[Cite as *State v. Tinsley*, 2010-Ohio-3535.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23542
v.	:	T.C. NO. 09 CR 00494/1
JERRY LAMAR TINSLEY	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 30th day of July, 2010.

. . . . . .

LAURA M. WOODRUFF, Atty. Reg. No. 0084161, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

JIMMIE CHRISTON, Atty. Reg. No. 0038116, 15 E. Fourth Street, Suite 625, Dayton, Ohio 45402
Attorney for Defendant-Appellant

. . . . . .

FROELICH, J.

{¶ 1} After the trial court overruled his motion to suppress evidence, Jerry Tinsley pled no contest to and was found guilty of possession of cocaine, possession of crack cocaine, manufacturing crack cocaine, and having a weapon while under disability. He appeals from the trial court's denial of his motion to suppress. For the following reasons,

the judgment of the trial court will be affirmed.

I

{¶ 2} In early February 2009, Dayton police obtained a warrant to search a house at 415 N. Broadway based on information from a confidential informant and their own surveillance. The police executed the search on February 11, 2009, and found drugs, weapons, and digital scales in the house. Tinsley was present at the house at the time of the search; he was arrested and subsequently indicted for having a weapon while under disability, possession of crack cocaine in an amount greater than ten grams and less than twenty-five grams, possession of cocaine in an amount greater that five grams and less than twenty-five grams, and manufacturing crack cocaine.

{¶ 3} Tinsley pled not guilty and filed a motion to suppress in which he challenged the validity of the search warrant and sought to suppress statements he had made to the police.

{¶ 4} The affidavit in support of the search warrant included the following information:

{¶ 5} Detective Joey Myers had been told by a confidential informant that drugs were being sold at 415 N. Broadway by a black man named "Chewy." In the past, the confidential informant had provided information to detectives that had "proven to be true and accurate through an independent investigation and ha[d] led to the issuance of search warrants which *** yielded arrests and the recovery of drugs, weapons, and money." On two separate occasions – January 29, 2009, and February 6, 2009 – Myers facilitated controlled buys of crack cocaine by the informant from the house at 415 N. Broadway. In

both instances, the confidential informant described the seller of the drugs as a black male nicknamed "Chewy." Detectives conducted surveillance during these purchases, and searched the informant before and after each purchase to ensure that the drugs came from the house. The detectives also "observed pedestrian and vehicular traffic consistent with operating drug houses." The affidavit included additional information that "Chewy" was 5'9" to 5'11" tall, weighed 200-215 pounds, and was 34-38 years of age.

{¶ 6} At the hearing on the motion to suppress, Detective Joey Myers testified to the following facts:

{¶ 7} The house at 415 N. Broadway was a two-story house with an unfinished basement. Police had gathered information about drug activities at the house from the confidential informant and "countless hours of surveillance" by Detective Myers. Fourteen or fifteen officers were present at the house when the search warrant was executed. Detective Myers was not the first officer to enter the house, but he testified that the officers who entered first had reported that Tinsley had been coming out of the kitchen when they entered. Drugs were found in the kitchen. When Detective Myers entered the house, Tinsley had been ordered onto the floor in the living room near the front door.

{¶ 8} The door to the basement was locked, and dogs were barking and jumping on the door from the basement side. Myers referred to Tinsley as "Chewy" and asked him if he had a key to the basement. Tinsley responded that he had a key in his pocket for the basement and allowed the officers to take it. Having obtained the key from Tinsley, the officers were able to "clear" the basement.

{¶ 9} After the house had been searched, Detective Myers got Tinsley up off of the

floor and advised him of his rights "verbatim" from the card provided by the prosecutor's office; Tinsley did not sign a written form regarding his rights. After being advised of his rights, Tinsley indicated that he was willing to talk without a lawyer. According to Detective Myers, Tinsley did not appear to be under the influence of drugs or alcohol or confused. Myers interviewed Tinsley for five to six minutes, then transported him to jail. Detective Myers did not believe that any other officer had talked with Tinsley. The content of any statements made by Tinsley is unclear from the record.

{¶ 10} Detective Myers was the only witness to testify at the hearing. However, Tinsley claims in his brief that another person, Richard Stevens, was present at the house during the search. Tinsley asserts that Stevens inaccurately told the police that Tinsley owned the house and that Tinsley was "Chewy" in order to deflect attention from himself. However, no evidence to this effect is contained in the record, and Detective Myers did not refer to such allegations in describing his actions.

{¶ 11} After the hearing, the trial court overruled the motion to suppress. In its decision, the trial court stated that, under the totality of the circumstances, "probable cause clearly existed for the issuance of the warrant." With respect to the description of the suspect, the trial court stated: "That Defendant's physical description does not match 100% is not sufficient to invalidate the otherwise proper warrant issued upon a finding of probable cause. Further, there is no indication that the informant was unreliable and the warrant relied upon police surveillance in addition to the informant." (Emphasis sic.)

{¶ 12} Thereafter, Tinsley entered no contest pleas on all counts. Tinsley was sentenced to an aggregate term of four years of imprisonment.

{¶ 13} Tinsley raises one assignment of error on appeal.

II

{¶ 14} Tinsley's assignment of error states:

{¶ 15} "THE COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS BECAUSE THE SEARCH WARRANT WAS DEFECTIVE AND THE AFFIDAVIT DETECTIVE MYERS GAVE THE JUDGE IN SUPPORT OF THE WARRANT WAS FLAWED."

{¶ 16} Tinsley argues that the evidence against him should have been suppressed because the search warrant was "flawed" and he was not identified in the warrant by name or by physical description. Tinsley claims that he "was just a renter who only had a key to the basement apartment. There is nothing that even remotely associated him with drugs in the house." He also claims that his statements to the police were involuntarily made.

{¶ 17} We begin by addressing the adequacy of the search warrant.

{¶ 18} The Fourth Amendment to the United States Constitution provides:

{¶ 19} "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

{¶ 20} Section 14, Article I of the Ohio Constitution contains the same language. R.C. 2933.22(A) similarly provides that "[a] warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized."

{¶ 21} An affidavit requesting a search warrant must set forth all facts that led the affiant to believe that the item(s) are at the address listed; without this, a warrant based on such an affidavit is invalid. *Akron v. Williams* (1963), 175 Ohio St. 186. A search warrant's supporting affidavit has a presumption of validity. *Franks v. Delaware* (1978), 438 U.S. 154, 171, 98 S.Ct. 2674, 57 L.Ed. 667; *State v. Roberts* (1980), 62 Ohio St.2d 170, 178.

{¶ 22} "In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, '[t]he 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*, 45 Ohio St.3d 325, paragraph one of the syllabus, following and quoting from *Illinois v. Gates* (1983), 462 U.S. 213, 238-239, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527; *State v. Hale*, Montgomery App. No. 23582, 2010-Ohio-2389, ¶16.

{¶ 23} To prevail on a motion to suppress, a defendant who claims that a warrant is flawed because it is based upon a false statement must prove by a preponderance of the evidence that the affiant made a false statement, either intentionally, or with reckless disregard for the truth. *State v. Underwood*, Scioto App. No. 03CA2930, 2005-Ohio-2309, ¶19, citing *Franks*, 438 U.S. at 155-156.

{¶ 24} In *George*, the Ohio Supreme Court also outlined restrictions on review of probable cause determinations, stating that:

{¶ 25} "In reviewing the sufficiency of probable cause in an affidavit submitted in support of a search warrant issued by a magistrate, neither a trial court nor an appellate court should substitute its judgment for that of the magistrate by conducting a de novo determination as to whether the affidavit contains sufficient probable cause upon which that court would issue the search warrant. Rather, the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In conducting any after-the-fact scrutiny of an affidavit submitted in support of a search warrant, trial and appellate courts should accord great deference to the magistrate's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant." *George*, 45 Ohio St.3d 325, at paragraph two of the syllabus (citation omitted).

{¶ 26} An appellate court reviews a trial court's decision on a motion to suppress de novo. *State v. Bing* (1999), 134 Ohio App.3d 444, 448, citing *Ornelas v. United States* (1996), 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911. An appellate court reviews the facts only for clear error, giving due weight to the trial court as to inferences drawn from those facts. Id.

