COURT OF APPEALS
DECISION
DATED AND FILED

September 29, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Nos. 99-1097-CR
99-1098-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

NO. 99-1097-CR

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEE A. GATES,

DEFENDANT-APPELLANT.

NO. 99-1098-CR

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER GATES,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Richland County: EDWARD E. LEINEWEBER, Judge. *Affirmed*.

Before Eich, Roggensack and Dillon, JJ.[1]

¶1 PER CURIAM. Lee and Christopher Gates appeal from judgments convicting them of possessing marijuana with intent to deliver. Both pleaded no contest after the trial court refused to suppress the evidence of their crimes. The sole issue is the suppression decision. We affirm.

¶2 The evidence used to charge the Gates was seized from their home on Saturday, November 8, 1997, pursuant to a search warrant issued on Friday, November 7. The complaint for the search warrant, drafted by Deputy Sheriff Christian Cejpek on November 7, stated that the Gates' home presently contained evidence of drug sales. The complaint further reported that the facts in support of the complaint were obtained between 11:30 a.m. and 1:45 p.m., during which time Cejpek examined garbage bags the Gates left on the curb for "routine garbage pickup on Friday mornings," and found evidence of marijuana sales.

¶3 After they were charged, the Gates moved to suppress the seized evidence because the search warrant complaint did not specify what day the garbage search occurred. The trial court concluded that the issuing magistrate could have reasonably inferred that it occurred on November 7, and denied the motion. The Gates filed their appeals to challenge that determination.

[1] Circuit Judge Daniel T. Dillon is sitting by special assignment pursuant to the Judicial Exchange Program.

¶4 In reviewing whether probable cause existed to issue a search warrant, we accord great deference to the determination made by the warrant issuing magistrate. *See* ***State v. Ward***, 2000 WI 3, ¶21, 231 Wis. 2d 723, 604 N.W.2d 517. The defendant's burden is to demonstrate that the facts were clearly insufficient to establish probable cause. *See* ***id.*** Probable cause is a commonsense test based on what a reasonable magistrate could infer from the information presented by the police. *See* ***id.*** at ¶¶23, 26. Search warrants are to be "tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area." ***State v. Starke***, 81 Wis. 2d 399, 410, 260 N.W.2d 739 (1978).

¶5 The magistrate could have reasonably inferred that the garbage search occurred on November 7 as opposed to some unspecified date in the past. The complaint stated that Cejpek knew that drug evidence was "now" present in the Gates' home, and identified "now" as Friday, November 7. The complaint identified the source of that knowledge as an investigation conducted between 11:30 a.m. and 1:45 p.m. on Friday. The magistrate could have reasonably applied common sense and normal language usage rules to infer that the Friday investigation occurred on the only Friday, as well as the only date, identified in the complaint. That was November 7. "Courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner." ***Id.***

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.