In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00349-CR

TOMMY ENRIQUEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 140th District Court
Lubbock County, Texas
Trial Court No. 2014-402,188, Honorable Jim Bob Darnell, Presiding

August 31, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant Tommy Enriquez appeals his conviction following his plea of guilty to the offense of possession of marijuana in an amount more than 50 pounds but less than 2000 pounds.[1] Through one issue, he contends the trial court erred when it denied his motion to suppress evidence. We disagree, and will affirm.

[1] *See* HEALTH & SAFETY CODE ANN. § 481.121(b)(5) (West 2016). Appellant pleaded guilty as part of a plea agreement with the State, receiving a sentence of five years of imprisonment.

Background

In March 2014, Lubbock police received two anonymous tips alerting them that appellant was actively engaged in marijuana trafficking. The first tip, on March 11, provided appellant's residence address and described two vehicles, a white Cadillac car with Texas plates and a pickup with New Mexico plates. Two days later, a Lubbock police officer, Paine, went to the address. There, he saw the two vehicles in the driveway.[2] The second anonymous tip came a week after the first. The tipster said he "used to be involved in trafficking marijuana in partnership with" appellant. He identified a storage unit, #46, at an address on Highway 87 in Lubbock, and described the routine appellant and another man used to unload and store one-pound packages of marijuana inside the storage unit. The routine involved pulling the arriving vehicle carrying the marijuana inside the storage unit.

Three days later, just after noon, Paine began surveillance of the residence. When two males left the residence in the white Cadillac, Paine followed them to a local pharmacy, where they met a man driving a gold Chrysler. The Chrysler was registered to an address in El Paso. Paine followed the two vehicles as they travelled together to storage unit #46. The white Cadillac parked in front of the unit and the Chrysler was driven inside and the unit's garage door was closed. Some 25 minutes later, the garage door opened and the Chrysler exited, driven by the same man Paine had seen at the pharmacy.

[2] Neither vehicle was registered to appellant.

Paine watched the Chrysler until other officers began to follow it. About five minutes after the Chrysler left the storage unit, the two men came out the unit's front door and left in the Cadillac. While Paine, and then another officer, watched the storage unit, no further activity was noted.

Lubbock officers conducted a traffic stop of the Chrysler when it ran a red light. The driver, Michael Davis, Junior, was in possession of $2700 in cash. After being given the *Miranda* warnings, Davis gave officers a recorded statement, in which he said he had received the money inside the storage unit from one of the two men from the white Cadillac. He said he received it as payment for transporting 45 packages from El Paso to unit #46. He said that after he parked the Chrysler inside unit #46, he and the other two men removed the packages from the Chrysler's door panels where they had been concealed. He also said the men placed the packages in a container, and that their contents looked like marijuana. In his statement, Davis gave officers the telephone number he was told to call when he arrived in Lubbock. Officers arrested Davis.

Later the same day, Paine swore to the information in an affidavit seeking a warrant to search unit #46. The affidavit was presented to a magistrate during the afternoon of that day, and the magistrate issued the warrant. Among other items, police recovered 85.7 pounds of marijuana from the storage unit. It is this affidavit and search warrant appellant challenges on appeal.

Analysis

Through his sole issue on appeal, appellant contends the trial court erred when it denied his motion to suppress.

Standard of Review and Applicable Law

Ordinarily, we review a trial court's ruling on a motion to suppress under a bifurcated standard of review, giving almost total deference to the facts found by the court and reviewing *de novo* its application of the law. *Amador v. State,* 221 S.W.3d 666, 673 (Tex. Crim. App. 2007). But when a trial court determines if there was sufficient probable cause to support a search warrant, the court is constrained to the four corners of the affidavit, and there are no credibility determinations to be made. *State v. McLain,* 337 S.W.3d 268, 271 (Tex. Crim. App. 2011). "[B]ecause of the constitutional preference for searches to be conducted pursuant to a warrant as opposed to a warrantless search," we review the sufficiency of an affidavit to determine whether there is a substantial basis on which the magistrate could have concluded that probable cause existed to find there was a fair probability that the described contraband would be found at the premises to be searched. *Id.* (*citing Illinois v. Gates,* 462 U.S. 213, 236, 103 S. Ct. 2317, 2331, 76 L. Ed. 2d 527 (1983)). For the same reason, our review is "highly deferential" to the magistrate's decision. *Id.* (*citing Gates,* 462 U.S. at 236). We extend this deference to the magistrate's determination to encourage the use of warrants, which "greatly reduces the perception of unlawful or intrusive police conduct." *Gates,* 462 U.S. at 236.

