IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27100-5-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
LANDON EVANS BROWN,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Schultheis, C.J. — Landon Brown's garage and residence were searched in the execution of a federal warrant to seize evidence of organized crime from members of the Hell's Angels Motorcycle Club. Federal agents discovered marijuana plants growing in Mr. Brown's home. A second warrant was sought by and issued to state law enforcement officers related to the marijuana plants. Mr. Brown was charged with manufacture of marijuana. He unsuccessfully moved to suppress the evidence and was convicted.

On appeal, he asserts that the state warrant was invalid, alleging (1) information to obtain the federal warrant was stale because the information that related to him was six

years old, (2) the federal warrant lacked probable cause because no specific facts in the application established a nexus between criminal activity and the item to be seized as Mr. Brown was not alleged to have been either a member of the motorcycle club or engaged in criminal activity, and (3) the federal warrant was overbroad to permit a search of the residence because it lacked probable cause to search the residence for documentation. He also challenges the sufficiency of the evidence to convict him. We find no error and affirm.

FACTS

A criminal investigation was initiated by federal authorities, targeting two members of the Hell's Angels Motorcycle Club, one of whom was the president of the Washington chapter. The Federal Bureau of Investigation (FBI) investigated these individuals for racketeer influenced corrupt organizations (RICO) and conspiracy, violent crimes in aiding racketeering, trafficking in and altering of motorcycle identification numbers, mail and wire fraud, and money laundering.

In February 2006, an FBI agent made an application with a 92-page affidavit for a search warrant. The affidavit related extensive facts provided by confidential informants with involvement in and connections to the motorcycle club as well as the information from federal investigators in other investigations involving the motorcycle club and its members. The application sought an expansive search of the club members' personal

residences and the clubhouse to seize financial records, computerized data, and documentation concerning the investigated crimes.

The FBI agent also sought to search for and seize a motorcycle believed to have been customized by club members for an Alaska client named "'Indian Jack.'" Clerk's Papers (CP) at 67. Club members allegedly unlawfully appropriated the motorcycle after assaulting Indian Jack, and then exchanged parts, including the frame, and re-titled it as a newly built homemade motorcycle. The FBI agent described state documents, which showed that a homemade motorcycle was newly titled to American Motorcycle at the clubhouse's address in April 2000 and then transferred the next day to the club president's daughter, whose name the FBI believed the club president often used to conceal his financial activities. Next, the records show that the motorcycle was gifted to Mr. Brown from his "'aunt,'" the club president's daughter. CP at 69. Mr. Brown had a homemade motorcycle registered to him, the annual registration for which was to expire in March 2006.

The search warrant as it related to Mr. Brown was granted by a United States magistrate judge. The warrant permitted law enforcement officers to search Mr. Brown's garage and residence in Elk, Washington for the motorcycle and documentation related to it.

During the execution of the federal warrant at Mr. Brown's residence, which was

devoid of furnishings, federal agents found marijuana growing under halide lights in one of the rooms. The federal agents contacted state authorities, which sought and obtained a search warrant for the marijuana growing operation. Spokane County sheriff's deputies recovered 16 marijuana plants as well as grow equipment, a photograph of Mr. Brown, and unspecified "dominion and control paperwork" for Mr. Brown. CP at 3. Mr. Brown's fingerprints were lifted from several pieces of grow equipment.

Mr. Brown was charged with manufacture of a controlled substance. He moved to suppress the evidence, asserting deficiencies related to the federal warrant. The motion was denied. He was convicted after a stipulated facts trial.

DISCUSSION

a. Search Warrant

The issuance of a search warrant is generally reviewed for abuse of discretion. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008) (citing *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004)). Great deference is afforded the issuing magistrate. *Id.* (citing *State v. Young*, 123 Wn.2d 173, 195, 867 P.2d 593 (1994)).

