

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-20
LEON JEFFERSON	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas Case No. 2008-CR-485H

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: October 13, 2009

APPEARANCES:

For Plaintiff-Appellee:

JAMES J. MAYER, JR.
Richland County Prosecutor
38 South Park Street
Mansfield, Ohio 44902

For Defendant-Appellant:

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Assistant Prosecuting Attorney
(Counsel of Record)

Delaney, J.

{¶1} Defendant-Appellant, Leon Jefferson, appeals from the judgment of the Richland County Court of Common pleas, convicting him of one count of possession of crack cocaine, a felony of the second degree, in violation of R.C. 2925.11, one count of possession of crack cocaine, a felony of the fourth degree, in violation of R.C. 2925.11, and one count of possession of Ecstasy, a felony of the fifth degree, in violation of R.C. 2925.11. The State of Ohio is Plaintiff-Appellee.

STATEMENT OF THE CASE AND FACTS

{¶2} Appellant was indicted by the Richland County Grand Jury on October 1, 2008, for four counts of possession of drugs. He pled not guilty to the charges at his arraignment.

{¶3} On December 4, 2008, Appellant filed a motion to suppress the drugs found as a result of a June 17, 2008, search warrant, executed at 277 East Second Street, Mansfield, Ohio, arguing that the police lacked probable cause for the search.

{¶4} The State of Ohio filed a memorandum in opposition to Appellant's motion on December 8, 2008. The trial court held an oral hearing on January 21, 2009.

{¶5} At the suppression hearing, the State of Ohio called Patrolman Keith Porch, of the Mansfield Police Department to testify. Appellant declined to call any witnesses to testify at the hearing.

{¶6} At the hearing, Officer Porch testified that he has been a police officer for sixteen years and that in 2007 and 2008, he was assigned to the Metrich Drug Task Force Unit.

{¶7} On June 17, 2008, Officer Porch applied for, and received, a search warrant from Mansfield Municipal Court Judge Ault for Appellant's residence at 277 East Second Street, Mansfield, Ohio, based on the following information:

{¶8} On June 24, 2007, the Metrich Task Force received information from a "concerned citizen" that Appellant, who lived at 277 East Second Street, was bringing crack cocaine and heroin from Chicago and storing it at a "lock-it-up" facility. The address of the facility was reported as 336 East Fourth Street, Mansfield, Ohio, Unit 3.

{¶9} Further, on July 20, 2007, Metric received information from a concerned citizen that Leon Jefferson, aka "Big Lee", was supplying people with crack cocaine to sell. The source was positive that Big Lee was supplying persons with drugs to sell.

{¶10} On July 30, 2007, Metrich was working surveillance on 277 and 279 East Second Street, Mansfield, and observed a 1998 Chevy SUV with an Illinois license tag of 7443482 that was registered to Appellant. Metrich received information that Appellant was from Chicago, Illinois, and that he was transporting crack cocaine and heroin from Chicago to Mansfield.

{¶11} On June 10, 2008, Metrich was again working surveillance at 277 East Second Street, Mansfield, and observed persons going to the residence, staying for a short period of time and then leaving. Officer Porch testified that such activity is consistent with drug trafficking. Additionally, on June 10, 2008, Metrich received information from Confidential Informant ("CI") 0801 that a man named Richard Galloway and a man named Gerald Galloway, along with Appellant, from Chicago, Illinois, were to go to Chicago and pick up supplies of crack cocaine and heroin and bring the drugs back to Mansfield. According to the CI, Appellant is the person who supplies Richard

and Gerald Galloway with drugs to sell. On that date, Metrich Enforcement agents witnessed Appellant on the front porch of 277 East Second Street.

{¶12} On June 11, 2008, Metrich again received information from CI 0801 that drugs were being transported from Chicago to Mansfield and that the CI believed the drugs were going to 277 East Second Street. The CI believed that Appellant supplied the drugs once they arrived at 277 East Second Street.

