

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 26, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3201-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

JAMES LANZEL,

Defendant-Respondent.

APPEAL from an order of the circuit court for La Crosse County:
MICHAEL J. MULROY, Judge. *Reversed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. The State of Wisconsin appeals from a circuit court order suppressing evidence of bomb-making apparatus found in the apartment of respondent James Lanzel. Based on our review of the affidavit and the search warrant, we conclude that the warrant issued upon probable cause. We therefore reverse the suppression order.

STANDARD OF REVIEW

In reviewing the sufficiency of an affidavit supporting issuance of a search warrant, "great deference must be paid to a magistrate's determination of probable cause." *State v. Anderson*, 138 Wis.2d 451, 469, 406 N.W.2d 398, 407 (1987). So long as the magistrate has "a substantial basis" to conclude that a search would uncover evidence of wrongdoing, a reviewing court will uphold the magistrate's determination. *Id.*

Stated otherwise, because of the "great deference" paid to a magistrate's determination, that determination "will stand unless the defendant establishes that the facts are clearly insufficient to support a finding of probable cause." *State v. Higginbotham*, 162 Wis.2d 978, 989, 471 N.W.2d 24, 29 (1991). The duty of the reviewing court is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Id.* The evidence before the magistrate in support of the warrant must have been such as to apprise the magistrate of "sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched." *Id.* (quoted source omitted).

Because the standard of review requires us to review the magistrate's decision directly, we need not consider whether the circuit court adopted an incorrect standard of review, as urged by the State.

BACKGROUND

The affidavit here, dated July 29, 1994, stated that on June 14, 1994, while attempting to plant a bomb in the car of a man he thought was a "narc,"¹ the bomb exploded and blew off Scott Sill's right hand. At a July 20, 1994 police

¹ I.e., a narcotics officer.

interview, Sill stated that a man named Steve Walz told him that he could "get something that would take care of getting back at" the narc. Sill went to an apartment above Bill's Pumping Station, found to be 106 1/2 East Clinton Street, La Crosse, and there met with Walz, and a man previously unknown to him named "Jim." Sill, Walz and Jim went to a bar where Walz and Jim discussed bomb-making. Several days later, Sill again visited 106 1/2 East Clinton Street, Walz came out of that apartment carrying a black duffle bag, Walz gave Sill a bomb made of two pipes, and Sill paid Walz \$200.

The affidavit also averred that a La Crosse Police Lieutenant "reports the tenant at 106 1/2 East Clinton Street was identified as James A. Lanzel" The affidavit sought a search warrant for "106 1/2 East Clinton Street, occupied by James A. Lanzel, for the purpose of seeking evidence of bomb construction." The affidavit averred that in the opinion of ATF agents, "evidence of the manufactured bomb may be present at the situs of its creation ... [and that] normally the person manufacturing the bomb would retain the publications utilized in a bomb's creation ... [and that various small items sought] made [sic] have inadvertently been retained due to their size."

The search warrant, which issued on August 1, 1994, permitted police to search for publications about electrical work and explosive devices, as well as for various small items specifically enumerated (e.g., wire strippings, clippings, glass fragments, walkie-talkie antennas and batteries with the same date code as that found on batteries in the recovered remains of the bomb).

ANALYSIS

Lanzel essentially argues that the search warrant was improper on two grounds: First, that the magistrate had before him insufficient evidence to support a finding of probable cause, and second, that the evidence was "stale." We reject both arguments.

The evidence recited by the affidavit was "sufficient ... to excite an honest belief in a reasonable mind" that evidence of bomb-making could be found at 106 1/2 East Clinton Street, La Crosse. Both of Sill's contacts with that address implicated bombs and bomb manufacture. In his first visit, Sill met

Walz and a man previously unknown to him named "Jim," and shortly thereafter accompanied Walz and Jim to a tavern where Walz and Jim discussed bomb manufacture. On Sill's second visit to the apartment, Walz came out of that apartment with a bomb. Finally, the apartment was known to police to be occupied by a James Lanzel. This evidence creates a substantial basis for a reasonable mind to conclude that 106 1/2 East Clinton Street was a locus of bomb activity, and that the occupant, James Lanzel, was involved with bomb-making.

We agree with respondent that a bomb may merely have been stored at 106 1/2 East Clinton Street, and been manufactured elsewhere. However, where there is otherwise sufficient evidence that the evidence sought is at one location, there is probable cause to search that location regardless of the fact that there may be other evidence that could lead reasonable persons to conclude that the evidence sought is in a different location. *State v. Tompkins*, 144 Wis.2d 116, 125, 423 N.W.2d 823, 827 (1988).

It is not necessary to infer that Lanzel manufactured the bomb. However, the reasonableness of a search warrant is not to be measured by the success attending its execution. 106 1/2 East Clinton Street was the geographic locus most associated with the bomb Sill ultimately exploded, and Lanzel was known to police as the occupant at that address. Presumably, had a search of this location proved unproductive, further search warrants would have issued for other places associated with either Lanzel or Walz.

Turning to whether the evidence was stale, we conclude that the affidavit reasonably permitted the magistrate to believe that the evidence sought would remain on the premises, despite the passage of several months. Bomb-making requires experience. Therefore, it was reasonable for the magistrate to infer that manuals and other written instructions would remain in the bomb-maker's possession, perhaps for future use.

The other evidence sought was specified to be either innocuous (batteries and the like) or so small that it may have been overlooked (wire clippings, wire strippings, etc.). As the affidavit makes clear, such evidence is likely to be retained "inadvertently," and hence could "excite an honest belief in

a reasonable mind" that it would still be present several months after the police's first suspicions.

By the Court. – Order reversed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.