On the other hand, because the trial court reviews the magistrate's determination of probable cause in a quasi-appellate capacity and we are equally bound by the four corners of the affidavit's supporting probable cause, we review the trial court's legal determination of probable cause de novo. *Id*. A de novo standard of review permits the

legal rules of probable cause to "'acquire content'" through appellate scrutiny. *State v. Chamberlin*, 161 Wn.2d 30, 41 n.5, 162 P.3d 389 (2007) (quoting *Ornelas v. United States*, 517 U.S. 690, 697, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)); *see also In re Det. of Petersen*, 145 Wn.2d 789, 799, 42 P.3d 952 (2002) (clarifying that the de novo standard of review as appropriate for review of the probable cause determinations). Furthermore, de novo review of probable cause determinations "ensures that appellate courts remain the expositors of law and ensures the unity of precedent." *Chamberlain*, 161 Wn.2d at 41 n.5.

The Fourth Amendment to the United States Constitution permits issuance of search warrants only upon a showing of "probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. On review, "the warrant must be read 'in a commonsense, practical manner, rather than in a hypertechnical sense[,]' 'keeping in mind the circumstances of the case.'" *State v. Maddox*, 116 Wn. App. 796, 805, 67 P.3d 1135 (2003) (footnote omitted) (quoting *State v. Perrone*, 119 Wn.2d 538, 549, 834 P.2d 611 (1992); *State v. Stenson*, 132 Wn.2d 668, 693, 940 P.2d 1239 (1997)), *aff'd*, 152 Wn.2d 499.

An affidavit of probable cause must show "'a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be

searched.'" *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)). Mr. Brown contends that these necessary nexuses are not established.

Mr. Brown asserts that the warrant application failed to set forth specific facts to establish a nexus between the item to be seized and the place to be searched. He reasons that the information was too attenuated in time to form a reasonable belief that the motorcycle was still in his possession and the motorcycle was not likely to be found in his residence.

Mr. Brown essentially argues that the information in the search warrant affidavit is stale because it is based on a transfer of a motorcycle that occurred in 2000. "The information is not stale for purposes of probable cause if the facts and circumstances in the affidavit support a commonsense determination that there is continuing and contemporaneous possession of the property intended to be seized." *Maddox*, 152 Wn.2d at 506.

The motorcycle at issue was titled to Mr. Brown in 2000 and registered to him through March 2006. The motorcycle was not registered to anyone else. Common sense would indicate that he had the motorcycle for at least five years and that possession continued up to the date of the warrant. The information in the affidavit was not stale and the required nexus is present.

Next, Mr. Brown contends that the warrant application failed to set forth specific facts to establish a nexus between criminal activity and the item to be seized. This is so, he claims, because he was not alleged to be either a member of the motorcycle club or engaged in criminal activity.

Mr. Brown is not protected from a search as a third party under the Fourth Amendment. The Fourth Amendment only requires probable cause to believe that the "things to be seized" are located in a particular place. *Zurcher v. Stanford Daily*, 436 U.S. 547, 554-55, 98 S. Ct. 1970, 56 L. Ed. 2d 525 (1978). Therefore, evidence to support probable cause to search need not be in the possession of the person suspected of criminal activity. *Id*. at 554; *see State v. Hatchie*, 161 Wn.2d 390, 402, 166 P.3d 698 (2007) ("To intrude into a third party's residence [to execute an arrest warrant], the police need at least a search warrant.").

In *Zurcher,* the district court had concluded that "third-party" searches without probable cause "to believe that the owner or possessor of the property is himself implicated in the crime" are only constitutional in very limited circumstances. 436 U.S. at 553. In reversing that decision, the Supreme Court explained that "[n]othing on the face of the Amendment suggests that a third-party search warrant should not normally issue." *Id*. at 554. Instead, "The Warrant Clause speaks of search warrants issued on 'probable cause' and 'particularly describing the place to be searched, and the person or

things to be seized.'" *Id*.

Thus, "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property for which entry is sought." *Id*. at 556. The object of the warrant must also constitute contraband or evidence. *Warden v. Hayden*, 387 U.S. 294, 307, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967).

Here, the warrant application and affidavit set forth in detail the basis for the belief that the motorcycle in Mr. Brown's possession was one involved in the motorcycle trafficking charges. These facts establish a nexus between criminal activity and the item to be seized.

Next, Mr. Brown contends that the search warrant was overbroad and not grounded in probable cause because the warrant application did not identify any documentation that the federal agents needed to seize for their investigation.

