Opinion issued July 19, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-22-00051-CR

ERIC DONTE JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 434th District Court
Fort Bend County, Texas
Trial Court Case No. 18-DCR-083715

MEMORANDUM OPINION

Appellant, Eric Donte Jackson, pleaded guilty to the second-degree felony offense of manufacture or delivery of a controlled substance, namely, cocaine,

weighing at least 1 gram but less than 4 grams.[1] In accordance with appellant's agreed punishment recommendation from the State, the trial court assessed appellant's punishment at confinement for three years. In two issues, appellant contends that the trial court erred in denying his motion to suppress evidence.

We affirm.

Background

Appellant moved to suppress all evidence seized by officers of the Fort Bend County Narcotics Task Force ("Task Force") in executing a search warrant at a residence located at 15806 Val Verde Drive, Houston, Fort Bend County, Texas (the "Residence"). At a suppression hearing on July 27, 2021, appellant presented, and the trial court admitted for purposes of the hearing, a copy of the affidavit submitted by Officer J. Young of the Sugar Land Police Department ("SLPD") on August 6, 2018, requesting a warrant to search the Residence.

In his affidavit, Young testified that he was a Texas-licensed peace officer, was employed at SLPD and had been for over five years, and was assigned to the Task Force and had been since June 2017. Young noted that he had received numerous hours of training and education as a peace officer and that he had been involved in numerous narcotics possession and trafficking investigations and arrests.

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[1] *See* TEX. HEALTH & SAFETY CODE §§ 481.102(3), 481.112(a), (c).

Young presented the address of the Residence at issue in this case, along with a description and photograph of the Residence and of appellant. Young testified:

> There is at [the Residence] concealed and kept in violation of the laws of the State of Texas and described as follows: cocaine, and any evidence relative to the trafficking of narcotics, which may consist of, but not limited to. the following: [List, including controlled substances, namely cocaine; materials used in distribution; records; cellular telephones; currency; and firearms . . . .].
>
> . . . .
>
> On the grounds for the issuance of this warrant are derived from surveillance, physical evidence, prior narcotic investigations, reports, and conversations with persons further mentioned below that have personal knowledge of the events described herein. Based on my experience and training and from conversations with others involved in narcotics law enforcement, I know the following:
>
> 1.) It is common for individuals who deal illegal controlled substances to hide contraband and proceeds of drug sales in secure locations within their residences and in their vehicles for ready access and to conceal from law enforcement authorities.
>
> 2.) Individuals who deal in illegal controlled substances commonly keep paraphernalia for packaging, cutting, weighing, ingesting, and distributing. . . .
>
> 3.) It is common for individuals who deal in illegal controlled substances to conduct narcotics related business on cellular phones . . . .

Young testified that he had probable cause for his belief that appellant was keeping "cocaine, and . . . evidence relative to the trafficking of narcotics" at the Residence based on two controlled transactions that occurred at the Residence between appellant and a confidential informant, as follows:

> In May of 2018, Affiant was contacted by a [Task Force] documented informant (herein after referred to as "C.I."), who Affiant knows to be credible, based upon information provided that was confirmed to be

truthful and accurate. The C.I. informed Affiant that he/she knew of a subject named "Dee" who was selling illegal narcotics from his residence located in Houston, TX. The C.I. received information that "Dee" was selling cocaine from his residence in Houston, TX. The C.I. was also able to provide Affiant with Dee's phone number; ". . .-5623."

During this investigation, Affiant was able to check the phone number of "Dee" through law enforcement databases. The results of the search of the phone number showed a linkage to the name of "Eric Donte Jackson." Affiant checked several law enforcement databases for information regarding an "Eric Donte Jackson" and was able to locate a Texas driver's license for a person with the same name. The subject listed as Eric Donte Jackson showed to have a date of birth of . . . and a Texas driver's license of . . . . The driver's license photo of Eric Donte Jackson was shown to the C.I. for identifying purposes. The C.I. immediately identified the subject in the photo to be the person he/she knows as "Dee."

At that time "Dee" was positively identified as being [appellant]. . . .

. . . . The C.I. stated that [appellant] was currently living at the address of 15806 Val Verde Drive, Houston, TX 77083 [the Residence].

. . . .