{¶13} On June 12, 2008, Metrich used CI 0801 in an attempt to make a controlled drug buy of one half ounce of crack cocaine from Richard Galloway. Galloway instructed CI 0801 to the area of East Second Street and Bentley Avenue. Galloway left CI 0801, was observed by Metrich detectives going to 277 East Second Street and was at this location attempting to acquire crack cocaine. According to the CI, Galloway's supplier was out of drugs but was awaiting a shipment from Chicago.

{¶14} On June 17, 2008, Metrich again received information from CI 0801 that Appellant had recently returned from Chicago with a large supply of crack cocaine. Galloway offered to sell the CI a half ounce of crack cocaine for \$550.00 and one quarter ounce of crack cocaine for \$375.00.

{¶15} On the same date, Metrich received information from a concerned citizen that Appellant had recently returned from Chicago with a large load of drugs. The source further stated that the suspect was storing the drugs inside a blue Chevy Caprice, Ohio license plate EGE 5228, and also provided the VIN. Additionally, Metrich received another tip from a concerned citizen on that date that Appellant was returning from Chicago with a large shipment of drugs and that he is known to carry a gun on his person at all times.

{¶16} Officer Porch testified that drugs and weapons are frequently carried on persons who engage in drug trafficking. He also testified that he has used CI 0801 several times in the past and that the CI has provided valuable information to Metrich on multiple occasions. CI 0801 has made numerous controlled drug buys that have resulted in numerous charges and arrests. Information provided by CI 0801 has been independently corroborated and proven reliable, per Officer Porch's affidavit in support of the search warrant.

{¶17} Defense counsel cross-examined Officer Porch at the suppression hearing and asserted that Officer Porch "no idea" whether much of the information in the affidavit supporting the search warrant was correct. His basis for that assertion was that Officer Porch was not the officer involved in the taking of some of the intelligence which was used in the affidavit.

{¶18} On redirect, Officer Porch established that the affidavit included "intelligence collected by all detectives of the Metrich unit" and that while he did not have personal knowledge of every fact contained within the affidavit, that it is common to rely on fellow officers in an investigation. He further assured the court that all Metrich officers on the task force had drug trafficking investigative training.

{¶19} On January 26, 2009, the trial court issued a decision overruling Appellant's motion to suppress. In the court's entry, its findings of facts reiterated much of the information provided by Officer Porch. In the court's conclusions of law, the court found as follows:

{¶20} "This Court, in reviewing the sufficiency of an application for a search warrant, must confine it's [sic] review to the "four corners" of the warrant, its

accompanying affidavit and application. In so doing, the Court must determine whether, under the totality of the circumstances and coming to a common sense conclusion, that the Judge or Magistrate issuing the warrant had a substantial basis for concluding that probable cause existed to issue the warrant. *Illinois v. Gates* (1983) 462 U.S. 213; 103 S.Ct. 2317; 76 L.Ed.2d 527. The detective's testimony at the hearing on this matter served only to corroborate that which was sufficiently set forth in his affidavit supporting his application for the search warrant. Because this Court finds that there was a substantial basis to conclude that probable cause existed for the issuance of the warrant, and for the reasons set forth in the State's memorandum, this Court finds that Defendant's Motion to suppress is without merit and should be denied."

{¶21} Appellant then proceeded to a jury trial on February 2, 2009, and the trial concluded on February 3, 2009. The State presented testimony from various law enforcement officers regarding Metrich's investigation into drug activity at 277 East Second Street and evidence found as a result of the search warrant. The State also called forensic chemist Anthony Tambasco of the Mansfield Police Crime Lab to testify regarding the testing performed on the drugs recovered from the search. Appellant testified in his own defense.

{¶22} At the conclusion of the evidence, the jury found Appellant guilty of possession of crack cocaine in Count 1 of the indictment, possession of cocaine in Count 2 of the indictment, and possession of Ecstasy in count 3 of the indictment. The jury was unable to reach a verdict on count 4, possession of Promethazine.

{¶23} The trial court sentenced Appellant to five years in prison on count 1 and imposed one year on counts 2 and 3, to run concurrent to Appellant's sentence on count 1.