The constitutional imperative of particularity prevents magistrates from issuing general warrants that authorize an unlimited search for evidence of any crime. *State v. Garcia*, 140 Wn. App. 609, 622, 166 P.3d 848 (2007) (citing *Stenson*, 132 Wn.2d at 691). A warrant can be overbroad under the particularity requirement "either because it fails to describe with particularity items for which probable cause exists, or because it

describes, particularly or otherwise, items for which probable cause does not exist." *Maddox*, 116 Wn. App. at 805 (footnote omitted) (citing *Perrone*, 119 Wn.2d at 545-46). Mr. Brown's appeal deals with the latter circumstance.

Here, the warrant authorized the agents to search for the motorcycle that the federal agents believed was stolen, re-framed, re-titled as new, and then transferred to Mr. Brown. The fact that Mr. Brown was the current titled and registered owner of the motorcycle provided probable cause for the search of the motorcycle and any paperwork associated with it.

b. Evidence Sufficiency

Mr. Brown challenges the sufficiency of the evidence to support his conviction for manufacturing marijuana. Under RCW 69.50.401(1), "it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture [methamphetamine]."

When considering a sufficiency of the evidence claim, this court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found all of the essential elements of the offense beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)), *overruled on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). The State's evidence is presumed to be true, as are all

inferences reasonably drawn from this evidence. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).

Mr. Brown stipulated to the facts that on February 14, 2006, deputies recovered 16 marijuana plants, "several pieces of grow equipment" that bore Mr. Brown's fingerprints, mail addressed to Mr. Brown, and a photograph of Mr. Brown. CP at 3. The defense submitted an affidavit in which Mr. Brown stated that he had not lived in the Elk residence since June 2005, when he married and moved to Newport, Washington. He stated that in the fall of 2005, he allowed a carpenter to reside in the house in exchange for repairs to the home, which he was planning to sell in the spring of 2006. He explained that he salvaged halide light hoods and ballasts from a construction job that he supervised for work and he intended to install the fixtures in a steel pole building he was constructing at his Newport residence. He said that he stored all of his personal belongings, including the light fixtures, in his garage at the Elk residence before the carpenter moved in. Mr. Brown stated that the carpenter had the keys to the residence and outbuilding, and the carpenter must have used the lights to grow marijuana, without either Mr. Brown's permission or knowledge. He stated that he saw the light fixtures in his garage in December 2005.

Mr. Brown asserts that the fingerprint evidence alone is insufficient to support the conviction, particularly in light of his unchallenged affidavit. "Fingerprint evidence alone

is sufficient to support a conviction if the trier of fact could reasonably infer that fingerprints could have been made *only* at the time when the crime was committed." *State v. Enlow*, 143 Wn. App. 463, 469, 178 P.3d 366 (2008) (citing *State v. Lucca*, 56 Wn. App. 597, 599, 784 P.2d 572 (1990)).

The trial court held that, while he deemed the question of guilt to be a very close issue, there was not enough of a doubt to constitute reasonable doubt, and the circumstantial evidence was sufficient.

The house had no furniture in it, which is consistent with Mr. Brown's story that he had moved out. But the absence of furniture is also consistent with the State's theory that Mr. Brown used the home as a grow house. Moreover, no clothing, bedding, or personal effects were found in the house, which is inconsistent with occupation by the carpenter.

The State's probable cause affidavit notes that the fingerprints were removed from "several pieces of grow equipment." CP at 3. It also notes the items the federal agents observed when their warrant was executed: "two lights, two ballasts, as well as the usual growing equipment, i.e. timers, fans, fertilizer, mylar, etc." CP at 121. The evidence supports an inference that Mr. Brown handled the growing equipment in the manner it was assembled for the purposes of this marijuana grow, rather than just handling the lights as he claimed. Thus, the conviction is supported by the evidence.

CONCLUSION

We conclude that the warrant was lawful and the conviction is sufficiently supported by evidence in the record.

Affirmed.

A majority of the panel has determined that 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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Schultheis, C.J.

WE CONCUR:

Sweeney, J.	Kulik, J.