COURT OF APPEALS
DECISION
DATED AND FILED

May 22, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP742-CR **Cir. Ct. No. 2015CF4438**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM CANALES, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CAROLINA STARK, Judge. *Affirmed*.

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. William Canales, Jr. appeals from his judgment of conviction, entered by the trial court upon accepting his guilty plea for one count of possession with intent to deliver between ten and fifty grams of heroin and one count of possession with intent to deliver more than forty grams of cocaine, both as second or subsequent offenses.

¶2 Canales appeals the trial court's denial of his motion to suppress the evidence that was obtained after a second search warrant was executed at his residence. He argues that the second warrant was based on illegally-obtained statements he made while in custody. The trial court did indeed find that there were illegally-obtained statements included in the affidavit prepared in support of the second warrant; however, the court determined that after those statements were stricken, the information remaining in the affidavit was sufficient to establish probable cause for issuing the warrant. We affirm.

BACKGROUND

¶3 As part of an on-going drug investigation, on September 29, 2015, Milwaukee police executed a search warrant at a residence on West Burnham Street in Milwaukee. Canales was the target and was present in the home. Police recovered only a small amount of heroin, but found substantial evidence of drug trafficking, including digital scales, baggies, multiple cell phones, a suspected drug ledger, surveillance cameras on the exterior of the house, and an aluminum can with a false bottom known as a "California Safe" that is commonly used to conceal narcotics. Additionally, police found over $43,000 in cash in a Popeye's bag in a vehicle belonging to Canales that was parked outside the residence.

¶4 Canales was taken into custody. He was interviewed by Officer John Schott. Officer Schott began by asking Canales some background questions,

including several questions about his connection to the Burnham Street residence, before advising Canales of his ***Miranda***[1] rights. After receiving his ***Miranda*** rights, Canales stated several times that he did not want to answer questions, and that he should have a lawyer present. However, Officer Schott continued to talk to Canales, asking him further questions and encouraging him to talk. During that continued questioning, Canales stated that there was more heroin at the Burnham Street residence.

¶5 The police then prepared an affidavit to apply for a second search warrant for the Burnham Street residence. The second search warrant was approved and executed on October 1, 2015, with police finding large amounts of both heroin and cocaine, as well as oxycodone pills. Canales was charged with possession with intent to deliver heroin and cocaine, and with keeping a drug house.[2]

¶6 Canales filed motions challenging the admissibility of the statements he made to Officer Schott during the interrogation, and to suppress the evidence found upon the execution of the second search warrant. The trial court first found that Officer Schott's questions relating to Canales's connection to the Burnham Street residence, which were asked prior to Canales receiving his ***Miranda*** rights, were inadmissible. The court noted that Officer Schott was an experienced drug investigation officer, so he knew or should have known that the answers to the questions about the residence "would solicit potentially incriminating responses." Furthermore, after Canales received his ***Miranda*** rights, he indicated that he did

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[2] This charge was dismissed but read in as part of the plea agreement.

not want to answer any questions; the trial court ruled that all of the statements Canales made after that point were also inadmissible. As a result, any reference to those inadmissible statements included in the affidavit for the second search warrant had to be stricken.

¶7 Nevertheless, the trial court found that the remaining information in the affidavit established probable cause for the second search warrant. The court based its decision on several factors: the disparity between the small amount of drugs found as compared to the large amount of cash discovered at the Burnham Street residence during the execution of the first search warrant; the reasonable inference that could be drawn that there were more drugs to be found at that location; and that the drug-detecting canine was not available during the execution of the first search warrant, but was available for the execution of the second warrant, thus increasing the likelihood of finding additional drugs at the residence.

¶8 Subsequent to that decision, Canales pled guilty to the two charges upon which he was convicted. He was sentenced to fourteen years, bifurcated as eight years of initial confinement followed by six years of extended supervision. This appeal follows.

DISCUSSION

¶9 The sole issue on appeal is whether the trial court erred in not suppressing the evidence found during the execution of the second search warrant. In our review of a motion to suppress, we apply a two-step standard of review: (1) we first review the trial court's findings of fact, and will uphold them unless they are clearly erroneous; and (2) we then "review the application of constitutional principles to those facts *de novo.*" *See* ***State v. Eason***, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625.