On or about July 16, 2018, Affiant met with the C.I. . . . Affiant conducted a search of the C.I.'s person and did not locate any illegal narcotics, contraband, weapons, or money in his/her possession. A search of the C.I.'s vehicle was also conducted in which no illegal items, weapons, or money was located. The C.I. was provided with enough money in documented United States currency . . . to purchase cocaine from [appellant]. . . . The C.I. was directed to contact the suspect, [appellant], from whom the C.I. would attempt to purchase cocaine . . . without using coercion, threats, or other enticements. Affiant advised the C.I. that members of the [Task Force] would maintain visual surveillance of him/her until he/she returned to the undisclosed meeting location. The C.I. acknowledged that he/she understood and complied with the procedures.

While meeting with the C.I., he/she and [appellant] communicated via cellular phones. [Appellant] was communicating with the C.I. using the phone number of . . .-5623, which belongs to [appellant]. While communicating via cell phones, [appellant] told the C.I. to meet him at the [Residence].

It is noted that Task Force Officer K. Hilliard assisted in the investigation and conducted surveillance of the controlled buy. It is also noted that the address of 15806 Val Verde Drive is within the county of Fort Bend and in the State of Texas.

As Affiant maintained visual surveillance of the C.I., he/she left the meeting location and later arrived to the [Residence].

While conducting surveillance of the controlled buy, TFO Hilliard observed [appellant] exit [the Residence]. [Appellant] then approached the C.I., where a hand-to-hand transaction occurred. [Appellant] then entered back into the residence after the transaction. The C.I. then left the location and later met with Affiant . . . .

While meeting with the C.I., he/she handed Affiant a small clear baggie containing a powdery white substance. The powdery white substance was believed to be cocaine based on Affiant's training and experience in narcotics as a law enforcement officer. The C.I. told Affiant that while on location, he/she met with Dee. The C.I. stated that he/she handed Dee the documented US currency . . . in exchange for the small baggie containing cocaine.

Affiant maintained custody of the cocaine for further processing. The small baggie of cocaine was weighed and tested. The small bag of cocaine yielded the total weight of 0.9 grams and tested positive for the presence of cocaine via NARK reagents test kit. . . .

On or about August 3, 2018, Affiant met with the C.I. . . . Affiant conducted a search of the C.I.'s person and did not locate any illegal narcotics, contraband, weapons, or money in his/her possession. A search of the C.I.'s vehicle was also conducted in which no illegal items, weapons, or money was located. The C.I. was provided with enough money . . . to purchase cocaine from [appellant] . . . . The C.I. was directed to contact [appellant], from whom the C.I. would attempt to purchase cocaine from without using coercion, threats, or other enticements. Affiant advised the C.I. that members of the [Task Force] would maintain visual surveillance of him/her until he/she returned to the undisclosed meeting location. . . .

While meeting with the C.I., he/she and [appellant] communicated via cellular phones. [Appellant] was communicating with the C.I. using the phone number of . . .-5623, which belongs to [appellant]. While communicating via cell phones, [appellant] told the C.I. to meet him at the [Residence].

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> While meeting with the C.I., he/she handed Affiant a small clear baggie containing a powdery white substance. The powdery white substance was believed to be cocaine based on Affiant's training and experience in narcotics as a law enforcement officer. The C.I. told Affiant that while on location, he/she met with Dee. The C.I. stated that he/she handed Dee the . . . currency . . . in exchange for the small baggie containing cocaine.
>
> Affiant maintained custody of the cocaine for further processing. The small baggie of cocaine was weighed and tested. The small bag of cocaine yielded the total weight of 1.1 grams and tested positive for the presence of cocaine via NARK reagents test kit. . . .

Young testified that, based on the foregoing, it was his "firm belief from his investigative experience in Narcotics Trafficking/Investigations in the past" that the Residence "contain[ed] cocaine," and he requested a search warrant.

On August 6, 2018, a magistrate issued a search warrant for the Residence. On August 8, 2018, members of the Task Force executed the warrant. Items seized during the search are detailed in the trial court's findings below.

After the hearing on the motion to suppress, the trial court denied appellant's motion to suppress all evidence seized. In its findings of fact, the trial court found:

1. On July 16, 2018, an officer with the [Task Force], with the assistance of a confidential informant, observed the defendant participate in a hand to hand narcotics transaction at [the Residence] . . . . Prior to the transaction, [Task Force] personnel had the [Residence] under surveillance and observed the defendant exit the residence upon the confidential informant's arrival. Upon the conclusion of the narcotics transaction, the defendant returned to the interiors [sic] of [the Residence].

2. A test of the white powdery substance that was given to the confidential informant by the defendant on July 16, 2018 tested positive for cocaine using the Nark reagent test kit.

