

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 27959-6-III
)	
Appellant,)	
)	
v.)	Division Three
)	
JUAN HERRERA-SANCHEZ,)	
)	
Respondent.)	UNPUBLISHED OPINION

Korsmo, A.C.J. — The State of Washington appeals the trial court’s decision to suppress the fruits of a search warrant. Concluding that there was probable cause to support the magistrate’s discretionary decision to issue the warrant, we reverse and remand for trial.

FACTS

This case has its genesis in a report by a neighbor about suspicious activities at two cabins next door to his residence in Ellisforde. The neighbor, John Lawrence, operates a towing business. He reported to Okanogan County deputy sheriffs about

numerous cars and visitors dropping in at the cabins for brief periods of time at random hours of the day and night.

Mr. Lawrence also related to deputies an incident occurring two days earlier. He was asked by the Hispanic man in charge of the cabins why Jose Orozco-Ayala had been arrested two days earlier. Mr. Lawrence had been called to tow Mr. Orozco-Ayala's car. Mr. Lawrence told the inquirer that the arrest had been for being an alien in possession of a firearm after a .22 caliber pistol was found under the driver's seat. The man responded by saying that he had given Mr. Orozco-Ayala the gun an hour earlier.

Mr. Lawrence told deputies that the Hispanic man had recently moved to a residence at 119 14th Avenue in Oroville. He had even followed the man to that location. Mr. Lawrence reported seeing a green Ford F-150 extended cab pickup with temporary plates parked outside the Oroville residence; the man he spoke with at the cabins had recently started driving that vehicle. Deputies confirmed that Mr. Orozco-Ayala had been arrested for alien in possession. They also confirmed the 14th Avenue address and observed a green Ford pickup with temporary license plates parked outside the house.

A confidential informant who had lived in the area for 20 years, but wished to remain anonymous because of fear of being killed, spoke to the deputies on two occasions. The man had no criminal history and had provided reliable information in the

past which had been corroborated by the Border Patrol or other informants. He indicated that people in the cabins were selling guns and narcotics and he had seen them wearing 9 mm. pistols on their hips “all of the time.” The informant explained that twice a month a man would come up from California with firearms and drop them off at the cabins. The man drove a green Ford pickup. The informant had seen guns in the cars driven by the cabin occupants.

The informant identified the man who spoke to Lawrence as “Juan Sanchez,” but did not believe that was his actual name. Juan had lived at the cabins, but now lived in Oroville. Juan drove a green Ford extended cab pickup. The informant reported that Juan was constantly talking about guns. Juan worked together with a man known as “Saul” or “the mechanic” to sell methamphetamine and marijuana as well as stolen guns. He also said that the men were illegal aliens.

Prior to speaking to the informant, the deputies had heard from Amy Snedigar about two Hispanic males living in the Ellisforde area who dealt guns and drugs. She had purchased drugs from Saul, who she also knew as “the mechanic,” in the past. He had once left a box of stolen firearms at her house to hold for him. She did not want them and took them back to Saul.

Mr. Lawrence corroborated part of Ms. Snedigar’s story. He saw a female give

Saul a box at the cabins. He heard the woman say she did not want to get shot for the contents of the box and also said that “the mechanic” should hold them.

Deputies also contacted Mr. Orozco-Ayala at the jail. He said that Juan was an illegal alien from Mexico, but would not reveal Juan’s true name for fear of retaliation.

The deputies provided all of this information in a search warrant request. A district court judge determined there was probable cause to search for marijuana, methamphetamine, and firearms. He issued a search warrant for the cabins, the Oroville residence, two vehicles including the green Ford pickup, and for both Juan and Saul. Mr. Sanchez was discovered inside the Oroville residence when police served the warrant. Deputies advised Mr. Sanchez of his *Miranda*¹ rights and he agreed to talk to them. He denied having any drugs in the residence, but told officers he had two pistols in a dresser drawer and a rifle in the bedroom. He admitted he was not a legal resident in the United States. A search of the house turned up the guns in the locations Mr. Sanchez had indicated. One of the pistols had been stolen. He was arrested for the crimes of alien in possession of a firearm and possession of a stolen firearm. Border Patrol agents confirmed he was in the country illegally.

