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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 30224-5-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
SARA CHRISTINE KORTAN,)	
)	
Appellant.)	
)	

Kulik, J. — Detective Jeff Dilks applied for a search warrant for Sara Kortan’s home based on a detailed conversation with Tracy Donovan. Detective Dilks executed the search warrant and found methamphetamine. Ms. Kortan moved to suppress all of the evidence obtained during the search. The trial court denied the motion and found Ms. Kortan guilty of possession of methamphetamine with intent to deliver, with a school zone enhancement. Ms. Kortan appeals. She asserts that the affidavit in support of the warrant was insufficient to establish the credibility of the informant.

We conclude the trial court properly denied the suppression motion because Ms. Donovan’s information and the detective’s independent investigation established the

credibility of the informant. We affirm the conviction.

FACTS

On April 22, 2010, Detective Jeff Dilks, with the Columbia River Drug Task Force, executed a search warrant for the residence of Lanny Griffith and Tracy Donovan in Wenatchee, Washington. Only Ms. Donovan and a guest were present during the search. Inside a bedroom Ms. Donovan shared with Mr. Griffith, officers found three small jeweler's bags, two of which contained residue, in addition to a small quantity of marijuana, pipes for both marijuana and methamphetamine, and a digital scale with visible methamphetamine and marijuana residue. Detective Dilks claims there was also a safe in the bedroom. When Detective Dilks asked Ms. Donovan what was in the safe, she stated that “[t]here shouldn't be anything in there anymore. We've been trying to get away from that lifestyle.” Clerk's Papers (CP) at 23.

During this contact, Ms. Donovan admitted that Mr. Griffith, her husband, sold methamphetamine to five different people, and that Sara Kortan was the supplier. In his application for the search warrant, Detective Dilks stated that Ms. Donovan “said that she and Lanny had been buying methamphetamine from Sara [Kortan] for several months, and that [Ms. Kortan] was their only supplier.” CP at 23. Ms. Donovan did not know the address for Ms. Kortan's house, but she gave Detective Dilks directions to the house.

She also gave Detective Dilks the telephone number for Ms. Kortan's business, "Handy Hands Massage," which Ms. Kortan operated out of her residence. CP at 25.

At the suppression hearing one year later, Ms. Donovan testified that she did not tell Detective Dilks that she and her husband purchased methamphetamine from Ms. Kortan. She also testified that she did not give Detective Dilks Ms. Kortan's telephone number, business name, directions to Ms. Kortan's residence, or any other indication that Ms. Kortan was involved in the sale of methamphetamine. However, the court found that Ms. Donovan did provide such information to Detective Dilks.

To corroborate the information supplied by Ms. Donovan, Detective Dilks found an advertisement for "Handy Hands Massage" in the telephone book. The telephone number matched the one provided by Ms. Donovan, and the advertisement named Sara Kortan. When Detective Dilks drove to the address listed in the telephone book, he found it matched Ms. Donovan's directions. Furthermore, Detective Dilks saw a pickup truck outside of the address that was registered to Sara Kortan.

In his application for the search warrant, Detective Dilks also noted that while Ms. Kortan had no prior convictions, she had been arrested for residential burglary and theft in the third degree. She also appeared to associate with known methamphetamine users; two convicted drug users had been found driving a vehicle registered to Ms. Kortan.

Detective Dilks did not include Ms. Donovan's prior convictions in his affidavit even though she was the informant providing the basis for probable cause. The court authorized the search warrant.

On April 30, 2010, the Columbia River Drug Task Force executed the warrant on Ms. Kortan's residence, where they found methamphetamine. Ms. Kortan was charged with possession of methamphetamine with intent to deliver.

In October 2010, Ms. Donovan provided a declaration denying that she provided Detective Dilks with information regarding Ms. Kortan. Ms. Kortan submitted a motion to suppress all evidence obtained from the search of her residence and to dismiss the charge. In a memorandum in support of this motion, Ms. Kortan argued that Detective Dilks should have included Ms. Donovan's criminal history in his application for a search warrant, that Ms. Donovan did not meet the requirements of the *Aguilar-Spinelli*¹ test for informants, and that the search lacked sufficient probable cause.