Under Texas law, "[n]o search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance." TEX. CODE CRIM. PROC. ANN. art. 18.01(b), (c)

(West 2014); *McLain,* 337 S.W.3d at 272. To establish probable cause, the affidavit must show:

> (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.

TEX. CODE CRIM. PROC. ANN. art. 18.01(c) (West 2014). "The facts stated in a search affidavit 'must be so closely related to the time of the issuance of the warrant that a finding of probable cause is justified.'" *McLain*, 337 S.W.3d at 272 (*quoting Flores v. State,* 827 S.W.2d 416, 418 (Tex. App.—Corpus Christi 1992, pet. ref'd)).

When reviewing a search warrant affidavit under the "substantial basis" standard, we interpret the affidavit in a commonsensical and realistic manner, and we defer to all reasonable inferences that a magistrate could have drawn. *Rodriguez v. State*, 232 S.W.3d 55, 61 (Tex. Crim. App. 2007); *Jones v. State,* 338 S.W.3d 725, 733 (Tex. App.—Houston [1st Dist.] 2011), *aff'd,* 364 S.W.3d 854 (Tex. Crim. App. 2012). We determine whether there are sufficient facts stated within the four corners of the affidavit, coupled with inferences from those facts, to establish a "fair probability" that contraband or evidence of a particular crime will likely be found at a specified location. *Jones,* 338 S.W.3d at 733 (*citing Rodriguez*, 232 S.W.3d at 62); *Massey v. State,* 933 S.W.2d 141, 148 (Tex. Crim. App. 1996). We consider the totality of the circumstances; those include whether anonymous tips have been corroborated by independent police work. *Gates,* 462 U.S. at 238, 241; *Rodriguez,* 232 S.W.3d at 62.

Application of Law to Facts

Appellant argues on appeal that the magistrate should not have issued the search warrant because the affidavit did not provide sufficient facts to establish probable cause that the marijuana would be found at the storage unit.

In his argument, appellant compares the information in Paine's affidavit with that found inadequate in other reported cases.[3] Some of the cases appellant cites contain facts that bear similarity to some of the facts before us. In *Hass*, for example, the search warrant affidavit described contraband found after a traffic stop of a vehicle that drove away from a mini-warehouse. 790 S.W.2d at 611. But in none of the cases appellant cites did the search warrant affidavit contain information from the recorded statement of a person like Davis who related that, while he was inside unit #46, he had helped unload 45 packages of suspected marijuana from their concealed locations in the car he drove, and that the packages were placed into a container inside the unit. That significant information, not dependent to any degree on information from anonymous sources, distinguishes the case before us from all those discussed by appellant. With the additional information that police watched the two men who entered the unit with Davis exit the unit's front door and drive away, the affidavit contains information the magistrate could have seen as providing a substantial basis to believe the 45 packages remained inside the unit. We find that information, coupled with that

[3] Appellant analyzes the facts of *Hass v. State,* 790 S.W.2d 609 (Tex. Crim. App. 1990), *Tolentino v. State*, 638 S.W.2d 499 (Tex. Crim. App. 1982), *Correll v. State,* 696 S.W.2d 297 (Tex. App.—Fort Worth 1985, pet. ref'd), and *Eatmon v. State,* 738 S.W.2d 723 (Tex. App.—Houston [14th Dist.] 1987, pet. ref'd), in addition to discussing the holdings of the Court of Criminal Appeals in *State v. Duarte*, 389 S.W.3d 349, 357 (Tex. Crim. App. 2012).

from the second anonymous tip that accurately and in some detail described the protocol by which marijuana deliveries were unloaded and stored in unit #46,[4] and other details such as the El Paso registration of the car Davis drove, gave the magistrate a substantial basis to believe the packages Davis described contained, as he believed, marijuana.[5]

When viewed as a whole and in a common-sense manner, the information in the search warrant affidavit established probable cause to support the magistrate's conclusion there was a fair probability that marijuana would be found in unit #46. *See, e.g., Duarte,* 389 S.W.3d at 356-57 (discussing factors to consider in determining whether sufficient probable cause existed to support issuance of search warrant). We resolve appellant's sole issue against him and affirm the judgment of the trial court.

James T. Campbell
Justice

Do not publish.

[4] As part of the totality of the circumstances, we consider whether an informant's tip contains "a range of details relating not just to easily obtained facts and conditions existing at the time of the tip," but also "to future actions of third parties ordinarily not easily predicted." *Gates*, 462 U.S. at 241-46.

[5] Appellant contends also the police investigation failed to conclusively identify appellant as one of the individuals involved in the marijuana trafficking. This was not necessary to the magistrate's finding that the affidavit contained sufficient facts to show a fair probability that marijuana would be found at the storage unit.