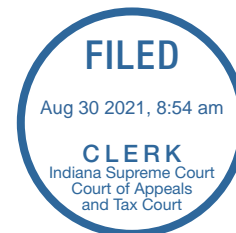


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Michael A. Wood,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 30, 2021

Court of Appeals Case No.
21A-CR-539

Appeal from the
Wabash Circuit Court

The Honorable
Robert R. McCallen, III, Judge

Trial Court Cause No.
85C01-2002-F6-267

Vaidik, Judge.

Case Summary

- [1] Michael A. Wood appeals his convictions for Level 5 felony possession of methamphetamine, Level 6 felony illegal possession of a syringe, and Class A misdemeanor resisting law enforcement, arguing the evidence presented against him was obtained pursuant to an invalid search warrant. We affirm.

Facts and Procedural History

- [2] On February 17, 2020, Officer Parker Stouffer of the North Manchester Police Department applied for a search warrant for 706 Meadowdale Drive, where Wood lived. The probable-cause affidavit provides, in part:

On Friday, 01/31/2020 around 2 am, I received a tip from a confidential and reliable informant from the Wabash County area. He told me that night, Michael A. Wood (09/04/1984) had just picked up several ounces of methamphetamine and was keeping that methamphetamine at 706 Meadowdale Dr, North Manchester, Indiana.

On 04/09/2007, Michael A. Wood was found guilty of Dealing in a Schedule I, II, III or controlled substance in Whitley County, Indiana under Case No. 92C01-0607-FB-000081. In my role as a narcotic detective, I have received numerous anonymous complaints pertaining to Mr. Wood's drug use and distribution. On 11/23/2019, while conducting routine narcotic related surveillance on the West side of the town of North Manchester, I witnessed Mike Wood driving a gold Pontiac. I observed several traffic violations and was aware that Wood's driving status was revoked. NMPD Officer Adams conducted a traffic stop on Wood, a police K9 alerted on the vehicle and Officer Adams located a small black digital scale with a white powdery

substance that field tested positive for methamphetamine. Officer Adams also located a partial prescription pill. That item was forwarded to the Fort Wayne Crime lab for further analysis.

Appellant's App. Vol. II p. 153. The affidavit also states Officer Stouffer observed a woman later identified as Shannon Bradley visit 706 Meadowdale Drive on February 11, 2020, and that a search of Bradley's apartment the next day revealed "evidence of possession of methamphetamine," which she claimed to have received from Wood. *Id.*

[3] Finally, the affidavit describes the following:

On 02/17/2020, at 4:45 am, I witnessed the same gold Pontiac I know Michael Wood to operate sitting at 706 Meadowdale Drive North Manchester, Indiana. I witnessed one brown trash bin sitting on the roadway in front of 706 Meadowdale Drive. The trash bin clearly belonged to that residence and was available to the public for pick up. I conducted a trash pull from that trash [bin]. I transported two large silver trash bags back to NMPD for processing.

Inside the first trash bag, I located dozens of clear Ziploc style bags with the corners torn out. I located a small digital scales cardboard box. I located a small clear Ziploc style bag with a White rock-like substance contained. The white rock-like substance weighed a little over a gram and field tested positive for methamphetamine. One of the bag corners tested positive for methamphetamine.

Id. at 154.

- [4] That same day, a judge issued the warrant. When officers arrived at the house to execute the warrant, Wood and another individual attempted to run out the back door and were apprehended. A search of the house’s attached garage—where Wood was staying—revealed six syringes, two loaded with methamphetamine. On Wood’s person, officers found a small container of methamphetamine.
- [5] The State charged Wood with Level 5 felony possession of methamphetamine, Level 6 felony possession of methamphetamine, Level 6 felony illegal possession of a syringe, Level 6 felony maintaining a common nuisance, and Class A misdemeanor resisting law enforcement. Wood filed a motion to suppress the evidence seized as a result of the search, arguing the probable-cause affidavit was based on “uncorroborated hearsay.” *Id.* at 150. A hearing was held in August 2020, after which the trial court denied Wood’s motion.
- [6] At trial, over Wood’s continuing objection, the trial court admitted the evidence obtained pursuant to the search warrant. Wood was ultimately convicted of Level 5 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, and Class A misdemeanor resisting law enforcement.¹ The trial court sentenced him to an aggregate sentence of five years.

