



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00810-CV

Eric Mark **CUELLAR**, as Claimant of
Current Money of the United States of America \$20,438.00, et al.,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 229th Judicial District Court, Duval County, Texas
Trial Court No. DC-14-384
Honorable Ana Lisa Garza, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: November 9, 2016

AFFIRMED

Eric Mark Cuellar appeals the trial court's judgment forfeiting any and all interest Cuellar had in currency and firearms seized during the execution of a search warrant. Cuellar asserts the trial court erred in concluding the currency and firearms were lawfully seized because he contends the affidavit in support of the search warrant failed to establish probable cause. We affirm the trial court's judgment.

STANDARD OF REVIEW

“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 also 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 or substantial chance that contraband or evidence of a crime will be found at the specified location.”). Probable cause “is a flexible and nondemanding standard.” *Bonds*, 403 S.W.3d at 873.

As a reviewing court, we apply a highly deferential standard to the magistrate’s determination of the existence of probable cause. *Moreno*, 415 S.W.3d at 287; *Bonds*, 403 S.W.3d at 873. “Provided the magistrate had a substantial basis for concluding that probable cause existed, we will uphold the magistrate’s probable-cause determination.” *Bonds*, 403 S.W.3d at 873. “The magistrate may interpret the affidavit in a non-technical, common-sense manner and may draw reasonable inferences solely from the facts and circumstances contained within the affidavit’s four corners.” *Id.* “Appellate courts should not invalidate a warrant by interpreting the affidavit in a hypertechnical, rather than a common-sense, manner.” *Id.* “When in doubt, the appellate court should defer to all reasonable inferences that the magistrate could have made.” *Id.*

AFFIDAVIT AND SEARCH WARRANT

Agent Randy Trigo was the affiant in the instant case. He first stated he has been a commissioned peace officer for twenty-two years and has conducted investigations and interviewed confidential sources that have led to the seizure of narcotics and the arrest of suspected narcotics dealers. Agent Trigo described the suspected place as a single family dwelling located at 708 West Dix Ave., City of San Diego, Duval County, Texas, and stated the suspected place was controlled by Cuellar. Agent Trigo also described the contraband located at the suspected place as including cocaine and proceeds, including large quantities of currency.

Agent Trigo stated that he and other law enforcement agents had received information in the past from other law enforcement officials and confidential sources that Cuellar had been packaging and distributing cocaine from the suspected place. Agent Trigo also stated he and other law enforcement agents had conducted surveillance on the suspected place in the past and present and observed frequent vehicular traffic arrive at the suspected place and depart within a short period of time which is commonly observed in narcotics investigations that have resulted in execution of search warrants and seizure of narcotics. Agent Trigo further stated he “has been in contact, with three (3) Confidential Sources who advised within the past 48 hours they have seen a usable amount of Cocaine in the suspected place.” Finally, Agent Trigo stated he believes the confidential source is reliable because the confidential source had provided information to law enforcement agencies in the past that have led to the successful seizure of narcotics and the arrest of narcotics dealers.

The affidavit was signed and presented to the magistrate on August 14, 2014. The search warrant was issued and executed the same day.

DISCUSSION

In his brief, Cuellar challenges the affidavit arguing the information was stale because the description of the prior investigation did not contain any details regarding dates, and Cuellar construes the reference to the “past 48 hours” as a reference to when Agent Trigo received the information from the confidential sources, as opposed to when the confidential sources observed the cocaine in the suspected place. Cuellar also argues the affidavit did not provide sufficient information regarding the veracity of the confidential sources.

A. Information Not Stale

The facts stated in the affidavit supporting a search warrant must be closely related to the time of the issuance of the warrant. *State v. McClain*, 337 S.W.3d 268, 272 (Tex. Crim. App.

2011). The proper method for determining “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 quotations omitted).

In *McLain*, the Texas Court of Criminal Appeals considered the inferences a magistrate could draw from the statement, “In the past 72 hours, a confidential informant advised the Affiant that Chris was seen in possession of a large amount of methamphetamine at his residence and business.” 337 S.W.3d at 273. Similar to Cuellar’s reading of the reference to the “past 48 hours” in the affidavit in the instant case, the intermediate appellate court held a “common sense reading” of the affidavit’s reference to the “past 72 hours” referred to when the affiant spoke to the confidential informant, not when the confidential informant acquired the information. *Id.* However, the Texas Court of Criminal Appeals disagreed, holding “the magistrate could have reasonably inferred that the informant observed Appellee with the methamphetamine within the past 72 hours.” *Id.* Similarly, in the instant case, the magistrate could reasonably have inferred the affidavit to mean the confidential sources observed cocaine in the suspected place within the past 48 hours. Therefore, the magistrate could appropriately have determined the information was not stale.

B. Veracity of Confidential Sources

It is well established that an affidavit contains sufficient information to conclude an informer is credible or his information reliable if the affidavit states the affiant has received information from the informer on previous occasions and such information has proven to be true and correct. *Hegdal v. State*, 488 S.W.2d 782, 785 (Tex. Crim. App. 1972); *Blake v. State*, 125 S.W.3d 717, 726 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Contrary to Cuellar’s contention,

the informant's reliability may be established by general assertions. *See Hegdal*, 488 S.W.2d at 785; *Blake*, 125 S.W.3d at 726. "An affidavit in support of a warrant to search for narcotics need not provide more specific details regarding the informant's reliability than to state the informant had been given information in the past regarding narcotics trafficking which had proved correct." *Blake*, 125 S.W.3d at 726.

In this case, the affidavit stated, "Confidential Source has provided information to law enforcement agencies in the past that have led to the successful seizure of narcotics and the arrest of narcotics dealers in the past." This statement was sufficient to establish the confidential source's veracity. *See Hegdal*, 488 S.W.2d at 785; *Blake*, 125 S.W.3d at 726. Therefore, the magistrate did not err in determining the confidential sources were credible and their information was reliable.¹

CONCLUSION

The trial court's judgment is affirmed.

Sandee Bryan Marion, Chief Justice

¹ Cuellar also appears to question the sufficiency of the information regarding the prior investigation. Agent Trigo, however, stated he was personally involved in the prior surveillance of the suspected place. In addition, "Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number." *United States v. Ventresca*, 380 U.S. 102, 111 (1985); *see also Aguirre v. State*, 490 S.W.3d 102, 111 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("The magistrate may rely on the affidavit of a police officer which is based on the knowledge of other officers.").