{¶24} Appellant raises two Assignments of Error:

{¶25} "I. THE TRIAL COURT ERRED PREJUDICIALLY BY FAILING TO GRANT THE DEFENDANT'S MOTION TO SUPPRESS."

{¶26} "II. THE TRIAL COURT ERRED PREJUDICIALLY BY FAILING TO RECOGNIZE THAT PERJURED INFORMATION, OR INFORMATION ASSERTED WITH RECKLESS DISREGARD OF THE TRUTH, WAS USED TO ESTABLISH PROBABLE CAUSE FOR THE SEARCH. THE MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED."

I & II

{¶27} In Appellant's first and second assignments of error, he argues that the trial court erred in denying his motion to suppress. We disagree.

{¶28} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long* (1998), 127 Ohio App.3d 328, 713 N.E.2d 1. During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, (1996), 75 Ohio St.3d 148, 661 N.E.2d 1030. A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Metcalf* (1996), 111 Ohio App.3d 142, 675 N.E.2d 1268. Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether

the trial court's decision meets the applicable legal standard. *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141.

{¶29} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 Ohio B. 57, 437 N.E.2d 583; and *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141. Second, an appellant may argue that the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 623, 620 N.E.2d 906.

{¶30} Appellant argues that the trial court incorrectly decided the ultimate issue in the motion to suppress, that being that probable cause existed to search his residence for evidence relating to illegal drug activity. Appellant also claims that the search warrant was based on a perjured affidavit or an affidavit that was made with reckless disregard for the truth.

{¶31} When challenging the sufficiency of an affidavit on the basis of lack of probable cause to support the issuance of the warrant, it is the duty of a reviewing court

to simply ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Illinois v. Gates* (1983), 462 U.S. 213, 103 S.Ct. 2317.

{¶32} We find that the evidence presented by the State of Ohio at the suppression hearing was sufficient to establish probable cause for issuance of the warrant.

{¶33} Officer Porch testified that the Metrich drug task force received information from a concerned citizen on June 24, 2007, that Appellant was transporting crack cocaine and heroin from Chicago to 277 East Second Street, Mansfield, and storing it at a nearby storage facility. On July 20, 2007, a concerned citizen again informed Metrich officers that they were “positive” that Appellant was supplying people with crack cocaine to sell.

{¶34} As a result of these calls, the task force conducted surveillance of Appellant’s residence at 277 East Second Street, and observed a 1998 Chevy SUV with an Illinois license tag registered to Appellant. They also conducted surveillance on June 10, 2008, and observed people coming and going out of the residence after staying there a short time. Officer Porch testified that such activity is consistent with drug trafficking.

{¶35} Also on June 10, 2008, Metrich received information from CI 0801 that Appellant, along with two other named men, were going to Chicago to pick up drugs to bring back to Mansfield. On that same date, Metrich detectives observed Appellant on the porch of 277 East Second Street.

{¶36} Metrich officers arranged for CI 0801 to attempt to purchase crack cocaine from Richard Galloway, one of the men associated with Appellant’s drug trafficking

business. Once the CI contacted Galloway, detectives observed Galloway return to 277 East Second Street and return to tell the CI that he was unable to get the drugs because his supplier was out of drugs at that time, but that he was awaiting a supply from Chicago.

{¶37} On June 17, 2008, Metrich officers received information from CI 0801 that Appellant had just returned from Chicago with a large supply of crack cocaine. Richard Galloway offered to sell CI 0801 a half ounce of crack cocaine for \$550.00 and a quarter ounce for \$375.00. On that same date, a concerned citizen reported that Appellant had returned from Chicago with a large load of drugs and was storing them inside a Chevy Caprice, with Ohio license plate EGE 5228, and the citizen also provided the VIN number of the car.

{¶38} A second concerned citizen also contacted Metrich officers on that date and informed them that Appellant had just returned from Chicago with a large shipment of drugs and that Appellant is known to carry a gun on his person at all times.

{¶39} Officer Porch averred in his affidavit and testified at the hearing that he is familiar with CI 0801, that CI 0801 has proven to be reliable in the past, and that the information provided by CI 0801 was independently corroborated and proven reliable, and that CI 0801 has made numerous controlled drug buys which have resulted in charges and convictions.