The court denied Ms. Kortan's motion to suppress and dismiss. In its decision, the court stated that at the time Ms. Donovan initially provided information, she met the

¹ The *Aguilar-Spinelli* test requires that, to establish probable cause, an affidavit must show (1) the informant's basis for knowledge and (2) the informant's credibility. *State v. Jackson*, 102 Wn.2d 432, 443, 688 P.2d 136 (1984); *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), *abrogated by Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), *but adhered to by Jackson*, 102 Wn.2d 432.

veracity prong of the *Aguilar-Spinelli* test because of the totality of the circumstances surrounding the search of her residence. The court pointed out that Ms. Donovan implicated herself in the purchase of a controlled substance, admitted that there was paraphernalia in her bedroom, and otherwise openly cooperated with law enforcement. In the court's view, Ms. Donovan was a reliable informant. However, the court did not find her more recent testimony credible because it was one year after her initial conversation with Detective Dilks and she no longer had any incentive to cooperate with the State.

The court found Ms. Donovan's knowledge of controlled substances and her admitted interactions with Ms. Kortan to be sufficient for the basis of knowledge prong of the *Aguilar-Spinelli* test. The court concluded that any deficiency with any part of the test was remedied by Detective Dilks' independent investigation. Ms. Kortan was found guilty of possession of methamphetamine with intent to deliver and with a school zone enhancement.

ANALYSIS

A magistrate's decision that there is sufficient probable cause to issue a search warrant is reviewed for an abuse of discretion. *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). Courts grant great deference to a magistrate's decision, reviewing

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affidavits supporting search warrants in the light of common sense. *Id.*; *see also State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981). The reviewing court considers only the facts and any commonsense inferences available to the issuing judge at the time the warrant was requested. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Doubts concerning the sufficiency of probable cause are generally resolved in favor of the warrant. *Vickers*, 148 Wn.2d at 108-09. The defendant has the burden of proof to show insufficient probable cause. *State v. Anderson*, 105 Wn. App. 223, 229, 19 P.3d 1094 (2001).

“The warrant clause of the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington Constitution require that a search warrant be issued upon a determination of probable cause based upon ‘facts and circumstances sufficient to establish a reasonable inference’ that criminal activity is occurring or that contraband exists at a certain location.” *Vickers*, 148 Wn.2d at 108 (footnote omitted) (quoting *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999)). An affidavit supporting a search warrant establishes probable cause if it “provides sufficient facts for a reasonable person to conclude there is a probability the defendant is involved in the criminal activity.” *Id.*

When an affidavit requesting a search warrant relies on information provided by

an informant, Washington courts use the *Aguilar-Spinelli* test to determine whether the informant's information establishes probable cause. *State v. Jackson*, 102 Wn.2d 432, 443, 688 P.2d 136 (1984). As noted, the *Aguilar-Spinelli* test requires that an affidavit must show (1) the informant's basis for knowledge and (2) the informant's credibility. *Id.*

If either prong is not met, independent police investigation corroborating the informant's information may remedy the missing elements. *Id.* at 438. However, such corroboration needs to be more than simply confirming innocuous details or commonly known facts. *Id.* Here, Ms. Kortan concedes that the basis for knowledge prong is met and only disputes the credibility or "veracity" prong.

The purpose of the veracity prong is to "evaluate the truthfulness of the informant." *State v. Lair*, 95 Wn.2d 706, 709, 630 P.2d 427 (1981). Several factors are relevant to this analysis. An informant's credibility depends on "whether the informant is a private citizen or a professional informant and, if a citizen informant, whether his or her identity is known to the police." *State v. Atchley*, 142 Wn. App. 147, 162, 173 P.3d 323 (2007). The most common way to establish an informant's credibility is by demonstrating that the informant has previously provided accurate information to law enforcement in the past. *Lair*, 95 Wn.2d at 710. Usually this is only true for professional

informants.