3. On August 3, 2018, officers with the [Task Force], with the assistance of a confidential Informant, observed the defendant participate in a hand to hand narcotics transaction at [the Residence] . . . . Prior to the transaction, [Task Force] personnel had the [Residence] under surveillance and observed the defendant exit the residence upon the confidential informant's arrival. Upon the conclusion of the narcotics transaction, the defendant returned to the interiors [sic] of [the Residence].

4. On August 6, 2018, based upon the two controlled transactions between the confidential informant and the defendant at 15806 Val Verde Drive, Houston, Fort Bend County, TX, search warrant # 18-400-50 was signed by . . . the 400th District Court of Fort Bend County, Texas[,] authorizing the search of 15806 Val Verde Drive, Houston, Fort Bend County, TX.

5. On August 8, 2018[,] members of the [Task Force] executed the search warrant . . . on 15806 Val Verde Drive, Houston, Fort Bend County, TX.

6. Recovered from the execution of the search . . . were the following:

   In the kitchen, the following was recovered:

   - Rolling band containing small amount of marijuana on the counter top;
   - A tan and white colored crockpot on the counter contained a white-powdery residue around the rim that field tested positive for cocaine. (The condition of the crockpot was

believed to be consistent with the mixing and manufacturing [of] crack cocaine[.]

In the master bedroom[,] the following was recovered:

- Two packages containing marijuana . . . [;]
- . . . [A] weigh scale with small amount of residue that field tested positive for cocaine[;]
- A clear container with a white top was recovered that contained a small bag of a substance that field tested positive for cocaine;
- Several empty baggies were recovered;
- Three bottles of a white powdery substance believed to be a cocaine cutting agent[;]
- A wallet that contained the Texas identification card for defendant[;]
- Clothes that were consistent with a male and female and also consistent with the sizes of the defendant[;]
- A black semi-automatic-Glock .357 caliber firearm . . . was recovered from the top shelf in the closet. A trace was conducted on the firearm that showed the firearm was reported stolen.

The total amount of marijuana that was recovered from the residence was 3.55 ounces. The total amount of substances that field tested positive for cocaine was 4.3 grams.

. . . .

10. [The trial court] [f]inds this was not a warrantless search.
11. The search was a result of a lawful search warrant issued by [the 400th District Court] based upon credible information.
12. The burden of proving the search unreasonable was on the defendant.
13. The Court finds defense offered no evidence to support the unreasonableness or unlawfulness of the search.

The trial court made the following conclusions of law:

> 1. Based on the record, the exhibits admitted during the pre-trial hearing, arguments of counsel and the foregoing findings, the Court concludes that the search of [the Residence] was based upon the finding of probable cause as decided by [the 400th District Court] on August 6, 2018.
> 2. Upon an independent review, this Court finds the search of [the Residence] on August 8, 2018 was based upon probable cause and reasonable.
> 3. Based on the record, the exhibits admitted during the pre-trial hearing, arguments of counsel and the foregoing findings, the Court concludes that the defense did not meet the burden of proving the search was unlawful, not supported by probable cause or unreasonable.
> 4. This Court does not find the argument of the defendant persuasive regarding a lack of nexus between residence, the defendant, the investigation and charged conduct.

Motion to Suppress Evidence

In his two related issues, appellant argues that the trial court erred in denying his motion to suppress the evidence seized from the Residence because it was "obtained through an illegal search in violation of the Fourth Amendment of the United States Constitution, Article I, Section 9 of the Texas Constitution, and Texas Code of Criminal Procedure Art. 38.23."

Standard of Review and Governing Legal Principles

The Fourth Amendment to the United States Constitution provides that 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 that no search warrant

shall issue without probable cause. U.S. CONST. amend. IV. Similarly, the Texas Constitution provides that "[t]he people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches" and provides that no search warrant shall issue without probable cause. TEX. CONST. art. 1, § 9; *see also Foreman v. State*, 613 S.W.3d 160, 164 (Tex. Crim. App. 2020). "The cornerstone of the Fourth Amendment and its Texas equivalent is that a magistrate shall not issue a search warrant without first finding probable cause that a particular item will be found in a particular location." *Foreman*, 613 S.W.3d at 163.