Mr. Sanchez was charged in the Okanogan County Superior Court with one count

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

of alien in possession of a firearm and one count of possession of a stolen firearm. His counsel moved to suppress the evidence, arguing that the search warrant affidavit did not establish probable cause. The trial judge determined that the warrant lacked probable cause to authorize the search of either Mr. Sanchez or the Oroville address because there was no connection between the alleged offenses and the Oroville residence. The court also believed that delivering the firearm to Mr. Orozco-Ayala did not amount to probable cause in the absence of information that the defendant knew that either Mr. Orozco-Ayala or he himself was in the country illegally. The court suppressed the three firearms found in the Oroville house.

The State appealed to this court. After briefs had been filed, counsel for respondent filed a statement of additional authority “regarding Second Amendment rights” identifying the then-new decision in *State v. Sieyes*.² This court directed the parties to file supplemental briefs regarding the constitutionality of the alien in possession statute in light of *Sieyes*. Counsel for respondent filed a brief which indicated that Mr. Sanchez was not challenging the constitutionality of the statute.

ANALYSIS

The remaining issue in this appeal is whether the search warrant established probable cause to search Mr. Sanchez and the Oroville house. We conclude that there

² *State v. Sieyes*, 168 Wn.2d 276, 225 P.3d 995 (2010).

was sufficient evidence to support the magistrate’s discretionary decision to issue the search warrant. We reverse the trial court and remand for trial.

Probable cause to issue a warrant is established if the supporting affidavit sets forth “facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity.” *State v. Huft*, 106 Wn.2d 206, 209, 720 P.2d 838 (1986). The affidavit must be tested in a commonsense fashion rather than hypertechnically. *State v. Partin*, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977). The existence of probable cause is a legal question which a reviewing court considers *de novo*. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007). However, “[g]reat deference is accorded the issuing magistrate’s determination of probable cause.” *State v. Cord*, 103 Wn.2d 361, 366, 693 P.2d 81 (1985). Even if the propriety of issuing the warrant were debatable, the deference due the magistrate’s decision would tip the balance in favor of upholding the warrant. *State v. Jackson*, 102 Wn.2d 432, 446, 688 P.2d 136 (1984).

Washington continues to apply the former *Aguilar-Spinelli*³ standards to assess the adequacy of a search warrant affidavit. *Jackson*, 102 Wn.2d at 446.⁴ As applied in Washington, probable cause based upon an informant’s information requires that an affidavit

³ *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).

⁴ Federal courts now apply a totality of the circumstances test in evaluating the sufficiency of a search warrant. *Illinois v. Gates*, 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983).

establish both the informant's reliability and basis of knowledge. *Id.* at 443. Where one or both of those factors is weak, independent police investigation can supply corroboration. *Id.* at 445.

We review the search warrant with these standards in mind. In light of the deference owed the magistrate's decision, the proper question on review is whether the magistrate *could* draw the connection, not whether he *should* do so. Correctly viewed, we agree that the warrant was sufficient to connect the weapons offense to the defendant and his home.

The affidavit supplied sufficient evidence to find the "informants" credible and their evidence reliable. Lawrence, Snedigar, and Orozco-Ayala were all named in the warrant. A named citizen informant is presumptively reliable. *State v. Wible*, 113 Wn. App. 18, 24, 51 P.3d 830 (2002); *State v. Northness*, 20 Wn. App. 551, 557-558, 582 P.2d 546 (1978). In addition, both Snedigar and Orozco-Ayala made statements against their own penal interest in admitting criminal activity. An admission against interest is also a factor that supports a finding of veracity. *State v. O'Connor*, 39 Wn. App. 113, 119, 692 P.2d 208 (1984), *review denied*, 103 Wn.2d 1022 (1985). The unnamed confidential informant was described as a longstanding member of the community with no criminal record who had given information to the police in the past that had been

corroborated. These factors all support a determination that an unnamed informant is reliable. *State v. Berlin*, 46 Wn. App. 587, 590-591, 731 P.2d 548 (1987). He had a legitimate fear of the suspects as evidenced by the fact that Snedigar and Orozco-Ayala also feared for their safety. This reasonable fear of harm is a legitimate reason to not identify an informant. *State v. Wilke*, 55 Wn. App. 470, 479, 778 P.2d 1054, *review denied*, 113 Wn.2d 1032 (1989). For all of these reasons, we conclude that the reliability of the informants was established.

The remaining question involves whether the informants were reporting firsthand information or merely repeating hearsay. While not all of the statements were clearly based on personal knowledge, the vast majority of them were. The contested questions here are whether Mr. Sanchez lived in Oroville and whether he engaged in criminal activity, including whether or not Mr. Sanchez was present in the country illegally.

