



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00615-CR

Chima **OKORIE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 227th Judicial District Court, Bexar County, Texas
Trial Court No. 2015CR2022
Honorable Pat Priest, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: October 11, 2017

AFFIRMED

Chima Okorie was convicted by a jury of possession of a controlled substance with intent to deliver and was placed on ten years' community supervision. The sole issue presented on appeal is whether the trial court erred in denying Okorie's motion to suppress because the affidavit in support of the search warrant issued by the magistrate which led to the seizure of the controlled substance failed to state sufficient facts to support a finding of probable cause. We overrule Okorie's issue and affirm the trial court's judgment.

STANDARD OF REVIEW

When a trial court is determining whether probable cause exists to support the issuance of a search warrant, the trial court does not make any credibility determinations but is constrained to the four corners of the affidavit. *State v. McLain*, 337 S.W.3d 268, 271 (Tex. Crim. App. 2011); *State v. Evans*, 486 S.W.3d 636, 638 (Tex. App.—San Antonio 2016, pet. ref'd). “Accordingly, when we review the magistrate’s decision to issue a warrant, we apply a highly deferential standard because of the constitutional preference for searches to be conducted pursuant to a warrant as opposed to a warrantless search.” *McLain*, 337 S.W.3d at 271. “The test is whether a reasonable reading by the magistrate would lead to the conclusion that the four corners of the affidavit provide a ‘substantial basis’ for issuing the warrant.”¹ *State v. Duarte*, 389 S.W.3d 349, 354 (Tex. Crim. App. 2012). “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.” *Id.* “This is a flexible, nondemanding standard.” *Id.* We review the supporting affidavit realistically, applying common sense, and uphold the magistrate’s probable cause determination so long as the magistrate had a substantial basis for concluding probable cause existed. *Duarte*, 389 S.W.3d at 354; *McLain*, 337 S.W.3d at 271; *Evans*, 486 S.W.3d at 638-39.

PROBABLE CAUSE BASED ON CONFIDENTIAL INFORMANT

In his brief, Okorie relies heavily on the Texas Court of Criminal Appeals’ decision in *Duarte* to challenge the supporting affidavit’s reliance on information provided by a confidential informant. In *Duarte*, however, the confidential informant was “a first-time informant looking for

¹ In his brief, Okorie relies on testimony at the suppression hearing to challenge the sufficiency of the information provided in the affidavit. As previously noted, however, the trial court and this court are “constrained to the four corners of the affidavit” in determining whether a substantial basis exists for issuing the warrant. *McLain*, 337 S.W.3d at 271; *see also Barraza v. State*, 900 S.W.2d 840, 843 (Tex. App.—Corpus Christi 1995, no pet.) (“While we must apply the totality of the circumstances standard in testing the sufficiency of the affidavit, this application only goes to the circumstances included in the affidavit. That is why we must restrict ourselves to the ‘four corners’ of the affidavit.”) (internal citations omitted).

‘a deal’ on his own pending criminal charges.” 389 S.W.3d at 351. In its analysis, the court distinguished “first-time confidential informants of unknown reliability” from confidential informants who “have a successful ‘track record.’” *Id.* at 357-58. Citing its decision in *Hegdal v. State*, 488 S.W.2d 782, 784 (Tex. Crim. App. 1972), the court noted the reliability and track record of the confidential informant in *Hegdal* was established by the following statement contained in the supporting affidavit, “Affiant has received information from said reliable and credible informant on previous occasions and such information has proven to be true and correct.” *Id.* at 359 n.44 (quoting *Hegdal*, 488 S.W.2d at 784). Unlike a tip from a first-time informant, the court noted a tip from a confidential informant who has a track record and is known to be reliable will support a probable cause finding if the informant stated he “observed [the defendant] 08-17-87 in possession of cocaine within the past twenty-four hours at 10919 Indigo Creek.” *Id.*

In the instant case, the supporting affidavit stated the affiant officer received “information from a credible and reliable informant” on September 4, 2014, “concerning narcotics being possessed at the above location [6515 W. Hausman #1000, Bexar County, Texas] by Chima Okorie.” In addition, the affidavit stated the informant described the residence and provided the affiant officer with the address, and the affiant officer went to the address and confirmed that the informant accurately described the premises. The affidavit also stated:

The informant has demonstrated his/her ability to identify Marijuana and the paraphernalia related to its ingestion, packaging and sale. The informant has given me information in the past that has been found to be true and correct.

The affidavit further stated the affiant officer had advised the informant that false statements would lead to criminal charges, the informant understood the legal implications, and the informant maintained the information provided to the affiant was true and correct. Finally, the affidavit stated, “On September 4, 2014, the informant stated he/she did within the past 24 hours see a

controlled substance to wit: Marijuana unlawfully possessed by Chima Okorie at the above described premises.”

Based on the holding in *Hegdal* which was reaffirmed in *Duarte*, we hold the supporting affidavit established that the confidential informant in the instant case was known to be reliable and had a successful track record. Therefore, the supporting affidavit provided the magistrate with a substantial basis for concluding probable cause existed.

CONCLUSION

The trial court’s judgment is affirmed.

Sandee Bryan Marion, Chief Justice

Do not publish