Accordingly, the Texas Code of Criminal Procedure provides that a "sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested." TEX. CODE CRIM. PROC. art. 18.01(b); *see State v. Baldwin*, 2022 WL 1499508, at *7 (Tex. Crim. App. May 11, 2022). And, no evidence obtained in violation of a United States or Texas constitutional provision or law "shall be admitted in evidence against the accused on the trial of any criminal case." TEX. CODE CRIM. PROC. art. 38.23(a).

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). That is, when the facts and circumstances shown in the peace officer's affidavit "would warrant a man of reasonable caution [to believe] that the items to be seized

were in the stated place." *State v. Elrod*, 538 S.W.3d 551, 556 (Tex. Crim. App. 2017). In addition, the facts stated in the affidavit "must be so closely related to the time of the issuance of the warrant that a finding of probable cause is justified." *State v. McLain*, 337 S.W.3d 268, 272 (Tex. Crim. App. 2011). Although a magistrate's determination of probable cause "must be based on the facts contained within the four corners of the affidavit," the magistrate "may use logic and common sense to make inferences based on those facts." *Elrod*, 538 S.W.3d at 556.

A defendant seeking to suppress evidence obtained by a warrant has the burden of proving, by a preponderance of the evidence, that the evidence was obtained in violation of his Fourth Amendment rights. *United States v. Wallace*, 885 F.3d 806, 809 (5th Cir. 2018); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). Although a trial court's ruling on a motion to suppress is normally reviewed under a bifurcated standard, a trial court's determination of probable cause supporting the issuance of a search warrant involves "no credibility determinations." *McLain*, 337 S.W.3d at 271. Rather, "the trial court is constrained to the four corners of the affidavit." *Id.* Accordingly, when "reviewing a magistrate's decision to issue a warrant, trial and appellate courts apply a highly deferential standard in keeping with the constitutional preference for a warrant." *Id.*

The duty of a reviewing court is "simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed,' based on the four

corners of the affidavit and reasonable inferences therefrom." *Moreno v. State*, 415 S.W.3d 284, 287 (Tex. Crim. App. 2013) (quoting *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983)). The reviewing court should not analyze the affidavit in a hyper-technical manner. *McLain*, 337 S.W.3d at 271. Rather, the court should interpret the affidavit in a "common sense and realistic manner," *Elrod*, 538 S.W.3d at 556, and "defer to all reasonable inferences that a magistrate could have made." *Rodriguez v. State*, 232 S.W.3d 55, 61 (Tex. Crim. App. 2007).

Sufficiency of the Affidavit

Appellant first argues that Officer Young's affidavit did not provide the magistrate with a basis to conclude that narcotics would be found inside the Residence because there was not a "sufficient nexus between the [informant's] controlled purchase and [the] inside of the residence to justify a search of the inside of the residence" and because "no one saw narcotics inside the home; no one purchased narcotics inside the home; and no one claimed that more narcotics would be in the home after the controlled purchase."

In determining whether Officer Young's affidavit provided probable cause to support a search warrant of the Residence, we are constrained to the four corners of his affidavit. *See McLain*, 337 S.W.3d at 271–72. We examine the affidavit to see if it recited facts sufficient to support conclusions (1) that a specific offense was committed, (2) that the property or items to be searched for or seized constitute

evidence of the offense or evidence that a particular person committed it, and (3) that the evidence sought is located at or within the thing to be searched. *See* TEX. CODE CRIM. PROC. art. 18.01(c); *Baldwin*, 2022 WL 1499508, at *7.

We note that confidential informants may be considered reliable tipsters if they have a successful "track record." *Duarte*, 389 S.W.3d at 357; *see Dixon v. State*, 206 S.W.3d 613, 616–17 (Tex. Crim. App. 2006); *Brown v. State*, 243 S.W.3d 141, 146 (Tex. App.—Eastland 2007, pet. ref'd) (holding evidence that informant had previously provided reliable information sufficient to establish veracity). And, an informant's tip combined with independent corroboration by police investigation may provide a substantial basis for the magistrate's finding of probable cause. *Janecka v. State*, 739 S.W.2d 813, 825 (Tex. Crim. App. 1987); *see Sadler v. State*, 905 S.W.2d 21, 22 (Tex. App.—Houston [1st Dist.] 1995, no pet.) (noting that circumstances of "controlled buy," standing alone, may be sufficient to establish probable cause to issue search warrant).

In *Rodriguez*, the Texas Court of Criminal Appeals held that the facts presented in the affidavit and the reasonable inferences therefrom were sufficient to establish probable cause to support a warrant to search the defendant's garage. 232 S.W.3d at 64. There, the affidavit stated that the affiant, an experienced narcotics officer, had received information that the defendant's uncle, Cantu, was selling large amounts of cocaine. *Id.* at 57, 62. Based on this information, a team of officers

surveilled Cantu and followed him to the defendant's house. *Id.* at 62. They saw Cantu arrive, pull around back, park near a garage, walk into the garage, emerge with a package, which he threw into the car, and drive away. *Id.* Cantu was then stopped for a traffic violation, and officers found that the package in fact contained bricks of cocaine. *Id.* The court concluded that it was a "fair inference from these facts that Cantu obtained that package from the garage" and that "there was a fair probability that more cocaine might still be in that same garage." *Id.* (noting that it was "reasonable to conclude that where there was smoke (the original three-kilo package of cocaine) there was fire (a larger cache of cocaine)"). The court noted that, although "[n]either the officers nor the magistrate could be positive of the existence of additional contraband in the garage, . . . it [was] certainly 'a fair probability' that there was more cocaine stored where the first package came from." *Id.* Thus, probable cause to search the garage was established. *Id.* at 64.

In *Mitchell v. State*, a court of appeals held that the facts presented in the affidavit and reasonable inferences therefrom were sufficient to establish probable cause to support a warrant to search a residence. No. 07-00-0552-CR, 2001 WL 1001003, at *1 (Tex. App.—Amarillo Aug. 31, 2001, pet. ref'd). There, a narcotics officer's affidavit stated that he had participated in investigating the defendant's cocaine-trafficking activities and that known confidential informants had purchased

cocaine from the defendant at the subject residence on certain dates—the last of which was 72 hours prior to the application for the warrant. *Id.*

The court, in *Mitchell*, held that the transactions evidenced a course of conduct from which one could reasonably infer that a specific crime had occurred and that evidence of that crime could probably be found at the residence. *Id.* at *2. The court noted: "That none of the confidential informants stated that the drugs were secured from *inside* the house [was] of no consequence." *Id.* (emphasis added). Rather, it concluded, there having been multiple sales and "each having transpired at the house or its immediate environs indicate[d] something more than mere coincidence." *Id.* The court noted that "the focal point in every probable cause analysis is probability not certainty." *Id.* at *3. It held that because the defendant "negotiated the sale *outside the house*, *entered the house* before delivering the drugs, *exited the house* to deliver the drugs, and then *re-entered the house* once the drugs were delivered and money received, then one ha[d] [a] basis to reasonably infer that drugs were *probably* being sold from the house even though no one expressly stated that." *Id.* at *2 (emphasis in original). Because the affidavit contained sufficient allegations establishing the probability of criminal activity, the probability of the defendant's connection with that activity, and the probability of evidence or contraband inside the house, the court held that the trial court did not err in denying the defendant's motion to suppress. *Id.* at *3.

Here, Officer Young testified in his affidavit that he relied on a Task Force "documented informant," who was "know[n] to be credible, based upon information provided that was confirmed to be truthful and accurate." *See Dixon*, 206 S.W.3d at 616–17. In addition, Young and other Task Force officers coordinated two controlled buys—on Monday, July 16, 2018, and Friday, August 3, 2018—from appellant, at the Residence, and officers conducted surveillance of each controlled buy. *See Sadler*, 905 S.W.2d at 22.

Officer Young testified that, in May 2018, the informant stated that a person named "Dee" was selling narcotics from his residence and gave Dee's phone number. Young determined that the phone number belonged to appellant. Young showed appellant's driver's license photo to the informant, who "immediately identified" him as "Dee." The informant told Young that appellant no longer lived at the address on the license and was instead living at 15806 Val Verde Drive, Houston, TX 77083, i.e., the Residence.

On July 16, 2018, Officer Young met with the informant. After searching the informant and his vehicle, and finding no narcotics, contraband, or weapons, Young provided the informant with money to purchase cocaine from appellant. During the meeting, the informant communicated with appellant at the cell phone number previously identified as that of appellant. Appellant told the informant to meet him at the Residence. The informant then left the meeting and went to the Residence.

Officer Hilliard, who conducted surveillance of the controlled buy, saw appellant come out of the Residence, approach the informant, conduct a hand-to-hand transaction, and then re-enter the Residence. The informant then met with Officer Young and gave him a small clear baggie that he had obtained from appellant, which contained a powdery white substance. Young determined that the baggie "yielded the total weight of 0.9 grams and tested positive for the presence of cocaine."