There was sufficient firsthand evidence that Mr. Sanchez lived at the Oroville address. Mr. Lawrence had followed him to the location and also stated that Mr. Sanchez drove the green pickup and appeared to live in town instead of at the cabins. The confidential informant said the same things and police were able to confirm that the pickup was regularly parked at the Oroville address. A magistrate could conclude from this information that Mr. Sanchez now lived in Oroville instead of at the cabins.

Mr. Sanchez argues, and the superior court agreed, that merely giving a gun to Mr. Orozco-Ayala was not a crime because of his Second Amendment right to possess weapons.⁵ However, both the confidential informant and Mr. Orozco-Ayala stated that Mr. Sanchez was an illegal alien. Aliens may not possess firearms in this state without first obtaining a permit; the permit requires demonstration of lawful presence in the country. Former RCW 9.41.170.⁶ The affidavit does not explicitly state how either the informant or Mr. Orozco-Ayala knew that Mr. Sanchez was in the country illegally. However, the affidavit clearly states that both of them had extensive interaction with Mr. Sanchez. The informant had observed and provided detailed information about Mr. Sanchez's activities; those observations were clearly based on firsthand experience. Mr. Orozco-Ayala also dealt with Mr. Sanchez and had even been given a gun by him. Himself an illegal alien, Mr. Orozco-Ayala stated that Mr. Sanchez was as well. While it is better practice to expressly state how both people knew Mr. Sanchez's immigration status, we think the detailed interactions each had with Mr. Sanchez allowed the magistrate to conclude they had firsthand information about his status in this country. In addition, both the informant and Mr. Orozco-Ayala knew that Mr. Sanchez was using an

⁵ We agree with Mr. Sanchez that the affidavit does not establish that he knew that Mr. Orozco-Ayala was an illegal alien. Accordingly, we do not consider the gun delivery as a violation of the statute.

⁶ RCW 9.41.170 was repealed in 2009 and replaced by RCW 9.41.171-.175.

alias and could not know, or would not reveal, his true identity. This fact, too, suggests personal knowledge of Mr. Sanchez's status. While it is a close call, we think there was sufficient information to satisfy the basis of knowledge prong.

Mr. Sanchez also challenges the factual basis for believing that he was engaged in drug trafficking. Both Ms. Snedigar and the confidential informant said he was. Although neither described specific acts of drug dealing by Mr. Sanchez, both were clearly acting upon personal knowledge. Mr. Lawrence's observation of numerous brief visits by people at random times likewise suggests that drug sales were taking place in the cabins. He also knew Mr. Sanchez to be in charge of the cabins. This information is a sufficient factual basis to link Mr. Sanchez to drug dealing as well as weapons trafficking.

The remaining questions are whether there was a legal basis to search either Mr. Sanchez or the Oroville residence. The trial court did not believe there was a basis. We disagree. As to the search of Mr. Sanchez, there was evidence that he sold both guns and drugs and he also was illegally in the country. There was probable cause to believe he had committed both types of crimes, so there was cause both to search and arrest him.

The question of the search of the Oroville house is much closer. Mr. Sanchez correctly argues that merely being a drug seller does not authorize a search of his residence. We agree. *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999). However,

there was sufficient evidence to believe he might have firearms at the residence. The confidential informant stated his observation that the topic of guns permeated conversations with Mr. Sanchez. Critically, the informant stated that Mr. Sanchez carried his 9 mm. “all of the time.” Weapons, like other personal items, may be inferred to be found at a suspect’s home. *State v. Condon*, 72 Wn. App. 638, 644, 865 P.2d 521 (1993), *review denied*, 123 Wn.2d 1031 (1994); *accord, Thein*, 138 Wn.2d at 149 n.4. A magistrate could conclude that evidence of the crime of alien in possession would be found on Mr. Sanchez’s person or in his residence in Oroville. Accordingly, there was probable cause to issue a warrant for both Mr. Sanchez and his residence.

CONCLUSION

We believe the issuing magistrate had a sufficient basis for determining that probable cause existed. The order suppressing the evidence is reversed and the case is remanded for trial.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, A.C.J.

WE CONCUR:

No. 27959-6-III
State v. Herrera-Sanchez

Sweeney, J.

Siddoway, J.