Courts generally relax the veracity prong for private citizen informants who generally do not have an opportunity to establish a track record with police. *State v. Northness*, 20 Wn. App. 551, 556, 582 P.2d 546 (1978) (citing *United States v. Wilson*, 479 F.2d 936 (7th Cir. 1973); *State v. Chatmon*, 9 Wn. App. 741, 515 P.2d 530 (1973)). However, citizen informants who are entirely anonymous or known to police but not the judge or magistrate issuing the warrant require a heightened demonstration of reliability. *State v. Rodriguez*, 53 Wn. App. 571, 575-76, 769 P.2d 309 (1989).

Courts will not relax the veracity standard simply because a citizen informant is identified in the affidavit; identification is only one factor “in determining whether the informant is truly a citizen informant, *i.e.*, an innocent victim or uninvolved witness to criminal activity.” *Id.* at 576. If “[t]he circumstances of the informants’ tips raise suspicions they were involved criminally themselves or were otherwise motivated by self-interest,” then the “presumption of reliability” is “greatly diminished.” *Id.* at 576-77. Finally, courts will be more inclined to decide that an informant is credible if the informant makes a statement contrary to his or her penal interest. *Lair*, 95 Wn.2d at 710-11.

Here, although there are some concerns regarding Ms. Donovan’s veracity as an

informant, the information in Detective Dilks' affidavit, in addition to the deferential standard of review, demonstrates that the warrant was supported by probable cause.

The circumstances in Detective Dilks' affidavit raise the suspicion that Ms. Donovan may have been criminally involved. Ms. Donovan is not identified as a professional informant and there is no mention of any past instance where she provided information to law enforcement. Usually, such an informant would be considered an identified citizen informant and would receive a relaxed standard as a result. However, the *Rodriguez* court suggests that if the circumstances raise suspicion that the informant was criminally involved, the presumption of reliability generally afforded a citizen informant is diminished. *Rodriguez*, 53 Wn. App. at 575-76.

Detective Dilks' affidavit certainly raises such suspicion; the affidavit clearly states that "she [Ms. Donovan] and Lanny had been buying methamphetamine from Sara [Kortan] for several months, and that [Ms. Kortan] was their only supplier." CP at 23. By stating that they both purchased methamphetamine and by using the pronoun "their" when describing Ms. Kortan as "their" supplier—rather than only Mr. Griffith's supplier—the affidavit indicates that Ms. Donovan may have been criminally involved.

Ms. Kortan argues that these circumstances diminish Ms. Donovan's credibility as an informant because they indicate that she was motivated by self-interest to direct the

police investigation away from herself and her husband. However, this concern may be mitigated if not completely cured by the information Ms. Donovan provided. In a similar case, the reviewing court held that an informant's credibility was not necessarily diminished even though the informant potentially had "a desire to exculpate herself from criminal liability as copossessor of the premises" where illegal substances were found. *Northness*, 20 Wn. App. at 558. The court continued, stating that "the fact that an identified eyewitness informant may also be under suspicion . . . has been held not to vitiate the inference of reliability raised by the detailed nature of the information." *Id.*

According to Detective Dilks' affidavit, Ms. Donovan did provide substantial detail. In addition to supplying Ms. Kortan's telephone number and the name of her business, Ms. Donovan was also able to describe how frequently they purchased methamphetamine from Ms. Kortan, describe the quality and price of Ms. Kortan's product and how that quality had changed over a span of months, and provide turn-by-turn directions to Ms. Kortan's address. Such detailed information can serve to outweigh the fact that Ms. Donovan may also have been under suspicion or was acting in self-interest. And Detective Dilks' independent corroboration of Ms. Donovan's information also serves to lessen this concern.

Most importantly, the affidavit establishes Ms. Donovan's credibility by indicating

that she made statements against her penal interest. While not necessarily sufficient on its own to establish credibility, an informant's statement against his or her own penal interest can weigh in favor of the informant's reliability. *See Lair*, 95 Wn.2d at 710-11. The affidavit here suggests that Ms. Donovan made statements against her penal interest. For instance, Detective Dilks noted that Ms. Donovan, after being given her *Miranda*² rights, admitted that there was drug paraphernalia in her bedroom and that both she and her husband purchased methamphetamine from Ms. Kortan, who served as "their" supplier. The affidavit also states that Ms. Donovan was reluctant to cooperate at first and that she did not want to communicate the supplier's name out loud. Such hesitance suggests that Ms. Donovan knew such statements might be against her penal interest.