¶10 "The Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution establish the right of persons to be secure from unreasonable searches and seizures." ***State v. Secrist***, 224 Wis. 2d 201, 208, 589 N.W.2d 387 (1999). Indeed, this court "consistently follows the United States Supreme Court's interpretation of the search and seizure provision of the [F]ourth [A]mendment in construing the same provision of the state constitution." ***State v. Kiper***, 193 Wis. 2d 69, 80, 532 N.W.2d 698 (1995) (citation omitted). As a result, search and seizure law in Wisconsin essentially "parallels" search and seizure law established by the United States Supreme Court. ***Secrist***, 224 Wis. 2d at 208-09.

¶11 While searches performed without a warrant are presumed to be unconstitutional, searches where a warrant was obtained will "pass constitutional muster" as long as it complies with three requirements:

> (1) prior authorization by a neutral, detached magistrate; (2) a demonstration upon oath or affirmation that there is probable cause to believe that evidence sought will aid in a particular conviction for a particular offense; and (3) a particularized description of the place to be searched and items to be seized.

State v. Tate, 2014 WI 89, ¶28, 357 Wis. 2d 172, 849 N.W.2d 798 (citation omitted).

¶12 Here, Canales challenges the second requirement—whether there was probable cause to issue the warrant after the illegally obtained statements

were stricken.[3] In order for probable cause to be established, the information presented to the court issuing the warrant must contain "'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 they will be found in the place to be searched.'" ***State v. Ward***, 2000 WI 3, ¶27, 231 Wis. 2d 723, 604 N.W.2d 517 (citation omitted). In making this determination, the court considers the "totality of the circumstances." ***Id.***, ¶26 (citation omitted).

¶13 In cases where a search warrant "was issued based on both tainted and untainted evidence," we review independently whether "'the untainted evidence was sufficient to support a finding of probable cause to issue the search warrant.'" ***State v. Herrmann***, 2000 WI App 38, ¶21, 233 Wis. 2d 135, 608 N.W.2d 406 (citation and one set of brackets omitted). If the untainted evidence is sufficient, the warrant is valid. ***State v. Carroll***, 2010 WI 8, ¶44, 322 Wis. 2d 299, 778 N.W.2d 1. In contrast, if a warrant is deemed invalid and the ensuing search rendered illegal, the proper remedy is suppression of the evidence recovered during that search. ***Id.***, ¶19.

¶14 In this case, the trial court found that many of Canales's statements to Officer Schott during his custodial interview were illegally obtained, and thus were inadmissible. Therefore, in its review of the affidavit which served as the basis for issuing the second search warrant, the trial court properly struck all

[3] Canales initially argued that the inevitable discovery doctrine was applicable in this case. However, the State pointed out that the inevitable discovery doctrine is an exception to the exclusionary rule for *unlawfully* obtained evidence. *See* ***State v. Jackson***, 2016 WI 56, ¶47, 369 Wis. 2d 673, 882 N.W.2d 422. Here, the trial court determined that the second search warrant was valid; thus, the evidence had been *lawfully* obtained, and the inevitable discovery doctrine is not applicable. Canales conceded this point in his reply brief.

references to the illegally obtained statements—the tainted evidence—and reviewed the remaining valid information—the untainted evidence—to determine whether it still provided sufficient probable cause to issue the second warrant. *See* ***id.***, ¶44.

¶15 The trial court determined that the affidavit contained sufficient information to establish probable cause to issue the second warrant. The trial court stated that it considered the disparity between the small amounts of drugs as compared to the large amount of cash discovered at the Burnham Street residence during the execution of the first search warrant, recognizing that a reasonable inference could be drawn that there were more drugs to be found at that location. The trial court further noted that the drug-detecting canine was not available during the execution of the first search warrant, but was available for the execution of the second warrant, thus increasing the likelihood of finding additional drugs at the residence.

¶16 We agree with the trial court that, based on the totality of these circumstances, the untainted evidence provided sufficient probable cause to reasonably conclude that there was further evidence of drug-dealing to be found at the Burnham Street residence. *See* ***Ward***, 231 Wis. 2d 723, ¶27. The second search warrant was therefore valid. *See* ***Carroll***, 322 Wis. 2d 299, ¶44. Accordingly, we affirm the trial court's denial of Canales's motion to suppress.

By the Court.—Judgment affirmed.

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