{¶40} As a result of the year long investigation by the Metrich task force, on June 17, 2008, Officer Porch applied to Judge Ault of the Mansfield Municipal Court for a warrant to search the residence at 277 East Second Street, and to search all individuals present at the residence, for drugs and items commonly associated with

drug activity. The municipal court judge reviewed the affidavit, which contained a recitation of the facts as set forth in this opinion, and determined that probable cause existed for the issuance of the warrant.

{¶41} The trial court concurred with the municipal court's findings, stating that Officer Porch's testimony "served only to corroborate that which was sufficiently set forth in his affidavit supporting his application for the search warrant."

{¶42} In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, "the task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, 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." *State v. George* (1989), 45 Ohio St.3d 325, 544, N.E. 2d 640, paragraph one of the syllabus. Probable cause requires "only the probability, and not a prima facie showing, of criminal activity". *Id.*

{¶43} Officer Porch's knowledge, through his work with the Metrich task force detectives, all of whom were trained in drug trafficking detection, along with tips from concerned citizens who provided specific detail, and through information obtained through a reliable CI, were sufficient to establish probable cause in support of the search warrant.

{¶44} Moreover, we find Appellant's contention that the information contained within the affidavit for the search warrant was perjured or submitted with reckless disregard for the truth to be wholly without merit.

{¶45} Appellant has cited no authority which establishes that an affiant to a search warrant has to have direct personal knowledge of every fact contained within that warrant. Appellant has failed to point to any fact in the record that would establish that Officer Porch either perjured himself or was reckless in regard to any statement made within the affidavit. An “allegation of deliberate falsehood or of reckless disregard must point out specifically with supporting reasons the portion of the warrant affidavit that is claimed to be false. It also must be accompanied by an offer of proof, including affidavits or sworn or otherwise reliable statements of witnesses, or a satisfactory explanation of their absence.” *Franks v. Delaware* (1978), 438 U.S., 98 S.Ct. 2674, at paragraph two of the syllabus. The movant must establish this deliberate falsehood or reckless disregard by a preponderance of the evidence. *Id.* at paragraph four of the syllabus.

{¶46} A search warrant affidavit may properly be based on hearsay, on fleeting observations, and on tips received from unnamed informants whose identity often will be properly protected from revelation. *McCray v. Illinois* (1967), 386 U.S. 300, 87 S.Ct. 1056, 18 L.Ed.2d 62

{¶47} We do not find that Appellant has demonstrated anywhere in the record, let alone by a preponderance of the evidence, that Officer Porch committed perjury or that he acted with reckless disregard with respect to any statement made within the affidavit.

{¶48} Appellant’s first and second assignments of error are overruled.

{¶49} Based on the foregoing, the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.

Hoffman, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

Hoffman, P.J., concurring

{¶50} I concur in the majority's analysis and disposition of Appellant's second assignment of error. I further concur in most of the majority's analysis and its disposition of Appellant's first assignment of error.

{¶51} I write separately to note my decision to concur in the majority's overruling Appellant's first assignment is not based upon reliance of the "concerned citizen" tips received in 2007. The State's characterization of the person making the tip as a "concerned citizen" should not be confused with, nor equated to, a tip from an identified citizen informant. It is an anonymous tip. I place no reliance on the 2007 tips because they were clearly stale as they relate to the search warrant issued in this case and there was no corroboration of non-neutral details to established reliability.¹

{¶52} Likewise, I place little value on the 2008 tips from the "concerned citizens". Considered independently, I find they are insufficient to establish probable cause to issue the search warrant. However, they are of some limited value in that they serve as corroboration of the CI's information. It is the CI's information, who was sufficiently established as being reliable, which I believe provides probable cause for issuance of the search warrant.

HON. WILLIAM B. HOFFMAN

¹ I find the fact Appellant's vehicle had an Illinois license plate insufficient to corroborate Appellant was bringing drugs from Chicago.

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
LEON JEFFERSON	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-20
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE