Opinion filed February 28, 2018

In The

Eleventh Court of Appeals

No. 11-17-00125-CR

WILLIAM JARELLE HALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 350th District Court
Taylor County, Texas
Trial Court Cause No. 12142-D

M E M O R A N D U M O P I N I O N

William Jarelle Hall pleaded guilty to the offense of possession of a controlled substance, methamphetamine, with intent to deliver in an amount of more than four grams but less than 200 grams.[1] Appellant pleaded "true" to an enhancement allegation. The trial court convicted Appellant and, in accordance with the terms of the plea bargain agreement, assessed Appellant's punishment at confinement for

[1]TEX. HEALTH & SAFETY CODE ANN. § 481.112(d) (West 2017).

fifteen years. On appeal, Appellant asserts that the trial court erred when it denied his motion to suppress evidence because the search warrant that allowed for the seizure of the evidence was not supported by probable cause. We affirm.

I. *Background Facts*

Derrick Franklin, of the Abilene Police Department, prepared an affidavit that sought a "no knock" search and arrest warrant from a local magistrate in Taylor County. The magistrate reviewed the affidavit and granted the search warrant request. The police executed the search warrant at Appellant's address, seized six grams of methamphetamine, and arrested Appellant, who was at the residence.

Appellant's defense counsel moved to suppress the seized evidence, and the trial court held a hearing that was for argument only. After the hearing, the trial court denied the motion to suppress.

II. *Analysis*

Appellant asserts in a single issue that the trial court erred when it denied Appellant's motion to suppress evidence because the search warrant was not supported by probable cause. The State argues that, because the confidential informant provided credible and reliable information to Officer Franklin that was not "stale," probable cause supported the issuance of the search warrant. As we explain below, we agree with the State that Officer Franklin's affidavit outlined facts that provided a substantial basis for the magistrate to conclude that the search warrant would uncover evidence of criminal wrongdoing at the specified location.

A. Probable Cause Standard

"To issue a search warrant, the magistrate must first find probable cause that a particular item will be found in a particular location." *Moreno v. State*, 415 S.W.3d 284, 287 (Tex. Crim. App. 2013); *see Bonds v. State*, 403 S.W.3d 867, 873 (Tex. Crim. App. 2013). "Probable cause exists when, under the totality of the circumstances, there is a 'fair probability' that contraband or evidence of a crime

will be found at the specified location." *State v. Duarte*, 389 S.W.3d 349, 354 (Tex. Crim. App. 2012); *see Flores v. State*, 319 S.W.3d 697, 702 (Tex. Crim. App. 2010) (citing *Illinois v. Gates,* 462 U.S. 213, 238, 243 n.13 (1983)).

Probable cause "is a flexible and nondemanding standard." *Bonds*, 403 S.W.3d at 873. If the facts in the affidavit, offered in support of the warrant, "justify a conclusion that the object of the search is probably on the premises," then the facts are sufficient. *Cassias v. State,* 719 S.W.2d 585, 587 (Tex. Crim. App. 1986). We note that the magistrate may draw reasonable inferences from the facts and circumstances set out in the affidavit. *Id.* at 587–88. However, the magistrate should review and interpret the affidavit in a nontechnical and commonsense manner that draws reasonable inferences solely from within the four corners of the affidavit. *Bonds*, 403 S.W.3d at 873.

B. Standard of Review

When we review a trial court's motion-to-suppress ruling that concerns a magistrate's decision to issue a search warrant, we employ a "highly deferential standard of review" to determine whether the magistrate had a "substantial basis" for finding probable cause. *Id.* Judicial review must take into account that many warrants are issued on that basis, which is a standard less demanding than that used in formal legal proceedings. *Gates*, 462 U.S. at 235–36. When we conduct this review, we are not concerned with facts that could have been or should have been included in the affidavit; rather, we focus on the combined logical force of facts that are in the affidavit. *Rodriguez v. State*, 232 S.W.3d 55, 62 (Tex. Crim. App. 2007). Therefore, we must affirm the magistrate's decision to issue a warrant if the magistrate had a substantial basis to conclude that a search would uncover evidence of criminal wrongdoing at the location specified. *Brown v. State*, 243 S.W.3d 141, 145 (Tex. App.—Eastland 2007, pet. ref'd).

C. The affidavit contained sufficient information for the trial court to find probable cause to support the issuance of the search warrant.

Officer Franklin's affidavit was based upon statements made to him by a confidential informant, but this fact does not foreclose a finding of probable cause. *Id.* at 146. "An affidavit may be based on hearsay information so long as the magistrate is informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were and some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable." *Id.* (citing *Aguilar v. State*, 378 U.S. 108, 114 (1964)); *see Gates*, 462 U.S. at 241–42.

1. The information in Officer Franklin's affidavit was credible and reliable.

Appellant argues that Officer Franklin's affidavit was insufficient because it did not provide sufficient information to evaluate the basis of the confidential informant's knowledge or the veracity of his information, and that the information in the affidavit was not credible or trustworthy. We disagree.

"Probable cause to support the issuance of a search warrant exists when the facts submitted to the magistrate are sufficient to justify a conclusion that the object of the search is probably on the premises at the time the warrant is issued." *Brown*, 243 S.W.3d at 145 (citing *Cassias*, 719 S.W.2d at 587). When the sufficiency of a search warrant affidavit to show probable cause is challenged, we are limited to the "four corners" of the affidavit. *See Massey v. State*, 933 S.W.2d 141, 148 (Tex. Crim. App. 1996). In this case, the affidavit provided the following information:

1. Officer Franklin had known the confidential informant for less than six months;
2. The confidential informant had previously provided information on criminal activities in Abilene that was both correct and true;

3. The confidential informant explained that, within the past forty-eight hours, he had been at the residence of Appellant, a black male, with a birthdate of 11-27-79, who lived at 741 Stevenson Drive, Abilene, Texas;
4. Within the past forty-eight hours, the confidential informant had seen a crystal-like substance that appeared to be methamphetamine at Appellant's residence in Appellant's possession; and
5. The confidential informant further reported that Appellant had firearms and was known to carry firearms.

Officer Franklin checked the Abilene Police Department's records and learned that Appellant had two prior convictions: one for aggravated robbery with a deadly weapon, a handgun, and one for aggravated assault that caused serious bodily injury. Officer Franklin also explained, based on his experience with criminals involved with drugs, that records, assets, papers, drugs, and keys to safe deposit boxes would likely be located within Appellant's residence.

Appellant asserts that the affidavit was not credible or reliable and had stale information and that, under the standard set forth in *Illinois v. Gates* and *Clayton v. State*, the trial court should have suppressed the evidence. *See Gates*, 462 U.S. at 238; *Clayton v. State*, 652 S.W.2d 950, 954 (Tex. Crim. App. 1983); *see also State v. McLain*, 337 S.W.3d 268, 272 (Tex. Crim. App. 2011). In contrast, the State argues that several cases, including *Clayton* and *Duarte*, support the trial court's decision to deny the motion to suppress. *See Duarte*, 389 S.W.3d at 354; *Clayton*, 652 S.W.2d at 954;

We note that Officer Franklin's affidavit did not explain the informant's familiarity with methamphetamine, but the Texas Court of Criminal Appeals has held that an informant's statement that he saw a white powder substance that the accused claimed was speed was sufficient to support a conclusion that speed was probably present. *Winkles v. State*, 634 S.W.2d 289, 299 (Tex. Crim. App. [Panel Op.] 1981). We note that Officer Franklin explained that the confidential informant had been in Appellant's house within the past forty-eight hours and had personally

observed Appellant in possession of a crystal-like substance that appeared to be methamphetamine. As the Court of Criminal Appeals held in *Hegdal v. State*, when a confidential informant with a prior track record personally observes controlled substances in a residence within forty-eight hours, the facts support the issuance of a search warrant. *Hegdal v. State*, 488 S.W.2d 782, 785 (Tex. Crim. App. 1972).

Here, Officer Franklin explained that the confidential informant had been accurate with prior crimes during the past six months, and he provided a detailed description of Appellant, which led to verifiable criminal history information. The confidential informant also explained that Appellant carried firearms, which Officer Franklin verified by certain parts of the criminal history. Evidence that the informant had previously provided reliable information is sufficient to establish the informant's veracity. *Capistran v. State*, 759 S.W.2d 121, 128 (Tex. Crim. App. 1982) (citing *Avery v. State*, 545 S.W.2d 803, 804–05 (Tex. Crim. App. 1977)). Because the confidential informant, who had been accurate and reliable in the last six months, personally saw a crystal-like substance in Appellant's possession at Appellant's residence, there was a sufficient basis to justify a search warrant. *See Clayton*, 652 S.W.2d at 954; *see also Capistran*, 759 S.W.2d at 128; *Avery*, 545 S.W.2d at 804–05. Because all of this information was before the magistrate, he correctly determined that he had a substantial basis to find probable cause and issue the search warrant.

2. Appellant also argues that the affidavit contained "stale" information.

Appellant also asserts that the information in the affidavit was "stale." The Texas Court of Criminal Appeals has stated "that the proper method to determine whether the facts supporting a search warrant have become stale is to examine, in light of the type of criminal activity involved, the time elapsing between the occurrence of the events set out in the affidavit and the time the search warrant was

issued." *Crider v. State*, 352 S.W.3d 704, 707 (Tex. Crim. App. 2011) (internal citations omitted). The facts stated in the affidavit supporting a search warrant must be closely related to the time of the issuance of the warrant. *McClain*, 337 S.W.3d at 272. However, "[t]he lack of a specific date in a search-warrant affidavit is not necessarily fatal to the validity of a search warrant." *Steele v. State*, 355 S.W.3d 746, 750 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

In this case, the affidavit outlined that the confidential informant had been in the residence within the past forty-eight hours and had personally observed a crystal-like substance that appeared to be methamphetamine. The affidavit was dated January 22, 2016, while the search warrant was issued at 11:00 a.m. on the same day. Under similar circumstances, courts have determined that the information was not stale. *See Cuellar v. State*, No. 04-15-00810-CV, 2016 WL 6609207, at *2 (Tex. App.—San Antonio Nov. 9, 2016, no pet.) (mem. op.) (affidavit not stale when the informant observed a "useable amount of cocaine" within the last forty-eight hours); *Quiroz v. State*, No. 04-13-00852-CR, 2014 WL 2601735, at *2 (Tex. App.—San Antonio June 11, 2014, no pet.) (mem. op., not designated for publication) (where warrant issued on same day as affidavit's date and affidavit referenced observations provided to police within thirty-six hours of affidavit's date—information not stale); *Sutton v. State*, No. 04-13-00247-CR, 2014 WL 953495, at *3 (Tex. App.—San Antonio Mar. 12, 2014, no pet.) (mem. op., not designated for publication) (confidential informant observed defendant's possession of cocaine and relayed that to police within forty-eight hours); *Blake v. State*, 125 S.W.3d 717, 725 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (information provided within twenty-four to forty-eight hours of affidavit's date, which was same date as warrant, was not stale); *see also Gordon v. State*, No. 11-09-00051-CR, 2010 WL 2803036, at *1 (Tex. App.—Eastland July 15, 2010, pet. ref'd) (mem. op., not designated for publication) (information not stale where warrant issued day after contraband found in trash).

Based on the information found within the four corners of Officer Franklin's affidavit, we hold that the magistrate had a substantial basis to conclude, under the totality of the circumstances, that there was a fair probability that a search would uncover evidence of criminal wrongdoing at the location outlined in the search warrant. Therefore, trial court did not abuse its discretion when it denied Appellant's motion to suppress evidence. We overrule Appellant's sole issue on appeal.

III. *This Court's Ruling*

We affirm the judgment of the trial court.

MIKE WILLSON
JUSTICE

February 28, 2018

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.[2]

[2]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.