

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

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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.

Appeal No. 2018AP1383-CR

Cir. Ct. No. 2017CF135

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EVERETT J. BARR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Juneau County:
BERNARD N. BULT, Judge. *Affirmed.*

Before Lundsten, P.J., Blanchard, and Fitzpatrick, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Everett Barr appeals a judgment of conviction for possession of drug paraphernalia to manufacture methamphetamine and bail jumping. Barr contends that the search warrant that police executed to obtain evidence was not supported by probable cause. For the reasons set forth in this opinion, we conclude that the search warrant was supported by probable cause. We affirm.

¶2 In May 2017, police executed a search warrant for the residence located at 209 Williams Street in Mauston. Police located methamphetamine and items associated with the manufacture of methamphetamine. Barr was arrested at the scene. The State charged Barr with maintaining a drug trafficking place, possession of methamphetamine, possession of drug paraphernalia with intent to manufacture methamphetamine, possession of waste from methamphetamine manufacturing, second-degree recklessly endangering safety, and two counts of bail jumping.

¶3 Barr moved to suppress the evidence obtained during the search. He argued that the search warrant lacked probable cause, requiring suppression of the evidence. The circuit court held a hearing, and then denied the suppression motion. Barr then pled no-contest to possession of paraphernalia with intent to manufacture methamphetamine and bail jumping, and the remaining charges were dismissed and read-in for sentencing purposes.

¶4 Barr contends that the search warrant affidavit did not establish probable cause for the search warrant. In our review of a challenge to a search warrant, we give deference to the judge's decision to issue the warrant. *State v. Sloan*, 2007 WI App 146, ¶8, 303 Wis. 2d 438, 736 N.W.2d 189. Our review is limited to the record as it existed before the judge at the time the warrant was

issued. *Id.* The inquiry before us is whether the judge ““was apprised 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 they will be found in the place to be searched.”” *Id.* (quoted source omitted). “We will uphold the decision to issue the warrant unless the facts in the supporting affidavit ‘were clearly insufficient to support a finding of probable cause.’ In reviewing a probable cause assessment, we examine the totality of the circumstances.” *State v. Casarez*, 2008 WI App 166, ¶10, 314 Wis. 2d 661, 762 N.W.2d 385 (quoted sources omitted).

¶5 Here, the May 2017 search warrant affidavit set forth the facts in paragraphs 6, 7, and 8 below.

¶6 In April 2017, an individual reported to police that methamphetamine was being cooked “at the old church” at 209 Williams Street by “Everett Clark,” Matthew Talley, and A.M.S. On May 2, 2017, an off-duty police officer was walking by the church at 209 Williams Street with a police drug detection canine, and the canine pulled his lead to garbage bags at the curb line and pressed his nose to the bags, sniffing heavily. The officer noted that the canine’s action was consistent with his alerts to the odor of illegal drugs when on duty.¹ The officer also noted that the canine did not act similarly relative to the other garbage bags they passed on that walk. On May 15, 2017, a second individual reported to police that Barr had been “cooking meth” at “the old

¹ The affidavit also states that the canine then entered the yard and began to sniff heavily and snort in front of an exterior window, consistent with the canine’s behavior for alerting to illegal drugs. Barr asserts that the affidavit should not have included information about the canine’s alert at the exterior window because the alert at the window was an unlawful search. We will assume for purposes of this opinion that the canine’s alert at the window was an illegal search, and we do not consider that fact in our analysis.

church” on Maine Street in Mauston. The individual reported having seen Barr “cooking” methamphetamine inside the church within the past six months. The individual indicated a belief that the church was at the corner of Maine Street and Martin Street in Mauston, and that Barr and Talley lived there.

¶7 Wisconsin Circuit Court Access indicated that Barr had a recently listed address of 209 Williams Street in Mauston. Wisconsin Circuit Court Access also indicated that Talley’s most recently listed address was 209 Williams Street in Mauston. The address of 209 Williams Street is located at the intersection of Williams Street and Martin Street and is adjacent to Maine Street.

¶8 Another police officer reviewed the “pseudoephedrine logs” within the immediate area and noted that Barr and Talley had purchased pseudoephedrine products on multiple occasions from March through May 2017, and that Barr was blocked from purchasing pseudoephedrine products on one occasion for exceeding the maximum allowed by law in a thirty-day period. Another known associate of Barr’s, Brianna Tande, had purchased pseudoephedrine products or was blocked from purchasing pseudoephedrine products on two of the same dates as Barr. The officer was aware based on his training and experience that pseudoephedrine is necessary for the manufacture of methamphetamine.

¶9 Barr argues that the search warrant affidavit was insufficient to establish probable cause.² He contends that the affidavit did not establish the

² Barr contends that the circuit court improperly considered additional evidence presented at the suppression hearing in determining that the search warrant affidavit had provided probable cause for the warrant. We agree that the additional evidence provided at the suppression hearing is not relevant to the issue of whether the search warrant affidavit established probable cause. We therefore limit the facts that we consider in this opinion to the facts set forth in the affidavit.

reliability of the information provided by the two reporting individuals.³ See *State v. Silverstein*, 2017 WI App 64, ¶15, 378 Wis. 2d 42, 902 N.W.2d 550 (reliability of information provided by citizen informants evaluated by the reliability of nature of the report, the person’s opportunity to hear and see the matters reported, and the extent to which it can be verified by independent police investigation). As to the first individual, Barr argues that the information was unreliable because the affidavit did not state how the individual obtained the information, why the individual should be considered reliable, or whether the individual had provided reliable information in the past. He points out that the individual misstated Barr’s last name as Clark and misidentified another involved party. As to the second individual, he contends that the information was unreliable because the affidavit did not describe precisely what the individual observed, how the individual drew