Ms. Kortan argues that Ms. Donovan did not make any statement against her penal interest. Ms. Kortan asserts that Ms. Donovan spoke only of her husband's criminal behavior and not her own, and thereby did not implicate herself in criminal activity. In making this assertion, Ms. Kortan ignores the appellate standard of review. The reviewing court only considers the facts and any commonsense inferences available to the issuing judge at the time the warrant was requested. *Maddox*, 152 Wn.2d at 509. The

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

affidavit available to the issuing judge, while not delineating clear or explicit admissions of guilt, certainly raised the commonsense inference that Ms. Donovan was potentially implicating herself in criminal activity.

Furthermore, a statement that goes against one's penal interest need not be an explicit admission. "[I]t is generally held to be a reasonable inference that a statement raising such a possibility" of prosecution is credible. *Lair*, 95 Wn.2d at 711. The conversation between Ms. Donovan and Detective Dilks in the affidavit certainly suggests that Ms. Donovan had raised at least the possibility of prosecution. Finally, Ms. Kortan's assertion that Ms. Donovan did not make any statement against her penal interest highlights an internal contradiction in Ms. Kortan's argument. Ms. Kortan argues that Ms. Donovan's credibility was diminished because the affidavit "shouts out with suspicious circumstances," but Ms. Kortan also argues that Ms. Donovan "did not implicate" herself in any criminal activity such that she violated her penal interest. Br. of Appellant at 16, 22.

Ms. Kortan also argues that because Ms. Donovan "was never promised anything for her statements," she had no incentive to tell the truth. Br. of Appellant at 13. For this assertion, Ms. Kortan relies on *State v. Bean*, where an informant made statements

against his penal interest in exchange for a favorable sentencing recommendation. *See State v. Bean*, 89 Wn.2d 467, 572 P.2d 1102 (1978). However, no court has expressly held that a statement against an informant's penal interest must be in exchange for some benefit in order to be valid. More importantly, *Bean* is distinguishable from the instant case in two significant ways. First, the court in *Bean* found the informant to be credible not only because he had an incentive to tell the truth, but also because he provided accurate information regarding the same case to police officers in the past. *Id.* at 471. Second, the *Bean* court was reviewing a police officer's decision that probable cause was sufficient, rather than a judge's decision. Courts grant a higher degree of deference to a judge's determination that probable cause exists as opposed to a police officer's. *See State v. Vasquez*, 109 Wn. App. 310, 317-18, 34 P.3d 1255 (2001), *aff'd*, 148 Wn.2d 303, 59 P.3d 648 (2002).

Finally, Detective Dilks' independent investigation remedies any remaining deficiencies regarding Ms. Donovan's credibility. The affidavit notes that following his conversation with Ms. Donovan, Detective Dilks verified Ms. Kortan's address, telephone number, the name of her business, and the vehicle registration. However, for corroboration to satisfy one of the *Aguilar-Spinelli* prongs, the independent investigation cannot merely confirm innocuous or commonly known facts. *Jackson*, 102 Wn.2d at

438.

Here, Detective Dilks also found that Ms. Kortan had associated with methamphetamine users in the past. In two different instances, methamphetamine users were found driving a vehicle registered to Ms. Kortan. This fact, taken alone, may not be enough to show probable cause. However, insufficient singular facts can establish probable cause when viewed together with other facts. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Ms. Kortan's past involvement with drug users, when combined with the other facts Detective Dilks verified and Ms. Donovan's statements in the affidavit, establish probable cause.

The trial court did not err by denying Ms. Kortan's motion to suppress the search warrant because Ms. Donovan satisfies both prongs of the *Aguilar-Spinelli* test and, therefore, the search warrant was supported by probable cause.

We affirm the conviction for possession of methamphetamine with intent to deliver, with a school zone enhancement.

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.

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WE CONCUR:

Brown, J.

Korsmo, C.J.