{¶ 27} With respect to the issuance of the search warrant, the affidavit detailed the controlled drug purchases effectuated with the confidential informant and the past reliability of the informant. It also contained the detectives' own observation of traffic patterns consistent with a drug house.[1] Based on our review of the affidavit, we conclude that the

[1]The trial judge also noted the "countless hours of surveillance;" however, the motion to suppress attached the warrant and affidavit, and the trial court's decision about the existence of probable cause must be based on the four

issuing judge had a substantial basis for concluding that probable cause existed to search the residence at 415 N. Broadway for drugs and other evidence of illegal drug-related activity. The issuing judge reasonably concluded that there was a fair probability that contraband would be found in the house.

{¶ 28} To the extent that Tinsley is not challenging the probable cause from the issuing judge's perspective, but rather the truthfulness of the affidavit, he has failed to present any evidence in support of a claim that the affidavit was not truthful. As such, he failed to meet his burden on this issue.

{¶ 29} Thus, the warrant was not "defective " or "flawed" and the fruits of the search were not subject to suppression.

{¶ 30} Tinsley also claims that his statements should have been suppressed because they were involuntary. "In a pretrial suppression hearing, when the admissibility of a confession is challenged by the accused, the burden is upon the prosecution to prove compliance with *Miranda;* that a knowing, intelligent, and voluntary waiver of Defendant's rights was obtained or occurred and that the inculpatory statement was voluntary. *State v. Kassow* (1971), 28 Ohio St.2d 141. However, once a case for the above elements is established, the criminal defendant then has the burden of proving his claim of involuntariness. Id." *State v. Alford*, Montgomery App. No. 23332, 2010-Ohio-2493, ¶10.

{¶ 31} The State presented evidence that Detective Myers read Tinsley his rights "verbatim," that Tinsley acknowledged his understanding of those rights, that he did not ask

---

corners of the affidavit. *State v. Eash*, Champaign App. No. 03-CA-34, 2005-Ohio-3749, ¶17, citing *State v. Klosterman* (1996), 114 Ohio App.3d 327, 332.

for a lawyer, that he did not seem to be under the influence or otherwise impaired, and that he was calm and cooperative. The only circumstances that could arguably have made Tinsley feel coerced were the presence of a large number of officers at the house and the fact that he lay on the floor for a brief time while the officers searched the house. Tinsley did not, however, testify that he felt coerced or present any other evidence that he had been coerced. Because the State presented evidence that it had complied with *Miranda*, and there was no evidence suggesting that Tinsley's statement was involuntarily made, the trial court properly overruled this portion of his motion to suppress.

{¶ 32} Finally, Tinsley contends that the detectives had an insufficient basis to believe that he was connected with the drug activity at the house, because their suspicions were based solely on his presence at the house and his possession of a key allowing access to the basement. Tinsley claims that the search warrant did "not even remotely identify [him] as the person in the house selling drugs [or] as even being in the house when drugs were sold;" he contends that he was "merely present" in the house when the search was conducted. He states in his brief that Stevens fit the description in the search warrant and was found with drugs on his person. The State, on the other hand, claims in its brief that Tinsley matched the description and responded to the nickname "Chewy." The State also observes in its brief that "Tinsley's brief fails to provide any argument or evidence that this description did not describe" him. (In fact, the record does not contain any description of Tinsley or Stevens other than the description of "Chewy" in the affidavit.)

{¶ 33} Tinsley's argument about the strength of the evidence against him challenges the sufficiency of the evidence for a conviction and does not relate to the motion to suppress.

A sufficiency of the evidence argument challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52.

{¶ 34} The record shows that, before he entered his plea, Tinsley was aware of and understood the charges against him. He did not dispute the facts upon which the charges were based, and he pled no contest. A "defendant who pleads no contest waives the right to present additional affirmative factual allegations to prove that he is not guilty of the charged offense." *State ex rel. Stern v. Mascio* (1996), 75 Ohio St.3d 422, 424. A plea of no contest means that "'the accused cannot be heard in defense.'" Id., quoting *State v. Herman* (1971), 31 Ohio App.2d 134, 140. Because Tinsley pled no contest to the alleged offenses, he cannot now argue that the State had insufficient evidence to connect him to the crimes. If his argument is that the insufficiency of the evidence proves the alleged flawed nature of the affidavit and warrant, we have already addressed this argument.

{¶ 35} The assignment of error is overruled.

III

{¶ 36} The judgment of the trial court will be affirmed.

. . . . . .

DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

Laura M. Woodruff
Jimmie Christon
Hon. Mary L. Wiseman