³ Barr raises a confusing argument related to the labeling used in the affidavit for the individuals who allegedly provided information to police. At points in his briefing, Barr asserts that the individuals were incorrectly labeled as “concerned citizens” in the affidavit. In fact, he asserts, the first individual was a “jail informant,” citing testimony at the suppression hearing that the first individual was in jail when he provided information to police. He asserts that the second individual might have been involved in criminal activity, since he or she claimed to be present during the manufacturing of methamphetamine, and therefore may have been a “criminal informant.” Barr argues that this matters because, if the individuals are considered “police informants” rather than “citizen witnesses,” the information they provided must be considered less reliable. See *State v. Silverstein*, 2017 WI App 64, ¶16, 378 Wis. 2d 42, 902 N.W.2d 550 (police informants generally less reliable than citizen witnesses). While he does not identify it as such, this would appear to be part of a potential *Franks/Mann* challenge to the search warrant, that is, a claim that the affiant knowingly included false information or omitted material facts. See *Franks v. Delaware*, 438 U.S. 154 (1978); *State v. Mann*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985). However, Barr does not separately develop any such argument. He specifically frames his single argument on appeal as whether there was probable cause for the search warrant based on the four corners of the affidavit, and argues that our review must be limited to the facts contained in the affidavit. Thus, at points in his briefing, Barr appears to assume that the individuals were correctly labelled as citizen witnesses, and argues that the information they provided was unreliable, an argument that we address in the text. With that background, we need not resolve the issue of whether the two individuals were correctly labelled in the affidavit. Rather, we consider the specific allegations in the affidavit regarding the two individuals and the information they allegedly provided in context with the totality of the circumstances.

the conclusion that Barr was manufacturing methamphetamine, and did not explain why the individual was present during criminal activity. He also points out that the individual did not provide the exact address of the church as 209 Williams Street and did not provide a date for having witnessed Barr cooking methamphetamine other than “within the past six months.”

¶10 Barr also contends that the affidavit did not sufficiently connect the garbage bags on the curb to the residence at 209 Williams Street or establish the canine’s training and reliability or why his behavior should be considered an alert for the presence of illegal drugs. Barr also contends that the information from the “pseudoephedrine logs” was hearsay, and that nothing in the affidavit established the reliability of that information. He argues that each item of information in the search warrant affidavit was unreliable, and that taken together, the totality of circumstances did not establish a fair probability that a search of 209 Williams Street would uncover evidence of wrongdoing.

¶11 We conclude that the facts in the search warrant affidavit, taken together, were sufficient to support an honest belief that evidence related to manufacturing methamphetamine would be found at 209 Williams Street. *See Sloan*, 303 Wis. 2d 438, ¶8. “The well-established test for probable cause is that it is ‘flexible,’ and is ‘a practical commonsense decision,’ that is made considering ‘the totality of the circumstances.’” *Silverstein*, 378 Wis. 2d 42, ¶22 (quoted sources omitted). While Barr attacks the reliability of individual pieces of information, “[p]rove-up of every detail is not required in a warrant affidavit, as is consistent with the policy that is designed to encourage law enforcement to obtain search warrants in the first place.” *Id.* Thus, we do not “focus on individual parts” of a supporting affidavit to determine whether it established probable cause. *State v. Schaefer*, 2003 WI App 164, ¶17, 266 Wis. 2d 719, 668 N.W.2d 760.

Rather, we assess the “statements viewed in their entirety, and the reasonable inferences that may be drawn from those facts.” *Id.*

¶12 We summarize the incriminating information as follows. Police received reports by two individuals as to possible methamphetamine-related activity at 209 Williams Street. While the reports contained limited detail and some misinformation, they corroborated each other to a degree and supported an inference that Barr and Talley were possibly involved with manufacturing methamphetamine at 209 Williams Street. The off-duty police canine’s reaction to garbage on the curb as the canine was passing 209 Williams street supported a reasonable inference that the garbage was associated with the residence and that it contained illegal drugs, further supporting the inference that evidence of methamphetamine manufacturing would be found at 209 Williams Street. The information from the pseudoephedrine logs for the immediate area indicating that Barr, Talley, and Tande had purchased large amounts of pseudoephedrine in recent months, which police knew to be necessary for manufacturing methamphetamine, further supported an inference of more recent manufacture of methamphetamine at that location. While the affidavit did not provide detail as to how the pseudoephedrine logs are maintained, the information obtained by police provides an additional commonsense factor for the probable cause analysis. Finally, that Barr and Talley had recently listed addresses of 209 Williams Street, provided additional “bricks” in the “brick-by-brick case for probable cause.”⁴ *See id.*, ¶22.

⁴ The affidavit contained the allegation that Barr was then out on bond with pending charges of possession of drug paraphernalia with intent to manufacture methamphetamine and knowingly possessing methamphetamine. The parties dispute whether this is a reliable fact that
(continued)

¶13 We conclude that the facts as a whole, and the reasonable inferences that may be drawn from those facts, established a reasonable belief that evidence of methamphetamine manufacturing would be found at 209 Williams Street. We affirm.

By the Court.—Judgment affirmed.

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can be considered in the probable cause analysis. We will assume without deciding that the bare allegation of pending charges is not a reliable fact that counts in the analysis.