¹ The jury found Wood guilty of all five counts. However, the trial court dismissed the Level 6 felony maintaining-a-common-nuisance count following Wood’s motion for judgment on the evidence and did not enter a conviction for Level 6 felony possession of methamphetamine due to double-jeopardy concerns.

[7] Wood now appeals.

Discussion and Decision

[8] Wood challenges the trial court’s admission of evidence stemming from the execution of the search warrant, arguing the warrant was not supported by probable cause. Both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution require probable cause for the issuance of a search warrant. *Smith v. State*, 982 N.E.2d 393, 404 (Ind. Ct. App. 2013), *trans. denied*. The Fourth Amendment provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The text of Article 1, Section 11 of the Indiana Constitution contains nearly identical language. *State v. Spillers*, 847 N.E.2d 949, 953 (Ind. 2006). These federal and state constitutional rights are codified in Indiana Code section 35-33-5-2, which sets forth the information that an affidavit for a search warrant is required to contain. *Id.* Section 35-33-5-2(a) provides that a search-warrant affidavit must particularly describe “the house or place to be searched and the things to be searched for[,]” allege “substantially the offense in relation thereto and that the affiant believes and has good cause to believe that . . . the things sought are concealed there[,]” and set forth “the facts known to the affiant

through personal knowledge or based on hearsay, constituting the probable cause.” If the affidavit is based on hearsay, it must either “(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or (2) contain information that establishes that the totality of the circumstances corroborates the hearsay.” *Id.* at (b).

[9] Wood’s argument requires us to review two judicial rulings: the initial finding of probable cause to issue the warrant and the trial court’s decision to uphold that finding. *McGrath v. State*, 95 N.E.3d 522, 526-27 (Ind. 2018). We review the latter ruling de novo but apply a deferential standard to the former. *Id.* In determining whether to issue a search warrant, “the issuing magistrate’s task is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Bradley v. State*, 4 N.E.3d 831, 840 (Ind. Ct. App. 2014), *trans. denied*. The duty of the reviewing court is to determine whether the magistrate had a “substantial basis” for concluding that probable cause existed. *Id.* A substantial basis requires the reviewing court, with significant deference to the magistrate’s determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the determination of probable cause. *Spillers*, 847 N.E.2d at 953.

[10] Here, Wood argues the affidavit did not provide probable cause because it was “based upon a lack of personal knowledge and uncorroborated hearsay,” namely, the tips from unnamed sources, information on his prior arrest, the car

search conducted by Officer Adams, and information from Bradley. Appellant’s Br. p. 22. But while some of the information in the affidavit may constitute uncorroborated hearsay, we note that a probable-cause determination is based on “all the circumstances set forth in the affidavit.” *Darring v. State*, 101 N.E.3d 263, 268 (Ind. Ct. App. 2018). Here, in addition to the hearsay statements, the affidavit describes a trash pull of Wood’s residence, in which officers found methamphetamine and drug-related packaging.² This is sufficient to support a finding of probable cause. *See Edwards v. State*, 832 N.E.2d 1072, 1080 (Ind. 2005) (concluding there was probable cause for a search warrant of the residence after officers found marijuana and packaging in residence’s trash); *Love v. State*, 842 N.E.2d 420, 426 (Ind. Ct. App. 2006) (“Given the presence of cocaine [in defendant’s trash], and the fact that the possession of cocaine itself is a crime, we conclude that the warrant was based upon probable cause, and the evidence discovered during the execution of the warrant was admissible.”).

[11] Wood argues the contents of the trash pull “could have belonged to the other residents of the main house and do not exclusively support the proposition that the illegal contraband found therein emanated from Wood[.]” Appellant’s Br. p. 23. But whether the contents of the trash pull belonged “exclusively” to Wood is not necessary to show probable cause to search the house. The question is whether “there is a fair probability that evidence of a crime will be found in a particular place.” *Fry v. State*, 25 N.E.3d 237, 246 (Ind. Ct. App.

² Wood does not challenge the validity of the trash pull.

2015), *trans. denied*. The record reveals, and Wood does not dispute, that methamphetamine and packaging supplies were found in the house's trash can. As such, there was a fair probability methamphetamine would be found in the house.

[12] Because there was probable cause supporting the issuance of the search warrant, the search did not violate Wood's constitutional rights and the trial court did not err by admitting evidence stemming from the warrant.

[13] Affirmed.

Kirsch, J., and May, J., concur.