted a sentencing hearing. The trial court found as mitigating circumstances that Miller had no criminal history, which it assigned significant weight, and that his incarceration would impose a hardship on his seventy-seven year old mother. The trial court found no aggravating factors. The trial court merged Count I, conspiracy to deal/manufacture methamphetamine, with Count II, manufacturing methamphetamine, and sentenced Miller to the Indiana Department of Correction for twenty-five years, with five years suspended to probation. The trial court sentenced Miller to twenty-five years with five years suspended to probation for Count III, dealing in methamphetamine; four years for Count IV, possession of precursors; and one year for Count V, possession of paraphernalia, all to be served concurrently to each other for an aggregate sentence of twenty-five years.

Miller now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Miller argues the trial court improperly admitted evidence obtained as a result of a search warrant at trial. Specifically, Miller contends that the evidence used by the police in obtaining a search warrant was based on evidence that was (1) untrustworthy, because it was based on an unsubstantiated statement made by an anonymous informant, and (2) obtained by the police after they entered the property and conducted a search without a warrant.

I. *Standard of Review*

Miller originally challenged the admission of the evidence seized after executing the search warrant via a motion to suppress. He appeals following a completed trial challenging the admission of the evidence at trial. Thus, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. *Ackerman v. State*, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), *trans. denied*. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*. However, we must also consider the uncontested evidence favorable to the defendant. *Id.*

II. *Probable Cause*

When reviewing a challenge to the existence of probable cause of a search warrant, we must determine whether the issuing trial court had a "substantial basis" from which to conclude that probable cause existed. *State v. Spillers*, 847 N.E.2d 949, 953 (Ind. 2006). We will review *de novo* the trial court's determination that such a substantial basis existed. *Id.* However, we will afford the trial court's initial determination significant deference and will "focus on whether reasonable inferences drawn from the totality of the evidence support that determination." *Id.* We will resolve doubtful cases in favor of upholding the warrant. *Redden v. State*, 850 N.E.2d 451, 461 (Ind. Ct. App. 2006), *trans. denied*. When deciding

whether to issue a search warrant, the issuing court should "make a practical, common-sense decision whether, 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." *Spillers*, 847 N.E.2d at 953 (quoting *Illinois v. Gates*, 462 U.S. 213, 218 (1983)).

A. *Anonymous Informant*

Miller argues that the anonymous tip that Hensley was reportedly manufacturing methamphetamine on North Little Blue Road was not enough to support a finding of probable cause. We recognize that uncorroborated hearsay from a source of unknown credibility, standing alone, is insufficient to support a finding of probable cause and issuance of a search warrant. *Spillers*, 847 N.E.2d at 953; I.C. § 35-33-5-2(b) (requiring that probable cause affidavits based on hearsay either establish the credibility of the source or that the totality of the circumstances corroborate the informant's statements). Had the officers applied for a search warrant on the basis of the anonymous tip alone, we would have a different situation. However, the anonymous tip was not the only evidence presented by the officers upon requesting the issuance of a search warrant.

An independent police investigation had been conducted regarding the alleged manufacture of methamphetamine on North Little Blue Road, and with regard to Miller and Hensley concerning their homes, places of business, and the residence and outbuildings on North Little Blue Road. Additional information was gathered from known sources regarding the purchase of commonly known precursors used to manufacture methamphetamine by Miller and Hensley. Then, one day as Detective McComas drove down Little Blue Road

with his window down he smelled an organic solvent odor like that emitted during the manufacturing of methamphetamine. Detective McComas also saw Miller and Hensley's trucks in the driveway of the residence. After compiling all the foregoing information, the officers applied for a search warrant. Thus, the warrant application in this case did not rely solely on the anonymous tip, but instead relied on a multitude of information gathered by several officers through their own observations, together with information provided by others. Thus, the trial court did not improperly admit the evidence obtained as a result of the search warrant at trial.

B. *Reasonable Expectations of Privacy*

To trigger Fourth Amendment protection, a search must arise out of an intrusion by government actor upon an area in which a person maintains a "reasonable expectation of privacy." *Holder v. State*, 847 N.E.2d 930, 935 (Ind. 2006). Therefore, whether Fourth Amendment protections should be applied embraces a two-part inquiry: (1) whether a person has "exhibited an actual (subjective) expectation of privacy;" and (2) whether "the expectation [is] one that society is prepared to recognize as 'reasonable.'" *Id*. 935-36 (quoting *Katz v. United States*, 389 U.S. 345, 361 (1967)). When a law enforcement officer observes something from an area where the officer is lawfully entitled to be, anything in "open view" may be observed without having to obtain a search warrant because making such "open view" observations does not constitute a search in the constitutional sense. *Justice v. State*, 765 N.E.2d 161, 165 (Ind. Ct. App. 2002).

The land immediately surrounding and associated with a home, the curtilage, also merits the Fourth Amendment protections that attach to the home. *Holder,* 847 N.E.2d at 936 (citing *Oliver v. United States*, 466 U.S. 170, 180 (1984)). The curtilage is defined on a case-by-case basis by reference to factors that determine whether a person's expectation of privacy in the area embraces the intimacy associated with the sanctity of the home and privacies of life. *Holder*, 847 N.E.2d 936. Thus, defining the curtilage requires more than an identification of the physical area immediately adjacent to the home; whether the area is enclosed, how it is being used, and the steps taken to keep it out of view are also analyzed to determine whether a person has a reasonable expectation of privacy in the area, demonstrating that it embraces the characteristics similar to those associated with the sanctity of the home. *Id*.

It is unclear from the record whether the land Detective McComas traversed was in fact Miller's "property," or property over which Miller possessed a reasonable expectation of privacy. Hensley testified that Miller leased the property, but there was no evidence "of the specific terms of the lease[,] such as the length of the lease, the payments due under the lease, and more importantly, the particular tract of land which was subject to the lease." (Tr. p. 631). Additionally, the trial court concluded that Hensley "was not a farmer and did not farm the tract of land which was devoted to farming [and] that it was [] Hensley's desire to lease the home and the barn and other outbuildings for the storage of his property." (Tr. p. 632). Therefore, without evidence that Miller had a reasonable expectation of privacy over the bean field adjacent to the residence and outbuilding, a violation of the Fourth Amendment is

not possible and we cannot conclude the trial court improperly issued a search warrant based on information gather by Detective McComas from walking through the bean field and observing the residence and outbuildings.

CONCLUSION

Based on the foregoing, we conclude the trial court properly admitted evidence obtained as a result of a search warrant at trial.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.