Officer Young further testified that, on August 3, 2018, the Task Force conducted a second controlled buy, under the same facts and circumstances as the first, from appellant, at the Residence. Young weighed and tested the second baggie of substance that appellant had given to the informant and determined that it "yielded the total weight of 1.1 grams and tested positive for the presence of cocaine."

Officer Young's affidavit contains sufficient allegations establishing the probability of criminal activity and appellant's connection to that activity. *See* TEX. CODE CRIM. PROC. art. 18.01(c); *Baldwin*, 2022 WL 1499508, at *7.

In addition, the affidavit contains sufficient allegations establishing a fair probability that the evidence sought was located at or within the Residence. *See* TEX. CODE CRIM. PROC. art. 18.01(c); *Baldwin*, 2022 WL 1499508, at *7. Here, like in *Rodriguez*, it is a "fair inference" from the facts stated in the affidavit that appellant obtained the cocaine from inside the Residence. *See Rodriguez*, 232

S.W.3d at 62. There was also a "fair probability" that there was more cocaine stored where the first packages came from. *See id.* Further, like in *Mitchell*, because appellant told the informant to come to the Residence and surveillance officers saw the informant arrive at the Residence, saw appellant come out of the Residence, approach the informant, conduct a hand-to-hand transaction, and then re-enter the Residence once drugs were delivered and money received, there was a basis to reasonably infer that a specific crime had occurred and that evidence of that crime could probably be found at the Residence. *See Mitchell*, 2001 WL 1001003, at *2–3.

Thus, like in *Rodriguez* and *Mitchell*, there are sufficient facts stated within the four corners of the affidavit that, when viewed as a whole and in a common-sense manner, and coupled with the reasonable inferences therefrom, establish that the magistrate had a substantial basis for concluding that there was probable cause to search the Residence. *See Rodriguez*, 232 S.W.3d at 62; *Mitchell*, 2001 WL 1001003, at *2–3; *see also Moreno*, 415 S.W.3d at 287 ("[O]ur duty 'is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed' based on the four comers of the affidavit and reasonable inferences therefrom.").

Staleness

Appellant also complains that "[n]owhere in the affidavit are there allegations raising probable cause to believe that there were, or would be, narcotics in the residence on August 5th, 6th, 7th, or 8th, 2018."

To justify a magistrate's finding that an affidavit is sufficient to establish probable cause to issue a search warrant, the facts set out in the affidavit must not have become stale by the time that the magistrate issues the search warrant. *McKissick v. State*, 209 S.W.3d 205, 214 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd). Probable cause ceases to exist if, at the time the search warrant is issued, it would be unreasonable to presume that the items remain at the suspected place. *Id*. 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. *Id.* However, "time is a less important consideration when an affidavit recites observations that are consistent with ongoing drug activity at a defendant's residence," as here. *Jones*, 364 S.W.3d at 862.

Here, the record shows that the informant first told Officer Young in May 2018 that appellant was selling cocaine from the Residence. A controlled buy took place on July 18, 2018, and a second controlled buy took place on Friday, August 3,

2018. On Monday, August 6, 2018, Young submitted his affidavit to the magistrate and the search warrant issued.

Although cocaine is easily transferred or disposed of, the facts stated in the affidavit, which took place over the course of several months, suggested ongoing drug activity at the Residence. *See id*. And, less than 72 hours elapsed between the second controlled buy and the time that the search warrant issued. *See McKissick*, 209 S.W.3d at 214. We conclude that the temporal references in the affidavit allowed the magistrate to determine that there was a substantial basis for concluding that the items listed in the affidavit were still present at the Residence. *See McLain*, 337 S.W.3d at 273 (holding magistrate could have reasonably inferred from facts in affidavit, including informant having seen defendant with methamphetamine in prior 72 hours, a fair probability that methamphetamine was still at defendant's house at time of issuance of warrant); *Mitchell*, 2001 WL 1001003, at *2–3 (holding that one could reasonably infer from evidence of ongoing drug transactions, and purchase at subject residence in prior 72 hours, that evidence could probably be found at residence); *see also Jones*, 364 S.W.3d at 862 (holding that controlled buy, combined with information from informants that drugs were being sold from residence, was sufficient to establish probable cause that "a continuing drug business was being operated from the residence, a secure operational base").

We hold that the trial court did not err in deferring to the magistrate's probable cause determination and did not err in denying the motion to suppress.

We overrule appellant's first and second issues.

Conclusion

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Goodman and Hightower.

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